Evaluation of WRIA 1 Instream Flow Pilot Projects

Final Draft

May 23, 2008

The Instream Flow Pilot Projects evaluation is a task in the June 2007 approved WRIA 1 Detailed Implementation Plan. The evaluation was coordinated by the WRIA 1 Staff Team. The WRIA 1 Staff Team includes representatives of the City of Bellingham, Lummi Nation, Nooksack Tribe, Public Utility District No. 1, Washington State Dept. of Ecology, and Whatcom County.

1. Introduction

The approved *WRIA 1 Detailed Implementation Plan, July 2007* includes a task to evaluate the WRIA 1 Instream Flow (ISF) Pilot Negotiation process. The ISF Pilot Negotiation process was initiated in trial areas to test the WRIA 1 Instream Flow Selection and Adoption Action Plan (ISF Action Plan). The ISF Action Plan was prepared as an element of the WRIA 1 Watershed Management Project to address the over-arching instream flow goal "… to supply water in sufficient quantities to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve fish habitats on which fish rely."(March 27, 2000 Scope of Work)

The watersheds selected as ISF Pilot Negotiation areas are the Middle Fork and Bertrand Creek watersheds. The pilot negotiation processes in each watershed were structured differently to accommodate differences in water rights allocations and water uses. In the Middle Fork watershed, the City of Bellingham is the primary state water right holder and representative of state water rights holders in the negotiations. In the Bertrand Creek watershed, agricultural production is the primary water use. The formation of a special purpose district, which is the Bertrand Watershed Improvement District, provided a structure that could collectively reflect the interests of water users in the negotiations.

Memorandums of Agreement for the Bertrand and Middle Fork ISF Pilot Negotiation projects were developed and signed by the participants of the two processes in June 2005. Procedural Agreements and Confidentiality Agreements associated with the two pilot projects were also signed in June 2005. These documents established the negotiated settlement framework for the Bertrand and Middle Fork ISF Pilot Negotiations.

The task of evaluating the ISF Pilot Negotiation process is included in the WRIA 1 Detailed Implementation Plan (DIP) as an outcome of discussions at the WRIA 1 Staff Team meetings during the Fall 2007, comments expressed at the WRIA 1 Planning Unit meeting in May 2007, and comments received from Planning Unit caucus representatives in advance of and at the June 2007 meeting. The WRIA 1 Staff Team (Staff Team) is identified in the WRIA 1 DIP as the task lead for coordinating the ISF Pilot evaluation task.

Milestones for completing an evaluation of the ISF Pilot Negotiation Process are identified in the WRIA 1 DIP. The primary milestone is a comparison of the ISF Pilot Negotiation Process to the documented WRIA 1 Instream Flow Selection and Adoption Action Plan (ISF Action Plan) that was included the June 2005, WRIA 1 Watershed Management Plan- Phase I, and to identify areas where implementation of the Pilots has differed from that identified in the ISF Action Plan. Other milestones identified under the DIP task for evaluating the ISF Pilot Negotiation Process includes conducting interviews with participants of the negotiation process and reviewing public process and technical documents to inform the evaluation. The final milestone in the DIP task for the evaluation is to prepare a summary report of the outcomes of the evaluation, and recommendations for changes to the WRIA 1 ISF Action Plan based on the outcomes (Sections 3 and 4 of this summary report).

The step of interviewing ISF participants was not pursued for this evaluation due to a separate but similar effort that occurred within the confidential negotiated settlement framework. The cover memo to the *Instream Flow Pilot Negotiation Status Report, December 2007* that was distributed to the WRIA 1 Planning Unit and WRIA 1 Staff Team by the ISF Pilot Negotiation mediation and facilitation staff includes a statement that information contained within that report is based in part on

outcomes of key informant interviews conducted by Dumas & Associates, Inc during the summer of 2007.

The approach for completing the DIP task to evaluate the ISF Pilot Negotiation process is to rely on publicly available documents, discussions at WRIA 1 Staff Team meetings, scopes of work for grants and task orders, budget information provided by participating entities, personal communication with representatives of participating entities involved in the negotiations, and information presented in the previously referenced *Instream Flow Pilot Negotiation Status Report, December 2007*. It is recognized that the pilot negotiation process is dynamic and perspectives of participants reported in December 2007 may have changed since that time.

2. Purpose of Evaluating ISF Pilot Projects

The WRIA 1 Staff Team reviewed and agreed to a purpose statement (Attachment A) for the ISF Pilot evaluation at their November 16, 2007 meeting that is intended to provide definition to this task. The purpose of evaluating the ISF Pilot Negotiation Projects is to establish the extent to which the goals and expected outcomes have been achieved, and to identify any needed modifications to the WRIA 1 ISF Action Plan. Elements of the evaluation as listed in the purpose statement include:

- Identify elements and/or work products of the pilot negotiation process that can be used as templates for other drainages (Section 3.1).
- Identify areas of the ISF Pilot Negotiations that can be streamlined to improve efficiency by reviewing the process, technical, geographic extent, and costs associated with recommending instream flows (Section 3.2).
- Determine whether the ISF Pilot Negotiations resulted in agreements/contracts for water management in pilot drainages (Section 3.3).
- Identify opportunities for education, outreach, and engagement of affected parties as defined in the WRIA 1 ISF Action Plan, Version 6c (Section 3.4).
- Compare outcomes of the ISF Pilot Negotiation Process to the WRIA 1 ISF Action Plan for purposes of identifying and recommending modifications to the ISF Action Plan (Section 3.5 and Attachment C).

Using the approach outlined in Section 1, this document addresses milestones set out in the DIP and in the November 16, 2007 purpose statement. This report does not address whether ISF Pilot Negotiations resulted in agreements/contracts for water management in pilot drainages since the process is still underway and falls under the confidential negotiation settlement framework.

The majority of available information used for this report is associated with the Bertrand ISF Pilot Negotiation process, which places an unintended emphasis on the Bertrand process.

3. Outcomes of ISF Pilot Negotiation Process Evaluation

3.1. Opportunities for Adapting ISF Pilot Elements and Work Products to Future Negotiations

3.1.1. Discussion

The negotiated settlement framework of the ISF Pilot Negotiation process includes technical, legal, and policy components. According to the *Instream Flow Pilot Negotiation Status Report*, the

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technical work group developed the technical foundation for the ISF negotiations and initial flow proposal concepts. The technical work group also identified policy and legal issues to be forwarded to the legal mediator. These issues formed agendas for the policy work sessions and discussions conducted by the legal mediator in confidential shuttle negotiations with participants.

The *Instream Flow Pilot Negotiation Status Report* briefly describes the negotiation framework as including private meetings with the MOA signatories and the legal mediator to identify issues and interests, small meetings of MOA signatories to discuss the issues, and an iterative process between MOA signatories during the flow proposal development process.

3.1.2. Observations and Recommendations

The negotiated settlement framework established for the ISF Pilot Negotiations is adaptable to future negotiations if participants decide to proceed with that approach in other geographic areas. The products of the negotiated settlement framework that can be adapted to other negotiations include the Memorandum of Agreement and Confidentiality Agreement that govern the negotiated settlement process.

Based on information available through WRIA 1 Staff Team meeting updates and discussions with process participants, it appears that the roles and responsibilities for the various steps in the process may not have been clearly understood at the start of the process. A recommended modification to the negotiated settlement framework and the associated agreements governing the process is to have clearly defined roles, responsibilities, and timelines for proceeding with and implementing each step of the negotiation process. As part of the clarification of roles and responsibilities, identifying criteria and a process that participants can use to prompt convening of policy negotiation meetings may reduce the potential for the ISF negotiation process to stall.

3.2. Review for Improving Efficiencies

This section of the ISF evaluation addresses the November 16th purpose statement to "identify areas of the ISF Pilot Negotiations that can be streamlined to improve efficiency by reviewing the process, technical, geographic extent, and costs associated with recommending instream flows."

The information sources referenced in Section 1 of this document were used to review the ISF Pilot Negotiations for the purpose of identifying efficiencies. As part of the review and to gain a better understanding of how the process progressed, the tasks and milestones from the cited sources were arranged in a simplified timeline under broad categories to provide a visual of the sequence of activities. Budget expenditures provided by the participating entities were also arranged along the same timeline in an effort to understand the points in the process where the funding challenges occurred that are referenced in the *Instream Flow Pilot Negotiation Status Report*. These course timelines are included in Attachment 2. The ISF Pilot Negotiation processes were structured as an iterative process, therefore although the timelines may suggest long stretches occurring without progress, it may be a reflection of the iterative nature of the process.

The final step for approaching the review for efficiency was to extract Table 1 from the *Instream Flow Pilot Negotiation Status Report* and add new columns where a direct comparison of the ISF Pilot Negotiation process could be made with the ISF Action Plan by using the referenced sections and lines. The comparison table is provided as Attachment C.

It is noted that a review of the ISF Pilot Negotiation process for efficiencies is inherently limited to some extent because the negotiations are still in process and information used for this review is

limited to publicly available information. Additionally, because the Middle Fork ISF Pilot and the Bertrand ISF Pilot Negotiation processes are structured differently in terms of state water rights holders represented (i.e., single municipal water right holder and multiple state water rights holders and others) the processes have not progressed at the same pace. The Bertrand ISF Pilot Negotiation process has progressed on a steadier pace than the Middle Fork Pilot Negotiation, where the most recent conceptual settlement proposals were exchanged and discussed in April 2006. Therefore, the majority of information available to review and consider is associated with the Bertrand ISF Pilot. This inherently places an unintended focus on the Bertrand ISF Pilot Negotiation process.

Based on a review of available information previously described including sequencing of tasks and milestones and recognizing limitations, the following subsections address each of the items listed in the purpose statement. We will use this information to identify opportunities for improving efficiencies in the process of recommending instream flows.

3.2.1. Process Efficiencies

3.2.1.1 Discussion

In the fall of 2004 the Instream Flow Working Group discussed the process and approach for implementing ISF pilot projects. In March 2005 the WRIA 1 Planning Unit approved the locations for the pilot instream flow negotiation projects, and the ISF Pilot Memorandum of Agreement (MOA) signatories adopted the confidential, mediated negotiation settlement approach for the ISF Pilot projects. A total of 11 Bertrand Instream Flow Technical Work Group meetings occurred from Spring 2005 – December 2007 and six (6) Middle Fork Instream Flow Technical Work Group meetings occurred from March 2005 – April 2006. A review of the information presented in the *Instream Flow Pilot Negotiation Status Report* including milestones achieved between March 2005 and December 2007 suggests that between March 2005 and March 2006 there had either been significant interruptions in the process or the participants critical to the process were unable to meet with the frequency needed to make substantial progress. According to one participant, a factor contributing to the apparent delay in progress during the referenced timeframe was that the Utah State University flow statistics that were necessary to initiate negotiations on instream flows were not available. The *Instream Flow Pilot Negotiation Status Report* cites interruptions in and changes to funding as an influencing factor in progress. However, based on the limited budget information available for this review it is difficult to know where the interruptions or changes in funding occurred and what element of the process had been directly affected given that funding was allocated throughout the timeline.

The ISF Pilot Negotiations were structured to use a legal mediator and a local process facilitator to coordinate and lead the confidential negotiation meetings. The local process facilitator also supported the technical work group meetings, and provided outreach support to the Bertrand WID. Technical elements of the process were supported by technical staff of the participating entities and consultants.

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3.2.1.2 Observations and Recommendations

A coordinated and collaborative approach for managing and prioritizing funds allocated to a watershed for ISF negotiations could reduce potential for disruptions in process due to funding shortfalls thereby increasing efficiencies in the process. Specifically, a collaborative approach for identifying shortfalls before they occur and to respond accordingly by recommending to the policy group a reprioritization of tasks, requesting and processing amendments to grant scopes of work, and/or soliciting policy decisions to allocate additional staff or budget would reduce process disruptions. Options for implementing a coordinated and collaborative approach for managing and prioritizing funds include:

1. If the negotiation process framework and associated documents are modified to more clearly identify roles and responsibilities (Section 3.1.2), responsibilities of each participating entity as it relates to budget management and/or task prioritization can be drafted to meet the purpose previously outlined.

2. Expand responsibilities of an existing policy or work group or establish an administrative team of representatives designated by the signatories of the governing Agreements (e.g., Memorandum of Agreement, Procedural Agreement) to provide an administrative level of financial management and project oversight of the negotiation process. This option would require a commitment of the signatories of the Agreements receiving grant funds to support the ISF negotiations to accept a team approach for developing, implementing, and modifying grant scope of work tasks.

3.2.2. Technical Efficiencies

3.2.2.1 Discussion

The process described in the ISF Action Plan for joint data development and joint technical proposal development was modified for the ISF Pilot Negotiations. The *Instream Flow Pilot Negotiation Status Report* states that the process modification was due to changes in ISF Pilot funding and to the agreed to confidential settlement negotiation framework. The status report does not further explain the funding changes that were a factor in the process change. A review of the limited funding information available for this timeframe does not offer insight into the changes influencing the process for the technical development. The other factor identified in the *Instream Flow Pilot Negotiation Status Report* for changing from the ISF Action Plan approach of joint data development and joint technical proposal development to independent approaches is the agreed to confidential settlement negotiation framework. As mentioned in the "Introduction" section of this document, the Bertrand and Middle Fork ISF Pilot negotiation processes were structured differently to accommodate differences in state water rights allocations and water uses. In each of the pilot negotiation processes, participants separately developed conceptual settlement proposals that essentially offered what participants felt comfortable recommending to policy staff. Finally, it is assumed that the delays in receiving flow statistics from USU were also an influencing factor in decisions associated with data and technical development for each pilot negotiation process.

3.2.2.1 Observations and Recommendations

Generally it is more cost effective to conduct joint efforts in processes because it maximizes limited staff and financial resources. In the case of the Bertrand and Middle Fork ISF Pilot Negotiation processes, however, separating the technical development efforts appears to have

been the most efficient approach given the differences in water right allocations and uses and the different schedules at which the processes progressed. If changes are made to the geographic scale at which ISF negotiations proceed in other areas of the WRIA, the value of the independent process for data and proposal development under the confidential settlement framework should be considered along with the efficiencies that can be realized in a joint process, especially given the time and resources that are associated with recommending instream flows.

Additionally, although a technical work group is established through the technical component of the negotiation framework the available information does not indicate that the responsibilities and commitments of time for the participating members had been formalized as part of the governing agreements. Efficiency in process may be realized by obligating a percentage of participating entities' staff time to the technical work group and establishing a timeline for developing the technical foundation for the ISF process as defined in the WRIA 1 ISF Action Plan. The percentage of time allocated and the timeframe established should be based on the geographic extent of the next ISF negotiation process. The commitment of staff could be incorporated in the Memorandum of Agreement established for the ISF negotiations and should describe in detail the steps necessary for completing the technical work with a deadline identified for each step. Establishing a technical work group through the Memorandum of Agreement that functionally serves as dedicated technical staff to the instream flow process should result in a condensed timeframe for completing the technical foundation outlined in the ISF Action Plan. To implement these recommendations, however, additional resources for negotiations, facilitation, and administration will be needed for the duration of the process.

3.2.3. Geographic Efficiencies

3.2.3.1 Discussion

A review of the ISF Pilot projects status, milestones, and budget expenditures confirms the substantial commitment that is required to support a locally driven process for recommending instream flows. Although the pilot projects are still underway, there is sufficient process information available to consider whether the drainage by drainage approach to recommending flows is the most process and cost efficient approach for WRIA 1. The information available on the ISF Pilot Negotiation processes identifies and implies that there are a number of challenges associated with negotiating and managing multiple instream flow processes concurrently. Among these challenges are limited staff time to participate in the process, financial resources to support the negotiations, and limited support for water rights holders to participate in the process. In addition, negotiating flows on a limited geographic scale also limits the range of solutions that can be considered for water management options.

3.2.3.2 Observations and Recommendations

Efficiencies are often gained in both time and budget when combining tasks or efforts. Consideration should be given to aggregating drainages into manageable geographic areas to increase efficiency over the drainage-by-drainage negotiation approach. Joint efforts to develop data and technical proposals for geographic areas with similar watershed characteristics maximizes technical staff's time and, depending on the negotiation process, may maximize the time commitment required of affected parties. Consideration of affected parties' time in an ISF process will be particularly important if there is not financial support available to maintain their involvement. Larger geographic areas may result in increased political flexibility. For example,

parties may be able to better achieve watershed-wide goals and accept less instream flow/habitat at one location if more instream flow and associated habitat is secured at a different location. Another example is that solutions for managing water within a geographic area involving capital projects may be more affordable if the cost of the solution is distributed across multiple watershed interests and government entities.

3.2.4. Cost Efficiencies

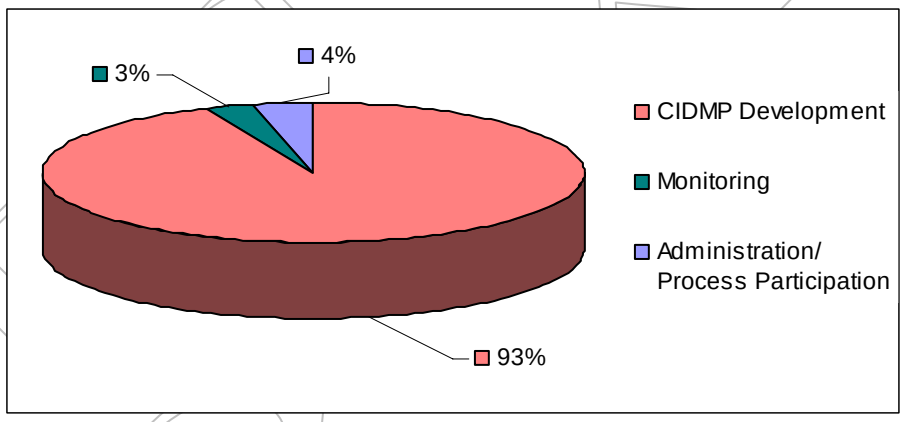
3.2.4.1 Discussion

The ISF Pilot Projects have received funding support since they were initiated in November 2004. For the Bertrand ISF Pilot the source of funding includes Washington State grant funds, Whatcom County budget allocations, and in-kind support from participating entities (Attachment B). For the Middle Fork ISF Pilot the source of funding has been primarily the City of Bellingham with in-kind support by ISF participants. The source of funds supporting legal mediation of instream flows including the Middle Fork and Bertrand is Washington State.

The Bertrand Watershed Improvement District (WID) represents Bertrand Watershed water users in the negotiations. Funds for representing the legal, technical, and political aspects in the WID negotiations were secured from Washington State, Whatcom County, and from participating entities as in-kind contributions.

Figures 1 through 3 summarize costs associated with the Bertrand ISF Pilot Negotiation process for three phases: planning and preparation; process implementation; and allocated but unspent

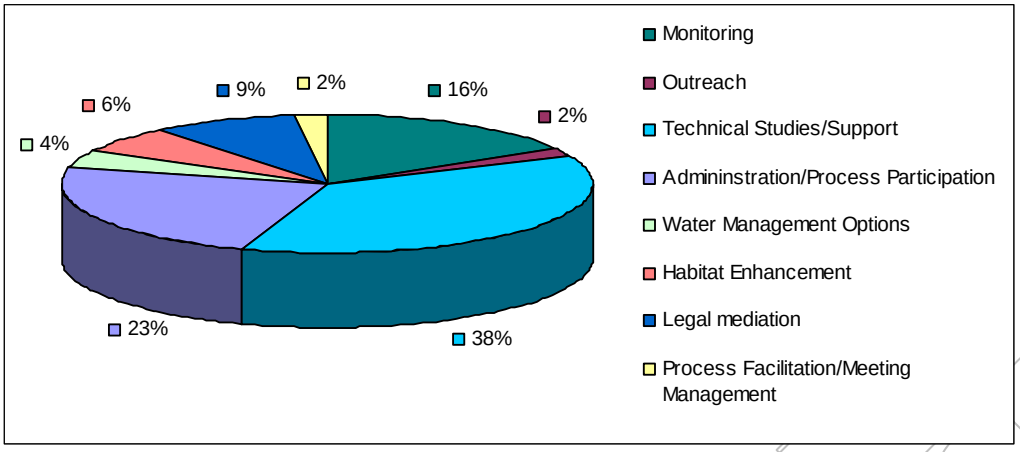
Figure 1. Bertrand ISF Pilot Negotiation Process- Planning and Preparation (2004)



Bertrand Instream Flow Pilot Negotiation Process: Planning and Preparation Estimated Cost $427,338

Planning	
Bertrand Comprehensive Irrigation District Management Plan (CIDMP) Development	*Washington Dept. of Agriculture*
Monitoring	
Rathbone Telemetry Station	*Washington Dept. of Ecology*
Administration/Process Participation	
Development of ISF Pilot Project Scope of Work	*Whatcom County*
In-Kind contribution estimated for 2004 planning/prep stage represents technical, policy, and/or legal staff involvement in planning the ISF Pilot Project process.	*Bertrand Watershed Improvement District Lummi Nation; Nooksack Tribe; Public Utility District No. 1; Whatcom County*

268 **Figure 2. Bertrand ISF Pilot Negotiation Process Implementation (approx. 2005-2007)**



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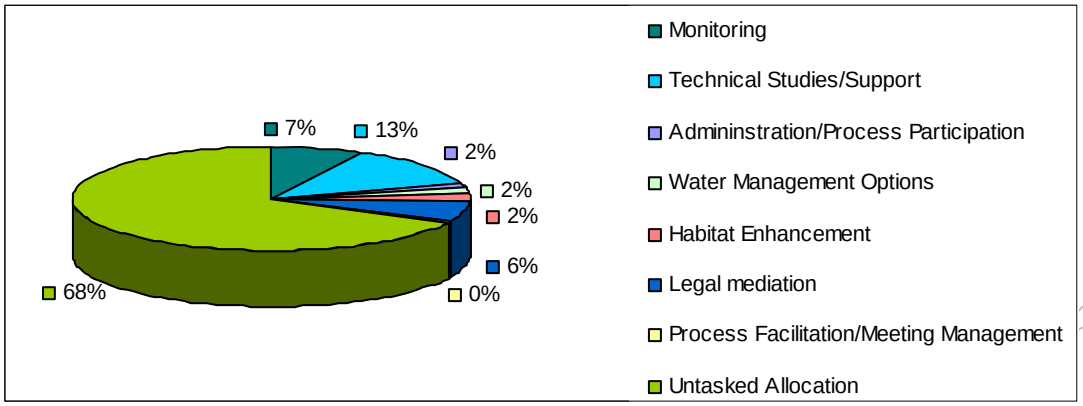
Bertrand Instream Flow Pilot Negotiation Process: Implementation Estimated Cost $902,118

Monitoring	
Rathbone Telemetry Station; Water quality monitoring at Rathbone Station for One-Year (Ecology site for 5-Year rotation)	*Washington Dept. of Ecology*
New USGS gage at US Boundary and H Street	*Whatcom County*
Bertrand CIDMP Implementation Grant	*Washington Dept. of Ecology*
Bertrand Storage Grant	*Washington Dept. of Ecology*
Outreach	
Assistance with State of Watershed Report: 2006 Project Status	*Whatcom County*
Bertrand ISF Pilot Negotiation Public Education and Involvement Plan	*Whatcom County*
Bertrand WID Member Quarterly Forum	*Whatcom County*
Bertrand Annual Watershed Open House	*Whatcom County*
Technical Studies/Support	
*Ecological Flow Regime Analytical Tools**	*Whatcom County*
*Bertrand Out-of-Stream Water Use Estimation Methodology & Data**	*Whatcom County*
WSU Ground Water Study	*Whatcom County*
Bertrand CIDMP Implementation Grant	*Washington Dept. of Ecology*
Bertrand Storage Grant	*Washington Dept. of Ecology*
Administration/Process Participation	
Bertrand CIDMP Implementation Grant	*Washington Dept. of Ecology*
Bertrand Storage Grant	*Washington Dept. of Ecology*
In-Kind contributions estimated for the Bertrand ISF Process Implementation represent administrative, technical, policy, and/or legal staff involvement in the ISF Pilot Project process implementation	*Bertrand Watershed Improvement District; Lummi Nation; Nooksack Tribe; PUD No. 1; Whatcom County*
Water Management Options	
*WID Member and Commission Focus Group Meetings for Management Options**	*Whatcom County*
Bertrand WID Management Options and Strategies Discussion Paper; Bertrand WID Recommended Flows & Management Options and Strategies*; Bertrand WID Water Resource Management Services Contract Development**	*Whatcom County*
Habitat Enhancement	
Bertrand CIDMP Implementation Grant	*Washington Dept. of Ecology*
Legal Mediation	
Legal Mediation of Pilot Negotiation Process	*Washington Dept. of Ecology*
Process Facilitation/Meeting Management	
Process Facilitation/Meeting Management	*Whatcom County; Washington Dept. of Ecology*

270 *Corresponds to title of Whatcom County task order for contracted work to support the Bertrand WID.

Figure 3. Bertrand ISF Pilot Negotiation Process Available Allocations for 2008-2009



Bertrand Instream Flow Pilot Negotiation Process: Available Allocation** Estimated Cost $892,809

Monitoring	
USGS gages at US Boundary and H Street	*Whatcom County*
Bertrand CIDMP Implementation Grant	*Washington Dept. of Ecology*
Bertrand Storage Grant	*Washington Dept. of Ecology*
Technical Studies/Support	
*Ecological Flow Regime Analytical Tools**	*Whatcom County*
*Bertrand Interaction & Coordination with WSU Ground Water Study**	*Whatcom County*
Bertrand CIDMP Implementation Grant	*Washington Dept. of Ecology*
Bertrand Storage Grant	*Washington Dept. of Ecology*
Administration/Process Participation***	
Whatcom County Process Participation, Administration of Task Orders, and USGS Gage Contract	*Whatcom County*
Bertrand CIDMP Implementation Grant	*Washington Dept. of Ecology*
Water Management Options	
Bertrand WID Recommended Flows & Management Options and Strategies	*Whatcom County*
Habitat Enhancement	
Bertrand CIDMP Implementation Grant	*Washington Dept. of Ecology*
Legal Mediation	
Legal Mediation of Pilot Negotiation Process	*Washington Dept. of Ecology*
Process Facilitation/Meeting Management	
Process Facilitation/Meeting Management	*Washington Dept. of Ecology*
Untasked Available Allocation	
Re-allocation of unspent funds from Bertrand ISF Pilot Task Orders 1-7	*Whatcom County*
*WRIA 1/Bertrand Creek Water Management Implementation****	*Washington Dept. of Ecology*

* Corresponds to title of Whatcom County task order for contracted work to support the Bertrand WID.

**This chart represents previously allocated but unspent funds. The "Untasked Allocation" represents grants awarded that did not have final scopes of work available when information was compiled, and Whatcom County Task Order funds that were in the process of being reallocated to different tasks supporting the Bertrand WID.

***In-kind contribution of participating entities in the ISF Pilot negotiations are not incorporated in the unspent allocation estimates.

****The WRIA 1/Bertrand Creek Water Management Implementation was a grant pending as of December 2007 for implementation in 2008-2009.

funds. Costs were grouped into general categories that encompassed the various tasks identified in different task orders and scopes of work associated with the Bertrand ISF Pilot Negotiations. The summary information is extracted from information provided in Attachment B. Costs are approximate and are based on best available information at the time the evaluation was

conducted. Budgets associated with task orders and scopes of work may have been redistributed to other tasks in support of the Bertrand ISF Pilot Negotiation process.

Although progress has been made in describing the structure and function of a water management settlement in the Bertrand drainage, several components critical to a successful agreement have yet to be resolved. The funding necessary for the implementation of the agreement cannot be evaluated until the key components of the agreement are better defined.

3.2.4.2 Observations and Recommendations

Incorporating the process, technical, and geographic efficiencies outlined in subsections 3.2.1 through 3.2.3 into the instream flow negotiation process are likely to result in cost efficiencies. Additionally, cost efficiencies may be realized by allocating existing staff or hiring staff to provide administrative, meeting, and technical support that is currently provided through consultants. If this cost efficiency measure is considered, however, it should be implemented through a formal agreement (refer to subsection 3.2.1.2) that obligates the staff time to complete the task. Otherwise, the potential exists for it to be an added task to an already full staff work load, which could result in slow progress on tasks related to the negotiation process.

3.3. Water Management Agreements Achieved in Pilot Negotiation Processes

As mentioned in Section 2, the process for the ISF Pilot Negotiations is still underway; flow agreements have not yet been accomplished.

3.4. Opportunities for Education, Outreach, and Engagement of Affected Parties

3.4.1 Discussion

The need for public education and outreach for affected parties is identified in the WRIA 1 ISF Action Plan. The Action Plan defines affected parties in each drainage as the property owners, water right document holders (certificate, permit, application, claim), and the Planning Unit Caucuses. Under the pilot negotiation process an administrative lead was established for each pilot negotiation. The administrative lead is responsible for the public involvement and education (PIE) function.

In the Bertrand ISF Pilot the opportunities varied according to target audience. Target audiences as identified in the *Bertrand Watershed Improvement District Public Involvement and Education Plan*, December 2006 includes the Bertrand Watershed Improvement District (WID) Commission, Bertrand WID Members, Pilot Negotiation Participants' Staff, Bertrand <2.5 acre Landowners with Existing Water Rights, Planning Unit and Caucuses, and Whatcom County Elected Officials. Bertrand <2.5 acre Landowners on Public Water and Renting Residents were identified as a secondary audience that will be engaged as appropriate. The Bertrand WID Public Involvement and Education (PIE) Plan and the scopes of work for Bertrand implementation grants and task orders focused on outreach and engagement of the Bertrand WID Commission, negotiation participants' staff, and Bertrand WID members. Exceptions to this are the annual open houses targeting the larger Bertrand Community as well as Bertrand WID members and the Bertrand State of the Watershed Report. The content and release of education material for the Bertrand PIE effort was determined by the legal mediator.[1]

[1] Instream Flow Pilot Negotiations Status Report, December 2007.

The Middle Fork ISF Pilot Project approach included conducting an initial focus group meeting in November 2005 to provide water right holders and water users in the Middle Fork watershed with an overview of the Pilot Negotiation process and ISF Action Plan and to solicit feedback on how to present information on the negotiation process and key concepts to the public. The focus group discussion[2] suggested that the Middle Fork community members are likely to be interested in receiving information explaining the City of Bellingham's role as lead, an understanding of how they fit into a negotiation process, and information on status of water management. A follow-up meeting with the water rights holders and water users was conducted in February 2006. The *Instream Flow Pilot Negotiation Status Report, December 2007* states that the City of Bellingham will implement public outreach strategies for the Middle Fork ISF Pilot once active negotiations resume.

3.4.2 Observations and Recommendations

The PIE efforts conducted to date have been focused on the participants of the negotiation process. However, the community as a whole needs to be informed and educated with respect to their role in the negotiation process for recommending instream flows in WRIA 1 regardless of whether they are considered a direct participant in the negotiation process.

An inclusive and multi-layered PIE plan is a critical factor in successfully implementing the ISF Action Plan since public and political support is required to proceed with a negotiated process for recommending instream flows. The instream flow negotiation process is complex. A strategically developed public education campaign is needed that introduces the community to ISF Action Plan topics, the process for recommending instream flows, implications of an adjudicated process, and costs associated with resolving water rights, illegal water use, instream flows, and implementation of negotiated flow agreements. This PIE effort is a recognized need and this evaluation is intended to help address this public education gap.

3.5. Comparison of ISF Pilot Projects to WRIA 1 ISF Action Plan, Version 6c

3.5.1 Discussion

The ISF Pilot Negotiation Projects were implemented in two watersheds with different characteristics to test approaches identified in the ISF Action Plan. Although the negotiations are still underway, a comparison of the ISF Pilot Negotiation process to the WRIA 1 ISF Action Plan, Version 6c was completed using the *Instream Flow Pilot Negotiations Status Report, December 2007*. The approach for the comparison was to extract Table 1 of the status report and add two new columns: one for the ISF Action Plan text and one to record observations and recommendations. The comparison table and its outcomes are included as Attachment C.

3.5.2 Observations and Recommendations

The most significant change between the pilot negotiation projects and the WRIA 1 ISF Action Plan, Version 6c approach is the agreed to confidential negotiation settlement framework. This framework introduced Confidentiality Agreements, a shuttle diplomacy approach for elements of the negotiations, and separate technical development approaches. In addition, at least for the Bertrand ISF Pilot Negotiation process, the ISF Pilot Negotiation process approach to public involvement and education appeared to have a narrower focus, audience, and more structured release of information than the approach inferred in the ISF Action Plan. Based on available

[2] Information provided upon review of City of Bellingham meeting notes and agendas.

information, participants of the Agreements for the Bertrand ISF Pilot Negotiation agreed to discreet issues for review and discussion by the WRIA 1 Planning Unit, affected parties, and the general public. The legal mediator approved the content and release of the Bertrand education material. The issues reviewed and discussed were provided as updates at Planning Unit meetings, Bertrand open houses, and WID forums. The Concentric Circle diagram (Figure 3) in the ISF Action Plan was updated to reflect a more defined structure and size for the Concentric Circle that is based on the negotiated settlement framework.

The Concentric Circle diagram (Figure 3) and the Summary of Target and Regulatory Flow Selection diagram (Figure 4) from the WRIA 1 ISF Action Plan were updated as part of the ISF Pilot Negotiation process to reflect the confidential negotiation framework.

If the framework established for the ISF Pilot Negotiations is the continued approach for recommending instream flows throughout WRIA 1, text modifications to the ISF Action Plan should be drafted to reflect and clarify the changes.

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ATTACHMENT A
WRIA 1 Instream Flow Pilot Negotiation Projects

ATTACHMENT A

WRIA 1 Instream Flow Pilot Negotiation Projects

Goals of the WRIA 1 Instream Flow Pilot Negotiations Projects

The primary goals of the WRIA 1 Instream Flow Pilot Negotiation Projects (ISF Pilot Negotiations) are to improve understanding of the processes, costs, and timelines associated with implementing the WRIA 1 Instream Flow Selection and Adoption Action Plan (ISF Action Plan), and to advance the level of trust among affected parties negotiating agreements for water management that benefit both instream and out of stream needs.

Expected outcomes of the ISF Pilot Negotiations include 1) agreement by affected parties on recommended target and regulatory flows for the pilot drainage, 2) agreements and/or contracts on water management for both instream and out of stream uses, 3) education, outreach, and engagement of affected parties associated with elements and outcomes of the ISF Pilot Negotiation processes, and 4) inform how ISFs are negotiated in other drainages within WRIA 1.

Purpose of Evaluating WRIA 1 Instream Flow Pilot Negotiation Projects

The purpose of evaluating the ISF Pilot Negotiation Projects is to establish the extent to which the goals and expected outcomes have been achieved and to identify any needed modifications to the WRIA 1 ISF Action Plan. This evaluation will:

- Identify elements and/or work products of the pilot negotiation process that can be used as templates for other drainages.
- Identify areas of the ISF Pilot Negotiations that can be streamlined to improve efficiency by reviewing the process, technical, geographic extent, and costs associated with recommending instream flows.
- Determine whether ISF Pilot Negotiations resulted in agreements/contracts for water management in pilot drainages.
- Identify opportunities for education, outreach, and engagement of affected parties as defined in the WRIA 1 ISF Action Plan, Version 6c, which is Appendix C of the June 2005 approved WRIA 1 Watershed Management Plan.
- Compare outcomes of the ISF Pilot Negotiation Process to the WRIA 1 ISF Action Plan for purposes of identifying and recommending modifications to the ISF Action Plan.

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Process, Milestone, and Budget Timelines

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	2004	2005				2006				2007			
	Sept-Dec	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Administrative Process													
ISFWG discuss location and approach for ISF Pilot Negotiation areas													
ISF Pilot MOA signatories adopt confidential, mediated negotiation settlement approach													
Planning Unit approves location of Bertrand and Middle Fork ISF Pilot Negotiation projects													
ISF Pilot MOA signatories send correspondence to US Dept. of Interior to request appt. of Federal Team													
ISF Pilot MOA signatories receive response from Dept. of Interior that request is being processed													
Bertrand WID seeks additional state funding to support WID analysis of flow augmentation options.													
Involvement of Affected Parties[3]													
Middle Fork ISF Pilot Admin Lead conducts focus groups to identify timing and info needs of affected parties													
Planning Unit meeting to provide update on negotiation framework and updated Figure 3 diagram for participation of affected parties.													
Bertrand WID implements outreach activities for affected parties in the Bertrand watershed.													
Bertrand WID distributes *State of the Watershed Report 2006* and hosts Open House.													
Bertrand WID Member focus groups to understand feasibility of WID management through WID-member service contracts.													
Bertrand WID Member Forum to update WID members on negotiations.													
Planning Unit provided update on Bertrand ISF Pilot negotiations.													
Bertrand WID hosts open house to present information on Ecology's water claims assessment, updates on ISF negotiations, and transboundary issues.													

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[3] Information provided by the ISF process facilitator reports that notification of Bertrand WID sponsored outreach and events occurring throughout 2006-2007 was also provided to Planning Unit Caucuses.

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	2004	2005				2006				2007			
	Sept-Dec	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Developing Technical Framework													
Technical work groups agree on USU IFIM numbers as preliminary fisheries baseflow numbers (one component of ecological flows).					◆								
ISF/FH Tech Team provides consensus statement regarding USU fisheries baseflow work products						◆							
Bertrand ISF Work Group agrees to use water budget to address practicality of flows (out of stream use will be integrated into annual water budget).						◆							
WWU Border Policy Research Institute begins work on transboundary issues and compilation of technical, policy, and landowner counterparts for cross-border cooperation in Bertrand watershed.									▬	▬	▬	▬	▬
Bertrand ISF Work Group recommends structure for target flow proposals.									◆				
Dept. of Ecology focuses on Middle Fork and Bertrand as part of water claims clarification process initiated in WRIA 1 including sending letters.													▬
Target Flow Proposals													
Confidential settlement negotiation sessions- Dept. of Ecology initiates discussions with **Bertrand WID** and **ISF Pilot MOA signatories** to explore managing water resources through contracted agreements (discussions continuing).						▬	▬	▬	▬	▬	▬	▬	▬
Confidential settlement negotiation sessions- draft water budget scope of work and potential funding under discussion.								▬	▬	▬	▬	▬	▬
Confidential settlement negotiation sessions- ISF Pilot MOA signatories develop and review draft target flow proposals (under discussion).									▬	▬	▬	▬	▬
Confidential settlement negotiation sessions- Bertrand WID provides draft flow augmentation proposal for discussion.										▬	▬		

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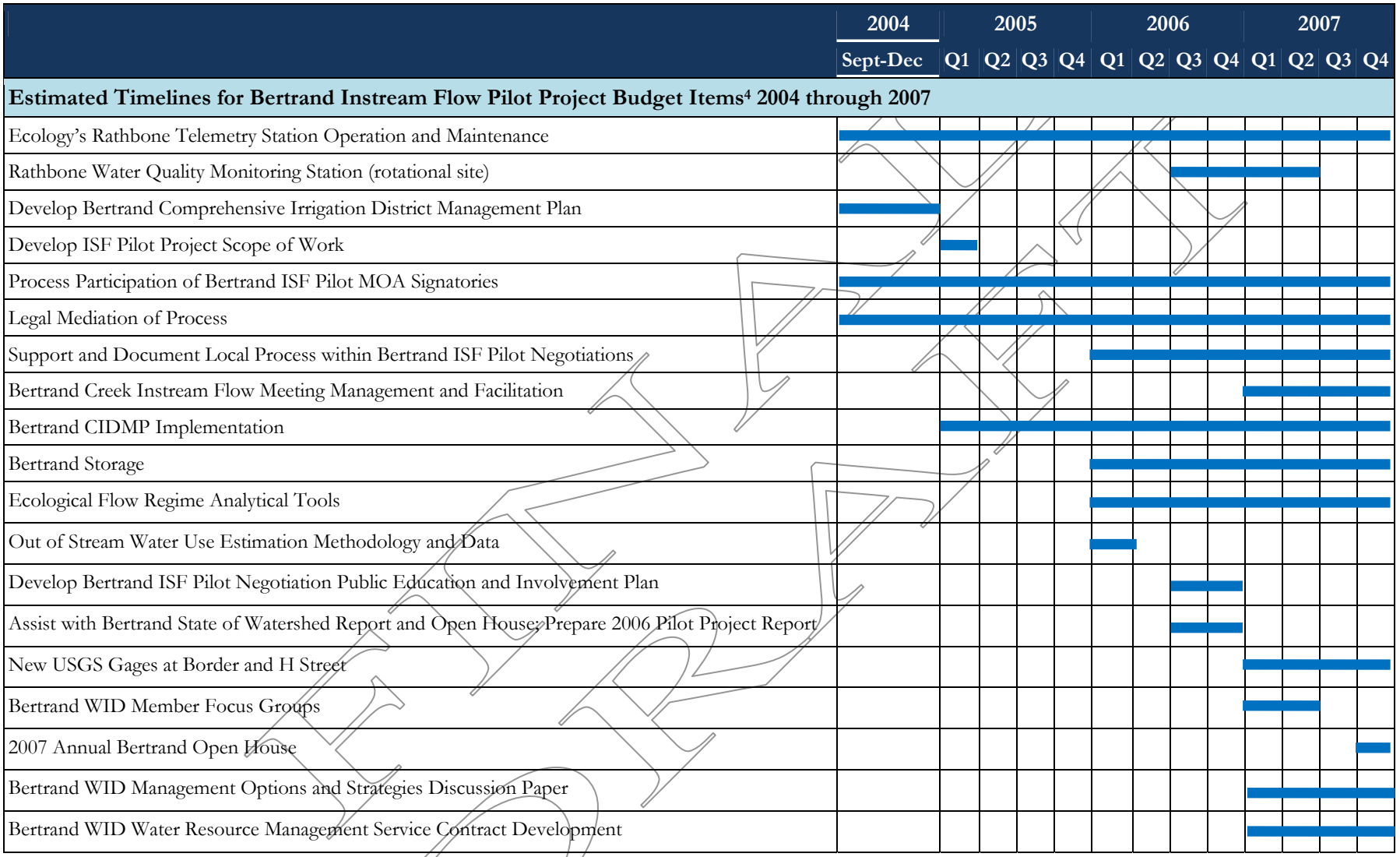

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[4] Descriptors for budget line items generally correspond to tasks in Department of Ecology grants and/or Whatcom County Task Orders issued in support of the Bertrand WID and/or ISF Pilot Negotiation process.

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One of the purposes of evaluating WRIA 1 Instream Flow Pilot Negotiation Projects is to "Identify areas of the ISF Pilot Negotiations that can be streamlined to improve efficiency by reviewing the process, technical, geographic extent, and costs associated with recommending instream flows." In an effort to assist WRIA 1 Staff Team/Technical Team Leads meet this purpose, costs associated with the Instream Flow Pilot Projects have been compiled for the Bertrand and Middle Fork Watersheds. The compilation includes annual estimated costs and funding source for tasks associated with the Bertrand Instream Flow Pilot Project along with assumptions and comments associated with each line item. The costs included in Table 1 were identified by accessing grants, task orders, and/or other information provided by WRIA 1 Staff Team members. Costs represented in the table may not be representative of the entire cost of a line item. For example, the Rathbone telemetry station reflects annual operation and maintenance costs but not installation or equipment repair and/or replacement. Other costs associated with the Bertrand ISF Pilot Project may have been incurred that are not included in Table 1.

Since information on budget expenditures was provided in varying formats, information that did not identify specific tasks in the timeframes were allocated across the timeline by dividing the expenditure by the number of months covered by the budget. In most cases, this approach applied to in-kind contributions and legal mediation. Additionally, some of the expenditures were provided without a breakdown of tasks or general task categories or the scopes of work for the expenditure appears designed to adapt to changing circumstances and/or is in a state of transition. These items are listed and included in the format they were provided.

Table 1 also includes information on funds that have been allocated to the Bertrand ISF Pilot Project and that are expected to be spent in 2008 and 2009. These allocated funds, however, are not intended to represent a budget for completing the Bertrand ISF Pilot Negotiation Project.

Tables 2 and 3 are a consolidation of the information presented in Table 1.

Table 1. Bertrand Instream Flow Pilot Project Estimated Annual Costs[5]

	2004		2005		2006		2007		Allocated (2008-2009)		Notes/Assumptions
Cost Description	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	
Rathbone Telemetry Station O&M	$12,000	Ecology	$12,000	Ecology	$12,000	Ecology	$12,000	Ecology	$12,000 (2008)	Ecology	▪ Ecology correspondence indicates operation funded through 2008
Bertrand Comprehensive Irrigation District Management Plan (CIDMP)	$400,000	Dept. of Agriculture									▪ CIDMP planning process initiated by WCD and completed by WCAPC.
Bertrand ISF Pilot Scope of Work			$4,700	Whatcom County							▪ Task Order for SOW development managed by PUD No. 1.
Rathbone Water Quality Monitoring					$276	Ecology	$824	Ecology			▪ Ecology monitoring for 1-year is part of Ecology rotating 5-year cycle. ▪ Cost estimate is for lab analysis and does not include Ecology's labor or travel time.

[5] All values should be considered estimates based on grant agreements and vouchers, scopes of works and budgets, relative distribution of total costs across a specified timeframe, payment vouchers, and/or staff estimates.

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	2004		2005		2006		2007		Allocated (2008-2009)		Notes/Assumptions
Cost Description	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	
Bertrand WID Board Involvement	$2,240	WID In-Kind	$4,480	WID In-Kind	$4,480	WID In-Kind	$4,480	WID In-Kind	See Notes/ Assumptions	WID In-Kind	▪ The Bertrand WID In-Kind contribution is assumed to continue beyond 2007. ▪ Estimated costs calculated on Board member attendance at fixed number of meetings per year at fixed per diem rate.
Process Participation and Technical Analyses Associated with the Bertrand ISF Pilot Project	$2,222	NNR In-Kind	$13,332	NNR In-Kind	$13,332	NNR In-Kind	$11,110	NNR In-Kind	See Notes/ Assumptions	NNR In-Kind	▪ The total estimated expenditure for NNR participation from Nov 2004 through Nov 2007 is $40,000. ▪ An annual estimated cost was calculated by dividing the total expenditure by the number of months covered during the period the match was provided. ▪ It is assumed that NNR will continue to participate beyond 2007.
Process Participation and Administration of Interlocal Agreement with Whatcom County	$1,666	PUD No. 1 In-Kind	$9,996	PUD No. 1 In-Kind	$9,996	PUD No. 1 In-Kind	$8,330	PUD No. 1 In-Kind	See Notes/ Assumptions	PUD No. 1 In-Kind	▪ The total estimated expenditure for PUD participation from Nov 2004 through Nov 2007 is $30,000. ▪ An annual estimated cost was calculated by dividing the total expenditure by the number of months covered during the period the match was provided. ▪ It is assumed that the PUD will continue to participate beyond 2007.
Policy and Process Participation and Technical Support for the Bertrand ISF Pilot Project	$3,330	LNR In-Kind	$20,000	LNR In-Kind	$20,000	LNR In-Kind	$16,670	LNR In-Kind	See Notes/ Assumptions	LNR In-Kind	▪ Cost estimate is approximately $20,000/year and includes time that has been spent on the Middle Fork pilot project, which has had minimal activity since the first few months after the pilot negotiation process was initiated in fall 2004. ▪ Cost estimate for staff is based on composite rate and considers preparatory time associated with both technical and policy meetings. ▪ Legal costs are included in the estimated annual rate and are based on actual costs. ▪ Legal costs can be expected to increase substantially as the negotiation process

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	2004		2005		2006		2007		Allocated (2008-2009)		Notes/Assumptions
Cost Description	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	
											progresses. ▪ It is assumed that LNR will continue to participate beyond 2008.
Process participation and administration of ILA with PUD No. 1	$1,180	WC In-Kind	$5,520	WC In-Kind	$5,520	WC In-Kind	$5,520	WC In-Kind	$5,520 (2008)	WC In-Kind	▪ A sum total cost estimate provided for the time frame of July 2004 through December 2008 was distributed across the timeframe using a calculated monthly value.
Legal Mediation of Pilot Negotiation Process	$4,170	Ecology	$25,020	Ecology	$25,020	Ecology	$25,020	Ecology	$58,000 (2008)	Ecology	▪ Annual costs were calculated by distributing the total estimated expenditure through 2007 evenly across the active timeframe for legal mediation. ▪ The funding source is an interagency agreement for legal mediation of instream flows and federal/tribal water rights WRIA-Wide. However, for purposes of estimating costs of the ISF Pilot Projects an effort has been made to approximate costs for efforts associated with the pilot projects as a proportion of the total interagency agreement budget. ▪ The amount represented in the "Allocation" column is not assumed to be allocated solely to the Bertrand pilot project.
Bertrand CIDMP Implementation			$117,281	Ecology	$85,088	Ecology	$12,827	Ecology	$84,084 (2008)	Ecology	▪ Ecology Grant #0500092 ▪ Information by task was not readily available.
Bertrand Storage					$76,692	Ecology	$69,571	Ecology	$53,737 (2008)	Ecology	▪ Ecology Grant #0600328 ▪ Information by task was not readily available.
Support and document local process agreement within Bertrand ISF Pilot Negotiations.					$6,500	Whatcom County	$4,877	Whatcom County	$3,510 (2008)	Whatcom County	▪ The total expenditure on Task Order#5 through Oct 27, 2007 is $11,377. To estimate an annual cost, the total expenditure was divided by calendar quarters. ▪ Amt shown under "Allocated" column represents amount available in task order budget for allocation in 2008. ▪ Task order managed by PUD No. 1.
Ecological Flow Regime Analytical Tools					$3,231	Whatcom	$5,385	Whatcom	$23,272 (2008)	Whatcom	▪ The total expenditure on Task Order #6

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	2004		2005		2006		2007		Allocated (2008-2009)		Notes/Assumptions
Cost Description	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	
						County		County		County	through Oct. 27, 2007 is $8,616. To estimate an annual cost, the total expenditure was divided by the number of monthly during which costs may have been expended. ▪ Amt shown in the "Allocated" column represents the budget available for allocation in 2008. ▪ Task order is managed by PUD No. 1.
Assist with Bertrand State of Watershed Report; prepare 2006 Pilot Project Status Report; Task Management					$3,620	Whatcom County					▪ Task Order #2-A to implement Bertrand outreach tasks managed by PUD No. 1
Bertrand Out of Stream Water Use Estimation Methodology and Data					$4,840	Whatcom County					▪ Task Order #1 for SOW development managed by PUD No. 1.
Bertrand ISF Pilot Negotiation Public Education and Involvement Plan					$7,345	Whatcom County					▪ Task Order #2 to develop Bertrand PIE Plan managed by PUD No. 1.
New gages in Bertrand at border and H Street							$47,040	Whatcom County	$35,282 (2008)	Whatcom County	▪ Total cost of $82,322 was estimated between 2007 and 2008 based on a monthly cost calculation. ▪ USGS cost for instrumentation, installation, maintenance, data collection, analysis, and QA/QC.
							$4,716	Whatcom County In-Kind	$3,534 (2008)	Whatcom County In-Kind	▪ Total cost of $8,250 was estimated between 2007 and 2008 based on a monthly cost calculation. ▪ Whatcom County in-kind contribution is for administration of USGS contract.
Bertrand Creek Instream Flow Meeting Mgmt							$7,237	Ecology			▪ Ecology Grant #0700173
Implement Bertrand WID Member and Commission focus group meetings relative to management options							$2,000	Whatcom County			▪ Task Order #2-B for focus group discussion managed by PUD No. 1.
Conduct quarterly WID Member Forum							$2,500	Whatcom County			▪ Task Order #2-C for quarterly forum managed by PUD No. 1.
2007 Annual Bertrand Watershed Open House							$3,255	Whatcom County			▪ Task Order #2-D for annual open house managed by PUD No. 1.
WSU Ground Water Study							$134,000	Whatcom			▪ Estimated cost represents an accumulated

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	2004		2005		2006		2007		Allocated (2008-2009)		Notes/Assumptions
Cost Description	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	**Est. Cost**	**Source**	
								County			billing through 2007; some of the costs may have been incurred in 2006. ▪ Remaining task to be completed in 2008 is training and public meeting.
Bertrand WID Management Options and Strategies Discussion Paper							$4,177	Whatcom County			▪ Task Order #3 for Bertrand WID Management Options & Strategies managed by PUD No. 1.
Bertrand WID Recommended Flows & Management Options and Strategies							$20,160	Whatcom County	$14,824 (2008)	Whatcom County	▪ Task Order #7 for Bertrand WID Recommended Flows and Mgmt Options & Strategies is managed by PUD No. 1.
Bertrand WID Water Resource Mgmt Service Contract Development							$9,861	Whatcom County			▪ Task Order #7a for Bertrand WID Water Resource Mgmt Service Contract Development managed by PUD No. 1.
Lower Bertrand Levee Setback Habitat Project							$25,000	Whatcom County			▪ Project took place between 2006 and 2007.
Bertrand Creek Instream Flow Meeting Management and Facilitation							$7,237	Ecology			▪ Grant between Ecology and PUD No. 1 for February – June 2007.
Interaction and Coordination with WSU Groundwater Study									$6,284 (2008)	Whatcom County	▪ Task Order #4 for WSU Groundwater managed by PUD No. 1.
Re-allocation of unspent funds from Task Orders 1-7 for the Bertrand ISF Pilot Project.									$15,295 (2008)	Whatcom County	▪ Process for re-allocating funds by Task Order was in process November 2007.
WRIA 1/Bertrand Creek Water Management Implementation									$177,750 (2008) $410,450 (2009)	Ecology	▪ Pending grant with the Bertrand WID. ▪ Source for allocation is Washington State Legislative budget proviso.

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ATTACHMENT C
ISF Pilot Negotiation Process and WRIA 1 ISF Action Plan Comparison

ATTACHMENT C

Information from Table 1 of "Key Learning WRIA 1 ISF Pilot Dec2007", Dumas & Associates, Inc. distributed to WRIA 1 Planning Unit and Staff Team, December 18, 2007		***The text provided in this column is from the WRIA 1 Instream Flow Selection and Adoption Action Plan, Version 6c and corresponds to the ISF Action Plan, Text/Line Number reference in the first column to the left, which is taken from Table 1 of the "Key Learning WRIA 1 ISF PilotDec2007" document.***	***Information presented in this column prepared for WRIA 1 Staff Team for purposes of coordinating the evaluation of ISF Pilot Projects as identified in the June 2007 approved WRIA 1 Detailed Implementation Plan.***
ISF ACTION PLAN Text/ Line Number	Process Modifications and Additional ISF Action Plan Details - *as developed through Jan2005–Dec2007implementation of the Bertrand and Middle Fork Instream Flow Pilots*	ISF Action Plan Text/Line Number	
Ecological Flows Definition 197–202	Nov2005 ISF Pilots technical work groups agree to work with Utah State University's (USU) IFIM numbers as preliminary fisheries baseflow figures, which will be considered as one component of the ecological flow regime. Mar2006 WRIA 1 Instream Flow/Fish Habitat Technical Teams provide consensus statement re USU fisheries baseflow work products. Additional USU products will inform the riparian, channel and water quality maintenance flows. Valley maintenance flows will not be quantified in USU work products. Mar2006 Bertrand ISF Work Group agrees to integrate the use of a water budget to address the practicality of flows (valley, riparian, channel maintenance, fisheries baseflow, and water quality maintenance flows). Out of stream use will be integrated into the annual water budget, which will reflect a range of wet to dry years, be distributed over the water year, and reflect the natural variability throughout the year. Fall2006–Fall2007 A draft water budget scope of work and potential funding is under discussion in the confidential settlement negotiation sessions	*Line 197-202:* "*Ecological flow regimes* for each stream will be developed using best available science. Ecological flow regimes are made up of five functional flow components: valley maintenance, riparian maintenance, channel maintenance, fisheries baseflow, and water quality maintenance flow. The ecological flow regime is the technical product of the work currently being conducted by Utah State University (USU) and the WRIA 1 technical teams."	Observations/Recommendations: 1. It appears from the information provided that the water budget information from phase 1 of the USU technical work was not at a sufficient level of detail necessary for the Bertrand ISF negotiations. This suggests that there is a level of technical information that is needed to proceed with negotiations that is not or will not be available using the USU work products. Consideration should be given to identifying the necessary information and funding sources to obtain that additional technical information as part of the process for initiating negotiations in the next geographic area.
Target Flows Definition 204–210	Nov2006 Bertrand ISF Work Group recommends a structure for the target flow proposals. Target flows proposals will address each of the following elements: - Flow value – establish values, timing, and triggers for active management, - Habitat model results – use USU work products on species and lifestages, - Opportunities for WID flow augmentation – WID developed initial proposal outlining feasible management options (see WID PIE Program materials distributed throughout 2006-2007), and - Habitat improvements – WRIA 1 ISF/FH Tech Teams and Co-Managers will identify priority habitat improvements within the Bertrand system. WDFW staff has prepared an initial overview of projects.	*Line 204-210:* *Target flows* are achievable and include consideration of instream and out of stream needs. Target flows will be developed locally by the Intergovernmental Instream Flow Working Group (IIFWG –see section "Participant Description and Summary of Roles") for *each* of the ecological flow components. Target flows will be the recommended goals that will come out of local negotiations and are the flows the community agrees to try to achieve. It is noted that the target flow may or may not be the same as the recommended regulatory flow regime.	Observations/Recommendations: 1. The information provided in the December 18, 2007 document does not appear to suggest a modification to the definition. 2. Text describing the steps for structuring target flow proposals based on the negotiated settlement framework that was used for the pilots should be drafted and considered as part of any revisions to the ISF Action Plan.
Regulatory Flows Definition 212–221	Mar2006 Ecology began work with Bertrand WID and ISF Pilot MOA participating parties to explore tools and approaches that will allow the WID to manage water resources through contracted agreements with WID members. Review and refinement of these draft concepts is under discussion in the confidential negotiations.	*Line 212-221:* *Regulatory flows* will be developed locally by the Intergovernmental Instream Flow Working Group (IIFWG – see section "Participant Description and Summary of Roles") for *each* of the ecological flow components. WRIA 1 approved regulatory flows based on an agreed-to management	The line reference for the Ecological Flow Definition reads as follows: Observations/Recommendations: 1. No comments; process information provided does not affect the definition for Regulatory Flow.

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ISF ACTION PLAN Text/ Line Number	Process Modifications and Additional ISF Action Plan Details - *as developed through Jan2005–Dec2007implementation of the Bertrand and Middle Fork Instream Flow Pilots*	ISF Action Plan Text/Line Number	
		strategy will be the recommended regulatory flow regime. The recommended regulatory flows will be submitted to: (a) Ecology for the use in the state rulemaking process to revise the current *state regulatory instream flows* for WRIA 1 Chapter 173-501WAC, and (b) the Federal/Tribal/State settlement process and may be used by a judge and/or legislative body for consideration and adoption through a consent decree and/or Federal and State legislation. The result of these two adoption processes will establish the final regulatory flows.	
"Concentric Circle" Approach depicted in Figure 3. 302–307	March2005 ISF Pilot MOA signatories adopt the confidential, mediated negotiation settlement approach recommended by Prof. Robert Anderson. The framework outlines the substantive negotiations and technical information development necessary to reach the end of the process with the agreements outlined in the Pilot Scope Draft 2/24/2005 and WRIA 1 Instream Flow Action Plan, Version6c. The stages of the Confidential Settlement Negotiation Framework are: - Private meetings with the MOA signatories and legal mediator to identify issues and interests. - With permission, legal mediator discussion of issues in small meetings of MOA signatories. - Presentation of the legal mediator's summary of issues to the MOA signatories and technical group. A consensus list of issues and technical work necessary to support negotiations will be developed. - Once agreed upon, the issues summary will be presented to the WRIA 1 Planning Unit for feedback. - Individual WRIA 1 Planning Unit caucus meetings as necessary. - Information from these sessions will be presented to the MOA signatories and technical group participants to confirm issues before going out to the broader public. This iterative process will continue throughout the development of the flow recommendations and integration of affected parties comments until the final recommendations are agreed upon by the MOA signatories.	*The line reference of 302-307 for the "Concentric Circle" approach is expanded here to include lines 297-301, which provides additional information on development of the Concentric Circle. Figure 3 and the Figure included as Appendix D in the Key Learning WRIA 1 ISFPilotDec2007 document distributed to PU and ST/TTL by Dumas and Associates, Inc. is included as Attachment A to this document.* Lines 297-307 The working group agrees that all affected parties need to be given ample opportunity to express their views and must have opportunities to be represented in the processes to select, achieve, adopt, and recommend instream flows. Further they must understand how flows will be enforced. To accomplish this overall goal, the "concentric circle" approach described by Michael Mirande and included in the *Instream Flow Selection Methodology Symposium Proceedings* (WRIA 1, May 2002) will be applied – particularly to the *selection* of target and regulatory flows for recommendation. The "concentric circle" approach is designed to give everyone that needs to be involved an opportunity to participate, as depicted in Figure 3. This decision making approach works with each interested and affected party in succession. Discussions may repeat or iterate back through the succession as changes are made or new information is obtained. There will be	Lines 297-307 of the ISF Action Plan reads as follows: " Observations/Recommendations: 1. Based on information provided, ISF Pilot MOA signatories have adopted the legal mediator's recommended approach for the confidential settlement negotiation framework. To reflect this framework, Figure 3 of the ISF Action Plan was updated. 2. Consideration should be given to updating the language and diagram in the ISF Action Plan relative to the negotiated settlement framework and the connection to the new diagram that further clarifies involvement of affected parties.

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Information from Table 1 of "Key Learning WRIA 1 ISF Pilot Dec2007", Dumas & Associates, Inc. distributed to WRIA 1 Planning Unit and Staff Team, December 18, 2007		***The text provided in this column is from the WRIA 1 Instream Flow Selection and Adoption Action Plan, Version 6c and corresponds to the ISF Action Plan, Text/Line Number reference in the first column to the left, which is taken from Table 1 of the "Key Learning WRIA 1 ISF PilotDec2007" document.***	***Information presented in this column prepared for WRIA 1 Staff Team for purposes of coordinating the evaluation of ISF Pilot Projects as identified in the June 2007 approved WRIA 1 Detailed Implementation Plan.***
ISF ACTION PLAN Text/ Line Number	Process Modifications and Additional ISF Action Plan Details - *as developed through Jan2005–Dec2007implementation of the Bertrand and Middle Fork Instream Flow Pilots*	ISF Action Plan Text/Line Number	
	Jul2005 Planning Unit provided an update on WRIA 1 Instream Flow Pilots, including Negotiation Framework (defined above) and updated Figure 3. Diagram of the WRIA 1 Instream Flow Pilot Negotiation Participants (see Appendix E). Negotiation Framework iterations: - A first iteration of the Negotiation Framework was conducted Jul2005 re Mediators Terms Sheet. - A second iteration of the Negotiation Framework is currently underway for the Bertrand ISF Pilot. ISF Pilot MOA participating parties are in *Stage 2. confidential sessions for review of the initial target flow proposals.*	significant effort put into information sharing and involvement of affected parties.	
"There will be significant effort put into information sharing and involvement of affected parties" 309–311	Information distribution is directed by Prof. Robert Anderson in context with the confidential settlement negotiation framework outlined above. Administrative Leads for each ISF Pilot are responsible for outreach and engagement of the affected parties within the ISF Pilot's boundary area. Outreach to potential affected parties will take place when potential scenario-based information on technical data and management scenarios agreeable to all MOA signatories is available (see Appendix C for summary of Bertrand ISF Pilot information and engagement activities to date). Three grant applications were submitted to secure additional funding for the Bertrand WID's ISF Pilot PIE Program; all were declined (Sand County Foundation, Fish & Wildlife Foundation, Laura Jane Mussser Foundation).	*Complete line reference that includes the text in the far left column is 307-311* There will be significant effort put into information sharing and involvement of affected parties. For example, the Intergovernmental Instream Flow Working Group (IIFWG defined below) will develop a set of initial ecological flows for a particular drainage or logical aggregation of drainages. Then the IIFWG will organize a series of workshops with the affected parties in each drainage or logical aggregation of drainages to discuss flow recommendations.	Observations/Recommendations: 1. As part of the ISF Pilot negotiation process and in context with the confidential settlement negotiation framework outlined in the *Key Learning WRIA 1 ISF Pilot Dec2007* status report, the distribution of information and outreach activities have assumed a structured approach for informing and/or engaging affected parties. This differs from the approach envisioned in the ISF Action Plan, Version 6c, which suggests frequent communication and involvement of affected parties throughout the process for selecting and recommending flows. As part of the ISF Pilot Project process and in the context of the negotiation framework, Figure 3 in the ISF Action Plan was updated to reflect the structured approach for communicating with and engaging affected parties based on level of participation in the negotiation process. The ISF Action Plan should include updated language describing the structured approach for involving and engaging affected parties. 2. The December 2006, Bertrand ISF Pilot Project Public Involvement and Education Plan (PIE) was developed consistent with the structure agreed to under the negotiation framework. Activities to date have primarily targeted Bertrand WID Commissioners and Bertrand WID Members. Non-WID

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Information from Table 1 of "Key Learning WRIA 1 ISF Pilot Dec2007", Dumas & Associates, Inc. distributed to WRIA 1 Planning Unit and Staff Team, December 18, 2007		***The text provided in this column is from the WRIA 1 Instream Flow Selection and Adoption Action Plan, Version 6c and corresponds to the ISF Action Plan, Text/Line Number reference in the first column to the left, which is taken from Table 1 of the "Key Learning WRIA 1 ISF PilotDec2007" document.***	***Information presented in this column prepared for WRIA 1 Staff Team for purposes of coordinating the evaluation of ISF Pilot Projects as identified in the June 2007 approved WRIA 1 Detailed Implementation Plan.***
ISF ACTION PLAN Text/ Line Number	Process Modifications and Additional ISF Action Plan Details - *as developed through Jan2005–Dec2007implementation of the Bertrand and Middle Fork Instream Flow Pilots*	ISF Action Plan Text/Line Number	
			Bertrand residents have benefited from PIE efforts that include an Annual Bertrand Open House and State of the Watershed report mailings. The Planning Unit met in July 2005 to receive information on Bertrand and MF confidentiality agreements and MOAs. Written correspondence addressing Planning Unit members' questions regarding their ability to update caucus members under the confidentiality agreement structure was distributed November 2005. The November 2005 correspondence also provided information on efforts to contact federal representatives regarding federal involvement in the ISF pilots. The Middle Fork ISF Pilot project administrative lead organized stakeholder focus group meetings early in the process.
Figure 2. General sequencing and Overlap of Four Subprocesses for ISF Action Plan 314			
- Location	Mar2005 Decision on location of Bertrand and Middle Fork ISF Pilots approved by WRIA 1 Planning Unit	*ISF Action Plan reference point for this item is Figure 2 (lines 314-316).*	
- Develop Initial Target Flows	Spring2005 Middle Fork ISF Pilot conducted focus groups to learn more about the timing and information needs of affected parties in the drainage. Fall2006–Dec2007 Bertrand WID conducted 6 public involvement and education activities with affected parties in the Bertrand, including small meetings with landowners to learn more about their interests and needs. Mar2007–Dec2007 Bertrand and Middle Fork ISF Pilot MOA participating parties engage in confidential negotiations session to develop and review draft target flow proposals. Broader review of these proposals will be conducted as outlined in the Negotiation Framework, ISF Action Plan, and Bertrand and Middle Fork ISF Pilots PIE Plans.	*ISF Action Plan reference point for this item is Figure 2 (lines 314-316).*	The ISF Action Plan (Lines 308-313) clarifies by example the approach envisioned for developing initial target flows (i.e., IISFWG develop initial ecological flows, organize workshops with affected parties to discuss flow recommendations, and IIISFWG and affected parties work together to determine to meet flows, identify problems and solutions, and determine appropriate management strategy.). Observations/Recommendations: 1. Specific timing of the IISFWG completing and then presenting the pilot drainage initial ecological flow to affected parties is not clearly identified in Table 1 "*Key Learning WRIA 1 ISF Pilot Dec 2007*". Therefore, it is unclear the extent to which the sequencing anticipated in the ISF Action Plan occurred during the ISF pilot projects. Information provided in Table 1 under "Ecological Flow Definition" and under "Develop Initial

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			Target Flows" suggests that the process for developing and presented the technical information occurred during a time frame of November 2005 to March 2007 when discussions were initiated on draft target flow proposals.
- Request for Federal Involvement	Dec2005 WRIA 1 ISF Pilot MOA signatories sent correspondence to the United States Department of the Interior to request appointment of a Federal Team to assist in instream flow negotiation process currently underway in the Pilots. Mar2006 Response letter from Dept of Interior indicated the agency is processing the request. Nov2006 WWU Border Policy Research Institute began work on transboundary issues in the Bertrand; products include: "Overview of Canadian Water Law and of Cross-border Water Resource Management Report" and compilation of Canadian technical, policy and landowner counterparts for further cross-border cooperation on water resource management in the Bertrand Watershed.	*ISF Action Plan reference point for this item is Figure 2 (line 314).*	Observations/Recommendations: 1. The DOI suggested involvement of a Federal Water Rights Negotiation Team is premature (date of letter, July 2006) but that they had appointed a representative of the Federal Team to monitor discussions starting in October 2006, who will make recommendations in the future to the DOI on the appropriate role for the Department.
Initial Flow Selection Representation 318	Figure 3. re Step 2 Initial Flow Section Representation & Step 3 Seek Agreement on Flow Recommendation Diagram was updated to integrate the Negotiation Framework adopted by ISF Pilot MOA signatories (see Appendix E).	*ISF Action Plan reference point for this item is Figure 3 (line 318).*	Observations/recommendations previously noted under Concentric Circle reference.
Intergovernmental Working Group 339	Diagram 1: Bertrand Creek and Middle Fork Nooksack Pilot Negotiations Technical Work Development updated to integrate the Negotiation Framework adopted by Pilot MOA signatories (see Appendix B). A current list of ISF Pilot MOA participating parties engaged in the Bertrand and Middle Fork ISF Pilots is available from the ISF Pilot Administrative Leads (Tom Anderson-Bertrand, Clare Fogelsong-Middle Fork). Washington Department of Fish & Wildlife has been an active participant at technical and policy discussions from 25Apr2005-Dec2007.	*Line reference 339 does not appear to be the correct reference to the ISF Action Plan. Line 339 is still the Concentric Circle diagram and the text that follows the diagram does not appear to coincide with the content in the left hand column.*	Observations/Recommendations: 1. Diagram 1, which is provided in "*Key Learning WRIA 1 ISF Pilot Dec 2007*" represents an updated Figure 4. Summary of Target and Regulatory Flow Selection Process from the ISF Action Plan. The updated diagram incorporates the negotiation framework and identifies a loop to the WRIA 1 Technical Teams. 2. Other than the WRIA 1 ISF/FH Team, the WRIA 1 Technical Teams as structured under the WRIA 1 Watershed Management Plan have not been involved in the technical work for the ISF pilot projects. Additionally, it is unclear how under

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			the negotiated framework structure the WRIA 1 Technical Teams could participate since Technical Team membership extends beyond the MOA signatories unless all members signed confidentiality agreements. Information provided in ISF pilot updates reports that the ISF Pilot MOA technical staff are providing the support for the foundation development. Using the IISFWG in the foundation development is consistent with the ISF Action Plan, Version 6c. Recommend deleting the reference to the WRIA 1 Technical Teams in the updated Diagram 1 unless a decision is made to re-activate the Technical Teams and support their function/process, and the challenge of members that are not signatories to the confidentiality agreements is addressed.
Planning Unit 352	Two WRIA 1 Planning Unit caucuses have signed confidentiality agreements to participate in the drainage-level confidential negotiation sessions (Small Cities and Non-municipal Water Systems Caucus).	*Line 352* When all of the drainages have recommended target and regulatory flow regimes, those recommendations will be evaluated by the IIFWG for any conflicts and inconsistencies and a set of WRIA-wide recommended target and regulatory flows will be presented to the Joint Board and Planning Unit.	
Affected Parties 389	Administrative Leads for each pilot are responsible for engagement of affected parties within their respective Pilot boundary area. The Affected Parties (target audiences) outlined in the Bertrand WID's ISF Pilot PIE Plan are: - Bertrand Watershed Improvement District Commissioners - Bertrand Watershed Improvement District members (landowners of parcels 2.5 and greater in the Bertrand District boundary area) - Bertrand Pilot Negotiation Staff (Technical/Policy/Legal) - Bertrand landowners of parcels under 2.5 acres with existing water rights - Bertrand landowners of parcels under 2.5 acres relying on public water systems - Bertrand residents who rent their homes	*Line 389* Affected Parties - In each drainage, affected parties are the property owners, water right document holders (certificate, permit, application, claim), and the Planning Unit Caucuses. Affected parties are encouraged to participate in the preparation of the flow recommendations and identification of strategies for achievement. They can also participate in information sharing workshops on, this Plan, water laws, and management options and participate in Ecology's formal state regulatory flow rule making process, adjudicatory court action, and/or legislation.	

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	- WRIA 1 Planning Unit and member caucuses - Whatcom County elected officials See Appendix B for details on the Bertrand WID ISF PIE Program outreach and engagement activities to date.		
Other Parties 377	WA Dept. of Ecology, under the state's WRIA 1 Watershed Management Project caucus structure agreement, is serving as the state representative in the ISF Pilot negotiations and technical work development. Ecology is responsible to update and bring feedback from other state agencies with an interest in the instream flows (e.g., Department of Agriculture and Community Development) to the ISF Pilots negotiation sessions.	*Line 377* The IIFWG will propose WRIA 1-wide instream flow goals (to be approved by the Joint Board and Planning Unit), develop initial flow recommendations, recommend flows to the Joint Board and Planning Unit for approval, and participate in the Federal/Tribal/State settlement process.	
Tribes 381	Initial outreach and engagement of any other tribes with usual and accustomed areas within the ISF Pilot boundaries will be the responsibility of Prof. Robert Anderson, in coordination with Ecology.	*Line 381* See above text, which covers Lines 377-380. The ISF Action Plan, V6c copy used for this review does not align with the line reference (i.e., Line 381 is paragraph spacing)	
Step 1 Foundation Development 436–440	Dec2005–Dec2007 The Bertrand Pilot and Middle Fork Nooksack ISF Pilots are the only ISF Action Plan implementation efforts underway at this time. Bertrand ISF Pilot: Foundation work is being developed by Bertrand ISF Pilot MOA participating technical staff. The Bertrand WID provided a draft flow augmentation proposal for discussion purposes in Spring2007. Proposal reviews is currently under discussion in confidential settlement negotiation sessions (see Section 1, 2 of this report for more details on foundation development work status). Middle Fork ISF Pilot: The City of Bellingham, Administrative Lead, is developing a draft target flow proposal for consideration in the negotiation sessions. Once this is completed, the Middle Fork Pilot will be reactivated.	*Lines 436-440* Step 1 Foundation Development: The IIFWG will recommend to the Joint Board and Planning Unit for approval where geographically to start and how big of drainage units (one drainage or several aggregated drainages) to include in this ISF Action Plan process. This process will ultimately be completed throughout WRIA 1. Multiple teams may be established to work in different areas of WRIA 1 depending on available funding.	
Technical Information	Jul–Nov2006 Bertrand WID prepared and distributed a "State of the Bertrand Watershed Report 2006" outlining key issues in the Bertrand Watershed, current watershed	*Lines 443-451 (line reference extended to include bullets)* The IIFWG will propose WRIA-wide instream flow goals (to	Observations/Recommendations: 1. The "Opportunities for Bertrand WID Flow Improvements"

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Workshops 443–477	management activities being conducted in and around Bertrand Creek to 923 households and individuals per the Bertrand PIE Plan target audiences. Nov2006 State of the Watershed Open House hosted by Bertrand WID held at Berthusen Park. Oct07 Bertrand WID Open House presented information on Ecology's water claims assessment currently underway in the Bertrand Watershed, updates on the ISF Pilot Negotiations, and transboundary issues.	be approved by the Joint board and Planning Unit). Then the IIFWG will compile technical information for the first drainage unit and conduct workshops for affected parties in the drainage unit to ensure that all of the affected parties within the drainage unit are identified and informed about the issues listed below. It is anticipated that this will involve the following affected parties: ▪ Water right document holders (certificate, permit, application, claim) ▪ Water users ▪ Property owners ▪ Planning Unit Caucuses	paper that, according to the ISF pilot project update, was prepared for the Spring 2007 Bertrand WID Member Forum is informative, concise and readable. The content of the State of the Watershed Report that was distributed in November 2006 to all watershed residents focuses more on historic and current land uses with general information on water management issues and solutions. 2. A recommendation is to use opportunities such as the Bertrand State of the Watershed Report to inform watershed residents of the ISF process, the ISF Action Plan, and the underlying topics as listed under the Foundation Development section of the Action Plan (lines 452-477).
Technical Analysis -information for discussion at the drainage level 479	Bertrand WID technical staff assists the WID Board in development and review of Foundation Development materials including: existing data (Canadian and US), USU draft work products, flow augmentation technical design, feasibility assessment, and public information and educational materials. The ISF Action Plan outlines a process for joint data development and joint technical proposal development with staff from all participating agencies and organizations working cooperatively (lines 369–380) to produce technical flow proposals. Due to changes in ISF Pilot funding, coupled with the confidential settlement negotiation framework, this was shifted to a model of independent data analysis and proposal development, which continues at this time.	*Lines 479-481* This effort is focused on ensuring that the information needed to make knowledge-based decisions is available to all parties for consideration in the flow selection process. The information from the technical analysis will provide the foundation for discussions at the drainage level.	Observations/Recommendations: 1. The status reports for the ISF Pilot Projects do not identify members or representatives of the technical staff involved in developing and reviewing the Foundation Development materials. Identifying the membership may increase community "buy-in" to the process for recommending instream flows. 2. The update refers to changes in ISF Pilot funding as one of the factors resulting in a shift to a model of independent data analysis and proposal development. Further clarifying and/or identifying the funding changes that occurred will help inform funding needs and approaches for other drainages.

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"A level of clarity is needed regarding existing water rights and claims" 487	Ecology's Bellingham Field Office initiated a water claims clarification process in WRIA 1, with early efforts focused in the Bertrand and Middle Fork drainages. Letters were sent to claim holders in both the Middle Fork Nooksack and Bertrand drainages Fall2007. Oct2007 Bertrand WID Open House provided claimants, landowners and residents in the Bertrand Creek area information on the claims assessment underway and the opportunity to sign up for landowner interviews with Ecology staff.	*Lines 471-490 (full reference)* As the discussion in the drainage unit expands it will include current and future out of stream water needs. This gets tied to a discussion of existing rights and claims. A level of clarity and certainty regarding existing water rights and claims is needed. The required level of clarity and certainty regarding who has what water rights does not currently exist in many drainage units.	
Federal Reserve Water Claims 504–519	Tribes have expressed a desire for the ISF Pilots to address the matter of federal reserve water right claims. This has increased the complexity of issues discussed in confidential settlement negotiation sessions with small groups of MOA participating parties.	*Lines 504-519* Federal reserved water claims including Tribal water claims have a significant impact on local water management. If a senior federal or tribal water right is left unresolved, or is not quantified, the result is uncertainty about the future availability of water for every other water use. Therefore, it is very important that the WRIA 1 process leads to a resolution of these questions. The local tribes in Whatcom County have stated a desire to quantify their claims. The local tribes have various claims with the Federal government including claims for water rights. The Federal government has a defined process for settling tribal claims. The local tribes preferred method is a Federal/Tribal/State settlement process as outlined in Appendix II. The local tribes and the State have agreed that within a Federal/Tribal/State settlement process they would accept or reject the flow recommendation from this process and if they are rejected refer them back to this process for further work (pending policy and legal review). The ISF Action Plan is intended to support the local portion of this settlement process by providing flow recommendations. The IIFWG will, as part of the discussions in the drainage unit, hold discussions about the pros and cons of a	Observations/Recommendations: 1. Lines 504-519 discuss federal reserve water right claims. Lines 515-519 state that the ISF Action Plan is intended to support the local portion of the Federal/Tribal/State settlement process by providing flow recommendations. The ISF Action Plan reads that as part of the discussions in the drainage unit, the IIFWG would hold discussions about the pros and cons of a Federal/Tribal/State settlement process, and the IIFWG would solicit public input to determine the level of support for recommending this approach. Recommendations would then be forwarded to the Joint Board and Planning Unit for action. It is not known based on information available, whether this discussion has occurred yet in the pilot drainages.

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		Federal/Tribal/State settlement process. The IIFWG will solicit public input to determine the level of support for recommending this approach and recommendations will be forwarded to the Joint Board and Planning Unit for action.	
Legislative Change 520	Per the ISF Pilot Procedural Agreement, individual MOS signatories will: "Not initiate any special action that would undermine the negotiation process, including publicly advocate for or be the direct proponent of a public measure that would be contrary to the negotiation." Jan2007 Bertrand WID requested additional state funding to support WID analysis of flow augmentation options in Bertrand. This funding was subsequently approved by the state and a final budget was developed with the Bertrand ISF Pilot MOA participating parties. The necessary grant paperwork is being finalized by Ecology and the Bertrand WID.	*Lines 521-524 (full reference)* A further effort envisioned by this ISF Action Plan, that may require legislative change, is to create a way for immediate improvements to flows and habitat to occur and for currently unpermitted water users to participate in a meaningful way in the goals of this Action Plan and ultimate regulatory processes.	
Step 2 Initial Flow Recommendation Development 526	The ISF Action Plan outlines a process for joint data development and joint technical proposal development with staff from all participating agencies and organizations working cooperatively (lines 369–380) to produce technical flow proposals. Due to changes in ISF Pilot funding, coupled with the confidential settlement negotiation framework, this was shifted to a model of independent data analysis and proposal development, which continues at this time. May2007 ISF Pilot MOA participating parties began the first iteration of target flow proposal review and discussions within the Negotiation Framework. Prof. Robert Anderson is meeting with small groups of ISF Pilot MOA signatories.	*Lines 526-532* Step 2 Initial Flow Recommendation **Development: The** IIFWG will develop the initial flow recommendations for the drainage unit. This development step is to identify flow levels that state, federal, tribal, and local government representatives will accept. Physically and financially practicable strategies to achieve flows will be identified. This is to ensure that the recommended flows are achievable within the context of the selection criteria identified previously. Several approaches may be used by the IIFWG to arrive at the recommended flows, and the recommended flows will be evaluated in terms of the criteria described previously.	See observations/recommendations listed previously for the update provided in Table 1 "Key Learning WRIA 1 ISF Pilot Dec 2007" for Technical Analysis -information for discussion at the drainage level 479
USU Technical Studies 534	Mar2006 USU draft deliverables for the preliminary fisheries baseflow in the Bertrand and Middle Fork ISF Pilot areas provided to ISF Pilot Work Groups, along with the WRIA 1 ISF/FH Tech Teams consensus statement re USU fisheries baseflow work products.	Lines 534-565 is the full text outlining steps for developing initial flow recommendations. a. Utah State University's technical studies will be used to identify the instream flow requirements of an ecological	Observations/Recommendations: 1. The process outlined in the ISF Action Plan includes the IISFWG developing initial flow recommendations that incorporate a

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Estimate of current and future water uses in drainages 540	Current and future water use estimates will be included in the draft flow proposal development. Individual organizations will outline the data used to establish the estimates as part of the proposal documentation. Whatcom County and Ecology are exploring technical approaches for estimating future use estimates for exempt wells.	flow regime for the drainage unit. The Utah State University's modeling effort will provide hydrographs for historic, current, and future scenarios under wet, average, and dry conditions. Those studies will also define a quantitative relationship between instream flow and fish habitat quantity and quality for the drainage unit. b. An estimate of current and future uses in the drainage unit will be prepared along with an analysis of existing water right claims, permits, certificates, and applications. This will include uses of water from wells exempt from permitting under RCW 90.44.050. c. The surface water model predictions of a historic conditions instream flow hydrograph for each drainage unit will be developed for wet, average, and dry years to evaluate water availability during each of these weather conditions. An analysis will be conducted to compare this "natural" water availability to the estimated current and future needs as well as the existing claims permits and certificates. This analysis will determine the magnitude, duration, timing, and frequency of events where water is available for instream and out-of-stream uses. This analysis may include evaluating sequential wet and/or dry years. Also modeling of historic flows will provide information on human impact to flows. Land use changes by humans can have significant effects on the timing and size of flow events. Understanding how changes have affected flows and habitat availability will provide direction on how to achieve desired outcomes. d. The results of the WRIA 1 ground water quantity modeling effort will be used to assist in the assessment of the impact of ground water use upon stream flow and habitat, and has the potential to be used to evaluate augmentation of streamflow and habitat, and evaluate other ground to surface water and habitat options that might be	number of technical elements. Once the initial flow recommendations were developed and consensus reached among the IIFWG, the process would move to the next step, which is presenting the recommendation, methodology, and justification to the affected parties for feedback and discussion at a workshop in the drainage. 2. Under the framework for the negotiated settlements, the technical framework for establishing the initial target flows is occurring as part of the confidential negotiation sessions.
Hydrograph of instream flows 544	The Bertrand ISF Work Group is currently focused on this area of technical review and discussion as part of the confidential negotiation sessions.		

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		useful in development of instream flow recommendations. e. When the IIFWG reaches consensus on proposed flows and practicable management strategies, then initial flows for recommendation have been identified for a drainage unit and the process can move to step 3.	
Groundwater quantity modeling 556	Whatcom County contracted with Washington State University to conduct groundwater studies for the Bertrand ISF Pilot area; work products are due Dec2007. These will be reviewed by the Bertrand ISF Pilot Work Group.		Observations/Recommendations: 1. Unless there are multiple contracts between WSU and Whatcom County, information provided by the County contract administrator is that the work products will be available to the public. The information available in the update suggests a review process through the ISF Pilot Work Group, which is not a public process due to confidentiality agreements. Clarification on the review process may be needed to manage expectations of parties not part of the confidential settlement process.
Figure 4. Summary of Target and Regulatory Flow Selection Process 565	Figure 4. Summary of Target and Regulatory Flow Selection Process was updated to integrate the Confidential Settlement Negotiation Framework adopted by Pilot MOA signatories (see Appendix B)	*Line 567 refers to Figure 4* The IIFWG will use the process summarized in Figure 4 in both Step 2 and Step 3.	

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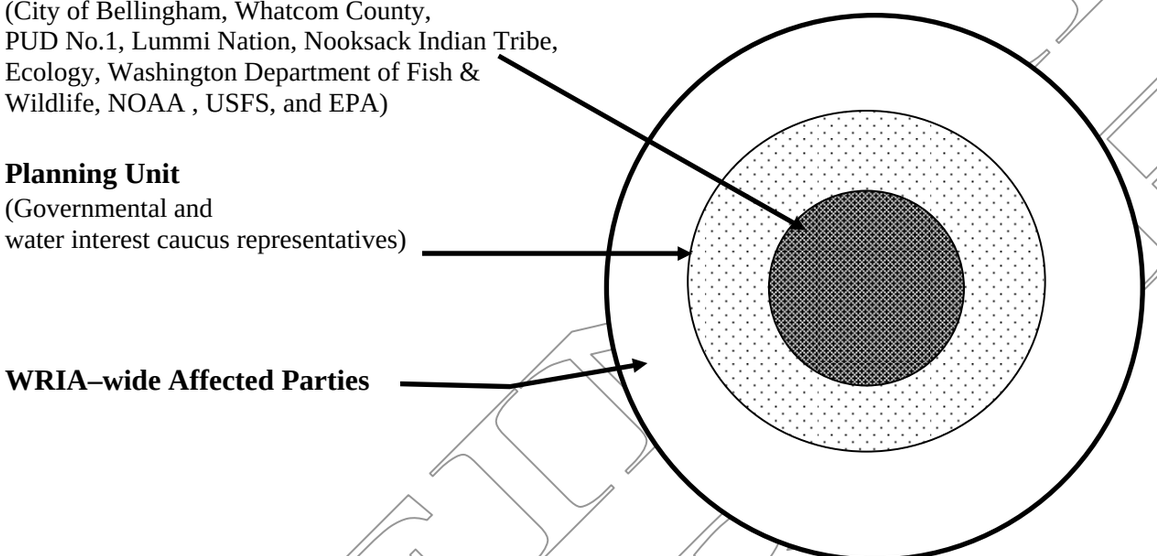
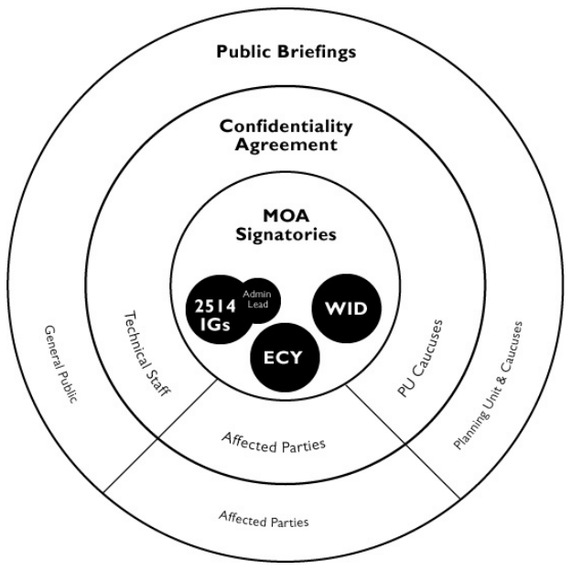
Figure 3. Step 2 Initial Flow Selection Representation & Step 3 Seek Agreement on Flow Recommendations Diagram (*Draft Instream Flow Action Plan Version 6c, 11-19-04*)



Appendix D. Updated *WRIA 1 Instream Flow Selection & Adoption Action Plan* Figure 3. (*Key Learning WRIA 1 ISF Pilot Dec2007", Dumas & Associates, Inc.)*



The affected parties for the pilot projects are listed in Appendix D of the Key Learning WRIA 1 ISFPilotDec2007 document distributed to the WRIA 1 Planning Unit. For the Middle Fork the referenced document notes that the affected parties are being identified by the Administrative Lead, which is the City of Bellingham. For the Bertrand ISF Pilot Project, the affected parties are listed as Bertrand WID Commissioners, Bertrand WID Members, Bertrand Pilot Negotiation Staff, Bertrand landowners of parcels under 2.5 ac with existing water rights, Bertrand landowners of parcels under 2.5 ac relying on public water systems, Bertrand residents who rent their homes, WRIA 1 Planning Unit member caucuses, and Whatcom County elected official

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