



Walla Walla Watershed Management Partnership

For Fish ■ For Farms ■ For Everyone ■

Title: Stiller Pond Site Local Water Plan Agreement

Number: LWP-10-02

Local Group: Quentin Schwenke and Joel Huesby

The Stiller Pond Site Local Water Plan (LWP) Agreement is between the local group, identified as Quentin Schwenke and Joel Huesby, the water management board, established as the Walla Walla Watershed Management Partnership, and the Washington State Department of Ecology and subject to all conditions and provisions of Chapter 90.92 RCW effective May 10, 2011 through September 30, 2016.

Part A - Introduction

This document is a Local Water Plan approved in accordance and consistent with RCW 90.92. The purpose of the Stiller Pond Site Local Water Plan (LWP) is to enhance instream flow conditions downstream from the surface water point of diversion on Mill Creek to the confluence with the Walla Walla River and continuing on the Walla Walla River as far downstream as river mile 37. This will be accomplished by:

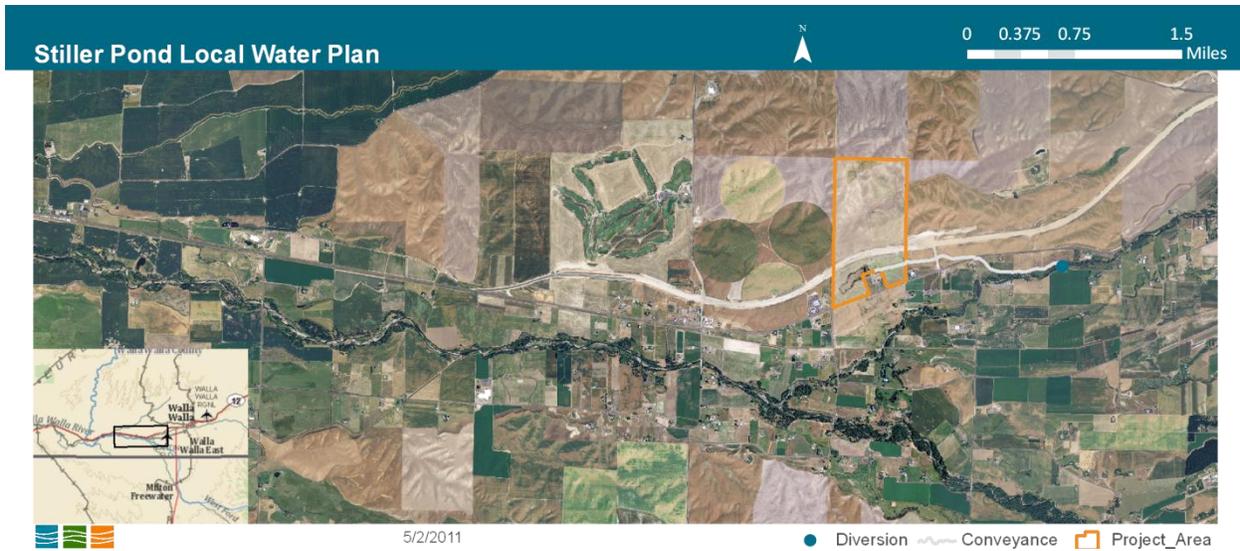
- (1) adding aquifer recharge as a purpose of use to existing surface water rights contained in the LWP;
- (2) diverting a minimum of 32 acre-feet annually for shallow aquifer recharge (SAR) at Stiller Pond; and
- (3) changing the season of use of 32 acre-feet annually from summer irrigation diversions to winter/spring use.

Stiller Pond is a SAR recharge site utilized in the winter and spring for increasing groundwater storage in the underlying alluvial aquifer which is hydraulically connected to the surface water. The recharge will enhance the discharge of groundwater to surface water during summer months, contributing to higher summer base flows in the river. Implementation of the LWP will not result in enlargement of the local group's existing surface water rights.

Local group will pilot local water management through September 30, 2016 under the Stiller Pond Site Local Water Plan, complying with monitoring and reporting requirements, and operating consistent with the baseline water determination and existing rules and regulations.

The Local Water Plan will enhance flows in a critical reach for Steelhead, Spring Chinook and Bull Trout; it is not anticipated that execution of this LWP will result in any impairment to existing water rights or instream flows.

Figure 1. Stiller Pond Local Water Plan Project Area



Part B - Local Water Plan

1. PROCESS

The Stiller Pond Site Local Water Plan process information and documentation are available on the Walla Walla Watershed Management Partnership (Partnership) website at <http://www.wallawallawatershed.org/projects/local-water-plans/135-lwp-10-02-stiller>. The LWP follows all requirements of Chapter 90.92 RCW and the Partnership's adopted guidelines and criteria for filing, review and approval of a local water plan.

- As filed on November 1, 2010, the Stiller Pond Site Local Water Plan proposal originally included provisions to add aquifer recharge to existing surface water rights as a beneficial use, transfer the current point of diversion to a shallow well in direct hydraulic continuity with the stream, add additional points of diversion to include other wells on the site, and authorize groundwater pumping of part of the aquifer recharge volume. The proposal is available at:

http://www.wallawallawatershed.org/downloads/Partnership/LWP/10-02/10-02_Local-Water-Plan-Proposal.pdf.

- Public notice and solicitation of comments by the Walla Walla Watershed Management Partnership occurred for thirty days through November 30, 2010, with five comments received and considered during development of the final Local Water Plan. The comments are available at:

http://www.wallawallawatershed.org/downloads/Partnership/LWP/10-02/10-02_Comments.pdf. The Partnership response is available at:

http://www.wallawallawatershed.org/downloads/Partnership/LWP/10-02/10-02_Response-Public-Comments.pdf

- The Water Resource Panel convened three meetings to review the Local Water Plan proposal and comments, which led to modifications and clarifications in the final Local Water Plan and issuance of a Water Resource Panel report on March 18, 2011, available at:

http://www.wallawallawatershed.org/downloads/Partnership/LWP/10-02/10-02_WRP-Report.pdf

- The final Stiller Pond Site Local Water Plan identifies flexibilities to add aquifer recharge as a purpose of use to existing surface water rights, and to change the season of use for diverting 32 acre-feet annually of surface water from summer irrigation (June 15 to September 30) to winter/spring aquifer recharge use. Implementation of this LWP will not result in the enlargement of the existing surface water rights. Stiller Pond will be a recharge point in the winter and spring for increasing groundwater storage in the underlying alluvial aquifer to support higher base flows to the river in summer months.
- The Local Water Plan will enhance flows in a critical reach for fish species in life stages to include Steelhead parr, smolts and adults; Spring Chinook smolts and adults; and Bull trout sub-adults and adults. It is not anticipated that implementation of this LWP will create any impairment to existing water rights, including instream flows.
- The Local Water Plan was reviewed under the State Environmental Policy Act (SEPA) and was identified as categorically exempt from the provisions of the SEPA. A Local Water Plan is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.
 - It is a surface water right application for more than 1 cubic feet per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
 - It is a groundwater right application for more than 2,250 gallons per minute;
 - It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
 - It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
 - It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this local water plan does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

2. EVALUATION CRITERIA

The parties considered mandatory evaluation criteria under Chapter 90.92 and find the Stiller Pond Site Local Water Plan:

- contains, in adequate detail, the required elements outlined in {RCW 90.92.080(3)};
- substantially enhances instream flow conditions {RCW 90.92.090(2)};
- does not impair existing out-of-stream water rights {RCW 90.92.120(1)(c)};
- flow benefits provided outweigh any impacts on existing instream flow rights {RCW 90.92.120(1)(c)};
- considered public comments/concerns;
- does not exceed total water use which was determined to have been used in the Baseline Water Use Determination;
- is economically sustainable for the duration of the proposed project; and,
- meets State Environmental Policy Act (SEPA) requirements.

3. WATER RIGHTS AND BASELINE DETERMINATION

The Stiller Pond Site Local Water Plan includes a determination by the Walla Walla Watershed Management Partnership of the baseline water use (Table 1) for portions of Walla Walla River Adjudicated Certificate #462 and Surface Water Certificate #7832 (see Appendix A), consistent with guidelines adopted by the Partnership and in consultation with the Water Resource Panel.

Table 1. Stiller Pond Site LWP Baseline Water Use Determination

| | WWRAC #462 | | SWC #7832 | |
|---------------------------|------------------|-----------|-------------------|-----------|
| Instantaneous Quantity | 4/1-6/30 | 0.127 cfs | 4/1-4/30 | 0.689 cfs |
| | 7/1-9/30 | 0.095 cfs | 5/1-5/31 | 1.11 cfs |
| | 10/1-2/28 | 0.190 cfs | 6/1-6/15 | 1.86 cfs |
| | 3/1-3/31 | 0.085 cfs | 10/1- 10/31 | 0.373 cfs |
| | | | 11/1-2/28 | 1.86 cfs |
| | | | 3/1-3/31 | 0.279 cfs |
| Annual Quantity | 43.625 acre feet | | 214.230 acre feet | |

Water use under the Local Water Plan does not exceed the baseline quantities identified in Table 1. The baseline water remaining instream (Table 2) is 0.127 cfs from June 15 – June 30 and 0.095 cfs from July 1 – September 30.

Table 2. Baseline Water Remaining Instream for Flow Enhancement

| | WWRAC #462 | | SWC #7832 | |
|---------------|------------|-----------|-----------|--|
| Instantaneous | 6/15-6/30 | 0.127 cfs | | |
| Quantity | 7/1-9/30 | 0.095 cfs | | |

4. APPROVAL OF PROPOSED FLEXIBILITIES

The parties approve the following flexibilities of use and application of water related to the portions of Walla Walla River Adjudicated Certificate #462 and Surface Water Certificates #7832 (Table 3) appurtenant to Walla Walla County Parcel #350729210004 under Chapter 90.92 RCW through September 30, 2016.

Table 3. Flexibilities in Use and Application of Water

| WWRAC #462 and SWC #7832 | |
|--------------------------|--|
| Add Purpose of Use | Storage of water and infiltration of the water to the groundwater to supplement shallow groundwater withdrawals and/or replenish the aquifer |

With the addition of the purpose of use, the Local Group may increase irrigation in the spring within the existing water rights, allowing surface water diversion during periods of relatively higher stream flows and enabling the water user to forego the summer surface water withdrawal of 32 acre-feet annually for irrigation with no enlargement of the existing surface water rights.

The Local Group shall implement the flexibilities in water use in compliance with the Terms and Conditions, Part C of the Local Water Plan, and adhere to the following duties and obligations as a condition of this agreement:

- a. Comply with baseline water use provisions in Table 1 and allow the amounts identified in Table 2 to remain instream and not be diverted from 6/15 to 9/30 for the term of the Local Water Plan;
- b. Put to beneficial use a minimum of 32 acre-feet annually for shallow aquifer recharge as identified in Table 3;
- c. Water use under this authorization shall continue to be subject to regulation;
- d. Recharge should be authorized to begin December 1 and end May 31;
- e. Use of the water right for the purpose of aquifer recharge should be contingent upon operating under a monitoring and testing plan approved by Ecology. Approval of such a plan should not require revision of the Local Water Plan;
- f. Produce an annual report for the period of October 1 – September 30, by November 15 of each year beginning in 2011 providing:
 - i) Meter data for water use under the plan, both instantaneous and total, for all participating points of withdrawal reported separately;
 - ii) Daily average flows above and below the boundaries of the plan;
 - iii) Groundwater levels within the boundaries of the plan;
 - iv) Photo documentation of the Local Water Plan; and
 - v) LWP project evaluation.

Part C - Terms and Conditions

1. REQUIREMENTS OF RCW 90.92

- a. All actions by any of the parties must be consistent with the specific requirements of Chapter 90.92 RCW.

2. PROTECTION OF LOCAL GROUP'S WATER RIGHTS

- a. The water rights in the Local Water Plan as authorized for the uses described in Part B of the Local Water Plan are:
 - i. Not subject to either the approval of Ecology under RCW 90.03.380 through 90.03.390, 90.44.100, and 90.44.105, or a tentative determination of the validity and extent of the water rights;
 - ii. Not subject to loss by forfeiture under RCW 90.14.130 through 90.14.200 during the period of time from when the Local Water Plan is approved to the expiration or nullification of the Local Water Plan as provided in Part B of the Local Water Plan; and
 - iii. Not to be exercised in a manner that would result in injury or detriment to other existing water rights unless express written approval is obtained from the holder of the impaired water right. To allow impacts to existing instream flow rights, the Partnership and Ecology must agree that the flow benefits provided the Local Water Plan outweigh the impacts.

- b. The years during the period of time when the Local Water Plan is operational may not be considered or calculated as a period of time that the water was not applied to use for purposes of RCW 90.14.130 through 90.14.200. Further, the years during this period of time under the rights subject to the Local Water Plan may not be considered or calculated as a period of time that the water was not applied to use and for purposes of future applications to change the water right for additional purposes or acreage under RCW 90.03.380.

3. PROTECTION OF OTHER WATER RIGHTS EXCLUSIVE OF LOCAL GROUP'S WATER RIGHTS

- a. Nothing in this Local Water Plan authorizes the impairment of existing water rights.
- b. A water right holder who believes the holder's water right has been impaired by any action authorized under this Local Water Plan may request that Ecology review the impairment claim. If Ecology determines that some action under this Local Water Plan is impairing existing rights, Ecology, the Partnership, and the Local Group must amend the Local Water Plan to eliminate the impairment. Any decision by Ecology to alter or not alter the Local Water Plan is appealable to the Pollution Control Hearings Board under RCW 43.21B.230. (RCW 90.92.100)

4. LIMITED USE OF DOCUMENTS

- a. All documents regarding water use submitted to the Partnership by the water users shall not be used by Ecology at any time to determine the validity of the water rights in any future administrative or regulatory action (RCW 90.92.080(3)a), unless authorization for such use is granted by the Local Group. This section will remain in effect after termination of the Local Water Plan.

5. ACCESS FOR MONITORING

- a. The Local Group shall allow the Partnership and its employees, agents, successors and assigns, at all times during the term of the Local Water Plan access to the lands necessary for the implementing monitoring and compliance terms of the Local Water Plan. Access will be used solely to allow the Partnership and its employees, agents, successors and assigns to:
 - i. Monitor and enforce the terms of the Local Water Plan; and
 - ii. Measure instream flows, return flows, and collect other hydrological data relating to any water body, whether on the surface or underground, affecting or affected by the Local Water Plan.
- b. The Partnership will provide notice to the Local Group no less than 48 hours prior to access to the land. The Local Group is entitled to be present when the Partnership accesses the land, if it so desires. If the Local Group is unable to provide access within 24 hours, it shall provide alternative times acceptable to the Partnership for access within 7 days.
- c. The water source and/or water transmission facilities are not wholly located upon land owned by the Local Group. Approval of a Local Water Plan does not convey to the parties a right of access to, or other right to use, land which the Local Group does not legally possess. Obtaining such a right is a private matter between Local Group and owner of that land.

6. CONTINUATION OF LOCAL WATER PLAN

- a. Upon the expiration of the Local Water Plan that has been operating for five or more years, the Local Group may request that the Partnership and Ecology make the elements of the Local Water Plan, including the water rights deposited to the water bank used for stream flow enhancement for placement in the trust water rights program, permanent authorizations and conditions for use of the water rights. The request will be evaluated based on whether:
 - i. The determination of the baseline water use adequately represents the extent and validity of the donated water right; and
 - ii. Whether there is injury or detriment to other existing water rights; or
 - iii. The written approval obtained from the holder of an impaired water right is continued or renewed.
- b. If the Partnership and Ecology approve the request under subsection (a) of this section, Ecology shall issue superseding water rights consistent with the management and uses of the water under the Local Water Plan. That portion of the baseline water rights deposited in the water bank for placement in the trust water rights program must be made permanent and transferred in accordance with Chapter 90.42 RCW.

7. TERMINATION

- a. The Local Water Plan expires by its terms, by written withdrawal of any party, or upon agreement by all parties to the contract.
- b. If the Local Group is not in compliance with the terms of the Local Water Plan, the Partnership shall, consistent with the dispute resolution process adopted by the Partnership, seek compliance. If the Partnership revokes the Local Water Plan due to noncompliance, the water users in the Local Water Plan must thereafter exercise the water rights only as the water rights were authorized and conditioned prior to the approval of the Local Water Plan, and all rights and duties that were terms in the Local Water Plan lapse and are not valid or enforceable.
- c. If the Local Water Plan expires and the water management and uses under the local water plan are not granted approval to be permanent, the water users in the Local Water Plan must thereafter exercise the water rights only as the water rights were authorized and conditioned prior to the Local Water Plan, and all rights and duties that were terms in the Local Water Plan lapse and are not valid or enforceable.

8. DISPUTE RESOLUTION

- a. Parties agree to utilize, to the extent applicable, the Dispute Resolution process identified in the "Partnership's Guidelines and Criteria for the Implementation of RCW 90.92" current revision.

9. ADDITIONAL PROVISIONS

- a. An approved data-logging measuring device shall be installed and maintained for each source authorized by this Local Water Plan in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173 <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>.

- b. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

10. ENTIRE AGREEMENT; MODIFICATIONS; CONSTRUCTION

- a. This Local Water Plan constitutes the entire agreement of the Local Group, the Partnership and Ecology with respect to the Local Water Plan.
- b. This Local Water Plan shall not be modified or amended except by a written instrument signed by all parties.
- c. This Local Water Plan will be governed by and construed under the laws of the state of Washington. The captions and paragraph titles used in this Local Water Plan are for reference only and will not be used in the interpretation of this Local Water Plan or any related document. If any provision of this Local Water Plan is determined to be illegal, void, or unenforceable, such determination will not affect any other provision of this Local Water Plan and all such other provisions will remain in full force and effect.

11. NOTICE AND CONTACTS

- a. The names, addresses, telephone, and fax numbers of the parties to this Local Water Plan for use in written communication and notice between the parties are as follows:

| | |
|--|--|
| <p>Local Group: Joel Huesby 1511 Fredrickson Rd Touchet, WA 99360 Tel: 509-200-9325 Fax: 509-522-0889 Email: joel.huesby@g3.bmi.net</p> | <p>Partnership: Walla Walla Watershed Management Partnership 500 Tausick Way Walla Walla, WA 99362 Attn: Cathy Schaeffer Tel: 509-524-5216 Fax: 509-524-5209 Email: cathy.schaeffer@wwcc.edu</p> |
| <p>Ecology: WA State Department of Ecology PO Box 47600 Olympia, WA 98504 Attn: Hedia Adelsman Tel: 360-407-6222 Fax: 360-407-6989 Email: hade461@ecy.wa.gov</p> | |

Part D - Local Water Plan Approval

1. APPROVAL SIGNATURES

- a. The Local Water Plan is a contract among the Partnership Board, Director of WA State Department of Ecology, and by all participating water users constituting the Local Group; by signing below all parties agree to abide by all terms and conditions of the Local Water Plan.

b. The individuals signing below have the authority to execute this Local Water Plan on behalf of their respective Local Group and bind the Local Group, its successors and assigns to the terms of the Local Water Plan. By Resolution attached hereto, the Partnership Board has approved the execution of this Local Water Plan by the Executive Director.

Quentin Schwenke 5/10/11
 Quentin Schwenke Date

Joel Huesby 5/10/11
 Joel Huesby Date

Cathy Schaeffer 05-10-2011
 Cathy Schaeffer, Executive Director, Walla Walla Watershed Management Partnership Date

Ted Sturdevant 5-16-11
 Ted Sturdevant, Director, WA State Department of Ecology Date

Appendix A

| Document | Note | Appendix |
|---|--|----------|
| Current Water Use Authorizations | Authorizations involved in the Stiller Pond Site Local Water Plan. | A |
| http://www.wallawallawatershed.org/downloads/Partnership/LWP/10-02/10-02_Water-Rights.pdf | | |