

Aaron Scrol: 2000 SfAA Environmental Anthropology Fellowship Presentation

In recent years the Lower Elwha Klallam Tribe has become increasingly concerned with the protection of its water resources, both within its reservation boundaries and within the broader boundaries of its traditional territory. Since 1990, the Lower Elwha Reservation has experienced a dramatic 400% increase in housing development, despite the short supply of land suitable for development. Over 40% of the Reservation is unsuitable for development due to chronic seasonal flooding. This, coupled with a rapidly growing population has placed enormous strain on local source water quality. When it comes to source water protection (SWP) the Tribe is caught between the competing interests and demands of tribal members and federal agencies that claim oversight of tribal lands and resources. The tribal government is under intense pressure to build reservation housing for its members, some of whom have been waiting up to 20 years for housing. The recent purchase of 250 acres of additional tribal lands should make it possible to accommodate most of these tribal members. The problem is that these recently acquired lands include a significant portion of the groundwater recharge zone for the existing community water system. The tribal government's navigation between the competing demands for public facilities and services highlights the fact that water quality management is not simply a technical matter of engineering and limiting development in ecologically sensitive areas. SWP efforts are really a result of a complex series of interactions between federal agencies like the EPA, local governments, and the communities that they represent.

In order to highlight the various points of connect and disconnect between the realities of tribal operations and EPA tribal SWP efforts; it is necessary to see how local decisions are shaped by community dynamics as well as the more global institutions to which they are linked. What I'd like to do today is first present a quick ethnographic assessment of the Lower Elwha Klallam tribal community and its responses to SWP. Then we can discuss the larger question of EPA Tribal SWP policy to show how this larger issue intersects with local socio-political institutions and cultural mores to provide a context for understanding SWP decision making.

To facilitate this approach, we've used an ecological model. This is type of model represents

an approach capable of conceptualizing multiple loci and levels of organization that influence regulatory behavior. The ecological model is well suited for an assessment of source water protection practices because it focuses attention on individual, bureaucratic and social environmental factors as targets for regulatory policy development. What the model provides is a framework for analyzing the dynamic inter-relationship between the individual, local political and social institutions, and agencies like the EPA that seek to regulate the actions of a large number of communities. In essence we will be looking at these nominally discrete levels of the problem with an eye for the important links between them that ultimately influence SWP activities.

To begin we will look at the Lower Elwha Community. The Lower Elwha Klallam Reservation comprises 609 acres located at the mouth of the Elwha River near Port Angeles Washington and on the bluffs 8 miles to the west. There is also 635 acres of Individual Allotment lands in the area. Tribal enrollment is currently 708 with an estimated 470 members living on reservation. The recent purchase of a 247-acre section of land contiguous with the southeast corner of the Reservation will eventually expand the reservation to approximately 849 acres.

The Tribe has two community water systems. The system serving the Lower Valley has wells in the Southeast corner of the Reservation and the smaller system serving the Heights development is located on the bluffs west of the valley. The Tribe has identified a number of possible threats to these CWS. The biggest the very shallow (static level 3'-18') nature of the unconfined aquifer serving the Lower Reservation. The shallow water table makes the groundwater supply particularly susceptible to surface water contamination. The problem is complicated by the increasing density of residential development on the Lower Reservation, because that development is dependent on on-site septic systems, which increases the danger of groundwater contamination. The Tribe purchased these new lands to the Southeast with the intent of developing them for tribal housing (100 new houses in 10 years). Any development in this area will impact existing tribal wells, especially in the absence of any enforceable land use regulations. The Tribe has completed a Well Head Protection Assessment for their community water systems, the WHP areas delineated during this process include all of the newly acquired lands. The Tribe has developed a *Groundwater Resource*

Protection Ordinance, but the ordinance has never been formally adopted by Council, and so continues to serve as a guide for environmental staff without imparting any real regulatory or enforcement power to them.

This lack of formal regulatory structure makes sense when viewed within the context of traditional Klallam resource management. Klallam culture is characterized by a dynamic, fluid, outward focus designed to manage resources over a large territory by vesting control and management in resource sharing kin networks, not in local political institutions. Conversely, local community resource management is characterized by very informal situational control. The political and social structure of a Klallam community like Elwha is not designed to promote exclusive management of local resources by a local political entity. Contemporary tribal members have resisted attempts by the tribal government to place restrictions on local land use to protect source water. These attempts are often viewed as illegitimate meddling in the lives of individuals and their families.

When we view the problems of development and SWP in this context we can see that the Tribe isn't willfully sacrificing the protection of its source water. When faced with this trade off between development and protection, many tribal members feel that tribal impacts on community resources don't carry the same connotation of disrespect and heavy handedness that is associated with attempts by non-Klallam agencies to regulate community development. Rather, tribal impacts tend to be viewed as an integral part of an important historical continuum that connects the contemporary Klallam with their ancestors, their culture and their land in a tangible and concrete manner. The changing demographics of the Elwha community, coupled with a strong sense of political and cultural empowerment associated with local growth, has led the community to resist a formalized Source Water Protection Plan in favor of continued autonomy and community development.

It's fairly easy to see the management implications that this has for the Tribal Government at Elwha. Cultural and demographic features of Klallam life have created certain salient and powerful limitations to the types of responses the tribal government can employ to threats to community source water. The government has till now been somewhat constrained in its responses to SWP

given the particular socio-cultural structure of the community it represents. However, the government and the community are rapidly realizing the need for more formalized management and policy as the community grows in size and density; and as its responsibilities for direct implementation of environmental programs grow in complexity and importance. In response, the Tribe has undertaken a number of steps to better facilitate more formalized and centralized management of community source water.

Until now the primary barriers to more centralized planning faced by the Tribal Government were one, a certain resistance to centralized planning at the community level, and two a lack of coordination between tribal programs. The Tribe has made some steps toward addressing these problems. These include the creation of the position of Community Development Director in order to bridge the gap between resource protection and development activities that have historically been dealt with as separate issues. Another response has been the institution of a coordinated planning board in an attempt to provide a forum to address reservation development activities across programs. Closely associated with this has been the passage of a Council resolution requiring a 15-day environmental review of all development projects funded by or in conjunction with the Tribe.

The Tribe has also considered several external-planning mechanisms to support the internal reorganization that they are undertaking. Tribal planners are very aware that short-term impacts as a result of community development could occur while the Tribe is focusing on long term planning strategies. In response to this concern, the Tribe has considered entering into cooperative arrangements with local and federal agencies in an attempt to lend external support to on-reservation management activities. One example would involve the Tribe entering into a regional water planning and purveying relationship with the nearby City of Port Angeles, whose municipal and industrial wells are within the Tribe's designated Well Head Protection Areas. This type of regional water management and purveying partnership would lend a good deal of technical support to tribal staff and would remove some of the onus for local SWP decisions from Tribal staff by giving the community some strong incentives to meet or exceed minimum SWP standards in exchange for a larger voice in regional water management. Together these strategies can provide the Tribe with a set of

powerful tools for guiding community growth and development in a manner consistent with community goals and social mores.

The EPA also employs a number of tools for protecting sources of community drinking water. These tools include assistance with the technical assessment portion of SWP planning, assistance with building tribal capacity to develop and implement SWP policy, and funding to support tribal environmental protection efforts. We have outlined a number of the dynamic factors that both frame and shape the ways in which the Lower Elwha Klallam Tribe has attempted to protect the sources of their community drinking water. What remains to be seen is how EPA SWP activities intersect with those of the Lower Elwha community.

The basic premise of the SWAP statute is that states will set the stage for protection by providing information to the public and to communities so local agencies can develop protection plans. EPA SWAP programs haven't placed a lot of emphasis on program implementation because local protection efforts will largely be driven by local planning that will require local ordinances and land use actions beyond the scope of state and federal jurisdiction. Because EPA focus is on state level assessments, the agency has never really developed a mechanism for influencing the type of land use or water policy that a community may or may not adopt as a result of assessment work. Consequently, many tribes find themselves in a situation similar to that at Elwha, having done all the technical assessment for policy development with little policy implementation. One possible means to address the lack of linkage between assessment and policy development activities would be to conduct a social and political assessment of a tribe's source water situation in conjunction with the more traditional technical assessment activities performed by EPA. These type of assessments can highlight the points of connect and disconnect between community life, tribal operations and EPA assistance that may surround the development and implementation of SWP policies.

The second tool EPA possesses for addressing tribal SWP is assistance to tribes to undertake capacity development. The capacity development provisions of the 1996 SDWA amendments offer a framework within which tribes and EPA can work together to ensure that water systems

acquire and maintain the technical, financial and managerial capacity to achieve public health standards. EPA Capacity building programs can and are important tools for focusing SWP efforts at the local level. Their main shortcoming has been that they are highly dependent on the vagaries of Agency funding mechanisms. EPA funding for tribal capacity development and environmental program operation is often tied to short term competitive grants. This creates a serious dilemma for tribal program managers. Many Tribal program managers have noted that it is difficult to keep a program running in Indian Country in the absence of long term base funding, because unless a Tribe has a significant land base, it can not generate tax revenue to support programs on a long term basis.

The EPA's answer to this problem has been the Tribal Environmental Agreement process or TEA. The TEA is a three-tier process designed to help tribes and EPA negotiate long term base funding and program delegation. I attended a recent Tribal Summit in Region X, and many tribal planners raised serious misgivings about the TEA process. Most of their comments revolved around the fact that the EPA has been unable to identify a statutory or regulatory mechanism for transferring long term base funding to tribal environmental programs. This has led some tribal planners to question the efficacy and purpose of the TEA process, and has also led to a good deal of confusion concerning the procedural requirements for completing each tier of the process.

EPA funding provides the lynch pin for all other EPA activities in Indian Country. Technical assessment and capacity building activities can and are useful tools for developing the informational and infrastructural baseline needed to address SWP in a coherent and effective manner. Addressing the current limitations of the TEA process could go a long way towards more closely linking these separate but equally important EPA activities by providing long term funding for program development and implementation.

In conclusion, the separate EPA SWP tools of technical assessment, capacity development and funding can provide tribes with a powerful set of tools for addressing community SWP goals. This tool set can help both the EPA and tribes explore alternative and creative responses to SWP that are currently beyond the scope of state SWAP activities. The challenges of working with small

tribal communities are great, but the ability to address SWP in a culturally appropriate manner and to develop SWP plans that have meaning and purpose and are effective within the socio-political context of a given community may well be the most significant outcome of the tribal SWAP process. I hope that this project has highlighted some of the issues surrounding that process.