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The Walla Walla Water Management Initiative:

Insights on Design and Implementation from Innovative Water Management Efforts

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Executive Summary

The Water Management Initiative is an emerging effort to create a locally governed water management system in the Walla Walla Basin that will support fish recovery while maintaining the agricultural economy. Because the Water Management Initiative represents a new and untested alternative to current water management, those involved in the effort—irrigators, tribal leaders, municipalities, environmentalists, and others in the Walla Walla Basin, in concert with Washington Department of Ecology and others—asked the William D. Ruckelshaus Center to conduct independent research that would inform their efforts to design an effective and locally appropriate water management system to achieve instream flow targets.

This report responds to that request. It attempts to describe the purposes, goals, and components of the Water Management Initiative as currently conceived by those in the basin and to provide insights and experiences from similar efforts elsewhere. Through extensive research and consultation with a broad range of people familiar with water management, water rights, and other relevant concepts, the Center identified and examined eight innovative environmental management efforts in the United States and internationally that provide insights on specific components of the Water Management Initiative. This report describes those examples and highlights structures, mechanisms and practices that may be relevant to the goals of the Initiative.

The Water Management Initiative is the result of an unprecedented offer by the Director of Washington Department of Ecology, Jay Manning. If water users in the Walla Walla Basin can commit to delivering prescribed flows, Ecology has offered to seek the needed authority to allow water to be managed locally and more flexibly. Ecology has asked the Walla Walla Basin community to develop a proposal that:

- Defines target flows to support fish needs and other instream values. Flows would be scientifically justified to support fish recovery and could be based on precipitation (wet year, medium year, dry year).
- Devises a reliable approach to achieving these flows. This might involve locally governed decisions regarding water management that offers greater flexibility and creates environmental benefit. It would also involve managing conflicts within the basin and monitoring flows to ensure targets are met.

Since any authorities to manage water will be conferred to the basin by the state, the Water Management Initiative will not supersede tribal rights and authorities or federal authorities such as the Endangered Species Act. In addition, Ecology has stated that it does not intend to abdicate its responsibilities and that the Ecology Water Master is expected to continue in the basin. The Initiative is being attempted only in the Walla Walla Basin and water policy changes associated with the Water Management Initiative apply only to the Walla Walla Basin.

Director Manning made this offer because of the significance of water challenges in the Walla Walla Basin and the limited effectiveness of the State's existing options to remedy them. Water in the Walla Walla Basin is overallocated, instream flows are insufficient to support some native aquatic species, and the federal Endangered Species Act threatens to impose severe restrictions on agricultural and other water users. Since junior water right holders typically are not served

because allocated water rights exceed divertible supply, any relinquished water would go to the next junior water user and would not be protected in the river. Furthermore, state water law is often blamed for encouraging excessive use of water rights and hindering conservation efforts. This offer is an attempt to overcome these challenges, create public benefit, and generate real protected water in the river by creating a cooperative alternative to traditional regulatory water management approaches.

The Water Management Initiative

As described by those in the basin, the purpose of the Water Management Initiative is to significantly contribute to the restoration and protection of streamflows, aquifers and water quality to support recovery of ESA listed species (steelhead and bull trout) while maintaining a thriving agricultural economy. It is also intended to provide a degree of local autonomy and responsibility for water management, giving those with the most at stake greater influence over their own destiny. The Water Management Initiative appears to have three primary goals:

- **Flow**: Achieve instream flow targets and temperature conditions in streams throughout the basin at specified times to support fish recovery. This includes protecting aquifers and the bypassed flows from Oregon as they flow through the Washington portion of the basin.
- **Flexibility**: Allow the basin community to govern water resources locally and provide them with flexibility in how water is withdrawn, conveyed and applied so they can optimize out-of-stream uses and achieve instream flow targets. This might involve altering water laws that inhibit reduced water usage.
- **Reduced regulatory risk**: Reduce uncertainties faced by water users under current federal and state regulations. This might involve suspending state relinquishment laws going forward. At the federal level, this might involve developing a Habitat Conservation Plan (HCP) to address Endangered Species Act requirements.

The Water Management Initiative is premised upon a "performance-based approach" to water management in which water users are given broad latitude within a defined area to meet measurable performance standards or "outcomes" rather than being governed by a traditional system of external rules. This approach is intended to give water users flexibility to design and implement solutions to instream flow problems that are more efficient and environmentally effective than conventional approaches. Many of the proposed water management options are available currently (e.g., conjunctive use of surface and groundwater or changing the point of diversion), but water right holders express a reluctance to consider them due to fear that such activities might lead to relinquishment. The Water Management Initiative is intended to make water management changes for environmental purposes easier to implement going forward and reduce the perceived and actual risks for water right holders.

Insights from the Research

Many of those working on the Water Management Initiative view the concept as an emerging *package* of components that must eventually come together in order for it to be both acceptable and effective. Based on interviews with a range of interests who are involved in or watching the development of the Water Management Initiative, an effective package that could be acceptable to most parties might include the following components:

- Stream flows are sufficient to recover ESA-listed species

- Irrigators are afforded flexibility to alter water management without fear of negative consequences
- The agricultural economy remains viable
- Local government interests are addressed
- The governance, monitoring, and dispute resolution mechanisms are appropriate and credible
- The approach is approved and overseen by relevant state and federal agencies and tribes
- Ecological, economic and social risks are minimized.

The research found no identical precedent operating within the context of western water law for the package of local and flexible water management currently conceived under the Water Management Initiative. However, the research did find examples of innovative environmental and agricultural management efforts from which useful ideas can be gleaned to help shape mechanisms or practices for consideration as part of the Water Management Initiative package. Some key insights from the research and case examples include:

- **Governance mechanisms**: The specific functions of the governance mechanism and its eventual form will depend on what goals, purposes, approaches, and activities are ultimately assigned to the Water Management Initiative. Some of these functions may include making water management decisions, monitoring performance measures and water management activities, enforcing water management decisions, managing projects, and resolving disputes that might arise. The case examples and research suggest that for the governance mechanism to gain credibility and legitimacy, important considerations will include how the governing body is selected (e.g., it might be appointed or otherwise endorsed by locally respected and legitimized bodies), who is involved (e.g., it might be composed of a range of relevant interests or constituency leaders); how decisions are made (e.g., many examples use consensus and base their decisions on accepted science and local knowledge); and how the governance mechanism relates to other entities with authority and influence.
- **Establishing flows and performance measures**: Many irrigators in the Basin say that if water requirements are clearly defined, they can design their water and cropping systems to benefit flows and agricultural needs. Scientific analysis is currently in progress to define streamflow conditions necessary to support recovery of ESA-listed bull trout and summer steelhead. The case examples and research suggest that to maintain trust in the system and to track performance, important considerations for establishing flows include that streamflow targets be based on accepted science, be measurable and be transparently monitored.
- **Market-based incentives**: Agricultural leaders involved in the Water Management Initiative have stated that the approach should employ incentives to achieve water management improvements. The examples demonstrate that market mechanisms such as water banking, transfers of conserved water, tiered pricing, water auctions and effluent permit trading can provide effective incentives for water conservation and water quality improvements. However, the case examples and research also illustrate that market mechanisms can have unintended consequences. For example, selling excess water can lead to increased use, and trading from agriculture to other uses can undermine the agricultural economy. Experience from California suggests that if water trading is

instituted in the Walla Walla Basin, it may be desirable to consider how much water can be traded, whether water can be traded from agriculture to other uses, and whether local zones might be appropriate to limit the geographic impact of water transfers.

- **Equitable distribution of costs and benefits:** Water management changes are likely to impose some costs for those making the changes and some potential impairment to the water availability of others. The case examples and research suggest that support for the Initiative might be enhanced if the costs of water restrictions are shared among groups rather than falling inordinately on some groups more than others (for example, irrigation districts or those on one side of the state line or the other). To mitigate the costs, a potentially helpful approach is to seek an equitable distribution of the *benefits* of water rather than the distribution of the *quantity* of water itself. Distributing water use benefits allows for positive-sum agreements, whereas dividing the water itself only allows for winners and losers.
- **Effective and efficient dispute resolution**: Water management changes are almost certain to result in some impairment of water rights at some time, and thus disputes within the Water Management Initiative are probably inevitable. The case examples and research suggest that an effective, credible and trusted governance structure can help avoid many conflicts. Incorporating a conflict resolution mechanism that builds on the overall credibility and trust of the system is also beneficial. As the case examples illustrate, one key to maintaining legitimacy and credibility is to develop an effective and efficient mechanism for resolving disputes when they do occur. Important components of such a system include 1) a definition of who makes decisions and how they are made (consensus or vote); 2) a specific, efficient, and final process to resolve disputes; and 3) mechanisms that create incentives for all parties to be more flexible and creative in trying to resolve the dispute without resorting to win-lose decisions or outcomes.

Conclusion

Many of the individual components contemplated for the Walla Walla Water Management Initiative have proven to be effective elsewhere. This report provides examples and insights that are intended to inform and possibly guide those in the basin who are working to advance the Initiative. It is hoped that the mechanisms and ideas presented in this report will be of assistance in developing an appropriate package of management and decision-making tools for an effective, balanced and trusted Water Management Initiative.