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Learning from the Past: Governing Transboundary Nooksack River Flooding

By Dr. Regina Jefferies & Kit Hager¹

Background on the Nooksack River International Task Force (est. 1990)

The NRITF was established “to investigate possible solutions to this flooding problem and to co-ordinate the activities of all government agencies, in Canada and the US, involved in solving this problem,” and that work has primarily focused on “finding technical reasons for the flooding.” Initial membership was split between agencies in the US and Canada², and has fluctuated over time. The limited and technical scope of agencies involved – including the absence of impacted Indigenous Nations – is notable.

The NRITF has historically concentrated on 4 strategies:

- Improve emergency response.
- Improve floodplain management.
- Restore the early 1970s Nooksack River flow capacity.
- Develop a comprehensive flood damage reduction plan.

Since its inception, the NRITF has proposed various possible short- and long-term technical actions, completed technical studies, and made progress on numerous fronts. However, it has had limited success relative to its initial purpose.

INTRODUCTION

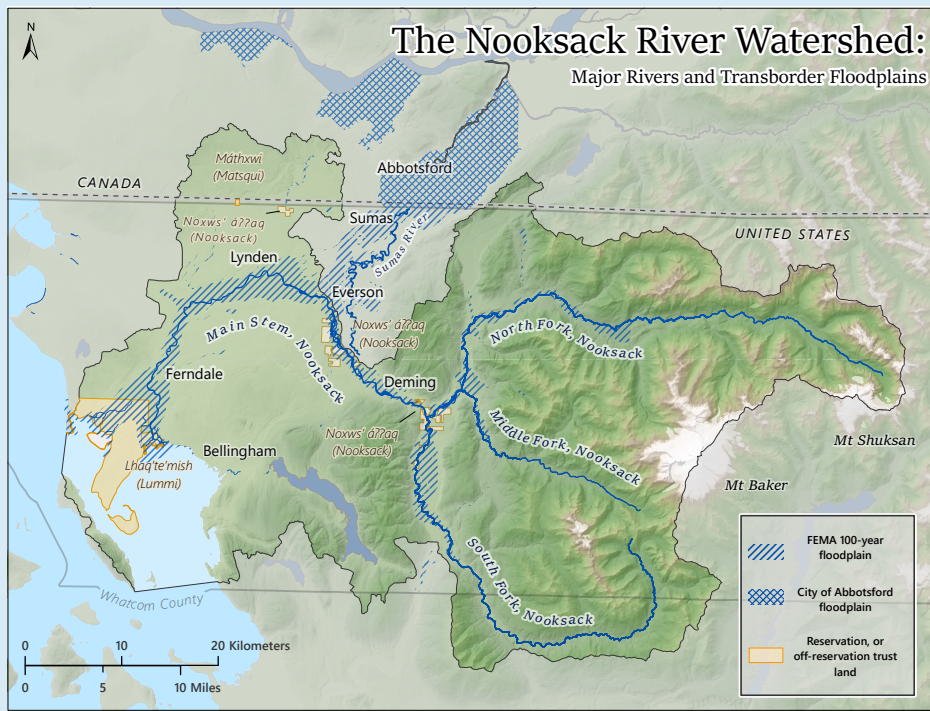
The severe flooding along the Nooksack River in November 2021 was the latest in a long history of floods in which the Nooksack’s waters flow north across the international boundary between the US and Canada. The flood prompted renewed calls for transboundary cooperation, culminating in a March 2022 announcement by former British Columbia Premier John Horgan and Washington Governor Jay Inslee of their intention to build “a sustained and ongoing transboundary initiative to address Nooksack River Flooding prevention and response.”³

Despite the tendency of flood events to facilitate dialogue about transboundary governance of the Nooksack River, prior (and continuing) initiatives still have not delivered appreciable results. The lack of meaningful change persists in part due to the lack of a strong transboundary governance mechanism which recognizes Nooksack River flooding as a complex, multi-faceted, social, cultural, political, and legal issue within the broader Salish Sea ecosystem. This Border Brief sets out to identify the current barriers to effective governance of the transboundary flooding issues of the Nooksack River, and to provide recommendations to improve cross-border collaboration in the future. It draws on a broader research collaboration with the Salish Sea Institute⁴ to identify potential barriers to effective cooperation and management, while highlighting ways in which the current initiative might consider lessons from prior efforts.⁵ *This report provides insights into how policymakers might more effectively move forward in this complex situation.*

NOOKSACK RIVER INTERNATIONAL TASK FORCE (NRITF)

The 2022 effort to establish sustained transboundary cooperation to address Nooksack River flooding is predicated by the Nooksack River International Task Force (NRITF). The NRITF was created after similarly catastrophic flooding in 1990, and in 1992 was incorporated into the BC-WA Environmental Cooperation Council (ECC) framework as part of an effort to provide “a long-term mechanism for integrated and coordinated action and information sharing on environmental matters of mutual concern.”⁶

In its May 1994 Status Report No. 2, the NRITF cited activities related to the Nooksack River that fell “outside the strategies and specific solutions,” recommended in the Preliminary Report but considered important to include in that later report.⁷ Those activities included the Nooksack Watershed Initiative, an “interdisciplinary effort to manage and protect the natural resources of the Nooksack Watershed,” through the coordinated efforts of state, federal, tribal, local governments and private stakeholders.⁸



Flooding has historically occurred along the Nooksack River, including at least nine times between 1909 and 1975. While total reported damages from the 1990 flood exceeded \$7 million, many damages, such as those impacting land and fisheries restoration, were unreported and may be impossible to quantify.⁹

Data credits: Dr. Aquila Flower, City of Bellingham GIS, National Hydrology Dataset (WA Department of Ecology), Whatcom County Natural Hazard Risk Assessment (WA Department of Ecology) National Flood Hazard Layer (Federal Emergency Management Agency), City of Abbotsford GIS.¹⁰

Map Authored 01/2023: Natalie Furness & Kailey Schillinger-Brokaw.

The NRITF's final Status Report No. 3, issued in June 1995, noted that the flooding is a "complex problem that has required the acquisition of scientific information," and that while the "data gathering phase" was 90% complete, the NRITF would continue to meet as they entered into "the solution (both structural and non-structural) identification and analysis phases."¹¹

Following the 1995 Status Report No. 3, the NRITF continued to meet and report its progress to the ECC, which by 2003 was still working to develop computer modeling of the Nooksack River to evaluate flood control options.¹² The work of the NRITF went largely dormant in 2010, then reappeared sporadically until it was formally reconvened on May 15, 2020, "to review its purpose and progress to date and the damage assessment and mitigation options work".¹³ The NRITF has continued to meet since 2020, in part to "introduce the Nooksack River Overflow Flood Mitigation plan and confirm desire for the International Task Force to continue its effort."¹⁴ While the ECC has also continually operated since its inception in 1992, public information regarding the work of the Council, including the ECC's Annual Reports to the Premier of BC and Governor of WA, is difficult to find and generally unavailable online.

BARRIERS TO EFFECTIVE, LONG-TERM TRANSBOUNDARY GOVERNANCE

While the NRITF recognizes the absence of simple solutions to governing transboundary flooding of the Nooksack River, transboundary efforts at tackling the complexity and intractability of the governance questions have proven inadequate.

Still, the existence of the NRITF and ECC frameworks

provide a precedent worth examining as officials seek to engage in renewed transboundary cooperation in the Salish Sea. This section highlights several barriers to effective, long-term transboundary governance:

- The narrow and event-driven focus of the NRITF does not adequately account for the multi-faceted social, cultural, political, and legal nature of the issue within the broader ecosystem. For example, the NRITF's early focus on dredging as a technical "solution" appears to have discounted not only the impact of such measures on the overall health of the ecosystem, but the legal nonstarter of dredging in light of US treaty obligations to sovereign Indigenous Nations, such as the Lummi Nation and Nooksack Tribe.
- The lack of institutional infrastructure and memory to sustain long-term, continuous coordination at multiple jurisdictional scales has resulted in a diffusion of information and loss of experience. Without a process to manage contacts and disseminate information publicly, the work completed and the knowledge developed sit scattered across various entities. The loss of participating staff and the reorganization of participating actors appears also to have contributed to ebbs and flows in the operation of the NRITF and ECC.
- The relationship of the NRITF to Indigenous Nations has not been undertaken in a manner reflective of their sovereign status, treaty rights, and relationship to the ecosystem. Although members of the NRITF have acknowledged that Indigenous Nations should be involved in all planning processes, it does not appear that they have always been accorded appropriate weight in decision-making and planning.
- The lack of clarity regarding the policy or legal

significance of NRITF recommendations and decisions has contributed to questions surrounding the value of participating in a time- and resource-intensive process that may not produce concrete results.

- The failure to properly resource long-term, continuous participation in a place-based, cooperative, collaborative, and holistic governance framework has similarly contributed to both the inconsistent operation of the NRITF and ECC, as well as to their limited effectiveness.¹⁵

Though the NRITF has made progress on some issues, such as improving floodplain management and emergency response, it has had limited success relative to its initial purpose. This is the case notwithstanding the NRITF's incorporation into the broader ECC framework.

MOVING FORWARD BY LEARNING FROM THE PAST

The transboundary governance of Nooksack River flooding remains a complex issue that requires a multi-faceted approach. This section draws several lessons from the experience of the NRITF and ECC as BC and Washington seek to embark on a new transboundary governance effort.

- A future transboundary governance framework must move beyond the narrow, technical, and event-driven approach of the past. The framework should not only recognize the multi-faceted, relational nature of the problem but should approach the issue holistically and from a place of shared values.

Without sustained, cooperative coordination of efforts at various scales, the diffuse range of technical, social, and legal projects with a bearing on transboundary Nooksack River flooding – as part of the larger bioregion – will continue to operate messily within competing legal frameworks, duplicate efforts, suffer from competing funding priorities, and competing time horizons. While the unfunded devolution of governance responsibilities to local actors adds significantly to the level of difficulty, there exist considerable opportunities for higher-level actors to contribute to a sustained, supportive, coordinated, and collaborative governance effort.

- A transboundary governance framework must involve meaningful collaboration with Indigenous Nations in the US and Canada in a manner reflective of their sovereign status, treaty rights, and relationship to the Nooksack River and broader transboundary ecosystem since time immemorial. Indigenous Nations not only possess inherent sovereignty in relation to the State of Washington and Province of BC, but relative to Canada and the US as well.

This approach aligns with BC's commitment to reconciliation with Indigenous peoples to "achieve

a government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights, and to the reconciliation of Aboriginal and Crown titles and jurisdictions."¹⁶ The approach also aligns to the Centennial Accord, Centennial Accord Millennium Agreement and accompanying Government-to-Government Implementation Guidelines between the State of Washington and federally recognized tribes of Washington, which provide a framework "to better achieve mutual goals through an improved relationship and implementation procedures to assure execution of that relationship."¹⁷ Establishing a collaborative approach to governance avoids the need to remediate fundamental structural and political barriers to effective governance at a later stage.

- Clarifying the policy and legal significance of expert knowledge – including traditional ecological knowledge of the region – must form part of a collaborative governance framework. As choices about data collection and interpretation are influenced by our socio-political frames, a future governance initiative must recognize and value various forms of expert knowledge in the production of legal and policy decisions.
- A commitment to the sustained development of institutional infrastructure and memory in support of a long-term, holistic, and relational approach to transboundary governance of Nooksack River flooding within the broader region should replace the current piecemeal arrangements. Providing a dedicated forum for the ongoing collection and sharing of information and experience has the potential to increase transparency, while improving communication and sustained engagement. In addition to reducing instances of agency memory loss, the type of information collected and shared may also contribute to inter-generational and inter-cultural education.

CONCLUSION

A future transboundary governance initiative must be properly resourced at multiple scales to support and incentivize a sustained, coordinated, holistic, and collaborative governance effort. The effort should recognize the difficult position of many lower-level actors tasked to manage complex responsibilities without corresponding funding or infrastructure.

Providing resources and spaces for meaningful, long- and short-term collaboration at multiple governance levels also incentivizes sustained participation in a place-based governance framework, rather than the current event-driven approach. Furthermore, building this strong framework within the Salish Sea has the potential to shape policy and law at higher levels of governance.

ENDNOTES

1. Regina Jefferies is an Assistant Professor in the Law, Diversity and Justice Program at Western Washington University and a member of the Whatcom County Climate Impact Advisory Committee. Kit Hager is a Senior in the Law, Diversity and Justice Program at Western Washington University.
2. Initial membership consisted of four members from the US and four from Canada, including the BC Ministry of the Environment, Washington Department of Ecology, Environment Canada, Whatcom County Department of Public Works, the District of Abbotsford, US Army Corps of Engineers, and the Federal Emergency Management Agency (FEMA). Status Report No. 2, at Appendix 1. The relevant Canadian ministries are now called the BC Ministry of Environment and Climate Change Strategy and Environment and Climate Change Canada.
3. <https://www.governor.wa.gov/news-media/british-columbia-and-washington-state-aim-develop-transboundary-nooksack-flooding>.
4. <https://salishsea.wvu.edu>
5. This Brief is based on research undertaken as a Fellow with the Salish Sea Institute (SSI) and BPRI at Western Washington University and draws upon prior work by BPRI, SSI, Norman, and Bakker on transboundary water governance in the Salish Sea.
6. BC/WA Environmental Cooperation Council Annual Report, 1992-93 (July 1993) at p1.
7. Nooksack River International Task Force, Status Report No. 2 (May 1994) p19.
8. Nooksack River International Task Force, Status Report No. 2 (May 1994) p19.
9. Sarah DeWeerd, "Rethinking flood control for the Nooksack River" (Salish Sea Currents Magazine, Mar. 22, 2022), available at <https://www.eopugetsound.org/magazine/nooksack-river>; Nooksack River International Task Force, Status Report No. 2 (May 1994) p1.
10. There is no singular dataset that encompasses floodplain data on both sides of the border and multiple sources were required to create the map in this Brief.
11. Nooksack River International Task Force, Status Report No. 3 (June 1995) p8.
12. Washington/British Columbia Environmental Cooperation Council, Borderline News (July 2003) p3-4.
13. City of Abbotsford, Nooksack River Overflow Mitigation Plan (Council Report No. ENG 050-2020, Dec. 9, 2020) p5.
14. City of Abbotsford, Nooksack River Overflow Mitigation Plan (Council Report No. ENG 050-2020, Dec. 9, 2020) p5.
15. Department of Justice Canada, Principles Respecting the Government of Canada's Relationship with Indigenous Peoples (2018) p3. Failure to properly resource and incentivize ongoing participation in a place-based (Salish Sea) cooperative framework that begins with an understanding of shared values and a shared vision upon which to build and shape our relationship with the environment. British Columbia / Washington Environmental Cooperation Council, 1993-1994 Annual Report (July 1994) p6.
16. Joint Agenda: Implementing the Commitment Document – Shared Vision, Guiding Principles, Goals and Objectives (Vision 2018) p1. The Federal Government of Canada has made a similar commitment to achieving reconciliation with Indigenous peoples "through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, co-operation and partnership as the foundation for transformative change."
17. Centennial Accord (signed August 4, 1989). See also Centennial Accord Millennium Agreement and accompanying Government-to-Government Implementation Guidelines.



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