



Community Update:

Cowichan Watershed Co-Governance Conversations: Phase 1: Internal Governance Review

Background

The Cowichan Watershed Board (CWB) is engaging in an internal governance review aimed at identifying and addressing barriers and challenges to the ability of the board to assume increased water/watershed governance responsibilities. This work is based on the rationale that management decisions informed by local people and local experts will likely lead to better outcomes, in terms of both ecological conditions and community well-being. As the CWB considers expanding its governance role, it has become clear that work is needed to define the cross-jurisdictional rules and policies that govern watershed board members in their decisions and activities, and the relationship of the Board to the organizations represented within it. In this context, Cowichan Watershed Board members are participating in an internal workshop series that will explore and clarify how authority could be shared between the key local decision makers and the Board.

Workshop Series

Fundamentally, the workshop series is attempting to answer the question: “What issues related to the governance model need to be identified and addressed, so that the CWB can expand its governance role and responsibilities, and effectively deliver the management functions needed in the watershed, while respecting the rights, title, needs and responsibilities of its founding partners?”

The workshop series is also based on the assumption that the preferred approach for expanding CWB governance responsibilities is incremental, with limited delegation and a “earn by doing” philosophy that will include ongoing assessment and evaluation by both the CWB and the Province of BC. In the interests of ensuring effective discussion at each workshop, the total number of participants will be limited. Continuity of representation from one workshop to the next will also be strongly encouraged.

Workshop #1 (October 12, 2017)

Objectives

1. Ensure all participants understand the history of the Cowichan Watershed Board, including the genesis of the CWB, work to date and accomplishments, and current structure and operations.
2. Clarify the nature of ‘co-governance’, rationale for the CWB seeking an expanded governance role.
3. Confirm new opportunities for local watershed co-governance authority under the Watershed Sustainability Act or through other mechanisms, and clarify assumptions about the preferred, ‘incremental, limited delegation’ approach for expanding CWB’s role and responsibilities.
4. Identify key barriers/issues related to the expansion of the CWB’s governance role and responsibilities, and/or strategies to improve current CWB operations.
5. Confirm how potential solutions for each barrier or issue will be generated, including identification of specialized advice or expertise and engagement with other interests that may be required.

6. Confirm next steps, including research to be completed prior to the next workshop.

It should be noted that the workshop series is not intended as a forum to:

- Re-examine in detail the fundamental rationale for local watershed co-governance;
- Conduct an evaluation the performance of the CWB to date;
- Negotiate or decide upon funding support for the work of the CWB

Presentations

CWB History, Accomplishments and Current Structure

- Overview Presentation provided by Tom Rutherford

Changing Context / New Opportunities

- Three presentations explored changing opportunities for expanded governance in the Cowichan Valley.

First Nations Perspective: 'Nutsamat'

- Lydia Hwitsum explained that Cowichan peoples had exclusive occupation of territory at the time of first contact with settlers, and continue to occupy the territory today. There are many ongoing laws and rules for members of Cowichan Tribes about how to live well in the territory and manage the resources appropriately. The history of occupation and management provide clear evidence that supports the Cowichan Tribe's assertion of jurisdiction and un-extinguished Aboriginal rights and title. Furthermore, in light of the Delgamuukw and Tsilhqot'in rulings, there is a clear obligation on the Provincial Crown not to abrogate or derogate from existing aboriginal rights. As a result, Cowichan Tribes bring to the table legitimate legal interests.
- Lydia also introduced participants to the concept of Nutsamat, which is defined in the Cowichan Hul qumi num Dictionary as '*one whole team or group, to form one whole piece.*' Lydia explained that this definition of Nutsamat as *snew uy ul* (teaching/law for how to live your life) comes from discussion at the Cowichan Elders Treaty Committee meeting, dating from May 2003 through to October 2003. Nutsamat is an ancient principle that comes from the teachings of Cowichan Nation Ancestors, and Lydia noted that she had received approval from the Elders Committee to bring this concept forward. By definition Nutsamat means that there are two or more parts that make the whole; the distinguishable parts come together to form the whole. In the context of the Cowichan Watershed Board, Lydia noted that the partners have come together and are connected based on their common reliance on the ancestral lands of the Cowichan Nation within which the Cowichan Watershed exists. Nutsamat in application makes us stronger together: *Nutsamat kws yaay'us tst: We come together as a whole to work together to be stronger as partners.* Lydia also stressed that while the recently passed Watershed Sustainability Act provides new opportunities for local governance based on Provincial statutes and regulations, Cowichan Tribes have unextinguished rights and title, which in turn provide a different form of authority.

Learning to Think like a Watershed: Opportunities in the New Water Sustainability Act

- Oliver Brandes provided an overview of emerging opportunities for expanded governance under the recently passed Watershed Sustainability Act (WSA), which emphasized three essential messages:
 - Getting water management & governance right is critical to everything!

- With regard to watershed governance, it is a case of not if but when. Let those impacted be the architects of their freshwater future
- The WSA offers opportunities for communities, First Nations and governments to better protect and steward home waters.
- Oliver's presentation included the following key points:
 - The Cowichan River Basin is not alone—similar challenges are being around the world.
 - The general public intuitively understands that protecting water has something to do with: – Expertise/science; – Rules and enforcement; and, – Citizens and local control.
 - The design of any governance approach needs to be tailored to local conditions
 - Currently, there is a complex mix of jurisdictions that share management responsibilities for water. Also key linkages between environmental flows and aboriginal rights and uses.
 - The WSA offers three key opportunities to improve outcomes for water:
 - Water Objectives: Water objectives can be set for water quality, quantity, and for aquatic ecosystems. Under the WSA communities have the opportunity to articulate and establish locally appropriate water objectives.
 - Planning Tools: WSA includes a spectrum of planning tools, including Water Sustainability Plans, triggered by conflicts over water or risks to water quality and ecosystems; Area Based Regulations, - can be used to designate specific areas & create unique thresholds and requirements for those places; and Sensitive Stream Designations, - can be used to protect at-risk fish populations, and establish more stringent licensing and monitoring conditions. These planning tools can also provide a collaborative mechanism by which First Nations can bring rights/interests into the colonial planning process to develop shared/collaborative vision for managing watersheds.
 - Delegated Governance and Advisory Boards: The Minister may establish advisory boards to provide advice related to the establishment of water objectives, methods for determining environmental flow needs, and standards and best practices for diversion/water use.
 - In conclusion, workshop participants can choose to work with local governance framework using WSA tools but also develop a locally-generated proposal to show BC what expanded governance could mean.
 - Finally, it was noted that terms such as 'governance' can be hard to define. One person stated, "governance is about having agency in making choices; it is a process of how we become architects of our own future; if we are impacted by decisions, we ought to have a say." Another added that governance is about the "responsibility to be influential in how we manage water in the Cowichan watershed; that responsibility comes with living here."

Local Government

- Brian Carruthers delivered a short presentation noting that the CVRD is in the process of developing a watershed service bylaw, which will likely be subject to a referendum during the October 2018 municipal election. (It was noted that Regional Districts provide basic services, but that the Board and the electorate must approve any discretionary activities).

Potential Barriers and Issues Discussion

Presentation

- David Slade provided an initial overview of challenges and potential barriers related to the expansion of governance roles and responsibilities
 - **Accountability:** How can the CWB demonstrate accountability to its foundational partners (Cowichan Tribes and CVRD), other levels of government, and Cowichan Valley residents?
 - Clarity of accountability mechanisms for individuals and groups represented on a local governance board; Clarity of decision making.
 - **Respecting and accommodating foundational partners:** How can the CWB effectively engage with the Province of B.C. to expand its governance roles and responsibilities while respecting its foundational partners rights, responsibilities and mandates? This means:
 - Protecting First Nations’ ability to engage without prejudice to rights and title;
 - Respecting the duty of local government representatives to uphold the Local Government Act, while also serving as a representative at the Board level;
 - Identifying and managing conflicts of interest and overlapping mandates;
 - Ensuring clear lines of communication back to Cowichan Tribes and CVRD: and,
 - Defining an optimal structure for the CWB, may differ from the current structure.
 - **Developing capacity, organizational structure, and communication framework to support an expanded mandate:** How can the CWB transition from its current mandate to one of increased responsibility in water/watershed governance.
 - How to maintain the benefits of a non-governmental organizational and the trust of the local community while also assuming a more formal, delegated role;
 - Resourcing and the need to avoid assuming increased responsibilities without the necessary funding, capacity and capability to deliver on those responsibilities;
 - The need for an organizational structure and lines of communication with foundational partners, senior levels of government and citizens of the Cowichan Valley that accommodates everyone’s needs

Discussion: Initial Scoping of Themes and Issues

In the discussion that followed the presentations, a range of themes and issues were identified:

- Accountability and Decision Making
- Degree of Autonomy/Independence
- Delegation vs. Downloading
- G2G Agreements
- Infringement on Cowichan Tribes Rights and Title
- Expectations, Power of Suasion
- Private Land Issues

Break out Sessions

Workshop participants were invited to engage in small group discussions to explore potential challenges and issues related to the expansion of governance for the CWB, or related to improvements in current operations, focusing on the three themes highlighted in Table 1.

| Table 1: Scope of Small Group Discussion Topics: October 12 | |
|---|---|
| Theme | Topics and Issues |
| Decision Making and Accountability | <ul style="list-style-type: none"> ▪ What specific decisions would fall within the responsibilities for a board with expanded governance authority? What is the scope of such decisions under a 'limited, incremental delegation' approach? ▪ How is accountability achieved? |

Table 1: Scope of Small Group Discussion Topics: October 12

| Theme | Topics and Issues |
|---|--|
| | <ul style="list-style-type: none"> - To whom (i.e., the watershed, citizens, other governments)? - To what degree is accountability reciprocal? - How is accountability secured? What is 'enough'? ▪ How can the CWB ensure that sufficient resources, capacity and capability are available to match expanded responsibilities? ▪ How can the CWB avoid the problems of 'downloading'? |
| Respecting Foundational Partners | <ul style="list-style-type: none"> ▪ What are the pros and cons of various G2G Agreements? Might such an arrangement be a necessary element of a new governance arrangement in the Cowichan? ▪ To what degree might a board with expanded governance responsibilities infringe on the rights, title and interests of Cowichan Tribes? Are there circumstances under which infringement might be unavoidable, or even desirable? ▪ How can clear lines of communication be established and maintained among the foundational partners? ▪ What is the scope of current CVRD powers? How can the CVRD demonstrate support from electorate? ▪ How might the CWB support the efforts of Cowichan Tribes to secure recognition of inherent rights, title and interests? ▪ How should a board with expanded governance responsibilities engage with the federal Government? |
| Capacity, Organizational Structure and Communication | <ul style="list-style-type: none"> ▪ What is the optimal structure for a board with expanded governance responsibilities? ▪ How can the CWB maintain the benefits of its non-government organizational culture while also assuming new roles and delegated responsibilities? ▪ How can the CWB capitalize on the power of 'suasion'? |

Plenary Discussion: Reflections on Workshop Outcomes

In the closing session of the workshop, various participants offered final comments, reflections, and suggestions including but not limited to:

- Concept of Nutsamat as a principal for strengthening existing partnerships/creating new ones
- Power of existing Partnership between Cowichan Tribes and CVRD as exemplified by CWB
- Need for further exploration of themes developed at this workshop in order to most effective engagement strategy for local governance/more detail around specific governance aspirations

Next Steps/Topics for Further Investigation

- Workshop participants identified topic areas where further info gathering/research needed
- External reporting to include workshop summary to be posted on CWB website and reporting out at November CWB meeting.
- Internal reporting to include workshop summary report distributed to participants
- Results from research and information gathering, along with first workshop outcomes to be collated into "straw dog" models proposing suggested changes to CWB governance in order to address key barriers and challenges to local governance. To be presented at next workshop
- Workshop 2 date and venue TBA – January 2018 to allow steering committee to complete preparatory work and accommodate Cowichan Tribes election.

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