

## **AGENCY BREAK-OUT SESSIONS – FWS NOTES**

### **Discussion Outline**

#### **AGENCY BREAK OUT SESSION - TWO HOURS**

We suggest that your group consider the following topics for discussion, set priorities for the most important issues to discuss, allocate an amount of time for discussion of each item, and designate a facilitator. In previous training courses, we have discovered that unless discussion times are actively monitored, overly long discussions at the beginning of the session can preclude discussion of important items later in the agenda.

*Important: Please have one person in the group take careful notes of the discussion, so that these notes/conclusions can be transmitted to all participants in the session.*

#### **Agency National Perspective**

What is happening in the national arena for the agency regarding water and water rights issues (e.g., funding, national priorities, etc.)?

How water is addressed varies from region to region, it is up to the discretion of each region as to how much budget and staff is assigned to water rights; the most active programs are in the west (negotiations, land exchanges to address water issues) and Alaska (data collection and application submission for state-based instream flow reservations).

National water team includes staff from Habitat restoration and fish hatcheries in addition to water resources specific staff, work on national level policies and priorities and integrating it into agency work. There is an effort to role all FWS water policy into one chapter – currently dispersed across several programs (Refuges, Endangered Species Act, etc.)

Nationally work is being done trying to address thematic issues at broader scales such as land management practices off -refuge – and how they impact water (e.g. sedimentation in mid-west)

Nationally all regions are engaged in the Water Resources Inventory and Assessment process – this is to both inventory and assess the state of water on refuges throughout the country.

Differences for FWS from other agencies – ‘we are at the bottom of every pipe’ ( because we often are managing wetlands we do not typically control the headwaters of systems where land is managed. Refuges in the lower 48 are typically quite small, also in lower 48 actively managing and moving water) which creates much different issues and priorities for water and water rights than in Alaska where the land area is much larger and lands are largely in a natural state rather than being actively managed.

#### **Water Rights Status for the Agency**

- What reserved water rights are held by the agency? (refer to tables in notebook)

In the Alaska Region:

There are unquantified federal reserved water rights on all refuges (the purposes of each Alaska refuge expressly identify water quantity and quality). There are an extremely limited number of places where any water rights exist on or off refuges pre-ANILCA in 1980 so we would have senior rights in almost all cases.)

- What work has been to done to quantify, adjudicate, and protect our reserved water rights?

It is the policy of FWS to apply through the state system for water rights and would make a determination to pursue federal reserved rights if needs/ purposes were not being met.

- Do we need to educate field personnel (AND MANAGERS) about what reserved water rights we have?

Water Resources does offer webinars and outreach to managers and staff on water rights and navigability; as part of Water Resources Inventory and Assessment Development an interview process between Water Resources staff and each refuge was conducted which raised awareness for water rights and other water related issues

Water Resources also does interact with managers when water rights and jurisdictional issues and questions arise.

Maybe less awareness outside of refuges as to water resources work

Work with NFHAP (National Fish Habitat Action Plan) partnerships, ADFG (Alaska Department of Fish & Game and FES (Fisheries and Ecological Services) for gaging; initially focused on sites where partial gage records existed now doing prioritization off refuge areas in Mat-Su and Southeast and southwest

- Where have we established water rights by working through the Alaska water rights system?

Received adjudication/ certificate for the Uganik River on Kodiak refuge;

Water Resources has filed 214 applications (Arctic, Yukon Flats, Kodiak (a few), one on Yukon Delta)

Logistically need to focus on one refuge at a time; Data collection has occurred on Kodiak Togiak, Tetlin, Kanuti, (plus water quality) Some on Inoko and Kenai, plus one gage on Alaska Peninsula / Becharof

- Where do we lack water rights on constructed facilities?

We don't currently have all the facility water rights, the majority have been secured and Water resources and Realty are working to secure the remainder

- Do we have a system for systematically tracking water rights owned by the agency?

Yes, spreadsheets and geo-referenced (part of Water Resources inventory and Assessment project) and accessible through FWS Realty lands mapper

Currently don't have a way of making hydrology data public but working on getting data into NWIS and also looking at other means

## **Delegation and Accomplishment of Water Rights Work**

- Who is responsible for reviewing public notices of water rights filed by other parties for potential impact to federal resources and water rights?  
Water rights Coordinator (Cathy) (She and branch chief are on the mail list from DNR for notices);

Reviewing the mining related notices are more challenging than water rights because there are more of them ; can be difficult to place them geographically because in state plane or identified by district

- Who is responsible for drafting and filing protests?  
Water rights Coordinator (Cathy) FWS has commented on some applications but to date no objections have been submitted
- Who is responsible for ensuring that water facilities in each management unit (e.g. wells, reservoirs, spring developments, wildlife developments) have the appropriate water right?  
Water rights coordinator in conjunction with Realty staff
- Who is responsible for maintaining files on water rights and where are those files located?  
Water Rights Coordinator / Water Resources program; currently being entered into 'ServeCat' FWS national file database
- How do we earmark personnel and money for accomplishing high priority work?  
In Alaska work focus through Water Resources Program under Refuges Division. When program started in early 1990's the original funding was through 1002 studies, Later based on discussions and refuge threats assessments the highest priority refuges were identified and data collection work has now been conducted (see data list below).
- Who is the agency's water rights coordinator for Alaska? Are field personnel aware that this person is available as a resource?  
Cathy; Yes

## **Prioritization of Water Rights Work**

- If significant water rights work has not been completed, what is the priority for future work?

- Establishing water rights on all constructed facilities?  
Not major issue – most facility water rights secured
- Establishing instream flow reservations?  
Working through the adjudication process for legacy applications (gages no longer exist)\; whether there will be issues about age of data – many applications go back 20plus years  
  
Work through gage data that has been collected to be able to submit applications for state-based rights
- Is water rights work in certain management units higher priority than other units because of water development threats?  
Yes, prioritization process through WRIA
- Are there major threats or opportunities that we are not addressing?  
Need to work more with partners (NGOs agencies) particularly in Southeast (areas where we do not have refuges  
  
In Mat-Su priority streams and lakes (39) based on salmon habitat values and threats higher development potential so priority date particularly important  
Similar prioritization in Southwest for HFHAP partnership  
  
Threats database will be expanded to include non-refuge areas

- Do we need to develop an agency-wide water rights strategy for Alaska? What priorities should be reflected in that strategy?  
Yes need to coordinate with other FWS programs (LCCs, NFHAPs, Refuges, FES)  
Better coordination that incorporates biological component; more successful at lower management levels of agency  
Work with other agencies, NGOs- would prioritization be by area? Threat type? Don't know

## **Water Rights Guidance and Training**

- Do we have sufficient guidance for work in Alaska? Are additional manuals, handbooks, or instruction memorandums needed?  
  
ADFG (Joe Klein) puts out white papers on methodology for data gathering  
  
USGS protocols  
  
Need synthesis of case law for Alaska – some info collected but not readily accessible
- Do we need more field training or work sessions in order to accomplish water rights work?  
Water Resources Program does do inreach and outreach; more interagency training partnerships would be useful

DOI agency – long term monitoring group to look at opportunities for agencies to work cooperatively on monitoring

Issues on the horizon in Water Rights for FWS:

ANILCA Title 11 access to land inholdings

Discussion of Navigability issues as it relates to water rights issue and jurisdictional considerations

Proposed Hydropower Act – currently anything under 5 megawatts doesn't have to go through FERC process, act would increase the megawatt limit