

The Return of a River:

A Nisqually Tribal Challenge

By Steve Robinson and Michael Alesko



Photo by Nisqually Tribe

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Abstract:

For thousands of years, the Nisqually River watershed has been home to the Nisqually Indian people. It has provided food in the form of salmon and other fish that filled the waters and shellfish when the tide went out. Deer and other game in the river's surrounding forests further nurtured the people, enriched by a diet of berries, roots, and herbaceous plants. As described by Northwest Indian Fisheries Commission Chairman Billy Frank, Jr's late father, Willy Frank, Sr. in the movie, As Long As the Rivers Run, it was a "paradise." The settlers moving in from the 1850s on decided to mold the area into their own version of what they thought a watershed should look like. They diked the estuary area for agricultural purposes, channelized the river in other areas, and greatly altered the natural habitat and the earlier natural balance. But over the past several years, a collective effort involving jurisdictions and neighbors from all vocations and ethnic backgrounds have worked together with the Nisqually Tribe at the helm in a successful effort to return the Nisqually estuary to its natural condition. This case study examines the Tribe's role as partner and leader in this multi-entity effort. It is a role forged through a combination of cooperative partnerships and litigation reestablishing Northwest tribes' legitimate place as resource managers.

Underlying Question:

When tribes manage their rivers they emphasize the need to manage the entire system holistically, to accommodate the needs of salmon. In its leadership role with the Nisqually River Council, the Nisqually Tribe has joined its neighbors in fixing problems up and down the watershed. This case study concentrates on the estuary, and the cooperative work going on there, but a river system is never complete without this holistic approach. Tribes, including the Nisqually Tribe, needed to win in court, e.g., *U.S. v. Washington* (Boldt) decision of 1974, to re-establish their legitimate role as resource managers. (For a detailed history of the conditions and activism leading up to the Boldt Decision on the Nisqually, refer to Chrisman, 2006, and

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Wilkinson, 2000.) But the Nisqually Tribe also has found great benefit in going beyond litigation to forge cooperative roles. This case study shows how a combination of both litigation and cooperative approaches worked to achieve tribal natural resource protection and restoration goals. The underlying questions the case study asks you to consider are: After seeing the approaches detailed here, when do you think tribes should litigate, when should they cooperate, when should they do both? When does it make sense to fight your neighbors and when does it make sense to work together?

The fight the Nisqually Tribe has carried on to protect its river and the resources it sustains is the same fight tribes have fought all across the continent, for hundreds of years, and through his years Northwest Indian Fisheries Commission Chairman Billy Frank, Jr. has become a legendary leader in this struggle. He was arrested for exercising his treaty-protected rights the first time when he was 14, even though treaties are defined as the “supreme law of the land” in the U.S. Constitution, even though Billy—like so many other Native Americans—served in wartime in the U.S. military services and has been a productive citizen of both the United States and his Tribe. He also stood up for his Constitutionally-protected human rights to fish, and for those of his fellow tribal members, and in the process has been arrested more than 50 times. He proved himself to be a warrior in many ways, with no shortage of courage and conviction for what he knows is right. But, the victory won, he also proved himself to be a peacemaker, a natural diplomat and a leader who could help bring people to the table to negotiate terms and find agreement. All of these qualities have earned him the respect he has received. Tribal members from one ocean to the other acknowledge the work that he has done and have been inspired by his words:

“I believe in the sun and the stars, the water, the tides, the floods, the owls, the hawks flying, the river running, the wind talking. They’re measurements. They tell us how healthy things are. How healthy we are.”

**–Billy Frank Jr., Chairman,
Northwest Indian Fisheries Commission**

Background

It’s a crisp November day in 2009 and the cloud-brushed blue skies are starkly and dramatically punctuated by a lone bald eagle circling above the 300 people gathered in a ceremony below. At once a symbolic messenger perhaps – of both Mother Earth’s once harmonious but later compromised past at this place, and of the promising future now beckoning. The guests, including Nisqually Tribal Chair Cynthia Iyall, Washington Congressman Norm Dicks, officials of Ducks Unlimited, the Nisqually Wildlife Refuge, and others, have come together at the Nisqually Wildlife Refuge to celebrate the restoration of the Nisqually River estuary, where the refuge lies. For the first time in a century the habitat-nourishing tidal waters of Puget Sound have returned to the estuary. The man-made dikes that had reduced the estuary to empty muddy channels have now been removed in a 12-year, \$12-million restoration effort in which the Nisqually Tribe played a central part.

For many centuries, Washington State’s Nisqually River Valley has been home to both the Nisqually Tribe and the iconic salmon which has always figured so prominently in the Tribe’s

life. Non-native settlement in the late 1800's and advancing through the 1900's compromised the River, the salmon and its habitat, and tribal lands as well. Tradeoffs between restoration of such natural resources and the increase in non-native settlement and its attendant growth of agriculture, industrialization, and economic development in the river basin have called for leadership for the resource restoration to occur. Time and again, the Nisqually Tribe has been recognized as a leader in cooperative partnerships to bring about this restoration. But at times, litigation to assert tribal fishing rights and the habitat needs has needed to be the handmaiden of the process.

In the largest estuary restoration project of its kind on the West Coast, the restoration of more than 900 acres of refuge and tribal estuarine land is being celebrated this November day. The project boosts by 50 percent the amount of salt marsh habitat critical for salmon, shorebirds and other species in South Sound. Wildlife scientists expect the restoration project to double the Nisqually's Chinook salmon population -- a stock federally listed as a threatened species in 1999.

The ceremony officially recognizes the Nisqually Tribe's historical life in this region and its strong partnership efforts in restoring this significant natural habitat. In the ceremony, the refuge has named the longest of the now-restored seven historical sloughs in the reclaimed estuary Leschi Slough, after the Nisqually Tribe's revered leader Chief Leschi, who fought for the Tribe's rights and lands in the mid-1800's. As the eagle soars above, the Tribe's Canoe family welcomes ceremony guests with traditional song, and tribal elder Zelma McCloud blesses the event and the site. (*Yil-Me-Hu Tribal Newsletter*, Winter, 2009)

The Nisqually River flows 78 miles from its source at Nisqually Glacier on Mt. Rainier to its delta at the refuge. David Troutt, the Tribe's natural resources director, notes that when the Tribe began its habitat protection efforts in 1990, less than five percent of the Nisqually River stream banks were in some form of permanent stewardship. This has now risen to 73 percent. In Troutt's estimation, "We are now well on our way to achieving our goal of 90 percent." (*Yil-Me-Hu Tribal Newsletter*, Winter 2009)

Reflective thoughts on why the integrity of fish and wildlife habitat is crucial to Native Americans – and by reference to us all – come from Billy Frank Jr. in a column he wrote for *NWIFC News*.

"Being Frank"

Remember Where Our Food Comes From

The mud and the water have always been a source of food. But when we start to see shorelines and rivers not as places where we get our food, but where we can make money developing property for the best views and highest value, we dishonor the importance of our surroundings.

When pollution has gotten so bad that we can't fish or harvest shellfish from our home waters, we start depending on food from other sources, sometimes thousands of miles away. Folks down on the Gulf Coast are going through that right now.

Many people have started to recognize the importance of local food. They are called “localvores,” and I think they’re on the right track. I didn’t know it, but I’ve always been a localvore. We look for food that comes from where we live. In this place, where rivers run from glaciers and meet the saltwater on great tide flats, salmon and oysters are about as local as it gets.

To have these foods we must protect the environment from where they come. That means protecting habitat by fighting for better shoreline development standards and protecting water quality from failing septic systems and lawn fertilizers.

Treaty tribal and non-Indian shellfish producers are on the front line of monitoring and protecting water quality in Puget Sound and along the coast. We can measure the health of these waters by the health of the shellfish that live there. Healthy water produces healthy shellfish, and healthy shellfish is good food for all of us.

The problem comes when we stop connecting our food to the place where it comes from. Salmon and shellfish don’t come from the grocery store. They come from nature.

Our lands and waters are naturally productive, just like salmon and shellfish. All they need is a little help to let them do what they do. We should be celebrating the fact that we can still produce and harvest salmon and shellfish in western Washington.

Everything is connected. What happens in one part of the environment affects other parts as well. Salmon and shellfish are measuring sticks for the health of our ocean and Puget Sound. While we salmon and shellfish managers can control much of what happens on the water, state and local governments need to do a better job of managing what’s happening onshore.

Billy Frank Jr. is the chairman of the Northwest Indian Fisheries Commission. His column, “Being Frank,” has been published monthly for two decades and is available to all on the NWIFC website at www.nwifc.org. (NWIFC News, Winter 2010/11)

Billy, who turned 80 in March of 2011, is the son of Willy Frank, Sr. who lived to be 104. Both were forced by non-tribal government actions to stand up for their rights as their lands were taken and the resources and natural habitat they and their people had always depended upon quickly eroded by the encroachment of expanding population, dikes, enterprise, ranching, roads and pollution. A film produced during the 1960’s by filmmaker Carol Burns shows rare footage of the senior Frank looking wistfully over the Nisqually estuary area, telling his son how it once had been.

“It was a paradise,” he said, in his firm, elderly voice—“a paradise.” He described his childhood experiences of being able to go out on the estuary and finding a great variety of natural foods, from sweet, carrot-like roots to wild onions, how the fingerling fish would incubate there in preparation for their ocean journey and the adults would feed there in preparation for their final swim upriver. The film, *As Long As the Rivers Run*, is an excellent depiction of the unrest of the

1960's and early 1970's leading up to one of the most important federal court decisions of all time to the tribes—the *U.S. v. Washington* (Boldt) decision of 1974

Whatever Happened to the Nisqually River?

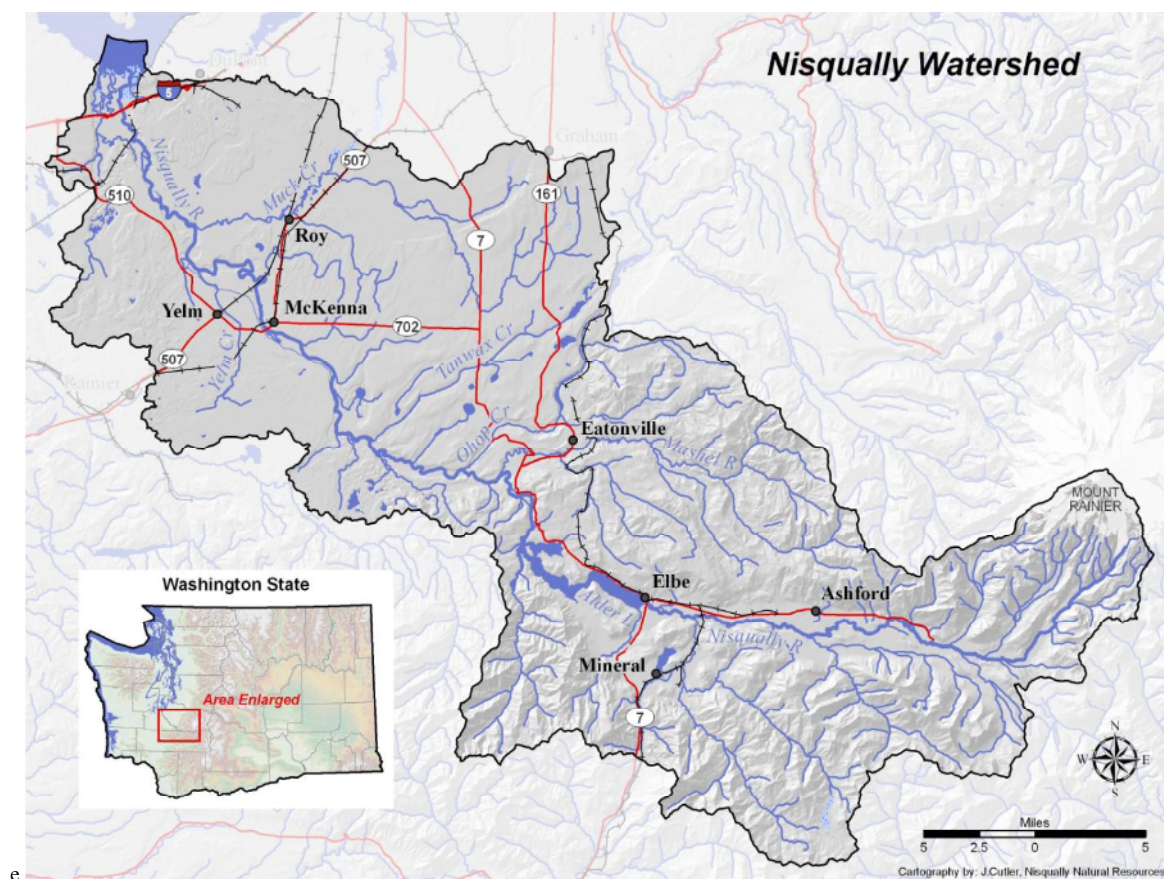
What Settlers Did In General: It is interesting that the Nisqually is the only watershed in the United States with its headwaters in a national park and its delta in a national wildlife refuge. It is located within an hour's drive of three metropolitan areas, yet remains one of the healthiest and least developed of the major Puget Sound rivers. Along its 78-mile course, the river traverses forested, mountainous terrain and rolling farmlands in three counties, several small towns, the Nisqually Indian Reservation and the Fort Lewis Military Reservation before it enters Puget Sound near the site of the region's first European settlement. Recognized as a "River of Statewide Significance" under the 1972 Washington State Shore lands Management Act, the Nisqually supports extensive salmon runs, timber and agricultural resources, and hydropower generation. It is also home to several threatened and endangered species, offers many recreational opportunities, and provides more than half of the fresh water flow entering southern Puget Sound. Preserving this beautiful river has long been a focus of the community along with tribal, state, and local governments.

Before settlers came the river ecosystem was intact and functioned as nature intended, with clear, clean, unhampered water flow, wetlands, intact forest lands and other natural habitat. Over the past century the banks of the river were hardened with hard rock riprap, embankments designed to block the water from eroding the land and from taking its natural course. This was intended to make the river more dependable for building homes and buildings alongside, where settlers of all kinds placed their businesses, ranging from farms to towns with cafes and stores. The banks that had been naturally lined with trees that had fallen into the water and floated down, forming natural log jams that put nutrition into the water and provided places for both juvenile and adult salmon to hide and rest as they migrated in or out for their ocean voyage were now artificially hardened.

Farmers turned the upper river into a channelized ditch which could not sustain salmon or any other forms of life. The river had meandered and been a place where salmon could spawn and create new generations and where trees and bushes thrived alongside. The lush riparian areas all along the river which kept the water cool and accommodated fish-feeding insects were ripped out and exchanged for subdivisions and crops that were carefully treated for bugs with poisonous insecticides and herbicides to keep them from consuming crops destined for market and to keep unwanted weeds away.

As more and more settlers came, it became apparent that they wanted the tribal members' land so they could build homes of their own, establish farms and ranches, cut down the trees and build their towns. The economy that was quickly developing was different; it was based on changing the land and making it profitable in a way that showed little regard for the fish and wildlife that had always co-existed with the native people there. The history that followed is another story, riddled with disease, oppression, massive efforts to beat the Indian out of native inhabitants, and transform the land and river into things Nature had not intended it to be.

Further upriver, near Ohop, the Nisqually had been transformed into a channelized ditch that ran straight, deep, and dirty from the resulting sediments, the wastes of farm animals, and the herbicides and pesticides of agriculture. Logs from parts of the upper watershed (not from Mt Rainer National Park since no logging occurred there since the Park was established in the early 1900s) had long since been cleared away and floated down to the Sound, and most of the forests in the hills in the higher watershed were fourth and fifth growth by the 20th Century. Naturally formed log jams that had formed salmon-friendly pools and hiding places were cleared away, and the sides hardened with riprap to keep the river banks from eroding away. The LaGrande Dam and the Alder Dam were built on the river. These dams have a very significant impact on salmon habitat, a negative impact that was reduced when the Nisqually Tribe worked out an agreement with the power companies to not have peak flow times.



Nisqually River Council: http://nisquallyriver.org/wp-content/uploads/2010/03/NWSP_09_priorities.pdf

Impacts on the Estuary

The estuary was diked and formed into dry pasture land for sheep nearly a century ago, and, as described by Willy Frank, Sr. the word “paradise” no longer applied. It no longer provided the ideal incubation place for juvenile salmon about to embark on their salt water journeys, the resting/feeding place it had once been for adult salmon preparing to go upriver to spawn or the growing place for natural vegetables and roots, the broken function of the estuary had its

impacts. Salmon diminished to a fraction of what they once were and mitigation took the form of hatcheries and other enhancements. The river, like other rivers across the continent, was subjected to its share of pollution, from agricultural activities, road building, timber harvest and development.

A Devastating Take from the Nisqually Tribe

In 1917, the United States Army condemned roughly two-thirds of the Tribe's Reservation. Georgianna Kautz, longtime Natural Resource Manager for the Tribe, says it was an illegal move, and the Bureau of Indian Affairs closed its eyes to the transaction. This land theft caused deep damage to the Tribe's lifestyle, culture and economy. Nothing good could be said about this violation of the Medicine Creek Treaty, which was supposed to be the law of the land. One thing it did do, however, was keep that part of the land intact as forest land. The Army was interested in war games, after all, not cutting timber, and even today, that part of the habitat remains largely intact. The relationship between the Army and the Tribe is positive today, but the Tribe is clear that the land still legally belongs to the Tribe.

What To Do About The Habitat Destruction?

The habitat destruction that prevailed in other parts of the non-tribal watershed was extensive. It was intense before during and after the Nisqually Tribe joined other tribes in Washington, with the support of the United States Department of Justice, in suing the State of Washington for failing to abide by the terms of the Stevens Treaties of the 1850's that enabled statehood in the first place. The Tribe was party to the Treaty of Medicine Creek of 1854, along with the bands and villages that comprise the Puyallup and Squaxin Island tribes today.

The case, of course, was *U.S. v. Washington*, which the tribes won in 1974. It came to be known as the Boldt Decision after Federal Judge George Boldt, a conservative judge who—as a conservative judge—really had only one choice under the circumstances and that was to decide in favor of the tribes. The law was clear. The tribes retained the right to fish and the state had violated that right. Boldt I, as that decision came to be known, was allocation-driven, and was upheld four years later by the U.S. Supreme Court. In his ruling, Judge Boldt clearly implied that an environmental habitat right also existed on the part of the tribes, both on and off reservation.

Judge Boldt was clear on one important issue: for there to be a right to harvest fish, there needs to be fish to harvest, and with the habitat degradation that had already taken place, the continued existence of the fish could not be taken for granted. Another way of viewing this part of the issue was that a dead fish is a dead fish, whether it is taken in a net, at the end of a fish line, or killed by pollution or lack of water.

The tribes' environmental habitat right, it was presumed, would be ironed out in some future courtroom. The habitat right was agreed to, in principle, by the State in the form of various government-to-government agreements and Memorandums of Understanding, but the tribes ultimately found it necessary to take the State to court to emphasize the point—and they won their case in a major victory related to the need to maintain, replace or do away with off-

reservation culverts in 2007 (*U.S. v. Washington*, 2007, the Martinez decision).³ The case sent a clear message that tribal habitat-related rights exist, legally, both on and off reservation. But the case may also point out one of the weaknesses in court cases, in that the State has virtually ignored the ruling, dragging its feet in culvert repairs and replacement ever since.

A Key Point: Cooperation Ushered In Amidst Court Cases

After winning the Boldt Decision, the tribes dedicated themselves to building up their management staffs, infrastructure, and fishing fleets, but it was not until 1985 that Washington State and tribal officials, both weary of fighting things out in court, established what they agreed was a better path to follow. Court remained a viable alternative, but a “new era of cooperation” was ushered in and a number of processes were developed through co-management that took advantage of skills and efforts of both tribal and non-tribal resources and knowledge, such as the U.S.-Canada Salmon Treaty, the Timber-Fish-Wildlife Agreement, the Chelan Agreement and the Centennial Accord. These agreements affected all the tribes, including the Nisqually.

As Pulitzer Prize winning writer Hedrick Smith pointed out in his 2009 essay “How Can We Save Habitat for Endangered Species?,” the tenor of the early efforts at collaboration did not always go easily:

In 1974, a decision by Federal District Judge George Boldt created a sea change for the tribes. In an historic ruling, Boldt ruled Native Americans were entitled to half of the salmon catch -- ten times their previous allotment. Plus Boldt gave them power to co-manage the local fisheries and watersheds with the state of Washington. That gave Billy Frank a shot of momentum and new responsibilities for protecting his cherished watershed.

Still, in the 1970s, the runs of salmon continued to nose dive. King salmon were wiped out. To try to recover the rivershed, the state legislature set up the Nisqually River Task Force in the mid-80s to bring together all local stakeholders.

But the issues were thorny and the parties clashed. Large economic interests like Weyerhaeuser Timber, Wilcox Farms, Tacoma Power, and the Army's Fort Lewis feared being forced to change. The tribe and environmentalists wanted natural buffers along the Nisqually's banks to protect the river and the salmon – a zone with no logging, no clearing, no cows.

The task force was deadlocked for months. One rancorous night, Billy Frank rose to speak. “I’ll never forget this,” recalls farmer Jim Wilcox. “Billy said, ‘We’ve got to stop this right now. I want everybody to know that we want Weyerhaeuser Timber Company to continue to operate and own the land along the river. We want Wilcox Farms to keep farming. We don’t want to do anything that’s going to put them out of business.’”

³ See “Pacific Northwest Salmon Habitat: The Culvert Case and the Power of Treaties” by Jovana J. Brown and Brian Footen. *Enduring Legacies: Native Cases*
<http://www.evergreen.edu/tribal/cases/collection/environmentalstudies.htm>

People listened. Tempers subsided. The deadlock thawed. Frank asked them all to work together to save their river. He suggested a compromise on the buffers. Cooperation began to blossom. The Army base offered a site for a tribal fish hatchery. Tacoma Power provided funds to run it. But the key for Billy Frank was recovering wetlands from farmers to nurture the baby salmon.

Successes were slow, but stunning. Today, 70 percent of the Nisqually corridor is permanently protected. Salmon are on the rebound. “The eagles, the habitat, the beavers are coming back,” says Billy Frank. “The little animals that lived on this watershed, they’re coming back. You know, these are very important life on the estuary and the ecosystem of a watershed.” (Smith, 2011)

The Nisqually River Council

The original vision of the Nisqually River Task Force, established in 1985, was to support a balanced stewardship of the area’s economic, natural, and cultural resources. Its key issues included public access to the river, flood control and emergency warning systems, fish and wildlife protection and enhancement, local interest in maintaining the existing rural landscape and economy, and the balancing of local private property owner rights with the rights of all citizens. (*Nisqually Watershed Stewardship Plan*, p. 3)

The Nisqually River Council, which developed from the task force, was formed in 1987 as a non-regulatory, coordination, advocacy and education organization, with the Nisqually Tribe in a founding/leadership role. The Council consisted of nearly two dozen local, state and federal government member entities and other public players. The Council sought to integrate the history, culture, environment and economy of the watershed into a healthy and sustainable future. Significantly, its intent was not to sue, but rather to build camaraderie and cooperative spirit with other governments as well as landowners and other entities along the River. The objective was to build a team dedicated to returning the River, as much as possible, to its natural state. A Nisqually River Citizens Advisory Committee, advisory to the Council, helped assure non-governmental, citizen representation during implementation of a Nisqually Watershed Stewardship Plan.

Litigation remained, and according to tribal officials always will remain, a viable option for standing up for treaty-protected rights. But the Nisqually River Council represented a different approach through collaboration—one that other tribes, and other governments as well as non-government entities were trying to make work. Some of these efforts survived; some didn’t. Some multi-tribal collaborative programs, such as the U.S.-Canada Treaty and Timber-Fish-Wildlife (Forests and Fish) most definitely had their challenges, ranging from continued fights over which country/state should get more fish to heated debates over the interpretations of stream types. But the processes do continue to function. The Centennial Accord, which was signed by then Governor Booth Gardner and the federally recognized Tribes of Washington (except Yakama) in the state’s centennial year of 1989, also continues to exist, laying the framework for a government-to-government relationship. Escapements for the Nisqually and other rivers—fish protected from harvest so they can spawn—are established in the international, national and

state/tribal planning regimes, with available habitat in mind. Also, when fisheries are opened in mixed stock areas, they are opened with protection of the weakest stock in mind.

The tribes wanted to fish, because it's who they had always been. But they were fishermen of a different stripe from many non-tribal fishermen. They respected the fish—their critical place in the ecosystem and in the health as well as cultural strength of their children for generations to come. Their power as managers had been returned to them by the Boldt Decision, and they knew they could assert that power if they chose to do so.

At the same time, they wanted to work with their neighbors if they could to make things better, and nowhere was that more true than on the Nisqually River. The natural resource managers of the Nisqually Tribe knew that if collaboration with their neighbors worked, it would have much better impact than continued litigation. It wouldn't leave the sour taste in the mouths of homeowners, chicken ranchers, cattlemen or sheepherders. It wouldn't draw the spite of city officials or timber people or the military across the river. By working with their neighbors the Tribe hoped to earn their friendship and educate others about the importance of habitat protection and restoration.

The Stewardship Plan

The Nisqually Watershed Council's Stewardship Plan was established by 19 active members including the Nisqually Tribe, Lewis, Pierce and Thurston counties, the Washington State Departments of Fish and Wildlife, Natural Resources, Ecology, the Washington Conservation Commission, University of Washington Pack Forest, Fort Lewis and McChord Air Force Base (now Joint Base Lewis-McChord), the Nisqually National Wildlife Refuge, Mt. Rainier National Park, Tacoma Public Utilities, local municipalities, Gifford Pinchot National Forest and a Citizens' Advisory Committee, with two representatives. The Council's goal was to protect the health of the Nisqually River itself, and the entire watershed – its people, its businesses, its economy, its tourism, its wildlife habitat, and its water sources. The group called the process a focus on "sustainability" because it recognized that the progress that had been made so far to protect and enhance the watershed could be sustained only with the involvement of the people and businesses that make the Nisqually watershed their home and depend upon it for their livelihood.

Watershed planning actually preceded the state's Watershed Management Act, HB 2514, which most tribes opposed when it was introduced in 1998—in large measure because of the belief that they would diminish the government-to-government standing of co-management between the state and tribes, as well as the federal government. Watershed planning, as a sovereign government-to-government process (state-tribal-federal) preceded the state's plan, which incorporated non-sovereign governments as well as non-government entities into the watershed planning process. The Nisqually watershed plan had begun formally in 1985. Still, the Tribe was one of a few that went along with the HB 2514 process, in large measure because it had already embraced the concept of engaging all neighbors in watershed planning. Also, because the Tribe had been the leader in the process, the fact that the HB 2514-created Water Resource Inventory Areas (WRIA's) called for a lead entity, the Tribe was the natural entity to assume that role and the new bill simply brought additional resources into the mix.

A key component of the Council's Stewardship Plan is what it calls "involved community." As the plan explains it, "We believe communities that function well make decisions that positively affect its watershed's sustainability. We hope to create a watershed community that transcends the civic boundaries of towns, cities and counties into a single community from the glacier to the sound....." (*Nisqually Watershed Stewardship Plan*, p. 18) The Nisqually Tribe is ideally and logically suited to epitomize and frame this "single community," as its whole historic and cultural focus and eschewing of manmade political boundaries epitomizes a watershed community transcending civic boundaries.



Left: The upper Nisqually River near Ohop, where agriculturalists had turned it into a channelized ditch for the past century—a habitat totally inhospitable to fish and wildlife. This photo depicts the channelized stream before the Nisqually Tribe and other members of the Nisqually River Council cooperated in turning the river back to its natural, meandering condition. The photo at right is at the estuary of the river, where salt water tides once again fill in hundreds of acres that had been grazing land for the past century. Due to this work by the Council, in concert with the federal government, indigenous plants, fish and animals are returning to the area. The Nisqually Tribe, leader of the Council effort from its beginning, has always known that to have a healthy river where fish and wildlife can abound, it must be well managed holistically. The leaders of the Tribe have always know that, from top to bottom of the river, having natural habitat is not only important for fish and wildlife, but for people, too.

Likewise, the very history, culture, stewardship approaches, and holistic Mother Earth view of the Tribe meshes perfectly with a tribal partnership and leadership role. As noted in the plan's background section:

.... this plan considers the Nisqually watershed an integrated whole. It is a community-based plan that is being voluntarily carried out by landowners, neighbors, and communities; cities and counties; state and federal government; and the Nisqually Indian Tribe. We believe this plan is fostering a vibrant watershed community that will connect those who live in Elbe and Ashford with those who live in Yelm and Eatonville in a way that helps them understand they are part of the same, integrated community that respects its traditions and heritage. This plan respects lands that are the foundation of the community—

some that generate tax revenue, others that are critical to the corridor's scenic beauty and others that enhance the health of animal and plant life and the Nisqually's water quality. This community plan respects and honors those who work the land, the forests, and the rivers. We are all stewards, but these are the people who must be stewards every day... (*The Nisqually Watershed Stewardship Plan*, Executive Summary, p. 2)

Council activities included mapping the eco-regions of the river system; approaching habitat restoration from a holistic approach by securing needed lands up and down the river through purchase, trades and gifts. It is setting up an invasive species removal program and establishing more native plants along the river and logs in the river. It also includes establishing game management; increasing hunting, fishing and scenic access; increasing minimal impact recreational opportunities; and working with the military to reduce its activity impacts, e.g., tank crossings. Also key was working together to build positive relations among participating entities by focusing on a sustainable economy and building positive public relations and education region wide.

Protecting the quality of water in the Nisqually watershed would also be key to all of the Council's efforts. This would include work with landowners and local governments on the problem of failing septic systems, promoting water conservation, developing a surface water monitoring program, and gathering data on adequate in-stream flows. From its glacial origin to its delta in south Puget Sound, the Nisqually River was seen as the hearth of myth, eco-diversity, history, beauty, and fresh water. If the salmon were the Northwest's canary in the coal mine, then the Nisqually was the mine. It was in this watershed that so much was now able to coexist—volcanic steam and watermelon algae, ice worms and elk moss, lady finger ferns and hydroelectric dams, forests young and old, suburban development and feeding heron, soaring eagles and spawning salmon. It was in this confluence, where glacial melt simultaneously yielded light to homes, nutrition to riparian habitat, and fresh water to the delta, that the participants in the Council felt they must define the depth of their commitment..." (*The Nisqually Watershed Stewardship Plan*, Executive Summary, p. 2)

How About Getting Fish Back?

The Nisqually River Council established long-term (50-100 year) goals that include: assuring natural production of fall Chinook in perpetuity by providing high quality, functioning habitat and by developing a self-sustaining, naturally spawning population. The goals translate into specific targets for returning adult fish with an average 3,600 natural origin recruits. Achieving these numbers of fish will ensure sustainable harvest, provide significant contributions to the recovery of other important species at risk and enhance natural production of all salmonids. The collaborative efforts used to reach these fish goals will also ensure that the economic, cultural, social, and aesthetic benefits derived from the Nisqually ecosystem will be sustained in perpetuity. (Shared Strategy for Puget Sound, p. 286)

There's no secret about it, and there never has been. The Tribe's primary objective in all the work it does on the river and beyond—all the habitat work, all the good neighborliness, all the planning and research and raising funding and getting muddy-- is to get fish back, particularly salmon. In ceremony and management action alike, it's been a chief objective of the Tribe for thousands of years to respect the resource in such a manner that it would return to the river in abundance. The reason for this may be a bit complex for the non-native mind to comprehend, in large measure because it's not to be found exclusively in the mind, but also in the Indian heart, identity, deep-seated belief and blood. In the Northwest, to be Indian is to be a fisherman.

Having a river system with cool, clean water in it, wood sided banks, healthy rearing and spawning grounds, vital wetlands, riparian areas, uplands and a functioning estuary is a wonderful thing, and all of these are vital to salmon life. But without the fish themselves, obviously there is a missing key ingredient.

Although there are no cookie cutter approaches that apply to every watershed, there are some key approaches that generally apply in the effort to restore salmon to most Northwest rivers. Because all river systems have been subjected to habitat degradation and pollution, restoration and protection work must be done. Because salmon are an anadromous fish, they must be managed throughout their ocean and inland water journey, and because many runs have declined due to challenges outside of the tribes' control, they either have to be enhanced through hatcheries or other enhancement operations or wild stocks must be allowed to spawn in adequate numbers to restore their populations, given available habitat—or there must be a well coordinated combination of the two. Typically, enhancement is necessary if there are to be fisheries and if there is to be broodstock to work toward the ultimate re-establishment of naturally spawning stocks.

The impacts of the “era of cooperation” have lasted for years, and the Nisqually Tribe, as well as the good neighbors they have been able to develop has taken the concept seriously. Working tirelessly through the Council, this has led to extensive coordinated efforts to secure land and funding to support their work. In fact, there have been times when the Tribe and its allies have embraced programs that other tribes have opposed. A good example of this took place in the 1998 Washington State Legislature, when it passed House Bill 2514, the Watershed Planning Act, to establish a framework for addressing water resources issues.

The purpose of the 1998 Watershed Management Act (WMA), which the legislation set up, was to provide a framework for local government, interest groups and citizens to collaboratively identify and solve water related issues in each of 62 Water Resource Inventory Areas (WRIA's) of Washington State, established by the legislation. The WMA did not require watershed planning but instead enabled a group of initiating agencies to select a lead agency, apply for grant funding, define the scope of the planning; and convene a local group called a planning unit for the purpose of conducting watershed planning. It is of little surprise that the Nisqually Tribe was selected as the Lead Entity on its watershed. The Tribe had been leading the restoration effort on the Nisqually from the beginning, and funding that came available through the process was put to good use in work already being done in concert with the Council. There was no need to reinvent the wheel on the Nisqually.

Estuary/Dike Removal

Among the many projects taking place on the Nisqually River, dike removal at the estuary commencing in 2002 allowed the rhythmic motion of the tides to enter for the first time in nearly a century. "What we have done is allow the Nisqually River and the Puget Sound to interact in a way they haven't in a long time," said Jeanette Dorner, the Tribe's Salmon Restoration Program Manager. "This project opened up some important and scarce salmon habitat." Like many other tidal estuaries in Western Washington, the Nisqually was diked off in the early 20th Century to provide land for farming or other uses. Nisqually River Chinook are listed as "threatened" under the federal Endangered Species Act. In addition to Chinook, coho, chum, and pink salmon, steelhead and cutthroat trout also depend on the Nisqually estuary. "In addition to being the most important step we need to take to restore salmon in the Nisqually, it is also the most cost effective," she said. (*Nisqually Watershed Plan*)

There had been some controversy regarding the estuary restoration for many years. In the 1970s the Nisqually estuary was proposed for conversion to a mega-port facility, Conservationist interests with a stewardship bent such as the Nisqually Tribe's blocked it, making possible today's partnership-driven restoration. "This was going to be asphalt and cement as far as the eye could see, but citizens recognized that wasn't the right thing for something so special," said Jean Takekawa, Nisqually Wildlife Refuge manager. "It's a great community story of people realizing, more than 20 years ago, they could make a difference. That's why restoration can happen here today." (Mapes)

Returning the estuary to a natural area also removed a popular trail and duck hunting area. But as the natural habitat has increased a new public access trail is lining the east side of the estuary, with far more to see, and that controversy has died down. Still, some might wonder if the area should have remained grazing land rather than become the restored home of thousands of new fish, birds, mammals and indigenous plants. The argument that food needs to be raised on farms or ranches has a tendency to get overblown by such lobbying organizations as the Farm Bureau, while the importance of fish harvests to the economy, as well as to the diets of Americans, is essentially ignored by some. Yet, 100 million people in the world depend on fishing for their livelihoods and millions more depend on fish as an important part of their sustenance and fishing is still a critically important component of both the Washington State economy and employment base. Now that the dikes have been removed and habitat restored, and natural flora and fauna are being restored, the future will tell if decisions made on the Nisqually were, indeed, the best decisions for the generations to come

Thousands of drivers along Interstate 5 now see new results of this work every day as they pass the borderline between Thurston and Pierce counties. Not all the changes are visible, of course. Estuaries are where salmon undergo a vital physiological change, under water, that allows them to move from the fresh water to salt water. But the tribes are discovering that migrating juvenile salmon from all over Puget Sound use the Nisqually estuary to feed and rear. The Nisqually Tribe and the Nisqually National Wildlife Refuge signed a cooperative Agreement in 2005 that would pave the way for conservation and recreation in the watershed. Under the agreement, the Tribe and the Refuge would cooperatively manage about 310 acres of tribally owned land on the

east bank of the Nisqually River as part of the Nisqually National Wildlife Refuge. Increased public access includes a new trail along the east side of the river.

Public Learns To Love the Change

Tuesday, February 1, 2011. The tide flowed in as the crowd pushed out onto the \$2.8 million boardwalk that opened to the public this day at the Nisqually National Wildlife Refuge. The mile-long, over-water boardwalk drew rave reviews from among nearly 200 visitors who attended the opening-day ceremony, including Natalie Cooper of Olympia, who said she has been visiting the refuge since she was a child and has kayaked in the delta as a young adult.

From the observation platform at the end of the wooden structure, Cooper could see Mount Rainier, the Nisqually Reach, McAllister Creek, Anderson Island and the Tacoma Narrows bridge in the distance under clear blue skies.

“I think it’s great; I’ll be back soon,” she said.

The wooden boardwalk, which features an observation tower, an enclosed viewing blind, two covered viewing platforms and several push-outs, winds out into the Nisqually River Delta through 762 acres of estuary restored in late 2009.

“It’s the longest marine boardwalk in Puget Sound, if not the West Coast,” said U.S. Fish & Wildlife Service refuge manager Jean Takekawa.

The mud flats visible when the boardwalk opened were covered with water by the time some of the first visitors walked the full length of the structure.

“This is something you don’t get to see that often,” said Chuck Benefiel of Steilacoom. “I love the way it changes with the tides.”

The Nisqually estuary, the place where the river flows into Puget Sound, was diked and farmed beginning in the early 1900s, a common practice in Puget Sound.

The dike became part of a 5.5-mile looped trail at the refuge that was lost when the dike was breached and marine waters flowed freely again for the first time in more than 100 years. The new boardwalk and trail is a four-mile round trip.

“No one alive today has seen this estuary the way it is now,” noted Robyn Thorson, Portland-based regional director of the U.S. Fish & Wildlife Service. “This is the largest estuary project in the Pacific Northwest.”

Recovering the estuary is vital to dozens of fish and wildlife species, including Puget Sound Chinook salmon, a threatened species. The boardwalk doesn’t help the fish, but it could build more public support for their recovery when people experience the changing

tides and see fish and wildlife firsthand, said David Troutt, director of natural resources for the Nisqually Tribe.

“To be out in the estuary and see the tidal exchange, you feel that the fish will be here,” Troutt said, adding that pink and chum salmon should start showing up in the following month.

The boardwalk begins within shouting distance of the site of the signing of the Medicine Creek Treaty of 1854, and the creek has been a spiritual place for the Tribe for thousands of years, Tribal Chairwoman Cynthia Iyall said during a welcoming ceremony that preceded the opening of the boardwalk.

Also on hand was Helen Engle, founding president of the Tahoma Audubon Society in 1969 and one of the South Sound environmentalists who helped save the Nisqually Delta from development some 40 years ago.

“I have a certain nostalgia for the diked trail, but it’s still a wonderful estuary,” she said. (Dodge, 2011)



The Nisqually Boardwalk Trail

Photo Jesse Barham

Conclusion

Today there can be no doubt that the Nisqually Tribe still faces challenges with its river and in restoring the runs of salmon that once existed, from the ongoing melt of the glacier that feeds the river—due to climate change, to the ongoing pressures of upland development. But, due to the cooperative work of the Nisqually River Council, neither can there be any doubt that there are occasionally bigger returns of key runs of salmon than have been seen for many years. From top to bottom on the river, the habitat is vastly improved and the estuary is wet and healthy, vibrant with life, and with hope for the future. The collaborative efforts of the various neighbors that brought this all about is a thing of beauty all its own. Unity of purpose and unity of action always is. “The long-term history of the Nisqually River Council and the Nisqually Chinook Recovery Team proves the benefits of a collaborative approach among key stakeholders and interests. Over the past 20 years, significant actions have protected and restored important portions of the watershed. Of particular note is the protection of the mainstem and restoration of the estuary.” (*Shared Strategy for Puget Sound*, p. 294)

The success of this approach on the Nisqually River, from the mountains to the estuary, has been pointed to with great accolades for many years. Former head of the federal Environmental Protection Agency and then head of the Salmon Recovery Funding Board Bill Ruckelshaus, along with Northwest Indian Fisheries Chairman Billy Frank, Jr. and former State Fish and Wildlife Director/Washington Forestry Protection Association Direction Bill Wilkerson, co-chairs of the initial Puget Sound Partnership, consistently pointed to the Nisqually River as the shining example of what needs to be done to save Puget Sound. Ruckelshaus had also done so when he followed through on the U.S. Institute on Ocean’s report on the status of the oceans.

The work was also honored by the US Department of the Interior in 2005. Federal as well as state officials throughout the natural resource arena called the work of the Council a blueprint for cooperative conservation projects of the future. Every day thousands of people see the very positive impacts of the work done on the Nisqually estuary as they cross the green bridge that crosses the Nisqually River and connects Thurston and Pierce counties. They see a restored estuary, with dikes breached, rather than grazing land for livestock. Upon closer inspection, they would see restored natural wetland plants, fish, birds and animals—a healthy, vital environment.

The idea that created this was not court suits among neighbors, but collaboration. It was also the persistent, diplomatic but courageous and hard-working drive and leadership of the Nisqually Tribe, without which, arguably it would not have happened.

This case study has addressed the restoration of the Nisqually Estuary and River. It began by posing the underlying questions: When do you think tribes should litigate and when should they cooperate and when does it make sense to fight your neighbors and when does it make sense to work together? As you have no doubt seen, there is a time when each approach can be needed and functional in achieving desired results. It is not our intention to leave you with all the answers and all the conclusions, but rather to help stimulate discussion. Do you think the great work that has been achieved on the Nisqually could have been achieved without the sacrifices of those who were willing to stand up for treaty-protected rights, or without the Boldt Decision? Could it have happened without the work of the Nisqually Task Force or the other cooperative

efforts?

References

Burns, C (Film Maker).(2006) *As long as the river runs*. Videorecording

Chrisman, G. (2006) The Fish-In Protests at Franks Landing, *Seattle Civil Rights and Labor History Project*. Downloaded 3/07/11 from: <http://depts.washington.edu/civilr/fish-ins.htm>

Dodge, J. (2011) Nisqually boardwalk a window to nature. *The Olympian*. Downloaded 3/07/11 from: <http://www.theolympian.com/2011/02/02/v-print/1528335/boardwalk-a-window-to-nature.html#ixzz1Ep2pVMfz>

Mapes, L.V. (2009) Restoring Nisqually estuary to close popular trail, *Seattle Times*, (May 6). Downloaded 1/04/11 from: http://seattletimes.nwsources.com/html/localnews/2009054782_nisqually15m.html

Nisqually Watershed Stewardship Plan (nd) Downloaded 3/07/11 from: http://www.stewardshippartners.org/nis_program.html

Shared Salmon Policy for Puget Sound (nd) Watershed Profile: Nisqually. Downloaded 1/04/11 from: http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/upload/Ch5_Nisqually.pdf

Smith, H (2011) Poisoned waters: How can we habitat for endangered species. *Teachers Domain*. Downloaded 3/07/11 from: <http://www.teachersdomain.org/resource/frnpw10.guide.habitat/>

Yil-Me-Hu Tribal Newsletter (2009) Winter

Wilkinson, C. (2000) *Messages from Frank's Landing: A story of salmon, treaties, and the Indian way*. Seattle: University of Washington Press

Web Site References:

Nisqually River Council – <http://nisquallyriver.org>

An excellent and primary resource for this case study is the web site of the Nisqually River Council, the multi-party group carrying out the Nisqually Watershed Stewardship Plan. The web site features the full text of the stewardship plan; background on the council and its citizens advisory committee; newsletters about the Nisqually restoration efforts; archives for news articles about the efforts; and links to other information resources. The Winter 2009 issue

of Yil-Me-Hu, the Nisqually tribal natural resources newsletter, can be accessed via this site and provides comprehensive articles on the restoration efforts

Nisqually Indian Tribe – www.nisqually-nsn.gov

The web site of the Nisqually Indian Tribe provides another valuable resource. It will give users of this case study a good overall context for the tribe's place as a leader in stewardship of the Nisqually Watershed. By accessing the site's information on the tribe's history, geography, culture and logistics, readers will gain understanding of the tribe's ties to the Nisqually River Valley and their stake in its present and future. The tribal site also contains useful links. One is to Washington History Online. There, readers can learn more about Chief Leschi, the tribe's revered leader from the mid-1800s, for whom the longest restored slough in the Nisqually estuary has been named, in honor of the tribe's restoration efforts.

Nisqually Delta Restoration – <http://nisquallydeltarestoration.org>

Some of the partners working together on Nisqually restoration issues have created an unofficial informational outlet – Nisqually Delta Restoration – pertaining to their work. These partners include the Nisqually Tribe, U.S. Fish and Wildlife Service, U.S. Geological Survey, National Wildlife Refuge System, and Ducks Unlimited. Good background, links and other resources can be found at this site.

Nisqually Wildlife Refuge – <http://www.fws.gov/nisqually>

The site of the Nisqually Wildlife Refuge provides good background information about both the refuge and Nisqually estuary restoration efforts. The site is useful for both its visual and textual information

Northwest Indian Fisheries Commission www.nwifc.org

“Being Frank” citations: NWIFC website

Presentations:

Dormer, J. *Nisqually Tribe presentation on salmon recovery in the Nisqually watershed* by <http://nwifc.org/2010/07/nisqually-tribe-presentation-on-salmon-recovery-in-the-nisqually-watershed/>

Nisqually Estuary Restoration 11 minute video. Ducks Unlimited.
<http://www.youtube.com/watch?v=UNK-UQ0TZc0>