

UPPER CRAB CREEK WATERSHED PLANNING UNIT

OPERATING PROCEDURES

I. Project Area

Upper Crab-Wilson Water Resource Inventory Area # 43 includes land surrounding Crab Creek and its tributaries from west of Medical Lake to Brook Lake west of the town of Wilson Creek. Crab Creek's main tributaries are Bluestem Creek, Rock Creek, Lords Creek, Coal Creek, Duck Creek, Lake Creek, Canniwai Creek, and Wilson Creek. The Crab Creek watershed covers approximately 1,185,000 acres and is found within Lincoln, Grant, Spokane, and Adams Counties.

II. Mission and Goals

a. Mission Statement

To develop a plan to manage and protect the water and related resources in an environmentally and economically sound manner in the interest of the citizens of the Upper Crab Creek Watershed.

b. Goals

- i. To analyze and document existing and historic status of water resources in the Upper Crab Creek Watershed and plan for the future needs of the citizens of the watershed.
- ii. To develop a plan for the people of the Upper Crab Creek Watershed which respects cultural and historic values, as well as environmental functions of the watershed.
- iii. To implement the plan and monitor its effectiveness in meeting the intent of the mission statement with periodic evaluation.

III. Representation

a. Initiating Governments

All of the counties within the watershed (Lincoln, Grant, Spokane, and Adams) along with the largest city (Medical Lake) and largest water purveyor (LRB Management Co.) comprise the initiating governments.

i. Lead Agency

Lincoln County has been designated as the Lead Agency by the Initiating Governments.

b. Membership

The Crab Creek Watershed Planning Unit includes a diverse group of resident and/or landowner interests, such as agriculture groups, businesses, recreational and environmental groups, property owner's and water associations, initiating governments, cities, and local, state and federal agencies.

i. Alternates

Members may choose an alternate if they are unable to attend a meeting. Alternates attending a meeting must state whom they are representing on the Sign In sheet.

IV. Rules and Responsibilities of the Planning Unit

a. Meetings

i. Times and Location

Planning Unit meetings will be held the 3rd Tuesday of every month in the evenings from 7:30 to 9:30, but is subject to change. Any future changes will be discussed at the previous meeting.

ii. Duration

The meetings will last two hours, and the agenda will be structured by time in order to accomplish all agenda items.

iii. Public Participation

All planning unit meetings will be open to the public. Any one who does not want to be a voting member may send in written comments to the Lincoln County Conservation District, or may address the planning unit during the last fifteen minutes of every planning unit meeting.

b. Decision Making

i. Quorum

A quorum will be achieved when twelve voting members are present. A quorum will be required to hold an official Crab Creek Watershed Planning Unit meeting. If a quorum is not present, attending members can continue to meet and informally discuss topics. The discussed topics can be brought up at the next meeting and be ratified when a quorum is present.

ii. Voting

To be a voting member, a person must meet membership criteria and must have attended at least three meetings in the past year. However, an appointed member of a city council and the initiating governments will have standing membership and will be eligible to vote, regardless of the number of meetings attended.

Each member eligible to vote, or their alternate, will receive one vote. Members in attendance who are also acting as an alternate for another member will receive only one vote.

iii. Obtaining Voting Rights

Voting rights will be obtained by attending 3 consecutive meetings.

iv. Decisions

If consensus is not achieved, then a simple two-thirds majority vote will be used to make decisions. However, any decision resulting from the two-thirds majority vote would not apply if it creates an obligation for any unit of government that disagreed with the decision.

Other rules regarding decisions are stated in the Guide to Watershed Planning and Management by the Department of Ecology. Section 8 (Watershed Plan Approval and Adoption) of the Guide has been attached as Appendix B.

c. Planning Unit Responsibilities

All members will adhere to the Crab Creek Planning Unit Ground Rules, attached as Appendix A.

V. Procedural Order of Meetings

- a. Facilitator shall call the meeting to order and pass around the sign-in sheet.
- b. Facilitator shall call for approval of previous meeting summaries and/or amendments.
- c. The facilitator can call for a vote to limit discussions or table the discussion for the next meeting.
- d. The facilitator will open the meeting for fifteen minutes toward the end of each meeting for a public comment period or for other issues.
- e. The facilitator shall wrap up the meeting:
 - i. Set the agenda items for the next meeting, which may include:
 - 1. business not concluded.
 - ii. Remind the members about the next meeting.
- f. The facilitator shall adjourn the meeting on time.

VI. Rules of Conduct

Rules of conduct have been stated in Appendix A: Crab Creek Planning Unit Ground Rules.

Appendix A

CRAB CREEK WATERSHED PLANNING UNIT GROUND RULES

- 1) To show respect and courtesy to others, I will listen while someone is speaking without interrupting or talking to other members. I will not personally attack individuals and/or organizations.
- 2) I will wait to be recognized by the facilitator/chair before speaking, and will not speak out of turn. I will state needs, problems, and opportunities.
- 3) I will make a committed effort to resolve all differences, and help the watershed planning process be successful. Every member is responsible for the planning unit's progress, success, and quality of work.
- 4) I will call the facilitator if I have questions or problems with the watershed planning process, and before acting on misinformation.
- 5) Decisions will be based upon the needs of the entire watershed.
- 6) It is the responsibility of the member and alternate to keep each other informed of progress made at planning unit meetings. Members/alternates are also responsible for informing those they represent about issues, progress, and decisions.
- 7) I will support the planning unit decisions outside of the meeting room, and agree that all official communications with the news media representing the Crab Creek Watershed Planning Unit will be by periodic, approved press release only.

Watershed Plan Approval and Adoption

In order for a watershed plan to draw on the authority granted by the Watershed Management Act, it must be approved by county legislative authorities, using a specific process described in the law. This Section describes the process. Additional information on plan implementation is included in Section 9.

The process outlined in the law is presented in Exhibit 8-1.

8.1 Planning Unit Approval and Submittal of Plan to Counties

8.1.1 Planning Unit Approval and Submittal to Counties

The law prescribes that the planning unit may approve the watershed plan, using either of the following procedures:

- Consensus of all of the members of the planning unit; or
- Consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit.

The law does not define the term “consensus.” It appears that the planning unit itself can determine how “consensus” is defined and achieved. Consensus is generally understood as meaning that the members of a group either concur or can “live with and support” a decision. However the planning unit chooses to define the term, it is important for all to agree on the definition early on in the process. The material in Appendix J is presented to assist planning units develop a consensus procedure. The law also does not define what constitutes a “unit of government” for the purposes of the approval process. Here again, it appears the planning unit itself may determine how to answer this question. As a starting point, the types of organizations defined as “initiating governments” in the law would appear to fall into this category. These include counties, cities, tribes, and water utilities (including special districts such as irrigation districts, public utility districts, water districts, etc. as defined in the law). It would be valuable to make this determination at the outset of the planning process, so all members of the planning unit understand what their role will be in the approval process.

If approval of the entire watershed plan cannot be achieved in the manner described above, the planning unit has two options:

- Approval of components of the plan (with or without a commitment to continue discussion of those elements that are not approved); or
- Termination of the planning process.

The same procedure described above is applicable to approving components of the plan.

The Watershed Management Act states that:

The planning unit shall not add an element to its watershed plan that creates an obligation unless each of the governments to be obligated has at least one representative on the planning unit and the respective members appointed to represent those governments agree to adding the element that creates the obligation. A member's agreeing to add an element shall be evidenced by a recorded vote of all members of the planning unit in which the members record support for adding the element.

Once the planning unit has approved either the entire watershed plan, or components of the plan, it may submit the plan to each of the counties with territory in the management area (i.e., the counties represented among the initiating governments). In order for a watershed plan to draw on the full legal authority granted by the Watershed Management Act, this submittal must occur within four years of the date the planning unit first received funding for planning activities beyond the initial \$50,000 grant (the law does not directly address cases in which a multi-WRIA management area receives a \$75,000 grant for Phase 1; however the intent appears to be that the four-year period begins when the first state funds are disbursed for Phase 2 activities, or Phase 3 activities if there is no Phase 2 grant).

8.1.2 Special Procedure for Planning Unit Approval of Minimum Instream Flows

If Instream Flows are within the scope of planning designated by the initiating governments, the law prescribes a decision procedure for the planning unit to recommend new or modified minimum instream flows for adoption by the Department of Ecology (Ecology). These are:

- In order to recommend modification of existing minimum instream flows on streams that have such flows already adopted by rule, the members of the local governments and tribes on the planning unit must vote unanimously to modify such flows, using a recorded vote;
- In order to recommend adoption of new minimum instream flows on streams where they have not been adopted by rule, the members of all governments and tribes on the planning unit present for a recorded vote must unanimously vote to support the proposed minimum instream flows, *and* a majority of the nongovernmental members of the planning unit present for the recorded vote must vote to support the proposed minimum instream flows.

8.1.3 County Public Hearing

The legislative authority of each county with territory in the management area is required to hold at least one public hearing on the watershed plan (for purposes of the following discussion, the "watershed plan" means the entire original plan, or those components approved by the planning unit). The counties are required to provide appropriate public notice in advance of the hearing(s).

8.1.4 Joint Approval by County Legislative Authorities

Following the public hearings in the respective counties, the law requires the legislative

authorities of all of these counties to hold a joint session to consider the watershed plan. The counties have two options in this joint session:

- Approval of the watershed plan, by a majority vote in the joint session;
- Return of the watershed plan to the planning units with recommendations for revisions.

The county legislative authorities convened in the joint session may not amend the plan itself, but must return it to the planning unit if it is not approved. In this case, the same procedure for planning unit approval, followed by the county hearings, and joint session of county legislative authorities is required. If the planning unit approves a revised plan, and the joint session again declines to approve it, the planning process terminates.

8.2 Adoption of Implementing Rules and Ordinances

8.2.1 Counties and State Agencies

Following approval of the Watershed Plan by the joint session of county legislative authorities, the law requires each county in the management area and each State agency that accepted obligations under the plan to undertake implementing actions. For State agencies, these actions include:

- Adoption by rule of the obligations of both State and county governments;
- Adoption of rules implementing the state obligations; and,
- Other actions to fulfill agency obligations as soon as possible.

For counties, these actions include:

- Adoption of any necessary implementing ordinances; and,
- Other actions to fulfill county obligations as soon as possible.

As indicated in Section 1.6.2, the law prohibits the watershed plan from creating any obligations unless the government to be obligated is represented on the planning unit and approves the element creating the obligation, in a formal voting procedure.

For both counties and State agencies, additional hearings and procedures may be required to comply with State laws on administrative procedures. However, the hearing and county approval discussed in Sections 8.1.3 and 8.1.4 may permit streamlining of adoption procedures at such time as individual rules and ordinances are adopted. Each agency or government should review applicable administrative law in this regard.

8.2.2 Ecology Adoption of Minimum Instream Flow Rules

The law provides additional guidance for the Ecology in adopting or modifying minimum instream flows as recommended by the watershed plan. First, Ecology “must attempt to achieve consensus and approval among the members of the planning unit regarding the minimum flows to be adopted.” The planning unit approval process is described in Section 8.1.2.

If the planning unit approves modification of previously-adopted minimum instream

flows, or setting of new minimum instream flows, the law directs Ecology to undertake rule making to adopt the recommended flows. In this case, three options are provided for Ecology's rule-making procedure:

- ❑ The regular rules adoption process provided in RCW 34.05 (Administrative Procedure Act);
- ❑ The expedited rules adoption process as set forth in RCW 34.05.230 (Administrative Procedure Act); or
- ❑ A rules adoption process that uses public hearings and notice provided by the county legislative authority to the greatest extent possible.

The law is ambiguous in terms of whether Ecology may proceed with rule-making on minimum instream flows on the strength of planning unit approval, or whether the joint session of county legislative authorities must approve minimum instream flows, as is required for the remainder of the plan.

The law also states that rules to adopt or modify minimum instream flows using the procedures described above “do not constitute significant legislative rules as defined in RCW 34.05.328,” and do not require small business impact statements.

Finally, the law gives Ecology the authority to unilaterally adopt rules setting Minimum Instream flows on streams that do not have them, if planning unit approval of minimum instream flows is not obtained within four years of the date the planning unit first receives Phase 2 grant funds. In this case, Ecology has two additional years to adopt such rules.

Under any of the rulemaking procedures described for minimum instream flows, Ecology is required to undertake “government-to-government consultation” with “affected tribes in the management area,” regarding setting such flows. The term “affected tribes” is not defined in the law. It would appear to include any tribes with either water rights or claims or fishing rights in streams contributing to their usual and accustomed fishing areas under consideration for Minimum Instream Flows.

8.2.3 Adoption of Plan or Ordinances by Other Governments

The watershed planning and management statute does not require other governments besides counties and State agencies to adopt the plan, rules, or ordinances regarding the plan. However, this manual recommends formal adoption of each government entity's obligations, in order to promote implementation. In addition, the planning unit may consider the use of formal agreements binding the implementing organizations to undertake specific actions (see Section 9.1).

8.3 Integration with SEPA

Section 11.2 addresses integration of watershed planning with the State Environmental Policy Act (SEPA).