

1 **Why Process Matters: A Procedural History of WRIA 1 Watershed Management Planning 1999-2016**

2
3 **Summary Findings of Fact**
4

5 The Watershed Planning Act (RCW 90.82, the Act) vested responsibility for review and approval of
6 watershed plans, including implementation plans, with planning units and no other body, and further
7 provided that planning units would manage the planning process. [\[Page 4\]](#)
8

9 In 1998 The WRIA 1 Initiating Governments (IGs) initiated the WRIA 1 Watershed Management Project
10 Watershed (Project) under the auspices of the Act and determined the composition of the WRIA 1 Planning
11 Unit (PU) in a Structure and Function memo dated March 25 1999. [\[Pages 4-5\]](#)
12

13 December 1999 County Attorney Dan Gibson confirmed at a PU meeting that the Act vested responsibility
14 for review and approval of a watershed plan with the PU, and no other body. [\[Page 5-6\]](#)
15

16 WRIA 1 PU reviewed and approved the 2005 Watershed Management Plan, Phase 1 (2005 WMP) and the
17 2007 Detailed Implementation Plan (2007 DIP). [\[Page 6\]](#)
18

19 In Fall 2007 a state Attorney General’s opinion determined that post-plan adoption roles of planning units
20 would remain as before plan adoption by default, unless the adopted plan provided otherwise. [\[Page 6\]](#)
21

22 Both the 2005 WMP and 2007 DIP explicitly provide for a post-adoption role for the PU. [\[Page 7\]](#)
23

24 In 2000 the IGs entered into an Interlocal Agreement (ILA) forming the Joint Administrative Board (JAB);
25 the ILA provides for administrative functions only. Nothing in said ILA amended or reduced the role of the
26 Planning Unit, or transferred any of the Planning Unit’s statutory responsibility to the JAB. [\[Page 8\]](#)
27

28 In February 2009, the WRIA 1 Staff Team decided the PU should be converted to an advisory committee.
29 The PU rejected that proposal at its June 30 2009 regular meeting. [\[Page 9\]](#)
30

31 July 8 2009 JAB decided it should resolve its authority over the PU “in a reasonable time frame,” and
32 **“Planning Unit remain in place until further discussion by Planning Unit and ... Boards.”** [\[Pages 10-11\]](#)
33

34 Various WRIA 1 participants have tried to justify suspending PU activities by claiming that the PU’s role is
35 over, since the process of watershed planning concluded once implementation began. Yet the 2005 WMP
36 clearly states it is an interim plan only, that it will require revision from time to time. [\[Pages 11-12\]](#)
37

38 Further, the Adaptive Management provisions of the plan call for iteration between planning and
39 implementation, driven by monitoring of results. [\[Page 12-15\]](#)
40

41 Thereafter, Staff Team stopped scheduling PU meetings; the latter, at that time having no independent
42 means of operating, languished in limbo for over four years. [\[Page 15\]](#)
43

44 The JAB developed the 2010 Lower Nooksack Strategy (LNS) without PU involvement. [\[Pages 15-16\]](#)
45

46 Legal and other questions remain unanswered regarding the propriety of procedures used to develop LNS,
47 as well as conflicts between Instream Flow Action Plan (IFAP) and LNS Objective 1. [\[Pages 16-17\]](#)
48

49 County Council Surface Water Work Session does not resolve the issues regarding PU [\[Page17\]](#)
50

51 In February 2013, prompted by County Attorney Dan Gibson memo on the legal status of the PU, County
52 Executive Louws reversed his position and recommended to council the PU be re-started. [\[Pages 18-19\]](#)
53

54 In Resolution 2013-025, approved July 23 2013, council recognized the PU for its statutory role in
55 watershed planning, and added an advisory role for matters outside watershed planning. [\[Page 24--25\]](#)
56

57 PU survives, but, isolated from JAB, plays no meaningful role in the Project. [\[Pages 25 -- 26\]](#)
58

59 JAB and staff team continue to mischaracterize the PU [\[Page 26\]](#)
60

61 JAB morphs itself into the watershed management board: [\[Pages 27 - 29\]](#)
62

63 JAB representative on PU makes false claims regarding PU role in an interlocal agreement [\[Pages 29 - 30\]](#)
64

65 Government participation in the Planning Unit dwindles over time [\[Page 30\]](#)
66

68 **Statutory Role and Procedural History of WRIA 1 Watershed Planning Unit 1999-2018**

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148 **Statutory Role and Procedural History of the WRIA 1 Watershed Planning Unit 1999-2018**

149 **NOTE: References and links found in [Appendix 1](#)**

150
151 **Statutory Role of planning units:**

152 The Watershed Planning Act [RCW 90.82] provides an operational definition of initiating
153 governments, and directs said initiating governments to form a planning unit that would provide citizens
154 representing local water resources interests maximum input and direction to the planning process, in a fair
155 and equitable manner. In so doing it found as a matter of fact that such broad representation was necessary
156 because “... *the local development of watershed plans for managing water resources and for protecting*
157 *existing water rights is vital to both state and local interests. The local development of these plans serves*
158 *vital local interests by placing it in the hands of people: Who have the greatest knowledge of both the*
159 *resources and the aspirations of those who live and work in the watershed; and who have the greatest stake*
160 *in the proper, long-term management of the resources.” [RCW 90.82.005; RCW 90.82.010; RCW*
161 *90.82.030]*

162 Further, the Act placed responsibility for managing the overall planning process with planning
163 units, per RCW 90.82.030(1) “All WRIA planning units established under this chapter shall develop a
164 process to assure that water resource user interests and directly involved interest groups at the local level
165 have the opportunity, in a fair and equitable manner, to give input and direction to the process.” [emphasis
166 added]

167
168 Thus, the legislature placed unprecedented responsibility upon planning units. RCW 90.82.130
169 requires that only a planning unit can recommend approval of watershed plans, and that while county
170 legislatures are given authority for final plan approval, counties cannot amend a watershed plan, they may
171 only send it back to the planning unit for revision [RCW 90.82.130 (2) (b)]. This limitation contrasts
172 markedly from the usual practice, where the members of bodies such as planning commissions are
173 appointed by the county and present their work to the county, which can do with it whatever it sees fit.
174 During the discussion held in the County Council’s July 23rd 2013 Public Works Committee meeting, of
175 AB2013-190 regarding Resolution 2013-025, entitled *Resolution Recognizing the Role of the WRIA 1*
176 *Planning Unit to Assist the Whatcom County Council Regarding Water Resources*, county attorney Dan
177 Gibson consulted the Act and confirmed this point at the request of Committee members.

178 The legislature also empowered planning units to petition Ecology for general stream adjudications
179 [as provided for under RCW 90.03.105].

180 With one exception, the legislature empowered planning units, and no other body, to seek the grants
181 made available under the Act.

182 No subsequent amendments to the Watershed Planning Act modify the role of planning units.

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185 **Formation of the WRIA 1 Planning Unit.**

186 In October 1998 Whatcom County, PUD, Bellingham and Lummi Nation entered into a
187 Memorandum of Agreement (MOA) that, among other things, committed those parties to act as the
188 Initiating Governments under the Act, to initiate watershed planning under its auspices, which required
189 formation of a planning unit. Nooksack Tribe did not sign the MOA, but later agreed to participate as an
190 initiating government as defined by the Act.

191 Thereafter, the five WRIA 1 Initiating Governments issued a memo on the structure and function of
192 the WRIA 1 Watershed Management Project in March of 1999, in which they set forth the detailed caucus
193 structure of the WRIA 1 Planning Unit, named each caucus, and established the basic rules of caucus
194 formation (self-selected representatives, etc.). Each caucus that needed to bring a large and diverse
195 membership together (including, but not limited to, environment, land development, private wells, forestry,
196 and fishers) did so under the watchful eye and with the explicit support of the WRIA 1 Initiating
197 Governments.

198 Excerpts from the March 25 1999 Structure and Function Memo read in relevant part:

200 “The state legislature, with agreements from federal agencies, has provided an opportunity for
201 watershed management decisions to be made locally. The local opportunity was provided by the Watershed
202 Management Act (ESHB 2514, RCW 90.82) of April 1998. The law provides that if local representatives in
203 WRIA 1 can work together, make scientifically sound assessments of the problems; collaborate to form a
204 Planning Unit; forge agreements among the affected parties; adhere to federal, tribal, state, and local laws;
205 and create a comprehensive watershed management plan and implementation strategy, than the state
206 agencies will accept the locally determined decisions. Federal agencies participating or represented in the
207 planning project may also accept the applicable obligations included in the plan. From Page 1
208

209 “An initial attempt to describe the structure and function of the Watershed Management Project was
210 released on December 29, 1998. In response to comments received about the document, the structure has
211 been refined and additional information provided on the Public Involvement and Education plan and caucus
212 formation and function. A new schedule for formation of the Planning unit is also being developed. This
213 report presents the refined structure and function of the Planning Unit and the other elements of the
214 Watershed Management Project. This document does not, however, change or waive any rights of the
215 Initiating Governments under ESHB 2514. From Page 1, emphasis added.
216

217 “If local elected and appointed decision-makers can succeed at working together, they will
218 determine how water resources in WRIA 1 are managed. If local decision-makers cannot cooperate and
219 plan together, the state, tribal and federal governments will make the necessary water resource management
220 decisions. From Page 1.
221

222 “These [Initiating] governments have assembled a capable Staff Team that is action oriented and
223 has learned the lessons of past water resource planning efforts. The Watershed Management Act may
224 provide the last opportunity for local decision-makers to plan and implement necessary water resource
225 solutions. Now is the time to trust, cooperate, and work together. From Page 2, emphasis added.
226

227 “The attached diagram of WRIA No. 1 Watershed Planning defines and describes the components
228 and functions of the planning project. The arrows between the components in the diagram mostly represent
229 the flow of information, communication, and feedback, and should not be confused with organizational
230 charts that depict lines of authority and reporting responsibility. This process must be a collaborative effort,
231 characterized by cooperation, trust, and mutual support if it is to succeed. From Page 3, emphasis added.
232

233 “Whatcom County is the Lead Agency for the Watershed Management Project. The role of the Lead
234 Agency in this effort is administrative. The agency is to coordinate and facilitate the watershed planning
235 process. The Lead Agency will provide staff and receive and disburse funds for the execution of grants,
236 contracts, and services as determined by consensus of the Initiating Governments. Whatcom County, as the
237 general purpose government with county-wide taxing authority, is the rational source to fund the local
238 portion of the Watershed Management Project. From Page 4, emphasis added.
239

240 “The Initiating Governments intend to provide some support to the caucus organizations and to
241 facilitate the formation of the caucuses. In would not be appropriate, however, for the Initiating
242 Governments to assume responsibility for the formation and functioning of the caucus organizations. Each
243 caucus is the responsibility of its members. From Page 4.”
244

245 The WRIA 1 Planning Unit caucuses began meeting in June of 1999. Over the first several months of its
246 existence the Planning Unit developed a document setting forth its rules of business, entitled Process and
247 Procedural Agreement, which was executed in December of that year.

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250 **Questions regarding the March 1999 Structure and Function Memo Arose During Planning Unit** 251 **Meetings.**

252 In WRIA 1, discussion of the role of planning units and the related issue of what authority initiating
253 governments had over planning units after their formation, began as soon as the Planning Unit convened in
254 June of 1999. The discussion continued and intensity of the concerns built until, at its regular December 22

255 1999 meeting, county attorney Dan Gibson gave some legal advice regarding those issues. Excerpts from
256 the summary of that meeting read in relevant part:

257 Question [from Planning Unit member]: In terms of approval of the plan, who holds that authority
258 with respect to the structure established for this planning process in our WRIA? What relationship do the
259 IGs have as members of the PU in terms of approval or lack thereof of that plan to whoever has the final
260 authority to approve it?

261 Dan Gibson: I'm not going to go too far into my reaction to the way the IGs are relating to the PU.
262 If IGs expect to have a vote, as I read RCW they must do so as members of the PU. On the issue of plan
263 approval, if parties want a vote, they do so as members of the PU. They might identify themselves as IGs
264 within broader context of the PU. It is the PU that approves/disapproves the plan. It then moves forward
265 to County Council.

266 Question: The perception is that the PU makes a decision – and the Process and Procedural Agreement
267 stipulates that if the table cannot decide then it goes up to the IGs – the IGs will then make that decision
268 by consensus. So it sounds like, the understanding of the law is that tribes are not going to be voting
269 unless the PU can not agree.

270 Dan Gibson: The law does not say that. In the process, as it has developed here, there seems to
271 have been a wedge driven between the IGs and PU. The law makes no distinction in terms of plan
272 approval. Plan approval is made by the PU. IGs are perceived to be members of PU. One cannot avoid
273 section 90.82.130 of the statute, which calls for approval of the plan by PU and not by some other group.
274 So to the extent IGs have a voice and are clearly given large and significant voice, in fact veto power must
275 be done in context of the PU. [\[Return to Findings\]](#) [\[Return to ToC\]](#)

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277 **WRIA 1 Planning Unit work products:**

278 The WRIA 1 Planning Unit recommended adoption of a 2005 Watershed Management Plan, Phase
279 1 (2005 WMP), and a 2007 Detailed Implementation Plan (2007 DIP). The County Council approved both
280 Plans. Such council approval was the final step in the plan adoption process as set forth in the Act.

281 The Planning Unit also reviewed and approved many other documents, including scopes of work for
282 contractors, and the work product of said contractors.

283 The Planning Unit also participated, on equal footing with other Project participants, in the selection
284 of contractors.

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287 **Status and role of the Planning Unit after Plan adoption:**

288 The issue of post-plan adoption role of planning units was raised by various WRIA 1 participants
289 and passed along to the state AG's office, with the following result, from a document entitled WRIA 1
290 Planning Unit Fall 2007 Update:

291 *Planning unit authority during implementation:*

292 RCW 90.82.043 and RCW 90.82.048 provide little additional guidance about how planning units are to be
293 established or organized, who the lead agency should be, or how decisions are to be made. Washington
294 Assistant AG Maia Bellon's recommendation was that absent detail in the statute authorizing Phase 4 actions,
295 the rules established in Phase 1 regarding initiation, structure, function, and decision-making still apply as
296 default. She also suggested that existing agreements already developed by the planning unit, and any guidance
297 provided in the approved watershed plan, are commonly used by other planning units as guidance for initiating
298 Phase 4. If the Planning Unit desires more clarity about planning unit structure in Phase 4, another alternative
299 could be to seek clarifying language in RCW 90.82 from the legislature. The Planning Unit approved Watershed
300 Plan states that the interim strategy for governance and administration during watershed plan implementation is
301 to retain the organizational structure for plan development but with modifications to the process to reflect a
302 reduced level of funding.

303 Link to Fall 2007 Update document [\[link not available as of 20191008\]](#)

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306 **Continuing Role of Planning Unit:** Both the 2005 WMP and 2007 DIP explicitly provide for ongoing
307 involvement of the PU. Both WMP and DIP establish a schedule of quarterly PU meetings, budgeted for
308 with Project funds, and a subcommittee was scheduled to address Project funding and governance issues
309 left unresolved by the 2005 WMP. Below are relevant excerpts from both plans:

310 2007 DIP Page 25 Table of Tier 1 Actions

311 Page 25, In Second Row, Column labeled Milestones:

312 Organize and conduct Planning Unit meetings as described in the June 2005 WRIA 1 Watershed Management
313 Plan.

314 Page 25, In Second Row, Column labeled Schedule:

315 Q1/08 and Q3/08 (tentative schedule for conducting Planning Unit meetings assuming continued process of 1st
316 meeting to review and 2nd meeting to approve)

317 Page 25, In Second Row, Column labeled Activity Leads:

318 WRIA 1 Staff Team and support staff lead for coordinating tasks.

319
320 Further, in his memo to Executive Louws dated February 6 2013, Dan Gibson, after reviewing the
321 relevant documents, stated: “Second, the primary reason that the planning unit continues to not simply exist
322 but to exist with some expectation of functionality ... is because the Watershed Management Plan adopted
323 in 2005 provides an on-going role for the planning unit, albeit that role is not crystal clear.

324 "Planning Unit - The composition of the Planning Unit with respect to caucuses represented will not
325 change. Modifications to the Planning Unit processes include a reduction in meeting frequency. It is
326 anticipated that the Planning Unit will have up to four (4) facilitated meetings per year. Scheduled
327 meetings will be for the primary purpose of considering recommendations relative to instream flows or to
328 the Federal/Tribal settlement negotiations, legislative changes, and formal WRIA 1 Watershed
329 Management Plan updates. Opportunities for feedback and input from the Planning Unit on WRIA 1 WMP
330 implementation activities outside of the scheduled facilitated meetings will be provided through a variety of
331 communication methods including: monthly posting of implementation activities to the WRIA 1 project
332 website; quarterly distribution of a simple newsletter to update WRIA 1 participants on program and
333 project status; email notification of events, meetings, and other notable activities as appropriate; posting of
334 Staff Team meeting summaries to the WRIA 1 Project website; and occasional informal, non-facilitated
335 Planning Unit meetings to receive feedback from and/or provide updates to Planning Unit or other WRIA 1
336 participants. . . ." WMP, Section 2 [sic, it's Section 4], p. 5.”

337
338 Here is the same language, verbatim:

339 119 Planning Unit – The composition of the Planning Unit with respect to caucuses represented
340 120 will not change. Modifications to the Planning Unit processes include a reduction in
341 121 meeting frequency. It is anticipated that the Planning Unit will have up to four (4)
342 122 facilitated meetings per year. Scheduled meetings will be for the primary purpose of
343 123 considering recommendations relative to instream flows or to the Federal/Tribal settlement
344 124 negotiations, legislative changes, and formal WRIA 1 Watershed Management Plan updates.
345 125 Opportunities for feedback and input from the Planning Unit on WRIA 1 WMP
346 126 implementation activities outside of the scheduled facilitated meetings will be provided
347 127 through a variety of communication methods including: monthly posting of implementation
348 128 activities to the WRIA 1 Project website; quarterly distribution of a simple newsletter to
349 129 update WRIA 1 participants on program and project status; email notifications of events,
350 130 meetings, and other notable activities as appropriate; posting of Staff Team meeting
351 131 summaries to the WRIA 1 Project website; and occasional informal, non-facilitated Planning
352 132 Unit meetings to receive feedback from and/or provide updates to Planning Unit and other
353 133 WRIA 1 participants. Planning Unit members are also encouraged to contact members of
354 134 the Staff Team, and in particular the Staff Team chair, if they have comments or concerns
355 135 that arise through their review of the various update mechanisms. The composition of the
356 136 Planning Unit with respect to interests represented will not change.

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The Act places responsibility for implementation plans with planning units

RCW 90.82.043 reads in full:

(1) Within one year of accepting funding under RCW [90.82.040](#)(2)(e), the planning unit must complete a detailed implementation plan. Submittal of a detailed implementation plan to the department is a condition of receiving grants for the second and all subsequent years of the phase four grant.

(2) Each implementation plan must contain strategies to provide sufficient water for: (a) Production agriculture; (b) commercial, industrial, and residential use; and (c) instream flows. Each implementation plan must contain timelines to achieve these strategies and interim milestones to measure progress.

(3) The implementation plan must clearly define coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms.

(4) In developing the implementation plan, the planning unit must consult with other entities planning in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent.

Source: <http://apps.leg.wa.gov/rcw/default.aspx?cite=90.82.043>

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The formation of the Joint Administrative Board (JAB):

While the March 1999 Structure and Function document made explicit reference to a “government-to-government” structure that would enable Lummi Nation and Nooksack Tribe to participate in the WRIA 1 Project without risking adverse impacts to the legal status of their treaty rights, as the Planning Unit began operation both tribes announced their legal counsel had advised against their direct participation in the Planning Unit. The Staff Team advocated the formation of the Joint Administrative Board (JAB), consisting of the executive decision makers of the five Initiating Governments, as a means to enable tribal participation in the Project without their direct involvement in the Planning Unit. The JAB was established by an interlocal agreement (ILA), executed by its parties in early 2000, which sets forth the JAB’s scope of responsibility as administrative functions including receipt and disbursement of funds and contracting for work approved by the Planning Unit.

Nothing in said ILA amended or reduced the role of the Planning Unit, or transferred any of the Planning Unit’s statutory responsibility to the JAB. The ILA doesn’t even mention the purpose of keeping the tribes at the table; the discussion of that issue took place during Planning Unit meetings between September and December, 1999, including a special Interlocal Committee of the Planning Unit established to review and approve the text of the Interlocal [source: Planning Unit meeting summaries September through December 1999].

Dan Gibson’s memo to Executive Louws of February 6 2013 provides additional background on this topic:

“There are a couple of wrinkles in the process [set forth in the Watershed Planning Act] as it has played out in Whatcom County that have contributed to the current level of uncertainty about the on-going role of the Planning Unit. First, while the statutes appear to presume that the initiating governments would be subsumed into the planning unit, so that the initiating governments' interests and positions would all be mediated through the more broadly constituted planning unit, that presumption did not come to pass here in Whatcom County. Because of the long-standing position of tribes that they engage only in government-to-government negotiations, the tribes declined to become participants in the planning unit in Whatcom County. Instead a hybrid process was established whereby the planning unit, without tribal participation, did its work, after which that work was reviewed and accepted by the "joint board" (essentially the initiating governments), and following that the plan was referred to the County legislative authority for adoption.”

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In 2009, the Staff Team proposed changing the Planning Unit to an advisory group:

Subsequent to the approval of the 2007 DIP, some Planning Unit members questioned whether the WRIA 1 Watershed Management Project was drifting off course. For example, the County's Comprehensive Water Resource Integration Program (CWRIP) appeared to run afoul of some provisions of the 2005 WMP and the 2007 DIP. Further, some Planning Unit members questioned whether the Adaptive Management section of the WMP was being implemented properly. A discussion of this issue is captured in the meeting summary of the January 21 2009 regular Planning Unit meeting. The decision was made at that meeting to continue the discussion at a later meeting, after the Staff Team had had a chance to review the matter.

[source: January 21 2009 WRIA 1 Planning Unit meeting summary, beginning Pages 6 through 8; **due to crash of the original Project site, the following link is no longer valid:**
http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Planning%20Unit/Planning_Unit_Summary_01-21-09_DRAFT.pdf

The Staff Team next met a month later. The written summary of the February 25 2009 Staff Team meeting contains the following, beginning Page 3:

6. WRIA 1 Program Integration Structure and Function

There was a discussion on the role of the Planning Unit (PU), based on tables that were created the last time this topic was on the ST/TTL agenda, as well as the legislation that discusses the role of the Planning Unit. The three phased structure document presented to the Joint Board in April 2007 was discussed as well. ST/TTL discussed the PU role during plan development and potential roles in transition of WRIA 1 governance into a more comprehensive structure. Becky [Peterson, Geneva Consulting, the WRIA 1 staff team/JAB contract coordinator] provided a review of the March 2000 SOW, Section 2.7, Process Flow Control Protocol. She asked if, regardless of the path forward, if this process was the intended process for purposes of implementing the three phased document. **A ST/TTL provided their interpretation of the PU decision making process, and it is that of an advisory role. Some ST/TTLs feel that for implementation the PU would function best if it is clearly stated they are an advisory committee, and that though it would be a difficult discussion, it needs to be held. While some PU members may be unhappy with this reorganization, they will at least know the fate of the PU.** It was noted that there is a need for water systems to have individual plans that are consistent with watershed planning, and there needs to be certainty. A ST/TTL noted a model for an advisory committee, under which there is a community advisory council, a board, and executive level decision makers, which would have a defined decision making process. Becky recommended reviewing how the 2007 document can be revised then taken to the PU and finally, presented to the Joint Board. A ST/TTL noted that the PU should be advisory, but include advisory ability for Salmon Recovery, hoping to result in a better way of making connections, rather than another layer of bureaucracy. Becky will draft a document that frames the discussion about proposed changes in the PU function to the advisory capacity. [emphasis added]

Action Item: Becky will draft a document that frames the discussion about proposed changes in the PU function to the advisory capacity."

Source: [link no longer available since the original Project site crashed.]

<http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Staff%20Team/WRIA%201%20Staff%20Team%20Meeting%20Summary%2002-25-09.pdf>

The meeting summary makes no mention of any controlling legal authority to justify the proposal. The meeting summary appears to suggest that the entire Staff Team members present at said meeting supported the proposal.

The proposal was brought before the WRIA 1 Planning Unit at its June 30, 2009 meeting. The Planning Unit rejected the proposal, although some of its members supported it.

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JAB attempts to decide fate of Planning Unit:

At its meeting held July 8, 2009, the JAB rejected a proposal by the County to continue the Planning Unit, albeit in a somewhat limited role.

Source: http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Joint%20Board/07-08-2009/DRAFT_2009_July8_WatershedPlanning_SalmonRecovery_Policy%20Meeting.pdf

NOTE: link no longer valid due to crash of the original Project site.

The following are excerpts from the written meeting summary.

Discussion:

WRIA 1 Watershed Management and Salmon Recovery Programs Implementation

Jon Hutchings [then with Whatcom County Public Works] reviewed the status of transitioning in to an implementation governance structure that had been discussed by the program policy boards in 2007. At that time the policy boards approved the first phase, which was to consolidate the meetings of the two policy boards. The next phases were proposed to move forward when identified milestones were achieved. The additional phases of the structure proposed in 2007 were not approved by the Joint Board at the time, and the action was that the Staff Team would consider the next phases and feasibility of implementing them. For a number of reasons including that the milestones are progressing to completion, the Staff Team initiated a review of the organizational structure presented in 2007 for feasibility of implementing. Based on the review, a revised implementation structure was prepared for the Joint Board and Salmon Recovery Board consideration. Jon continued explaining that the revised implementation structure was discussed by the Staff Teams of both Boards, the Salmon Recovery Board's Steering Committee, and presented and discussed at two informal meetings with Planning Unit caucus representatives and at the June 30 Planning Unit meeting. Additionally, Whatcom County staff met individually with a number of Planning Unit representatives to discuss the current status of the Planning Unit and the role in implementation. Planning Unit members' comments from the June 30 Planning Unit meeting on the proposed implementation structure were distributed via email to the Joint Board.

Jon [Hutchings, Whatcom County] presented his recommendation to the Joint Board, which is to move forward with the structure while retaining the Planning Unit for purposes of the instream flow action plan. Points discussed and/or raised by the WRIA 1 Joint Board and Salmon Recovery Board members included:

- The Nooksack Tribe Joint Board member expressed the perspective of having a stakeholder group that can address all projects from a wide range of programs that come forward similar to a watershed council. He is not sure that the Planning Unit is structured to serve in that capacity, and that the role of the Planning Unit during the planning phase is not applicable to the implementation phase.
- The City of Bellingham member expressed the perspective that it is important to identify the role of the stakeholder group. If the Boards are asking a group to provide input then it is important that the Boards provide support for the stakeholder group.
- The PUD No. 1 raised the question that had been brought up at an earlier Planning Unit meeting involving the Planning Unit's authority once the Planning Unit is established and the watershed plan approved. The legislation is not clear on what happens once the plan is approved. The other related question is the authority vested in the Joint Board as it relates to the Planning Unit, and whether the Joint Board has the authority to sunset the Planning Unit if the Joint Board established it.
- The designated representative for the City of Blaine expressed the need to clarify within the organizational structure where discussions associated with out of stream water needs will take place.
- The designated representative for the City of Lynden expressed a perspective that the Planning Unit needs to remain in place because it is the only link the small cities have into the instream flow process at this time.
- Joint Board and Salmon Recovery Board discussed the proposed implementation structure and investments of time that have been made to date by the Planning Unit. Jon Hutchings recommended to the Boards that concerns expressed about the watershed panel and the process for selecting representatives continue to be discussed and resolved within a reasonable timeframe. In the meantime, he recommended the Boards approve the structure with the exception of the watershed panel, and that the Planning Unit remain in place until there is further discussion by both the Planning Unit and the two Boards. After receiving clarification that the proposed structure does not change the policy level of the proposed structure, the designated representative for the City of Lynden stated support for moving the WRIA 1 Management Team level of the proposed structure forward but not the other components until there is further discussion.

527 • The Joint Board and Salmon Recovery Board agreed by consensus to implement the WRIA 1 Management Team
528 element of the proposed implementation structure. The watershed panel and process for selecting representatives
529 will continue to be discussed and resolved within a reasonable timeframe. [Pages 3 & 4 of 5 pages]
530

531 **Actions/Agreements:**

532 The Joint Board and Salmon Recovery Board agreed by consensus to implement the WRIA 1 Management
533 Team element of the proposed implementation structure. **The watershed panel and process for selecting**
534 **representatives will continue to be discussed and resolved within a reasonable timeframe. The Planning Unit**
535 **remain in place until there is further discussion by both the Planning Unit and the two Boards** [emphasis
536 added; from Page 4 of 5 pages]
537

538 The July 8 2009 JAB meeting summary offers no indication that anyone present at said meeting offered an
539 answer to the question reportedly raised by the PUD representative of what controlling legal authority the
540 JAB had to make decisions regarding the Planning Unit. No subsequent Joint Board meeting summaries
541 make reference to this topic. Thereafter, no mention of the Planning Unit appears in the written meeting
542 summaries of the Joint Board or the Staff Team until 2013.
543

544 With respect to the question of whether the JAB “has the authority to sunset the Planning Unit,” county
545 attorney Dan Gibson concluded otherwise. On February 6 2013, he issued a memo to County Executive
546 Louws in which he concluded, as Louws’ summarized it to the County Council, “the Planning Unit has
547 legal status.” Said memo reads in relevant part:

548 “ ... the planning unit was not less and could not legally be less than that for which the
549 statute provided. Thus the planning unit did not owe its continued existence, after formation, to
550 the Joint Board nor could the Joint Board unilaterally declare that the Planning Unit was
551 terminated.

552 “While the statutes carve out no clear role for the planning unit following plan adoption,
553 they do provide for its continuing existence until the formation of a water management board
554 pursuant to RCW 90.92.030.”

555 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

556 **The interim nature of the 2005 WMP:**

557 The WRIA 1 2005 Watershed Management Plan, Phase 1, was intended to serve only as an interim
558 plan. When the legislative bodies of the small cities and other governments who were parties to the 2005
559 WMP approved it, they included language in their approving resolutions as follows:

560 “WHEREAS, the WRIA 1 Watershed Management Project – Phase 1 is a step toward the eventual
561 adoption of a watershed management plan that addresses and may resolve water issues important to the
562 City; and

563 WHEREAS, the WRIA 1 Watershed Management Project – Phase 1 is limited to identifying a
564 “road map” for selecting and adopting instream flows, continuing data collection and monitoring,
565 completing technical studies, and developing the next version of the watershed management plan;” [From
566 City of Bellingham council resolution, Appendix G, 2005 WMP]. Almost exact same language appears in
567 the approving resolutions from Lummi, Nooksack, and the small cities.

568 Furthermore, the 2005 WMP itself explicitly provides that it is a preliminary plan.

569 From 2005 WMP Executive Summary, Page 1:

570 This draft Water Resource Inventory Area 1 (WRIA 1) Watershed Management Plan – Phase 1
571 (WRIA 1 WMP) was developed through the cooperative efforts of local stakeholders and governments
572 under the framework provided by the Washington State Watershed Management Act (RCW 90.82). The
573 WRIA 1 WMP provides a roadmap for addressing water quantity, water quality, instream flow, and fish
574 habitat challenges faced by residents of WRIA 1 now and in the future, with an initial focus on 2005/2006
575 activities. **It is to be viewed as a living document that will evolve and develop over time with**
576 **continued refinement of the technical information necessary to respond to existing and new**
577 **challenges.** [Emphasis added]
578

579 From 2005 WMP Section 3 Page 1:

581 The purpose of Section 3 is to identify the initial solutions, actions, and alternatives for addressing
582 the key issues identified in Section 2, and the requirements described in the WRIA 1 March 2000 Scope of
583 Work. **As noted in the March 2000 Scope of Work, the identification and evaluation of solutions**
584 **requires an incremental/iterative process building upon recommendations from previous planning**
585 **efforts and considering existing laws, programs, and other efforts.** [Emphasis added]
586

587 From 2005 WMP Section 3, Page 13:

588 The Management Options Subcommittee, which was a subcommittee of the WRIA 1 Staff Team,
589 formed in June 2001 to explore approaches for defining, reviewing, and recommending management
590 options for consideration in addressing issues identified as part of the WRIA 1 Project. The approach
591 recommended by the Subcommittee to the WRIA 1 Planning Unit was a three-step process that the
592 Planning Unit subsequently approved. The steps included:

593 Step 1: Defining Initial Potential Management Options/Creating an Options Catalog;

594 Step 2: Evaluating the Potential Management Options; and

595 Step 3: Selecting and Implementing Management Options.

596 The Management Options Subcommittee initiated the first step - defining initial management options and
597 creating a catalog - with the intent of making the Management Options Catalog a comprehensive source of
598 potential management options for consideration in the WRIA 1 Project. **Management options not**
599 **pursued for the current iteration of the WRIA 1 Watershed Management Plan - Phase 1 remain in**
600 **the catalog for consideration in future iterations. Additionally, as part of WRIA 1 Project**
601 **implementation, there will be an ongoing effort to update the Management Option Catalog including**
602 **providing a status of the options being pursued, adding new options for future consideration, and**
603 **modifying language of specific management options as additional information is gathered.** [Emphasis
604 added]
605

606 2005 WMP Section 3, Page 32:

607 *Project Design Details for Consideration in Future WRIA 1 Project Updates:*

608 The information outlined below reflects the original design concept outlined in the March 2004 Preliminary
609 Review Draft WRIA 1 Watershed Management Plan. It includes parts of the original design that have not
610 been included previously in this program description. **Retaining the original concept for project design is**
611 **important because it may need to be referred to when developing future work plans, drafting**
612 **Watershed Management Plan updates or amendments, and/or modifying project implementation**
613 **elements as part of an adaptive management strategy.** [Emphasis added]

614 NOTE: This or similar language appears in various places in Section 3 of the 2005 WMP. Page 51
615 provides yet another example.

616 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

617

618 **Planning and implementation: linear transition or iterative process? The Adaptive Management** 619 **provisions of the 2005 WMP:**

620

621 From 2005 WMP, Section 4 (begins Page 7)

622

623 "4.3 Adaptive Management

624

625 Adaptive management is a process that can allow organizations to acknowledge and deal with uncertainty
626 within a deliberate decision making framework. It is a process that facilitates the use of best available
627 science in influencing public policy.

628

629 The March 2000 Scope of Work specifies the use of adaptive management in the Watershed Management
630 Plan's implementation and provides a description of the process."
631

632 The description of the Plan' Adaptive Management provisions are thus found in the March 2000 SOW
633 (Appendix B to the 2005 WRIA 1 WMP):

634
635 2.7 Process Flow Control Protocol (Begins Page 12 Line 504)
636

637 The WRIA 1 watershed planning process, and the implementation of the action elements thereof, shall be
638 executed in a specific sequence of steps that have been established in order to maximize the chances of the
639 plan's success. The sequence embodies and employs the principles of adaptive management. The sequence shall
640 apply to each plan section for each sub-basin and each plan component.

641
642 Generalized Planning Flow Control:
643

644 2.7.1 Planning Process Flow Control Protocol (begins Line 511)

645 The planning process shall consist of the execution of each task within each section in this Scope of Work, in a
646 sequence to be determined by the decision making logic set forth below. The planning process applies to each
647 plan component (water quantity, water quality, instream flow, and fish habitat) within each sub-basin.
648

649 Generalized Implementation Flow Control:
650

651 2.7.2 Management/Implementation Process Flow Control Protocol (begins Line 540)

652 Provisions for adaptive management within the implementation phase (upper right shaded box of Figure 2) are
653 discussed below.

654
655 Provision for Specific Detailed Flow Control
656

657 2.7.3 Process Flow Protocols (begins Line 561)

658 The intent of these Process Flow Control Protocols and their accompanying diagrams is to portray only general
659 process flow. Specific, detailed process flow control protocols will be established, when and if needed, for
660 particular sections or sub-sections of the planning and/or implementation process.
661

662 2.7.4 Implementation Strategy/Status Files (begins Line 566)

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

666 Content; File Type(s); Implementation Strategy/Status: where; what; why; when; who; how;

667
668 [NOTE: The Adaptive Management logic model flow charts are reproduced as Appendices 2 and 3 of this
669 document; Links: [Appendix 2](#) [Appendix 3](#); You can compare the WRIA 1 WMP management logic model
670 with that of the WRIA 1 Salmon Recovery Adaptive Management logic model [Appendix 4](#)]
671

672 From 2007 DIP Table 3 Tier 1 Actions (begins Page 25):
673

674 **Task: Adaptive Management**
675

676 Subtask: Develop Implementation Schedule for Tier 2 and Tier 3 Category WMP Actions
677

678 Milestones:

679 Review status of Tier 1 actions and effectiveness in meeting program/project goals.

680 Assess Tier 2 and Tier 3 WMP actions based on outcome of Tier 1 review and recommend
681 changes/modifications to the Tier 2 and Tier 3 actions.

682 Develop an implementation schedule for Tier 2 and Tier 3 actions. Incorporate modifications to
683 Tier 1 actions recommended as part of the effectiveness review.
684

685 Related Information:

686 □□The March 2000 Scope of Work for the WRIA 1 Watershed Management Project includes a
687 strategy for adaptive management in Section 2.7. The review of the Tier 1 actions' effectiveness in
688 addressing goals and objectives of the WRIA 1 Watershed Management Plan and modifications or changes
689 that may need to be made to Tier 2 and Tier 3 actions based on the outcome of the review will be done
690 consistent with the adaptive management process identified in the March 2000 Scope of Work.

691 □□Tier 1 actions include implementing the ISF Action Plan, which is intended to address water
692 availability for instream and out of stream uses as part of the negotiation process. If after reviewing the Tier
693 1 actions, it is determined that the negotiation process is not sufficiently addressing water supply for future
694 uses and the role of inchoate rights in meeting future supplies, additional strategies will be identified using
695 the Adaptive Management strategy outlined in Section 2.7of the March 2000 WRIA 1 Watershed
696 Management Project Scope of Work.
697

698 Subtask: Implement Section 7, Adaptive Management of the WRIA 1 Long Term Monitoring Program
699 Strategy
700

701 Milestones: □□Establish coordinating/technical team to implement adaptive management steps identified
702 in the WRIA 1 LTMP strategy.
703

704 Related Information: □□The WRIA 1 Long Term Monitoring Program Strategy that includes Section 7,
705 Adaptive Management, is included as an Appendix to the WRIA 1 Detailed Implementation Plan.
706

707 Subtask: □ Modifications/additions to strategies included in the June 2005 WRIA 1 Watershed
708 Management Plan for addressing water quantity, water quality, instream flow, and fish habitat goals and
709 objectives
710

711 Milestones:

712 □□Prepare annual status report of implementation actions identified in the Detailed Implementation
713 Plan.

714 □□Based on report, evaluate implementation actions to identify need for modifications and/or
715 additions to strategies for purposes of addressing WRIA 1 Watershed Management Project goals and
716 objectives.

717 □□Present list of changes, if any, to Planning Unit and Joint Board for consideration.
718

719 Related Information:

720 □□Strategies and programs identified in the June 2005 WRIA 1 Watershed Management Plan were
721 developed to address the goals and objectives identified in the March 2000 WRIA 1 Watershed
722 Management Project Scope of Work. Section 2.7 identifies an adaptive management process for evaluating
723 effectiveness of the implementation strategies included in the WRIA 1 Watershed Management Plan.
724

725 From 2007 DIP Long Term Monitoring Program (begins Page 55):
726

727 **“WRIA 1 Long Term Monitoring Program Adaptive Management** The WRIA 1 LTMP adaptive
728 management approach is designed to incorporate monitoring results from programs identified in the LTMP
729 strategy back into the decision-making process in a manner consistent with the overall adaptive management
730 approach described in the June 2005 WRIA 1 Watershed Management Plan. Ensuring monitoring results are
731 appropriately influencing or being incorporated into management programs requires consistent dedication of
732 resources including staff and funding. The steps associated with the WRIA 1 LTMP adaptive management
733 approach, which will run concurrent with the WRIA 1 LTMP strategy implementation, include:

- 734 1. Evaluate monitoring data associated with the over-arching monitoring element of the WRIA 1
735 LTMP strategy and assess extent to which the goals and objectives identified in Section 3.0 have been achieved;
736 2. Evaluate monitoring data associated with complementary programs;
737 3. Evaluate status of implementing WRIA 1 LTMP recommendations in Section 6.0;
738 4. Evaluate status of funding to support implementation of WRIA 1 LTMP strategy;

- 739 5. Assess outcome of evaluations identified in numbers 1-4 and determine appropriate adaptive
740 management options;
- 741 6. Implement the appropriate adaptive management action consistent with the adaptive management
742 approach described in the WRIA 1 Watershed Management Plan; and
- 743 7. Monitor the effects of the adaptive management actions. As part of the adaptive management
744 process, a project team involved with coordinating implementation of the WRIA 1 Watershed Management
745 Plan will initiate the process for implementing the steps outlined above. The process taken will be consistent
746 with organizational procedures identified for the WRIA 1 Watershed Management Project.”

747 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

748 **Planning Unit Meetings Suspended Indefinitely:**

749 Upon the Planning Unit’s rejection of the proposal for it to be relegated to an advisory role,
750 Planning Unit meetings abruptly ceased. The 2007 DIP placed responsibility to schedule Planning Unit
751 meetings with the Staff Team. Even though the JAB’s decision was for the Planning Unit to continue
752 meeting until somehow a final resolution of the issue was achieved, the Staff Team stopped scheduling
753 Planning Unit meetings. Thereafter, the Planning Unit, at that time having no independent means of
754 operating, languished in limbo.

755 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

756 **The 2010 Lower Nooksack Strategy (LNS):**

757 In October 2010 JAB issued a document entitled **Achieving Economic and Environmental**
758 **Certainty in Water Availability for the Lower Nooksack River Sub-basin: Work Plan, Budget and**
759 **Financing Strategy [Short Title Lower Nooksack Strategy]**

760 https://drive.google.com/file/d/1eErZa_KHg2_R8cNVCpas3A3x2xPSsfIv/view

761 **Introduction/Background**

762 On July 7, 2010 the WRIA 1 Joint Board directed its Management Team to propose a work plan, budget and
763 financing strategy to advance a negotiated settlement of Tribal and state in-stream flow water rights on the
764 mainstem of the Nooksack River, while maximizing the economic and environmental benefits of out-of-stream
765 water use in the Lower Nooksack sub-basin. The Joint Board directed staff to (1) apply approximately \$600,000 in
766 Joint Board budget capacity to the work, and (2) prepare a leveraged five-year financing strategy to achieve this
767 shared goal. **11 This direction is consistent with WRIA 1 Watershed Management Plan priorities.** [Emphasis added]

768 The purpose of this document is to outline work that must be performed to achieve the shared goal and desired
769 outcomes as they are described below.

770 The LNS contains five inter-related objectives, under each of which certain tasks needed to achieve the
771 objective are outlined:

772 Objective 1: Develop and implement a process for negotiating settlement of water rights on the
773 Mainstem Nooksack River.

774 Objective 2: Update and verify the Lower Nooksack River sub-basin water budget and provide
775 technical support for decision-making.

776 Objective 3: Update the Whatcom County Coordinated Water System Plan.

777 Objective 4: Continue and, if appropriate, enhance targeted streamflow and water quality
778 sampling at locations identified in the WRIA 1 Long Term Monitoring Program.

789 Objective 5: Advance work on tools that foster water resource allocations consistent with long-
790 term economic and environmental land-use goals for implementation in five years.
791 [\[Return to Findings\]](#) [\[Return to ToC\]](#)
792

793 **Procedural and Substantive Questions Arise regarding 2010 LNS:**

794 Objective One, the negotiated settlement of water rights, appears to be based on, and to incorporate
795 elements of, the 2005 Instream Flow Action Plan [IFAP], approved as part of the 2005 WMP.

796 Some Planning Unit caucuses have questioned, however, whether the two documents are entirely
797 consistent, and assert that the official activities that took place subsequent to the adoption of the IFAP,
798 including actions under the LNS, were inconsistent with some of IFAP's provisions. Further, some
799 elements of the decision-making process set forth in the IFAP may violate provisions of the Watershed
800 Planning Act. A memo dated May 6 2015 from Roger Brown of the WRIA 1 Water Districts Caucus, in
801 part based on analysis of former Whatcom County attorney and municipal law expert Bob Carmichael,
802 makes these and other points.
803

804 Objective Three, water supply planning, of which the update of the county-wide Coordinated Water System
805 Plan is but one part, provoked controversy before the county council when the JAB sought Economic
806 Development Investment (EDI) monies to fund a portion of the work. The meeting minutes of the
807 September 13 committee meeting at which this issue was discussed read in relevant part:
808

809 **COUNCIL "CONSENT AGENDA" ITEMS 1. REQUEST APPROVAL OF THE ECONOMIC DEVELOPMENT**

810 **INVESTMENT BOARD'S RECOMMENDATIONS FOR EDI FUNDING (AB2011-281) (11:27:07 AM)**

811 *Kershner moved* to recommend approval to the full Council.

812 The following people spoke and answered questions:

813 Jon Hutchings, Public Works Department

814 Roger Brown, Birch Bay Water and Sewer District General Manager, referenced a letter he sent. The lower Nooksack
815 strategy violates the terms of the adopted watershed management plan. The process for approving the lower Nooksack strategy
816 has happened in secret. There are questions of whether the coordinated water system plan is well suited to address questions and
817 whether the PUD is appropriate. Explore the questions in more depth during a water resource work session. He is concerned
818 about their place in the project and the secrecy.

819 Steve Jilk, Whatcom Public Utility District (PUD), stated their request is a key component of the watershed
820 management plan adopted several years ago. Meetings weren't held behind closed doors. Approve the economic development
821 investment (EDI) allocation, but not approve the PUD until they have a discussion on how the project should be led. PUD is
822 taking this on as a member of the Joint Board. The Joint Board approved the strategy, budget, and work plan last year. Part of
823 this is using the coordinated water system plan as a basis for the water supply plan. The County is responsible for the coordinated
824 water system plan. The PUD has shown it's willing to take this on to create a broader level of credibility about what is needed to
825 support the local economy.
826

827 Knutzen asked and there was discussion of whether the Water Supply Planning Project would quantify agricultural use
828 of water.
829

830 Mann asked and there was discussion of why the County wouldn't manage the Water Supply Planning Project.

831 Brenner asked and there was discussion of conflicts from different entities competing for the water.

832 (11:52:40 AM)

833 Crawford asked and there was discussion of:

834 Whether Mr. Jilk is amenable to reconvening the Planning Unit.

835 The formation and purposes of the Planning Unit and Joint Board.

836 Why the Joint Board would not drive this Water Supply Planning Project.

837 Whether the Water Supply Planning Project process has been secret, as Mr. Brown stated.

838 Whether the Planning Unit can convene and provide input. Convene the Planning Unit at the start of the process, and
839 they can meet again at the end of the process to provide input.
840

841 Weimer asked and there was discussion of whether the Joint Board was unanimous in recommending that the PUD take
842 the lead.

843 Hutchings referenced letters (*on file*) from the small cities and City of Bellingham, which are in the Council packet.

844 Kershner asked and there was discussion of:

845 How the Water Supply Planning Project would benefit the economy, since they're using EDI funds.
846 What this expense would pay for

847
848 Brenner stated she was concerned that the County wasn't involved.

849 *Mann suggested a friendly amendment* to withdraw the Water Supply Planning Project and schedule a discussion of it in a
850 water resources work session.

851
852 The minutes of the evening council meeting held that same day read in relevant part:
853

854 **1. REQUEST APPROVAL OF THE ECONOMIC DEVELOPMENT INVESTMENT BOARD'S**
855 **RECOMMENDATIONS FOR EDI FUNDING (AB2011-281)**

856 *Mann* reported for the Finance and Administrative Services Committee and *moved* to approve the request. Vote to
857 allocate the funds now, and schedule a discussion of water law and the contract specifics during a Surface Water work session.

858 Crawford stated he will support the motion. His concerns have been addressed. Once they come up with a contract, they
859 can specify they would like to reconvene the Water Resources Inventory Area (WRIA) One Planning Unit to provide input at the
860 beginning of the contract and again toward the end of the contract.

861 Brenner stated she has misgivings about any party that competes for water rights being in a position like this. The
862 County is not a water purveyor, so it should be in that position. She hopes the Planning Unit will make that recommendation. She
863 is in favor of the motion, given the conditions.

864 Kershner stated she voted against the request during committee today because she is opposed to secret meetings that deal with
865 issues in which the public has a vested interest. Also, she didn't understand how Economic Development Investment (EDI) funds
866 could be used for this request. Now, she's concluded that water is essential to economic development. She will vote for this. She
867 hopes the secret, exclusive meetings will cease.

868 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

869
870 **The November 15 2011 County Council Surface Water Work Session:**

871 Meeting minutes:

872 [http://documents.whatcomcounty.us/weblink8/0/doc/3333499/Page1.aspx?searchid=b0031914-8ddb-4505-](http://documents.whatcomcounty.us/weblink8/0/doc/3333499/Page1.aspx?searchid=b0031914-8ddb-4505-9b31-fe029793050e)
873 [9b31-fe029793050e](http://documents.whatcomcounty.us/weblink8/0/doc/3333499/Page1.aspx?searchid=b0031914-8ddb-4505-9b31-fe029793050e)

874 Audio recording:

875 <https://www.digitalarchives.wa.gov/Record/View/441C48AEFCA0E4B2FC25B7475A4AC139>
876

877 As directed by council, a Surface Water Work Session took place November 15 2011, at which
878 county staff, represented by Dr. Jon Hutchings, then Assistant Director Public Works, summarized what led
879 him to develop the presentation as follows, roughly transcribed from the recording of the session:

880 There was some discussion [by council] about future representation in this process and what the
881 scope of work would ultimately be and how all that fits together, so you asked us to bring forward a
882 discussion of the entirety of this water resource planning effort that has been underway, and bring us all
883 the way to the present where we can have a conversation about what this LNS means as a component of
884 that and how it ties into the CWSP [County Coordinated Water System Plan] update.
885

886 Rather than engage directly in those topics, Dr. Hutchings instead launched into a lengthy recitation of his
887 or somebody's version of the history of the entire watershed planning process, supported by a two-page
888 handout entitled "A Brief History of Watershed Planning in Whatcom County." Only at the end of that
889 presentation was there time for any discussion of the underlying issues, as listed in the council meeting
890 minutes quoted above.
891

892
893 At the conclusion of the November 15 Surface Water Work Session, Dr. Hutchings was asked by
894 some council members what the next step would be. He said there were generally two next steps.

895 First, where [the Non-Government Water Systems caucus rep] left us is really the conversation that
896 needs to happen over the course of the next months, into 2012, to talk about this question of
897 representation and all that business. We've been through it, not made a lot of progress, needs to be
898 brought to a head. At the same time, advancing the Lower Nooksack Strategy, so we'll come back around
899 to you [council] with a scope of work for the Coordinated Water System Plan update, and we'll talk about
900 reestablishing that committee [Water Utility Coordinating Committee] that, ah, so on and so forth.

901 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

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Planning Unit 2.0

The Tide Turns:

As documented in the section entitled [Procedural and Substantive Questions Arise re LNS](#), beginning Fall 2011, as a result of the public opposition to the implementation of Objective Three (water supply planning) of the LNS, County Council members began raising questions about the Planning Unit's proper role in the Project.

A couple of lengthy, detailed presentations by Planning Unit participants before the council's Public Works Committee in July and August of 2012 explicitly raised legal, ethical and practical problems associated with the continuation of watershed planning under RCW 90.82 in the absence of the duly-established body vested with the responsibility for such planning. At the January 17 2013 JAB meeting, members of the public openly expressed these concerns; one PU representative threatened a lawsuit if the PU was not restored to its proper role forthwith.

As a prophylactic measure, in early 2013 Executive Louws asked the county attorney's office to review the legal status of the PU. Dan Gibson's memo in response to that request, dated February 6 2013, after reviewing the statutory responsibility of planning units and summarizing how the PU and the JAB came to be constituted, concluded thus:

"... 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."

Further, Gibson noted "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."

Upon receipt of the Gibson memo, Executive Louws, on February 11 2013, issued a memo to council on the subjects of the Planning Unit, the proposed role of PUD in water supply planning in furtherance of Objective Three of the LNS, and the use of EDI funds for that purpose. Relevant excerpts follow:

Regarding Gibon's conclusions on the Planning Unit, in a memo to Council Executive Louws stated: "The condensed version is that the 'planning unit' has legal status."

"I recommend that the council take no action on all items related to the PUD contract tomorrow, including the budget amendments."

"This leads to the discussion of using EDI money to fund water related plans. The EDI Board, Administration, the county attorney, and the council approved use of the EDI funds in 2011 to fund these projects. After further review, it is my and staff's recommendation that EDI funds not be used for water plans or planning in the future."

"Recap of e-mail:

- * Planning Unit has legal status
- * PUD is not willing to facilitate WSP
- * EDI Funding is not available for funding
- * Recommend that Council take no action on all items related to PUD
- * Flood money is an option, along with General Fund for money"

"I recommend that we step back from making any big decisions related to this subject tomorrow [council meeting of Feb 12 2013]."

The council meeting minutes of February 12 2013 indicate it followed Executive Louws' advice:

Feb 12 regular Council Meeting minutes excerpt:

<http://documents.whatcomcounty.us/weblink8/0/doc/3329036/Page1.aspx?searchid=4b226045-428a-409a-ba54-34ce6518e5cf>

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6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL GRANT AGREEMENT BETWEEN WHATCOM COUNTY AND PUBLIC UTILITY DISTRICT NO. 1 RELATED TO WATER SUPPLY PLANNING, IN THE AMOUNT OF \$367,500 (AB2013-087)

Mann reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion failed by the following vote:

Ayes: None (0)

Nays: Kremen, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

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JAB, Management Team and Staff Team address the Planning Unit issue:

In order to assist JAB in addressing the fallout of the February 6 Gibson memo, the WRIA 1 Staff Team issued a memo dated March 14 2013 that analyzed the situation and offered several options for dealing with it. Said memo reads in relevant part:

Background

A new governance structure was approved by the Joint Board in 2009, but it did not resolve the issue of the Planning Unit's involvement in the process once the transition from planning to implementation occurred. The Planning Unit also met in 2009 to discuss its role and structure. At that time the instream flow pilot negotiations were still underway and a Planning Unit role in the final outcome of these negotiations was clearly defined in the ISF Selection and Adoption Action Plan [IFAP]. Given this context, there was an interest in continuing, albeit at a lesser frequency of meeting, in order to test the flow setting process within the existing structure. Since then, there were no changes made to Planning Unit structure, there were no ISF agreements to review (the pilot negotiations were suspended in December 2010 as the Lummi Nation and Nooksack Indian Tribe seek a declaratory action of the instream flow rights), and no Watershed Management Plan updates.

There are benefits to maintaining a Planning Unit consistent with the Watershed Management [sic] Act. A watershed plan approved by a Planning Unit can provide a useful tool to add flexibility to the state water code. A locally adopted plan can be used as a framework for the state in making future water resource decisions for the watershed included in the plan (RCW 90.82.130(4)). A local advisory group not recognized in Washington State statute [sic] may or may not provide the same.

If water resource planning in WRIA 1 is to continue under the auspices of the Watershed Management [sic] Act, there needs to be a forum with clearly defined roles and responsibilities for water resource interest once negotiations over the availability of water and fish habitat resume. Continued community engagement in plan implementation beyond instream flow setting will also be important to long-term watershed planning success.

Options for Moving Forward

Two options for Joint Board consideration, and the identified advantages and disadvantages of each option, are presented below. These options were identified by the WRIA 1 Staff Team and are based on the 2005 Watershed Management Plan (WMP), the 2007 Detailed Implementation Plan (DIP), and WRIA 1 Staff Team recommendations and work done on this issue in 2009.

Option 1. Request a meeting of the Planning Unit with currently available governmental and non-governmental caucus representatives and request discussion leading to a decision to do one of the following:

a) Dissolve the Planning Unit; or

b) Re-engage the Planning Unit and retain its role in plan update approval and instream flow negotiations. This option could include updating the 2005 Watershed Management Plan and the 2007 DIP or simply providing an update to the Planning Unit on the current status of the 2005 WMP implementation efforts; or

1014 c) Adopt the Watershed Panel structure described in the June 30, 2009 Governance Structure for
1015 Implementing WRIA 1 Programs, Integrated Working Draft. This structure provides for continued
1016 meaningful community engagement as specific water resource issues receive individual attention; or
1017 d) Re-engage interested participants from the Planning Unit and begin meeting to create a entirely
1018 new local entity for stakeholders and propose a role of them in implementing watershed management
1019 goals.

1020
1021 Advantages of Option 1:

1022 1. The Planning Unit determines its future.

1023 2. The public re-engages in the process and can provide support for moving forward with
1024 implementation.

1025 3. Option 1(c) removes the burden on caucuses to provide for representation and minimizes
1026 conflicts over decision making.

1027
1028 Disadvantages of Option 1:

1029 1. Questions remain regarding the representativeness [sic] of the Planning Unit caucuses. At least
1030 one caucus suspended participation in the Planning Unit because the caucus representative did not feel
1031 that they could represent their membership.

1032 2. Updating the 2005 Watershed Management Plan and 2007 Detailed Implementation Plan, given
1033 changes in the instream flow negotiation process, completion of technical work products, and governance
1034 would translate to additional resources (staff and monetary commitment).

1035
1036 Option 2. Dissolve the Planning Unit and establish a water resource interest group once instream flow
1037 negotiations resume and only then evaluate ways to fully integrate public involvement.

1038
1039 Advantages of Option 2:

1040 1. None identified.

1041
1042 Disadvantages of Option 2:

1043 1. Timeline for resuming the instream flow negotiations is undetermined.

1044 2. If the litigation requests of the Lummi Nation and Nooksack Tribe are acted on by the United
1045 States, participation in the instream flow negotiations will be determined by the court.

1046 3. Whatcom County legal opinion may conflict with this approach.

1047
1048 The [WRIA 1] Staff Team recommends Option 1.

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1050
1051 The JAB meeting summary of March 21 2013 reads in relevant part:

1052
1053 5. WRIA 1 Joint Board Discussion of Planning Unit

1054 Jon Hutchings reviewed a memo that was prepared by the WRIA 1 Watershed Staff Team identifying
1055 Planning Unit options for discussion by the WRIA 1 Joint Board. Additionally, Whatcom County Executive
1056 had requested Whatcom County legal counsel Dan Gibson to provide a briefing paper pertaining to the
1057 Planning Unit's status, which is the Planning Unit has legal status. Executive Louws stated his intent to
1058 have Whatcom County facilitate reconvening the Planning Unit. The Planning Unit will have an opportunity
1059 to identify how they intend to proceed under the procedural agreements that the Planning Unit approved.
1060 Jon reviewed that the caucus structure and how the caucus demonstrates that they are representative of
1061 the caucus interest is also part of the procedural agreements.

1062 Mayor Linville referred to the concentric circle diagram in the WRIA 1 Instream Flow Action Plan that
1063 was included in Jeremy Freimund's presentation and asked, in the absence of instream flow negotiations,
1064 what is there within the WRIA 1 process that the Planning Unit will work on. Peter Gill, Whatcom County
1065 Planning and Development Services, reviewed options for Planning Unit involvement including updates to
1066 the approved Watershed Management Plan and approved Detailed Implementation Plan. Chris Brueske
1067 reported that he had received feedback from community members that Planning Unit tasks could include
1068 reviewing the water budget and ground water technical work.

1069 Steve Jilk indicated he supports reconvening the Planning Unit to review work being done and bring
1070 recommendations to the Joint Board. At some point, however, the relationship between the Planning Unit
1071 and the Joint Board needs to be discussed. It was clear when the PUD and the other initiating
1072 governments started the process and established the Planning Unit that the Planning Unit could not make

1073 decisions that impact the PUD. Correspondence circulating through the community is suggesting that the
1074 Joint Board should be disbanded and there is not a role for the Joint Board. This interpretation does not
1075 follow the intent of the RCW or the intent of the Memorandum of Agreement for the Joint Board. Mayor
1076 Linville indicated the original intent of the law was that any governmental entity had to agree to whatever it
1077 was that would impact their operation.
1078

1079 Executive Louws recommended that Whatcom County government take the lead on reconvening the
1080 Planning Unit, recognizing that the Planning Unit can convene on their own, so the Planning Unit can
1081 discuss their role and purpose. There are members of the Planning Unit and community that feel that there
1082 is a role for the Planning Unit.
1083

1084 The tribal perspective that the Planning Unit does not have a role in discussion of tribal treaty water
1085 rights was expressed by Bob Kelly and Leroy Deardorff although the Planning Unit had a valuable role as
1086 part of the watershed planning process and assisting the technical teams as the watershed plan was being
1087 developed.

1088 In response to public comment about the Joint Board's role and relationship to the County Council and
1089 Planning Unit, Jeremy Freimund clarified that the Joint Board is not advisory to Whatcom County. The
1090 County is a member of the Joint Board and throughout the planning process, the former County Executive
1091 expressed to the Planning Unit that he would represent their views on the Joint Board. He would not vote
1092 at the Joint Board table without consulting with the Planning Unit.
1093

1094 The official meeting summary of May 22 2013 Management Team meeting reads in relevant part:
1095

1096 3. Planning Unit Support Proposal 1097

1098 Chris Brueske provided background on a draft Planning Unit Support proposal. The proposal provides for four
1099 meetings of the Planning Unit and is modified from the initial draft distributed to the Management Team at its April
1100 meeting. The revisions to the proposal include removing the budget element to cover costs for County staff to
1101 administer the proposal and to add description of the anticipated purpose of the four Planning Unit meetings. The
1102 County is seeking Joint Board support to fund the proposal through an amendment to the Joint Board budget.
1103

1104 Discussion Points:

1105 Alan Chapman asked for clarification on the role of the Planning Unit. Chris replied that the Planning Unit is likely to
1106 discuss their continued role as part of the meetings and preparation of a work plan.

1107 Jon Hutchings commented that the landscape of implementation has changed and part of what the Planning Unit
1108 needs to consider is their role in that implementation. If the Management Team recommends support of the proposal,
1109 a Joint Board meeting will need to be scheduled for purposes of amending the Joint Board budget.

1110 Chris asked if the Joint Board Governments present had concerns with the proposal or recommending a Joint Board
1111 budget amendment for funding the proposal.

1112 Management Team members present recommended supporting the proposal and request for an amendment to the
1113 Joint Board budget as presented by Chris.

1114 A Joint Board meeting will be scheduled for a date the end of June or beginning of July.
1115

1116 Actions/Outcomes:

1117 WRIA 1 Management Team recommends forwarding the Planning Unit Support proposal as presented to the WRIA
1118 1 Joint Board for approval with a recommendation to amend the Joint Board budget according to the budget outlined
1119 in the proposal.

1120 A WRIA 1 Joint Board meeting will be scheduled for late June or early July.
1121

1122 Observer Notes on May 22 2013 WRIA 1 Management Team meeting: 1123

1124 Chris Brueske of County Public Works addressed a question regarding the County's position on the status
1125 and role of the Planning Unit, and what its officials hoped to get out of its proposal to fund PU meetings.
1126

1127 Brueske: According to the County Attorney, the Planning Unit is autonomous thus it will be up to the
1128 Planning Unit to determine how it will move forward.
1129

1130 Dr. Jon Hutchings, assistant director, public works, City of Bellingham:

1131 It was presumed in this transition from planning to implementation the roles of the Planning Unit
1132 would change. But there was no consensus achieved by the Planning Unit on what the change of its role

1133 should be. I would hope there would be a recognition by Planning Unit members that the landscape had
1134 changed, and that the role of the Planning Unit should change with it.

1135
1136 A question by a Management Team member: So what, exactly, is the role of the Planning Unit?

1138 Hutchings: The original role of the Planning Unit was clear, in terms of its involvement in the 2005
1139 Watershed Management Plan. But going forward, now, its role should be to provide input from the ground
1140 up, that is, from all the affected water resource interests, to the governments who are now responsible for
1141 the WRIA 1 watershed management project. How that gets set up, I'm not sure.

1142 The caucus system was no longer representative of the water resource interests by the time I got
1143 involved [2007]. The Planning Unit should be redefining its role in light of the transition from planning to
1144 implementation. In this transition there is a role for the Planning Unit "or something like it." I don't know if
1145 the caucus system will continue to exist; don't know it won't. [Emphasis added]

1146
1147 A question by a Management Team member: So is the role of the Planning Unit advisory to the Joint
1148 Board?

1149
1150 Hutchings: I don't know the answer to that, but it is difficult to see how the Joint Board, which consists of
1151 elected members of governments with responsibility to their constituents, would abrogate its responsibility
1152 to the Planning Unit or any other body. The Planning Unit has legitimacy, always has, but its role has not
1153 been recently clarified, and there will have to be Planning Unit meetings to achieve that clarification.

1154 Since the Joint Board has control of the purse strings of the WRIA 1 monies, it is appropriate for it
1155 to be considering this proposal to fund Planning Unit meetings. [Emphasis added]

1156
1157 The JAB meeting summary of June 2013 reads in relevant part:

1158
1159 4. WRIA 1 Joint Board Budget Amendment for Planning Unit Proposal

1160
1161 Chris Brueske reviewed that a scope of work for Planning Unit Support has been reviewed by
1162 Watershed Staff Team and Management Team, and is being presented to the WRIA 1 Joint Board for
1163 approval. The proposal requests \$14,000 from the WRIA 1 Joint Board fund facilitation of up to four
1164 Planning Unit meetings. The scope of work outlines the anticipated purpose of each of the meetings:

- 1165
1166 Meeting 1 informal open meeting to review and discuss the Planning Unit process and procedure
1167 documents.
1168
1169 Meeting 2 formal meeting to discuss planning unit role, review implementation plan and work completed,
1170 and discuss work plan for 2014.
1171
1172 Meeting 3 formal meeting to discuss work plan and budget.
1173
1174 Meeting 4 formal meeting to finalize work plan and financing plan.

1175
1176 Chris noted that since the Planning Unit is autonomous, the outline of the meeting purposes is the vision
1177 of how those meetings would proceed. The proposal is really for \$14,000 for the facilitation of up to four
1178 Planning Unit meetings.

1179
1180 Executive Louws asked if there is a motion to approve the expenditure of \$14,000 for the Planning Unit
1181 proposal. Motion by Jon Hutchings on behalf of the City of Bellingham; second from Merle Jefferson.
1182 Executive opened the item for discussion.

1183
1184 Merle asked if there was something in writing that explains what the role of the Planning Unit will be.
1185 Chris reviewed that the Planning Unit role as it is currently written is to review and approve updates to the
1186 Watershed Management Plan. They will have some ability to self-direct since they are recognized an
1187 autonomous group. Merle wanted to clarify for the record that the Planning Unit recommendations are to
1188 the County.

1189
1190 [PUD] Commissioner McClure asked for clarification on whether the Planning Unit is approving plans or
1191 are they making recommendations to the County Council. Executive Louws indicated his understanding is
1192 that if there are changes to the Water shed Management Plan that the Planning Unit approves those
1193 changes. Commissioner McClure asked if the final work product for the scope – the Planning Unit work
1194 plan – will be presented to the Joint Board upon completion of the four meetings in the scope.

1195 Executive Louws felt it was appropriate for there to be communication between the Planning Unit and Joint
1196 Board.

1198 □ Being no further discussion, Executive Louws asked WRIA 1 Joint Board members present
1199 (representatives of the City of Bellingham, Lummi Nation, and Public Utility District No. 1)
1200 if they support expending \$14,000 of WRIA 1 Joint Board funds as moved by Jon Hutchings and seconded
1201 by Merle Jefferson. The expenditure of the Joint Board funds was unanimously agreed to under their
1202 consensus decision-making process.

1203
1204 WRIA 1 Staff Team meeting summary of July 8 2013 reads in relevant part:

1205 3. Next Steps for Planning Unit Process

1206 It was noted that the Joint Board approved the budget amendment for the Planning Unit process. Peter
1207 [Gill, WCPDS] indicated that a RFP would be prepared for facilitating the Planning Unit meetings. A
1208 resolution pertaining to the Planning Unit was proposed by Barbara Brenner and is scheduled for the
1209 Whatcom County Council meeting.

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1211

1212 **Council Resolution 2013-025:**

1213 On July 9 2013 the council Public Works Committee considered a resolution on the Planning Unit.
1214 After various amendments, the council passed the final version of the resolution on July 23 2013. The
1215 minutes of the council meeting

1216 [http://documents.whatcomcounty.us/WebLink8/PDF/a5htsq45n5zbwaznttuvhiig/65/Council%20Jul](http://documents.whatcomcounty.us/WebLink8/PDF/a5htsq45n5zbwaznttuvhiig/65/Council%20July%2023%202013.pdf)
1217 [y%2023%202013.pdf](http://documents.whatcomcounty.us/WebLink8/PDF/a5htsq45n5zbwaznttuvhiig/65/Council%20July%2023%202013.pdf)

1218 read in relevant part:

1219

1220 7. RESOLUTION RESTORING THE WRIA 1 PLANNING UNIT TO ASSIST THE WHATCOM COUNTY COUNCIL
1221 REGARDING WATER RESOURCES (AB2013-190)

1222
1223 Brenner moved to approve the resolution and moved to amend the resolution with the change submitted by Roger
1224 Brown, "Section 6: Review and Approval of Watershed Plans. The County Council requests that the Planning Unit
1225 regularly review and approve and [provide appropriate recommendations as appropriate on] any ongoing
1226 assessments of the current water resource situation, including, but not limited to water availability, instream flow,
1227 water quality, and habitat. As provided...."

1228
1229 Crawford asked if the language should strikeout "regularly review and approve." Prosecutor Dan Gibson was trying to
1230 mimic State law in saying this Planning Unit does not have approval authority. The County Council has that authority.
1231 Karen Frakes, Prosecuting Attorney's Office, stated she spoke with Mr. Gibson about this specifically. He told her
1232 that Mr. Brown's language is language that Bob Carmichael worked on and he'd seen. Mr. Gibson said he could live
1233 with that language.

1234
1235 Crawford stated that's alright, if Mr. Gibson has looked at it. Having served during the original Planning Unit, the
1236 Planning Unit did not have any authority for final approval. That always rested with the County Council. Be careful
1237 here. He'll accept it's okay with the words "as appropriate." Make sure the Planning Unit understands they don't have
1238 final approval. Only the County Council can do that, which is consistent with State law. The elected officials have to
1239 be accountable, not planning group appointees.

1240
1241 The motion to amend carried by the following vote:

1242
1243 Ayes: Brenner, Mann, Crawford, Knutzen, Weimer and Kremen (6)

1244 Nays: None (0)

1245 Absent: Kershner (1)

1246
1247 The motion to approve as amended carried by the following vote:

1248
1249 Ayes: Brenner, Mann, Crawford, Knutzen, Weimer and Kremen (6)

1250 Nays: None (0)

1251 Absent: Kershner (1)

1252

1253 Link to Resolution 2013-025 text:

1254 <http://documents.whatcomcounty.us/WebLink8/PDF/a5htsq45n5zbwaznttuvhiig/64/res2013-025.pdf>

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Several statements contained in the Resolution subsequently caused some confusion among various WRIA 1 participants.

The Resolutions' caption reads: **RECOGNIZING THE ROLE OF THE WRIA 1 PLANNING UNIT TO ASSIST THE WHATCOM COUNTY COUNCIL REGARDING WATER RESOURCES**

The caption makes no reference to the Planning Unit's statutory role under the Watershed Planning Act, yet the recitals of the Resolution include excerpts from the Act.

The body of the Resolution, Section 1, reads: "The Council finds that the Planning Unit is the advisory board established and responsible for recommending WRIA 1 water resource plans under RCW 90.82, including development of instream flow recommendations ..."

Some have suggested the term "advisory body" in that finding, together with similar references means the Council intended the role of the Planning Unit is merely advisory to the Council and has no other role in the WRIA 1 Watershed Management Project.

The Resolution further states: "Section 6: Review and Approval of Watershed Plans. The County Council requests that the Planning Unit regularly review and approve [provide appropriate recommendations on] any ongoing assessments of the current water resource situation, including, but not limited to water availability, instream flow, water quality, and habitat."

This language appears to be capable of being read to support the contention that the Council's intent was to limit the Planning Unit to an advisory role, or, to the contrary, to acknowledge its role under the Act, or both. Similar ambiguity can be found in other sections.

The recitals also include a reference, however oblique, to the Adaptive Management provisions of the 2005 WMP: "**WHEREAS**, Whatcom County Council has consistently recognized that review and approval of watershed plans and plan amendments shall be conducted by the Planning Unit **in a continuous improvement process** in the manner provided for by the Council-adopted WMP and DIP ..." [emphasis added]

Further, the recitals note "... the Planning Unit has not met since June 30, 2009 and thus has not functioned to carry out its role as contemplated in the adopted WMP and DIP ..."

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The PU re-starts in isolation from the JAB

State Accountability Audit of the JAB:

Meanwhile, JAB underwent an audit of its operations by the State Auditor's Office (SAO), which in its Accountability Report number 1009043 issued February 4 2014 states:

RESULTS

In the areas we examined, the Board's internal controls were adequate to safeguard public assets. The Board also complied with state laws and its own policies in the areas we examined.

In its Exit Interviews letter of January 30 2014 to JAB, SAO also found:

The Joint Board is a public agency established under RCW 39.34.030(4) to oversee implementation of the watershed management plan. The Joint Board expended \$252,073 and \$32,427 in 2012 and 2011, respectively.

State law requires all actions of the Joint Board to take place in a meeting open to the public. Actions mean transaction of business and include approving claims against the Joint Board for payment. A quorum was not present for any Joint Board meetings during 2012 and 2011; and account payable and payroll related payments for the period were not approved inside of an open public meeting.

The Board was unaware that its form of government was required to comply with the Open Public Meetings Act.

1313 We recommend the Joint Board comply with state law and approve all expenditures in an open
1314 public meeting (RCW 42.90 Open Public Meetings Act and RCW 42.24 Payment of claims for
1315 expenses, material, purchases-advancements).
1316

1317
1318 The SAO report goes on to describe JAB thus:

1319 **ABOUT THE BOARD** The Water Resource Inventory Area Watershed Management Project brings
1320 together citizens, local governments, tribes and state and federal agencies to develop plans for allocating
1321 water, protecting water quality and restoring fish habitat. Whatcom County provides staff support for the
1322 planning process, which focuses on the Nooksack River basin and certain adjacent watersheds.

1323 Five governments initiated the Watershed Management Project. Each has an administrative
1324 decision maker and at least one staff member. In January 2000, the initiating governments signed an
1325 agreement, creating a joint board to handle the project's administrative functions. The initiating
1326 governments include Whatcom County, city of Bellingham, Public Utility District No. 1 of Whatcom County,
1327 the Nooksack Tribe and the Lummi Nation.

1328 Note that no mention whatsoever is made of the Planning Unit in this official state report.

1329 Link to SAO report:

1330 <http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1009043&isFinding=false&sp=false>
1331

1332 **Staff team private meetings continue:**

1333 Despite the state auditor's admonishment cited above, during this period the staff team began
1334 meeting in in private.

1335 Further, the PUD did initiate the regional water supply planning meetings as part of Objective 3 of
1336 the 2010 LNS (and later, Strategy 3 of the Watershed Management Board's 2018—2023 Work Plan
1337 [subsequently renamed], and they are also being held in private.
1338

1339 [\[Return to Findings\]](#) [\[Return to ToC\]](#)
1340

1341 **2013-2017; The PU survives:**

1342 From the get-go the county's efforts at resuscitating the PU were limited.

1343 The county gave no funds for PU caucuses to reform, as had been provided during the initial
1344 formation and first few years of operation of the PU, despite repeated explicit requests from the PU to the
1345 council for such funds, including detailed justifications for those funds.

1346 The JAB made no provision to re-integrate the PU back into the watershed management project,
1347 over which the JAB, in the PU's absence, had seized total control despite having no statutory or other
1348 controlling legal authority to do so.

1349 The PU began meeting in September 2013. The PU adopted a new set of business rules that enabled
1350 it to operate independently of the JAB and staff team. It also adopted a comprehensive and ambitious work
1351 plan.

1352 The county made poor selections for PU facilitators. The first, who the PU endured for a year and
1353 three months, contributed little to the effort save chaos. Her conduct was so far below minimal professional
1354 standards that no PU member, even those who were also JAB members, supported her retention.

1355 The second facilitator lasted one year. Her primary mission was to manipulate PU members into
1356 voluntarily disbanding. After concerted effort by a majority of PU members thwarted that goal, the PU
1357 decided to do away with facilitators and select from among its members volunteers to serve as chair and
1358 vice-chair.
1359

1360 Role of the Planning Unit discussed but not resolved to the satisfaction of all parties:

1361 As the PU re-started in September 2013, its members re-initiated the discussion of the proper role of
1362 the PU, and the group spent a substantial amount of meeting time engaging in a meandering and often
1363 contentious debate on the subject which have continued to this day [2019 10 08] without resolution.

1364 In January 2015 the PU adopted a final version of its current Work Plan. The discussion of the
1365 proper role of the PU was made part of Objective Six of said Work Plan, embodied as Task 6.3, "Clarify

1366 Project status and Planning Unit relationships with JAB, Whatcom County, Salmon Recovery Board, et al.”
1367 Subsequently, the PU sent the issue to the PU’s Governance and Funding Committee. Meanwhile, the PU
1368 asked the county attorney for an opinion on whether the council had the authority to establish a standing
1369 formal advisory committee to it, which would retain its statutory responsibilities and its caucus structure
1370 with self-selection of representatives. Dan Gibson’s reply reads in full:

1371 Gary [Stoyka, WCPC and county PU rep]:

1372 “Though I would not characterize the Planning Unit as a "standing advisory committee to the
1373 County Council", it is nonetheless evident that the Council does intend to draw upon the Planning Unit for
1374 advice, as demonstrated in the Council resolution from about 2 years ago [2013-025], and I see no legal
1375 reason why the Council cannot do that. My advice is to leave the advisory status issue right where it is,
1376 which basically puts the ball in the Council's court to seek advice when it believes it is helpful to do so.”

1377 On March 2015, at its regular meeting, the PU adopted and sent to council a report from the
1378 Governance and Funding Committee which found:

1380 “3. Retain its existing membership structure, with self-selection of Caucus representatives.”

1382 The report also noted, in its concluding paragraph,

1384 “The Committee is aware of the recent consideration by the WRIA 1 Staff Team, Management Team and
1385 Joint Administrative Board regarding changes to the relationships between Project entities, including the
1386 Planning Unit. The Committee is considering a proposal regarding the Planning Unit’s role in possible
1387 response to changes proposed by the other entities.”

1388 https://drive.google.com/file/d/1DH7ozEGrBB2BSO9LrVoi27Jawt9_rTV0/view

1390 At its August 2015 meeting the full PU adopted a motion that recognized the dual role as stated
1391 above.

1392 <https://drive.google.com/file/d/1Zf7gssmhAzvncUM9ko4KmtPqGmwGScg/view>

1394 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

1395 **Ongoing conflict between county attorney opinion and that of administration staff:**

1397 Since the reconvening of the PU various county departments and other parties made false
1398 statements regarding the PU that directly contradicts the conclusions of the February Gibson memo.

1399 For instance, during the county comprehensive plan update began in 2015, in the water resources
1400 section of the Environment Chapter 11, county planning staff asserted the following:

1401 “The role of the Initiating Governments was to review a recommended Watershed Plan and take it
1402 to their governments for adoption.” That statement directly conflicts with the documents cited herein,
1403 beginning with the Watershed Planning Act, in that it provides no role for the PU.

1404 In the same document planning staff’s assertion that the joint policy boards have authority to
1405 “Provide WRIA 1 programs policy direction” is supported by no statute or other controlling legal authority.

1406 County planning staff continued with the following erroneous assertions found in staff responses to
1407 comments on the update to the county comprehensive plan calling for recognition of the PU:

1408 “... The PU is a subcommittee of the Joint Boards, as are the Watershed Management
1409 Team, the Watershed Staff Team, and the Salmon Staff Team. Staff purposefully left all but
1410 the highest levels of the organization out. Furthermore, the organization of the WRIA 1 is
1411 currently undergoing potential change, and the status of the PU is unknown.”

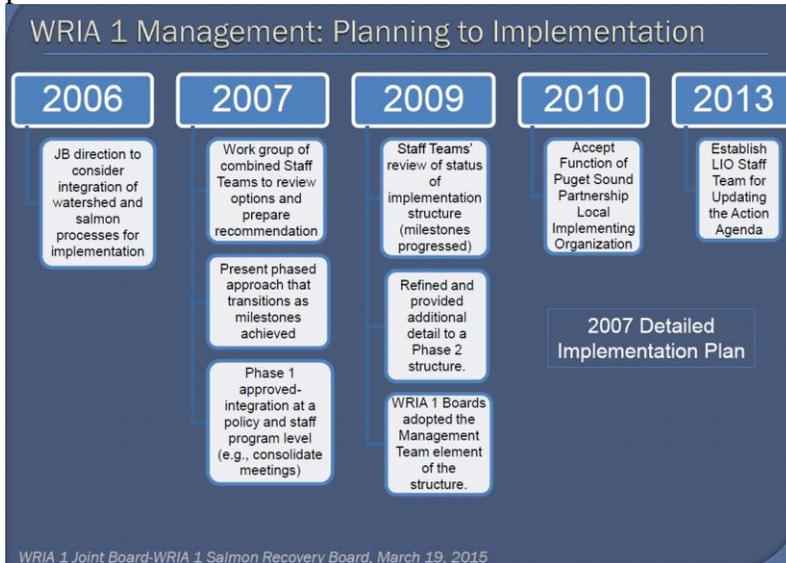
1413 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

1414 **A 2016 interlocal agreement establishes the watershed management board:**

1417 Beginning in early 2015 the JAB, which was running out of money, began advocating the formation
1418 of a new board which fully combined the salmon recovery board and the JAB, and all their staff groups,
1419 into one meta-bureaucracy.

1420 As members of the staff team and JAB began lobbying the county and city councils on behalf of the
1421 new structure, they based their sales pitch on questionable assertions.

1422 At a presentation March 19 2015 to the County Council, as the staff team rolled out their
1423 justification for the new entity, they continued to purvey the myth that the 2005 WMP called for a linear
1424 one-way transition from planning to implementation ([refuted above](#)), as displayed in this slide from the
1425 presentation:



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1428 Notice the reference to the 2007 DIP, which provides for a continuing role of the PU. Note also that
1429 no mention is made of the failure of the confidential negotiations to settle instream flow and quantify tribal
1430 water rights, without the success of which the rest of the effort could well be moot.

1431 The staff team and JAB's insisting that the 2005 WMP provides for a one-way linear transition
1432 from planning to implementation has the effect of justifying their power over water resources within WRIA
1433 1. By insisting that there is nothing left to do but implementation, of which they have placed themselves in
1434 sole charge, they have attempted to justify cutting the PU out of the decision loop.

1435 Note that in all the discussion to date [20191008], no one has come forth with a citation of the IGs
1436 authority to made the determination of what is planning and what is implementation.

1437 In selling the new interlocal and the new entity it would establish, the staff team's pitch included the
1438 following:

1439 First, they laid out three "straw man" choices with the implication that those choices constituted an
1440 exhaustive list – that no other reasonable choices could exist. They successfully structured the discussion
1441 before the county and city councils to preclude any consideration of other choices, despite at least one PU
1442 member pointing out that there were in fact alternatives that could be considered.

1443 Second, despite having suspended its activities for over four years, and steadfastly refusing to
1444 engage with it after it restarted, suddenly the staff team began to feign concern about the fate of the PU.
1445 Note below they list as a "challenge" of both the status quo and the second "straw man" option that they
1446 fail to address the future role of the PU, as if the PU were a lost puppy in need of a home. These assertions
1447 once again contradict the February 2013 Gibson memo: the PU does not owe its existence to the JAB; it is
1448 an independent entity both in law and, since it established its new business rules in 2014, in practice as
1449 well.
1450

Benefits	Challenges
Option 1: Status Quo	
<ul style="list-style-type: none"> • Process in Place • Continue Collaborative Process • Continue Tribal Engagement 	<ul style="list-style-type: none"> • No Identified Funding • Does Not Address Future Role of Planning Unit
Option 2: Go It Alone	
<ul style="list-style-type: none"> • Less Meetings • Save Administration Costs 	<ul style="list-style-type: none"> • No Collaboration • No Identified Funding • May Reduce Outside Funding Opportunities • Less Efficient Resource Management • Potential for Work Not to Get Done • Does Not Address Future Role of Planning Unit
Option 3: Fully Transition to Phase 3	
<ul style="list-style-type: none"> • Consistent with 2007 Detailed Implementation Plan • Continues Tribal Engagement • Formalizes Role of Planning Unit as Identified by County Council 	<ul style="list-style-type: none"> • No Identified Funding • Need to Revise Existing or Establish New MOAs to Reflect Changes

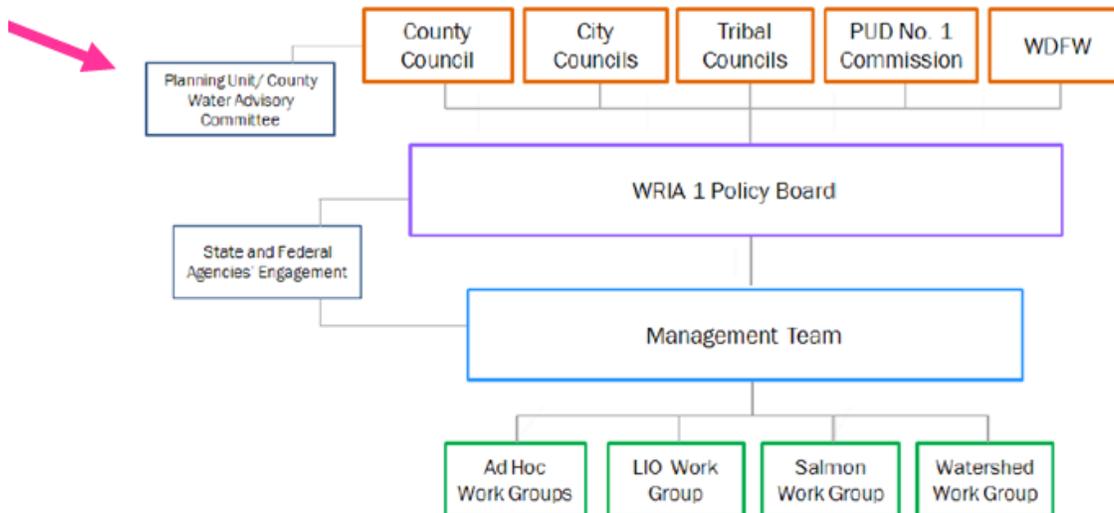
WRIA 1 Joint Board-WRIA 1 Salmon Recovery Board, March 19, 2015

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By far the largest fail in the entire effort can be found by returning to the supposed justification for conducting the exercise in the first place: the unquestionable fact that the JAB was running out of money. Examine the challenges listed above for all three options, and note that in each of them there is “No Identified Funding.” In other words, even the staff teams preferred option, number 3, fails to achieve the primary goal that drove the effort in the first place. So, why bother creating a new entity if it fails to solve the primary problem that prompted its consideration? No legitimate answer to this question, which was asked during the council’s deliberations by at least one PU member, was ever provided.

What was the staff team’s suggestion for the future role of the PU? That it be disbanded to become an advisory committee (as shown in the org chart below; see arrow pointing to box on far left, with link to county council) just as the staff team had been asserting since at least February 2009, and the PU had explicitly rejected in 2009 and again in 2015:

Exhibit A - Integrated Implementation Structure DRAFT



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One further note regarding this structure: it’s upside down. The flow of the process, ever since the staff team and JAB usurped the PU’s lawful role in 2009, has been like a waterfall, from the staff team down to the councils, who find themselves overwhelmed with the sheer mass of material the staff team floods them with.

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Desperate times call for ... stuff and nonsense:

Most PU members were well aware of the implications for the PU of the language and org chart of the proposed new interlocal. As the process of shopping the interlocal around to various councils continued, PU members raised ever more pointed questions about the legality and propriety of the interlocal agreement’s exclusion of the PU from any meaningful role in the watershed management project. The concerns came to a head at the October 25 2015 regular PU meeting, where a PUD staff person repeatedly misspoke to the PU, as thoroughly documented in [Appendix 6](#). The motive appears to have been to deter the PU from pursuing its criticisms of the interlocal and to influence the outcome of a vote at said PU meeting. The errors included the following:

That the Watershed Planning Act and the Salmon Recovery Act (RCW 77.85) list who can participate in interlocal agreements, and the PU is not included. Fact: there is NOTHING in either statute that stipulates who can be a party to any interlocal agreements established pursuant to either of those acts.

Further, her claim that ... the PU ... can’t be named in an ILA because it’s not part of the RCWs that create ILAs.” is also false. Whether the PU is a public agency is a matter for municipal law mavens to debate, but it is clear that public agencies have entered into interlocal agreements with private entities, as the City of Bellingham did in 1992 with the Van Wyck Water Association (see [Appendix 6](#)).

She also claimed that the PU cannot manage government grants, which must be news to the legislature, which specifically granted planning units the authority to apply for and receive grants.

Worst of all is the misleading claim that “It [the interlocal agreement] doesn’t change anything. It doesn’t alter the fact that the PU has a place in the process.” That claim is wrong on several counts.

First, the interlocal does “change things” by giving all control of adaptive management to the new version of the joint board, in an attempt to ensure that the process remains forever in “implementation” mode, regardless of the amount of planning engaged in (such as Objective 3 of the 2010 LNS) and thus out of the hands of the PU.

Here are excerpts from the interlocal that demonstrate that fact:

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1497

36 The primary functions of the Board are to

37 1) Facilitate implementation and adaptive management of the *WRIA 1 Watershed*
38 *Management Plan-Phase 1* as currently constituted or subsequently amended;

1498 Interlocal agreement, page 2, and
1499
1500

7 3) Coordinate planning, implementation, monitoring and adaptive management of ecosystem
8 recovery actions in WRIA 1 consistent with agreed local goals and objectives, and serve

1501 Interlocal agreement, page 3

1502 Source: https://drive.google.com/file/d/1kRnMMniD6i_D2polz7ZIphkby6SUwgOI/view
1503
1504

1505 Second, the org chart accompanying the text of the interlocal established the PU's role as advisory
1506 to the county council, so the PU would be out of way of the joint board and staff team once and for all.

1507 Finally, however, in effect the interlocal does NOT change some things, as it leaves the PU isolated
1508 from the watershed management project, all dressed up with its statutory authority, but with no place to
1509 exercise it.

1510 So what? The effect of the false statements documented above was that the PU dropped further
1511 action on the interlocal agreement. After another year, a few more iterations of its text, and more council
1512 schmoozing by the staff team, the interlocal was approved in late 2016.
1513

1514 [\[Return to Findings\]](#) [\[Return to ToC\]](#)
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1517 **Government participation in the Planning Unit dwindles over time:**

1518
1519 Federal: After visiting one or two PU meetings in 2013 as it just began restarting, an EPA official who was
1520 invited to participate declined to do so. The federal seat at the table has remained vacant since 2005.
1521

1522 State: The state caucus representative stopped attending PU meetings in May of 2014, only to return in
1523 2018 after the passage of ESSB 6091. State attendance fell off rapidly in 2019 and a state rep has been
1524 absent since June 2019.
1525

1526 Small Cities: The Small Cities caucus representative stopped attending PU meetings in mid-2015 after their
1527 attempt to lead the PU into formally disbanding failed. They returned to the PU table in 2018 in response to
1528 the passage of 6091. In early 2019 the Small Cities rep announced he was withdrawing from the PU once
1529 again. NOTE: Small Cities has been included in the Watershed Management Board's Local Government
1530 Caucus.
1531

1532 City of Bellingham: Bellingham, one of the IGs, stopped attending PU meetings in October of 2015 and has
1533 yet to return.
1534

1535 [\[Return to Findings\]](#) [\[Return to ToC\]](#)
1536
1537

1538 Appendix 1: Documents A Working Knowledge of which is Necessary to Participate
1539 Effectively in the WRIA 1 Watershed Management Project
1540

1541 **NOTE: Some links were broken when the WRIA 1 website crashed in 2018.**
1542

1543 **Part I: Legal, Structural, Process and Procedural Documents Issued Prior to Suspension of the**
1544 **WRIA 1 Planning Unit in 2009**

1545 Listed in chronological order, beginning with earliest.
1546

1547 **The controlling statute: RCW 90.82, The Watershed Planning Act (formerly, the Watershed**
1548 **Management Act), aka ESHB 2514. <http://apps.leg.wa.gov/rcw/default.aspx?cite=90.82>**
1549

1550 Purpose: RCW 90.82.005:

1551 The purpose of this chapter is to develop a more thorough and cooperative method of determining
1552 what the current water resource situation is in each water resource inventory area of the state and to provide
1553 local citizens with the maximum possible input concerning their goals and objectives for water resource
1554 management and development.

1555 It is necessary for the legislature to establish processes and policies that will result in providing state
1556 agencies with more specific guidance to manage the water resources of the state consistent with current law
1557 and direction provided by local entities and citizens through the process established in accordance with this
1558 chapter.
1559

1560 **Memorandum of Agreement between Lummi Nation, Whatcom County, Bellingham, PUD**

1561 <https://drive.google.com/file/d/1miGO8U2QYgSNohWDrgV3QK3obbCP5tz/view>

1562 Establishes “the local decision making group to develop and implement a watershed management
1563 plan that fulfills all the requirements (water quantity assessment) and options (water quality, instream flow,
1564 and habitat assessments) authorized by ESHB 2514.”

1565 “The first task of the initiating governments will be to fully define the Planning Unit.”

1566 “Decisions will be made by unanimous vote with each member of the initiating governments having
1567 one vote.”

1568 Executed October 29 1998.
1569

1570 NOTE: The above three quotes, if taken out of context, might be construed to suggest that the signatories to
1571 the MOA believed that the IGs were the “...local decision making group to develop and implement a
1572 watershed management plan...” despite the Act providing that planning units, in which initiating
1573 governments can participate, are responsible for plan development, and that, by clear implication, the
1574 parties responsible for implementation would be identified in the plan.
1575

1576 **WRIA 1 Watershed Management Project Structure and Function as set forth in a Memo from**
1577 **Initiating Governments dated March 18 1999 and executed March 25 1999**

1578 Sets forth how all entities involved in the Project, including the Planning Unit, will be formed.
1579 Includes the initial Public Education and Involvement Plan used (among other things) to perform outreach
1580 for Planning Unit caucus recruitment and formation, and the Caucus Formation and Function.

1581 <https://drive.google.com/file/d/1tZ0CwIPu6sjMdf23jZIn2460yPbthz4W/view>

1582 Excerpt from Page 2 of the Structure and Function memo:

1583 “The Initiating Governments are committed to addressing ... long-standing water resource
1584 management issues. These governments have assembled a capable Staff Team that is action oriented and
1585 has learned the lessons of past water resource planning efforts. The Watershed Management [now,
1586 Planning] Act may provide the last opportunity for local decision-makers to plan and implement necessary
1587 water resource solutions. **Now is the time to trust, cooperate, and work together.**” [emphasis added]

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WRIA 1 Watershed Management Project Planning Unit Process and Procedural Agreement approved December 22 1999

<https://drive.google.com/file/d/1ExJVjH2YxD0pWrgxjXwofhq3ftde62li/view>

The initial “business rules” of the Planning Unit. The most recent version approved in 2017:

<https://drive.google.com/file/d/1drmaB6zWuAPMLgLNAZn6tgKgghG5CENh/view>

County Council Resolution 99-050 Improvements to the WRIA 1 Watershed Management Project Decision Making Process approved October 26 1999

<http://documents.whatcomcounty.us/weblink8/0/doc/3274210/Page1.aspx?searchid=7c887388-09aa-40c4-8078-3be52cb23f77>

Provides, among other things, that:

“... policy changes negotiated by the administrative decision-makers of the Initiating Governments will be brought back to the County Council and the respective councils of the other initiating governments, as agreed to during the creating of the Memorandum of Agreement, for approval.

... the County Executive is hereby directed to identify by way of an interlocal agreement a financial administrative process for the WRIA 1 Watershed Management Project that is jointly administered by the five Initiating Governments.

... upon mutual acceptance by the five Initiating Governments of a joint financial administrative process, subsequent approvals of budgets for the WRIA 1 Watershed Management Project by the County will include the transfer of funds to and expenditure authority from an account jointly administered by the five Initiating Governments.”

Hence, this document paved the way for the formation of the JAB.

WRIA 1 Joint Administrative Board Financial Management and Administrative Procedures (May 23 2000); WRIA 1 Administrative Decision-Makers and the Staff Team Roles and Operating Procedures (March 11, 1999); Interlocal Agreement Establishing WRIA 1 Joint Administrative Board executed January 14 2000.

<https://drive.google.com/file/d/1Qj3GzPjXxxsfDP4cEc3bc-V7FHnEBtn6/view?usp=sharing>

From the Interlocal:

Joint Administrative Board. There shall be established, or recognized hereby if already established, a joint administrative board in accordance with the terms of the written agreement of March 11, 1999, titled” “WRIA 1 Watershed Management Project Administrative Decision-Makers and the Staff Team Roles and Operating Procedures” (hereinafter referred to as “Operating Procedures”), said board being comprised of the Administrative Decision-Makers described therein, representing each of the five initiating governments. This board shall be designated as the “Watershed Management Project Joint Board.”

Operating Fund. Money received by the board from any source whatsoever shall be deposited in a fund with the Whatcom County Treasurer, said fund to be established by the board and designated as “Operating Fund of the Watershed Management Project Joint Board.”

Expenditure Authority. Expenditures from the operating fund shall be authorized in accordance with the procedures provided in the Operating Procedures, dated March 11, 1999. Expenditures of those funds received from the State of Washington or its political subdivisions shall be consistent with requirements adopted by the State of Washington governing the expenditures of such funds.

Contracting Authority. The board shall have authority to enter into contracts to carry out RCW 90.82, and to pursue legal redress in the appropriate forum, if necessary, to enforce performance, and/or receive the benefits of such contracts. Decisions of the board with regard to the same shall be made in accordance with the Operating Procedures referred to elsewhere herein.

1637 **Staff Team Meeting Summary of February 25 2009 indicates Staff Team planned the termination of**
1638 **the Planning Unit well in advance of proposing to do so, and without notice to the Planning Unit**
1639 **members:**

1640 <http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Staff%20Team/WRIA>
1641 [%201%20Staff%20Team%20Meeting%20Summary%2002-25-09.pdf](http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Staff%20Team/WRIA)

1642 **[NOTE: this link is not available since the crash of the original Project website.]**
1643

1644 **County Council Resolution 2013-025 Recognizing the Role of the WRIA 1 Planning Unit to Assist the**
1645 **Whatcom County Council Regarding Water Resources approved July 23 2013**

1646 [http://documents.whatcomcounty.us/weblink8/0/doc/3186144/Page1.aspx?searchid=0ef97512-](http://documents.whatcomcounty.us/weblink8/0/doc/3186144/Page1.aspx?searchid=0ef97512-ad45-4ab6-9cd8-0703b0ca4b63)
1647 [ad45-4ab6-9cd8-0703b0ca4b63](http://documents.whatcomcounty.us/weblink8/0/doc/3186144/Page1.aspx?searchid=0ef97512-ad45-4ab6-9cd8-0703b0ca4b63)
1648

1649

1650 **Part I A: Legal, Structural, Process and Procedural Documents Issued After Suspension of the**
1651 **WRIA 1 Planning Unit in 2009**
1652

1653 **2009 GOVERNANCE STRUCTURE FOR IMPLEMENTING WRIA 1 PROGRAMS**

1654 https://drive.google.com/file/d/1Ycxvtua8fbjJ9doOEtKz2In_ObqCGe0y/view

1655 This document was explicitly rejected by the WRIA 1 Planning Unit on June 30 2009

1656 This document proposes replacement of the Planning Unit with a “WRIA 1 Watershed Panel”

1657 without any review and approval authority over updates to or implementation of the WRIA 1 Watershed
1658 Management Plan-Phase I.

1659 Key Excerpts from Executive Summary:

1660 “In 2007, the WRIA 1 Joint Board was presented a three-phased governance structure for
1661 implementing WRIA 1 programs. Achieving identified milestones marked the progression from one
1662 phase to the next. With the milestones nearing completion, it is time to consider advancing to the
1663 next phase of implementation.

1664 The Phase 2 structure in the 2007 report was reviewed to explore an alternative
1665 organizational structure for implementing WRIA 1 Watershed Management and Salmon Recovery
1666 Programs. The outcome of the review is reflected in the organizational structure presented as Figure
1667 1 in this document. It is a structure that can be implemented at the direction of the WRIA 1 Joint
1668 Board and WRIA 1 Salmon Recovery Board, will not require changes to the existing Memorandum
1669 of Agreements that established the policy boards, retains the government to government
1670 relationship, and more effectively involves stakeholders in the direct implementation of actions
1671 associated with the program planning documents.

1672 The reasons for advancing program implementation to the next phase at this time are:

1673 • to maximize available resources and improve efficiencies by eliminating unnecessary or
1674 duplicative process

1675 • to increase opportunities for stakeholder involvement directly in program implementation;
1676 and

1677 19 to advance implementation of actions in the WRIA 1 Watershed Management Plan
1678 (WMP) and WRIA 1 Salmon Recovery Plan (SRP) that address coordination and integration
1679 between programs.
1680

1681 **2016 INTERLOCAL AGREEMENT BETWEEN LUMMI NATION, NOOKSACK INDIAN TRIBE,**
1682 **WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE, WHATCOM COUNTY,**
1683 **AND THE CITIES OF BELLINGHAM, BLAINE, EVERSON, FERNDAL, LYNDEN,**
1684 **NOOKSACK AND SUMAS, AND PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM**
1685 **COUNTY**

1686 Establishing the WRIA 1 Watershed Management Board

1687 https://drive.google.com/file/d/1kRnMMniD6i_D2polz7ZIphkby6SUwgOI/view

1688 Excerpt:

1689 The primary functions of the Board are to:

1690 1) Facilitate implementation and adaptive management of the WRIA 1 Watershed

1691 Management Plan-Phase 1, as currently constituted or subsequently amended;

1692 [etc.]

1693
1694

1695 **Part II: Substantive Planning Documents Approved by WRIA 1 Planning Unit**

1696

1697 The key elements of the 2005 WRIA 1 Watershed Management Plan, Phase 1 (2005 WMP):

1698

1699 **March 27 2000 General Scope of Work (Appendix B, 2005 WMP)**

1700 <https://drive.google.com/file/d/1bc59P44ua6Masyq7iHqgm0rTyQi1VvAd/view>

1701 Note Section 2.7, Process Flow Control Protocol, (Pages 12-14, Lines 504 through 598) establishes

1702 the Adaptive Management element of the 2005 WMP, as acknowledged in Section 4 of the 2005 WMP,

1703 Page 8.

1704

1705 **2005 WMP Executive Summary**

1706 <https://drive.google.com/file/d/1tP1rwLPLLeUoi8JEsiMosimfYxga496SQ/view>

1707

1708 **2005 WMP Introduction**

1709 <https://drive.google.com/file/d/1Z4YWrQRfmRIVZTQP0Jp2TuKMxGnRb24D/view>

1710

1711 **2005 WMP Section 3 WRIA 1 Watershed Action Plan to Address Key Issues**

1712 https://drive.google.com/file/d/1DtaPr2_oJuHajkOQ-NnGU7ScvIx7Zylu/view

1713

1714 **2005 WMP Section 4 Governance and Implementation and Adaptive Management**

1715 <https://drive.google.com/file/d/1JYu-vNWJO9CGEI4kbDY779S4QalJCqWc/view>

1716

1717 **2005 Instream Flow Selection and Adoption Action Plan, Version 6c (Appendix C, 2005 WMP)**

1718 <https://drive.google.com/file/d/1sPRAAsRexrACrk9tTKltOpKL7Qlrzy2W/view>

1719

1720 **July 2007 Detailed Implementation Plan**

1721 https://drive.google.com/file/d/1pQ0r8B0b4ImUoJDv_i_XVvKGugZBAW0k/view

1722

1723

1724 **Part III: Substantive Planning Documents NOT APPROVED by WRIA 1 Planning Unit:**

1725

1726 **October 2010 Lower Nooksack Strategy**

1727 Approved by Joint Administrative Board without Planning Unit review and approval:

1728 https://drive.google.com/file/d/1eErZa_KHg2_R8cNVCpas3A3x2xPSsflv/view

1729

1730 **WRIA 1 Watershed Management Board 2018-2023 Work Plan Version dated July 10 2019**

1731 https://drive.google.com/file/d/1_EUz4C9fA_JlhgLM7G8vfr-L3YGSUOqJ/view

1732 NOTE: a new version was adopted September 25 2019, renamed “Implementation Strategies.”

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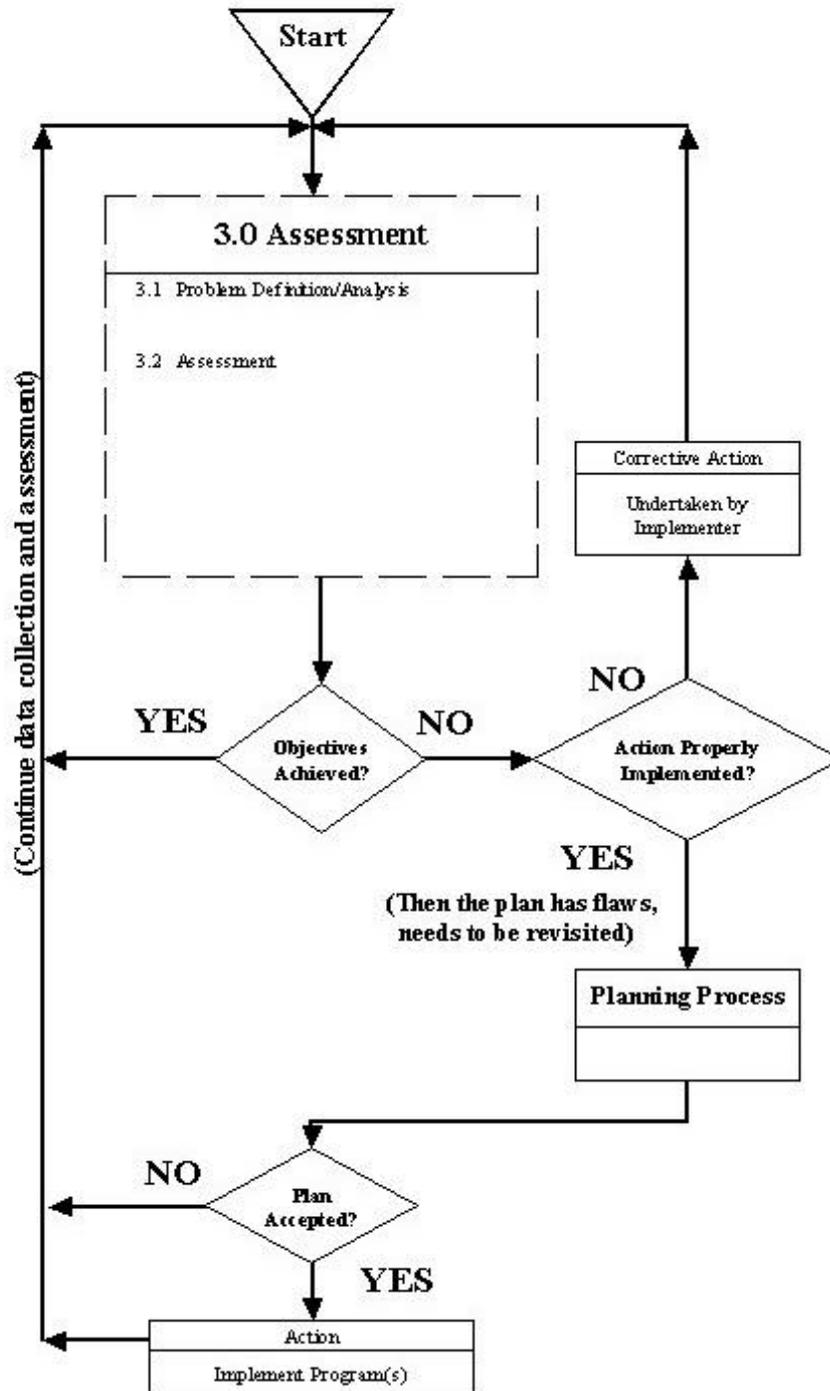
Appendix 2: Logic model for management activities of the WRIA 1 Watershed Project

From March 2000 General Scope of Work:

<https://drive.google.com/file/d/1bc59P44ua6Masyq7iHqgm0rTyQi1VvAd/view>

Figure 3: WRIA 1 Watershed Management Process Flow Sequence V 1.0

The process applies to each component within each sub-basin.



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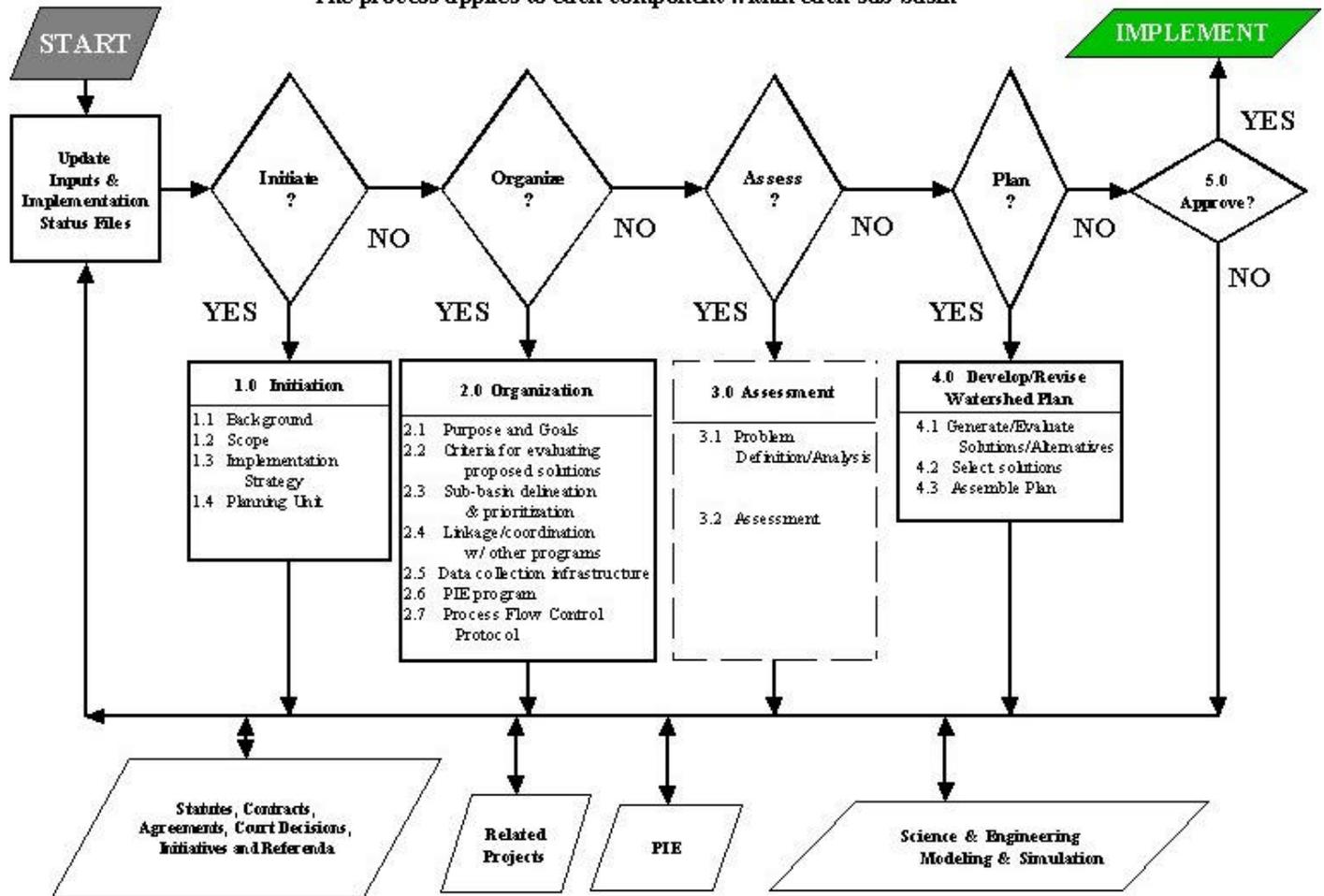
Appendix 3: Logic model for planning activities of the WRIA 1 Watershed Project

From March 2000 General Scope of Work:

<https://drive.google.com/file/d/1bc59P44ua6Masyq7iHqgm0rTyQilVvAd/view>

Figure 2: WRIA 1 Watershed Planning Process Flow Sequence V 1.0

The process applies to each component within each sub-basin

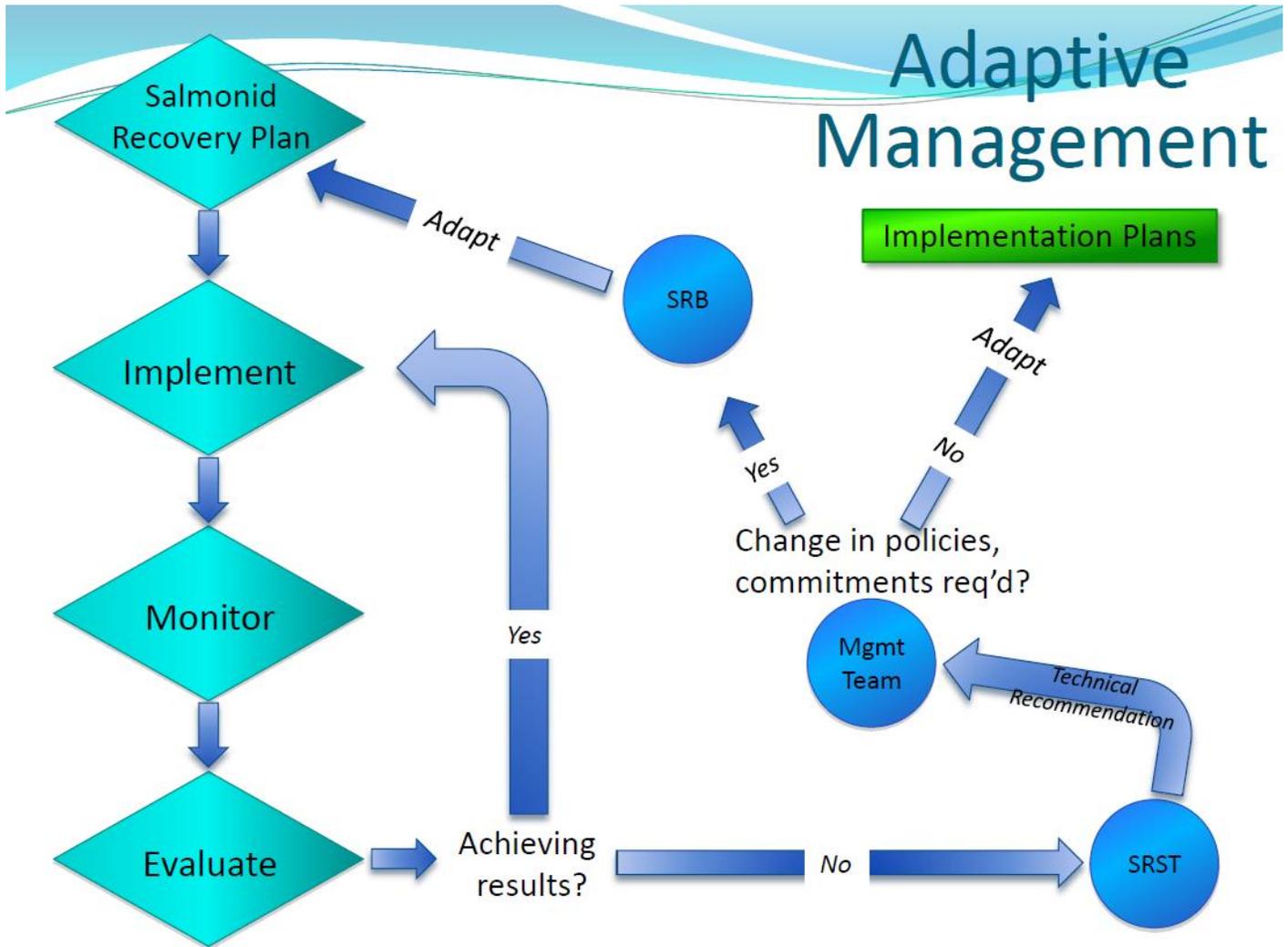


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Note: processes with dashed borders are shared between planning and management

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1755 Appendix 4A: Adaptive Management logic model of the WRIA 1 Salmon Recovery Project,
 1756 presented to formal mtg of WRIA 1 salmon recovery decision makers by Treva Coe,
 1757 Nooksack Tribe employee:
 1758



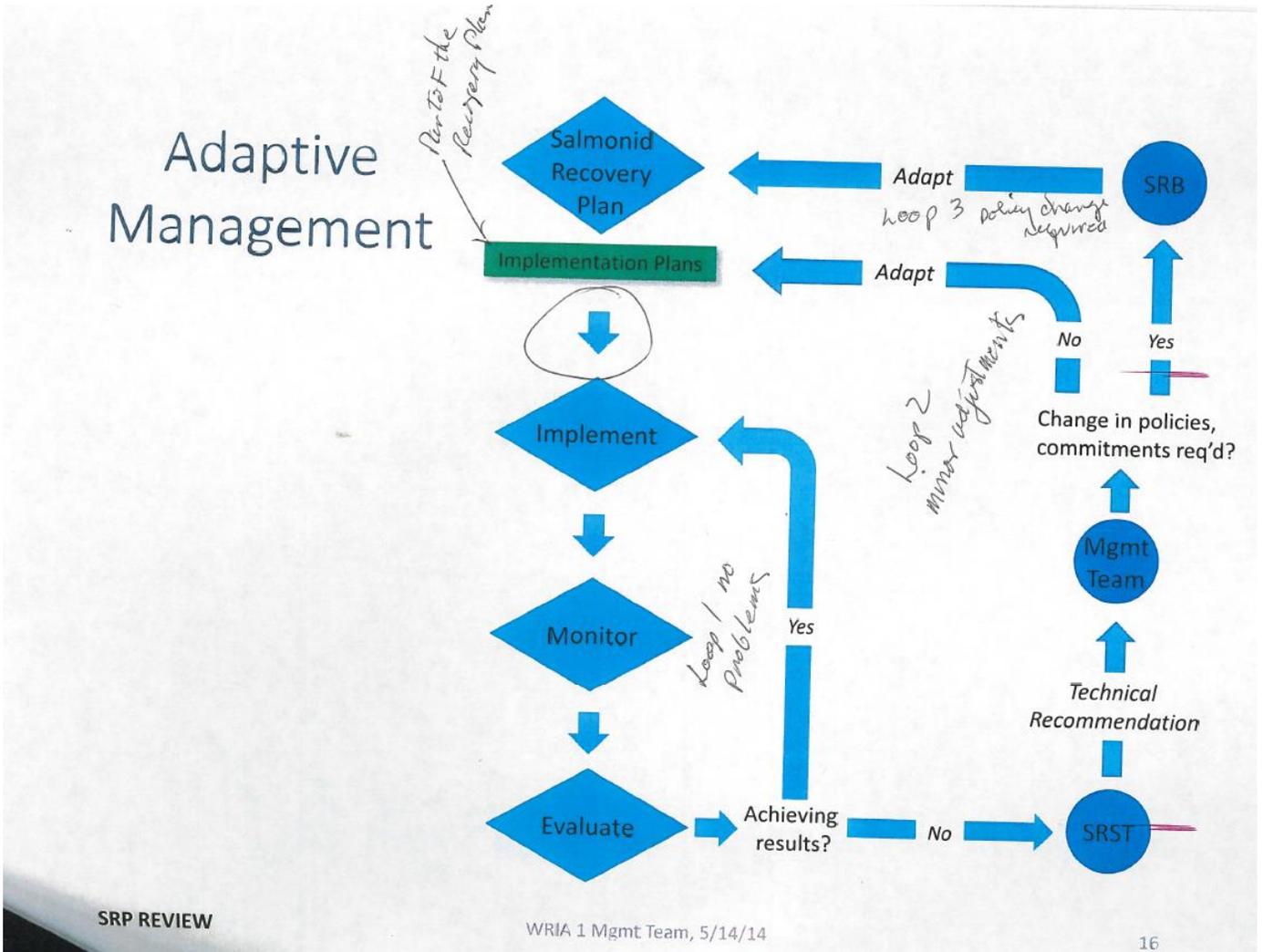
1759
 1760
 1761 **NOTE 1:** This flowchart displays an invalid adaptive management structure, in that it shows no pathway by
 1762 which information (activity reports, results reports, etc.) regarding activities undertaken in the
 1763 “Implementation Plans” rectangle can flow back to decision makers for evaluation and input to corrective
 1764 actions of the Salmon Recovery Plan, or for that matter, the implementation plan(s).
 1765

1766 **NOTE 2:** This flowchart uses symbols in a non-standard way; for example, the diamond shape is properly
 1767 used to denote a decision-point, while rectangles denote an activity or sets of related activities.
 1768

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1772 Appendix 4B: Adaptive Management logic model of the WRIA 1 Salmon Recovery Project,
 1773 a version Alan Chapman sent in response to a query prompted by the comment labeled
 1774 NOTE 1 in the version posted above:
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1785 Transcript of audio recording of state auditor's exit interview with JAB personnel:

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1787
1788 AUDIO CLIP #1:

1789 County Executive Louws: "... because the Whatcom County Council through the interlocal has
1790 given me legislative authority to make decisions, and if there's legislative authority then it ends up being
1791 under the Open Public Meeting Act and there's no argument at all ... "

1792 SAO staff: "There just can't be any decisions made behind closed doors."

1793 Louws: "That's correct."

1794

1795 AUDIO CLIP #2:

1796 Louws: "And just for your information I asked Public Works to take a look at all the rest of
1797 the interlocals we have (laughs) because we have literally dozens of them, and make sure that we aren't
1798 falling outside of the cracks on those also, so ... and I think our advisory committees we're fine on but if
1799 there's anything that either the council or I that are appointed to, particularly me, **if I'm put into a position**
1800 **on one of these boards that I have a legislative authority on**, I think it's my understanding that it has to
1801 be an open public meeting act."

1802 Jon Hutchings [current county Public Works Director, then Bellingham assistant Public Works
1803 Director]: "So the underlying question I have then has to do with what constitutes a quorum. And we need
1804 to go back and make sure we fully understand that and whether or not we can even approve a budget then
1805 for 2013 and 14 next week because we're not going to have, it's very unlikely that Bob's going to show
1806 up."

1807 Louws: "Well, if we do need that John I will ... I'll personally give Bob [Kelly, then chair of the
1808 Nooksack Indian Tribe] a call and say "Hey, you know what, we, to clean up what's going on on this and
1809 you guys are party to, we at least need you to show up at a couple of meetings, so that we can change the
1810 interlocal so ... or allow you to bow out of it ... and we're going to need your vote, we're going to need to
1811 have you there a couple of times to make that happen. Like I say if they aren't willing to do that we may
1812 have \$400,000 that's going to sit there in perpetuity because we aren't going to be able to unwind it."

1813 Hutchings: "So we should have that heart to heart discussion at some point ... "

1814 Louws" "We will..."

1815 Auditor staff: "That's outside of this..."

1816 County Public Works Direction Frank Abart: "Can you be present in a quorum via telephone? I've
1817 seen it done on the public works board ... like when I was on the public works board we had people from
1818 Spokane and other areas ... they're on the telephone there in the middle of the table, they're still voting. Is
1819 that an acceptable way to get somebody here that doesn't want to show up?"

1820 Auditor: "You can have attendance by telephone ..."

1821 Abart: "...as an option ..."

1822 Auditor staff: "... and still be open to the public and everyone be able to attend. Anybody else
1823 have anything more?"

1824 Audience: "I'm going to ask him about the Planning Unit..."

1825 Louws: "Do you understand what I'm asking for?"

1826 Auditor Two: "I do."

1827 Abart: "And maybe I'm thinking, just put an asterisk by his name and mine, our signature, and put
1828 a statement down there that we're representing administrative management not necessarily representing the
1829 board."

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1838

1839 Summary: A PUD representative to the WRIA 1 Planning Unit (PU) made several serious
1840 misrepresentations regarding the nature of and restrictions on development of interlocal
1841 agreements. These misrepresentations appear to have influenced the outcome of a PU vote
1842 regarding the interlocal agreement that established the Watershed Management Board. Because
1843 the person in question claimed expertise in the matter, the misrepresentations may fall into the
1844 categories of misfeasance or even malfeasance.

1845

1846 WRIA 1 Planning Unit (PU) meeting date: **October 28, 2015**

1847

1848 Agenda Topic: The proposed interlocal agreement to establish the new version of the Joint Board,
1849 eventually called the Watershed Management Board.

1850

1851 At the October 28, 2015, PU meeting, during a discussion of whether the PU could be included in the
1852 proposed Interlocal Agreement (ILA) that established the so-called watershed management board, Rebecca
1853 Schlotterbach, representing the PUD, stated the following (an excerpt of transcript of official audio
1854 recording of the PU meeting):

1855

1856 **Rebecca Schlotterbach**, begins @ min 40:50 into the meeting:

1857

1858 As the only initiating government body sitting here tonight ... and just so you know I have been a
1859 part of this for 15 years, I went back to the original PU meeting group and have sat not at the table but at
1860 every PU meeting from 2000 to 2005.

1861

1862 I just want you to understand what an ILA is. I think most of you people understand what an ILA is;
1863 it is a legal agreement between entities who need to do ... either do contracts together, or manage funding
1864 together. It has nothing to do with *process*.

1864

1865 So the ILA between the IGs was done so that they could do *business* together. They could manage
1866 contracts, they could do whatever they needed to do to business.

1866

1867 Same thing with Salmon Recovery board. ...

1867

1868 That's what an ILA is.

1868

1869 So, to put wording into an ILA that includes the PU is very ... it's really not appropriate, because
1870 PU members, many of them are not government agencies and cannot manage government funding or grant
1871 funding.

1871

1872 So I just wanted to be really clear what an ILA is, a way for government agencies to do business
1873 with each other. [emphasis added]

1873

1874 After various PU members discuss other aspects of the issue, the representative for the Water Districts
1875 Caucus asks a question of Rebecca Schlotterbach:

1876

1877 **Richard Bunel**: @ min 49:00:

1878

1879 ... Under 90.82 the PU is responsible for implementation of the watershed management plan, right?
1880 So how does that reconcile if we're not in the ILA but it sounds like we should be, though, doesn't it?

1881

1882 **Rebecca Schlotterbach**: @ min 49:41: We can't be. The ILA is –

1883

1884 **Richard Bunel**: So the ILA is ... the policy board formed by the ILA is responsible for the implementation
1885 –

1885

1886 **Rebecca Schlotterbach**: this agreement is between ... [moves mic] The ILA is between legal governments
1887 [listed some of them]; those are the people who are named in RCWs that can sign interlocal agreements. If
1888 you look at the Salmon Recovery RCW and you look at the Watershed Planning RCW, those are the people

1889 who are named who can sign interlocal agreements to work together to manage the money and the grants.
1890 That's what this is all about. And if you go back and look at the integration process, what we're trying to
1891 is move forward the fact that we're integrating the two boards together. It's a formalization of what we've
1892 already been doing. That's all this is. It doesn't change anything. It doesn't alter the fact that the PU has a
1893 place in the process. It just can't be named in an ILA because we're not part of the RCWs that create ILAs.
1894

1895 **The statements Rebecca Schlotterbach utters contain various falsehoods.**

1896 First, there is NOTHING in either the Watershed Planning Act (RCW 90.82) or the Salmon
1897 Recovery Act (RCW 77.85) that stipulates who can be a party to any interlocal agreements established
1898 pursuant to either of those acts.

1899 Further, her claim that "... the PU ... can't be named in an ILA because we're not part of the RCWs
1900 that create ILAs." is also false. Whether the PU is a public agency is a matter for municipal law mavens to
1901 debate, but public agencies have entered into interlocal agreements with private entities, as the City of
1902 Bellingham did in 1992 with the Van Wyck Water Association, as this caption indicates:
1903

**INTERLOCAL AGREEMENT BETWEEN CITY OF BELLINGHAM
AND VAN WYCK WATER COOPERATIVE**

THIS AGREEMENT dated this _____ day of _____,
1992, entered into between the CITY OF BELLINGHAM, hereinafter
referred to as "City", and the VAN WYCK WATER COOPERATIVE, a
Washington corporation, hereinafter referred to as "Van Wyck".
The City and Van Wyck are sometimes referred to herein
individually as a "Party" and collectively as the "Parties".

1904
1905
1906 It gets worse. In the first segment quoted above, she says: "So, to put wording into an ILA that includes the
1907 PU is very ... it's really not appropriate, because PU members, many of them are not government agencies
1908 and cannot manage government funding or grant funding."

1909 Here is what a section of RCW 90.82, the Watershed Planning Act that enabled planning units, says
1910 about planning units and grants and the like:

1911 RCW 90.82.040 WRIA planning units—Watershed planning grants—Eligibility criteria—
1912 Administrative costs.

1913 (1) Once a WRIA planning unit has been initiated under RCW 90.82.060 and a lead agency
1914 has been designated, it shall notify the department and may apply to the department for funding
1915 assistance for conducting the planning and implementation. Funds shall be provided from and to
1916 the extent of appropriations made by the legislature to the department expressly for this purpose.

1917 (2)(a) Each planning unit that has complied with subsection (1) of this section is eligible to
1918 receive watershed planning grants in the following amounts for the first three phases of
1919 watershed planning and phase four watershed plan implementation:

1920 (i) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars
1921 for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in
1922 accordance with RCW 90.82.060(4);

1923 (ii)(A) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the
1924 management area for conducting watershed assessments in accordance with RCW 90.82.070,
1925 except that a planning unit that chooses to conduct a detailed assessment or studies under
1926 (a)(ii)(B) of this subsection or whose initiating governments choose or have chosen to include an
1927 instream flow or water quality component in accordance with RCW 90.82.080 or 90.82.090 may
1928 apply for up to one hundred thousand additional dollars for each instream flow and up to one
1929 hundred thousand additional dollars for each water quality component included for each WRIA to
1930 conduct an assessment on that optional component and for each WRIA in which the
1931 assessments or studies under (a)(ii)(B) of this subsection are conducted.

1932 <http://app.leg.wa.gov/RCW/default.aspx?cite=90.82.040>

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There are numerous other sections of the statute that mention planning units applying for grants.

In other words, the legislation provides that planning units can apply for and receive grants from the state. There is NOTHING in the statute that justifies the assertion that planning units may not apply for and receive grants of any kind. The interlocal agreement that formed the Joint Administrative Board, executed in January 2000 with the consent of the Planning Unit, provided for an administrative mechanism whereby the PU could apply for funds, as an entity, without the administrative bother of filling out applications and keeping books.

Worst of all is Schlotterbach’s misleading claim that “It [the interlocal agreement] doesn’t change anything. It doesn’t alter the fact that the PU has a place in the process.” That claim is wrong on several counts.

First, the interlocal does “change things” by giving all control of adaptive management to the new version of the joint board, in an attempt to ensure that the process remains forever in “implementation” mode, regardless of the amount of planning it engages in.

Second, the org chart accompanying the text of the interlocal established the PU’s role as a mere advisory body to the county council. Resolution 2013-025 that enabled the PU to act as advisory to the council also acknowledged the PU’s statutory role under the Watershed Planning Act.

Finally, however, we see a truth that covers a more important truth. In effect the interlocal does NOT change things, as it leaves the PU isolated from the watershed management project, all dressed up with its statutory authority, but with no place to exercise it.

Well, so what? What was the upshot of this act of serial misrepresentation? Simply this: according to the official meeting summary, a motion made by a PU member, to remind the Joint Administrative Board and lead agency (Whatcom County) of the statutory authority of PU when modifying the 2005 WMP, failed. From the official the meeting summary:

Planning Unit Motions That Did Not Pass

Motion (Motion #4) by Linda Twitchell to send a letter to the Lead Agency and to the Joint Board asking that the new ILA include an attachment reminding the Joint Board and the Lead Agency of the statutory role of the Planning Unit in reviewing and updating the Watershed Management Plan. Motion seconded by Sylvia Goodwin.

Vote:

- 5 in favor (Environmental, Fishers, Land Development, NGWS, Port of Bellingham)
- 1 opposed (Agriculture)
- 5 abstain (Forestry, Private Well Owners, Public Utility District #1 of Whatcom County, Water Districts, Whatcom County)
- 5 absent (City of Bellingham, Diking/Drainage, Small Cities, State Agency, Federal Agency)

Motion fails

Toward the end of that segment of the PU meeting, Karen Brown, then serving as representative for the Private Well Owners caucus, summed up the situation precisely: “ ... the Joint Board wants us to go away; to be quiet and go away.”

Upshot: the PU abandoned any further efforts to address its concerns regarding the interlocal, and about a year later the county council approved it.

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