Walla Walla Watershed Management Partnership

For Fish. For Farms. For Everyone.

SUBJECT:	Local Water Plan (LWP) with Larry Pierce, approved by WWWMP Board of Directors
PREPARED BY:	Sam Chapman with input from Larry Pierce, Vincent Pierce, Chris Hyland, and Partnership Water Resource Panel (WRP) members
DATE:	August 8, 2018

Summary

Larry Pierce desires to change the Place of Use on two of his water rights in order to provide irrigation to lands downstream of his current irrigated ground. Pierce's rights are diversions from the mainstem Walla Walla River, located close to the confluence with the Columbia. In 2008, Pierce sold water rights downstream of his hay shed to the Washington Department of Transportation, leaving his downstream land without irrigation. As he has recently found a lessor interested in the downstream land, he wants to move his place of use downstream in order to compensate for the water previously lost to sale.

This Local Water Plan allows Pierce to move the point of diversion of right 5443 downstream to the western vertex of parcel #320719440004, owned by Vincent, son of Larry Pierce. This will preserve upstream flow by drawing on a more available water supply. The Place of Use of this water right will move along with the Point of Diversion, moving to Larry Pierce's downstream lot, #320720340005, totalling 70.81 acres.

In return for the movement of 3 acre-feet per acre to irrigate the 70.81 downstream acres, Pierce will leave 123.57 acre-feet instream year-round, along with 0.607 cfs from April 1 to June 1 and 0.456 cfs from June 1 to October 1. This instream flow will come from right SWC 5443 cert. 9777, one of three rights on the land, as detailed in later sections. The acre-feet moved downstream would derive from this right and from Walla Walla River Adjudicated Certificate 646, of which Pierce hopes to retain 1 acre-foot per year (0.003 cfs) to water the lawn at his RV park.

Further benefits on top of the protected streamflow will be provided by the enrollment of approximately a quarter-mile of riverside land into the Conservation Resource Enhancement Program (CREP), which compensates landowners for devoting land to riparian habitat. As there is no reliable meter currently attached to the pump diversion for 5443, Pierce is required to add one as part of this agreement.

Though the priority date on the two rights in question is 1947, there are no major diversions downstream of Pierce's land, meaning this LWP would result in critical bolstering of flow between Nine Mile Road and the mouth of the Walla Walla. Bill Neve, former watermaster, has stated that he never had to regulate off Pierce's water right.

This document is meant to inform the landowner (Larry Pierce), the Department of Ecology, and other Partnership stakeholders about the components of this plan, the means for executing it, and the benefits for fish habitat and for the irrigator. The Board has voted to give the Partnership Executive Director the right to sign the Local Water Plan.

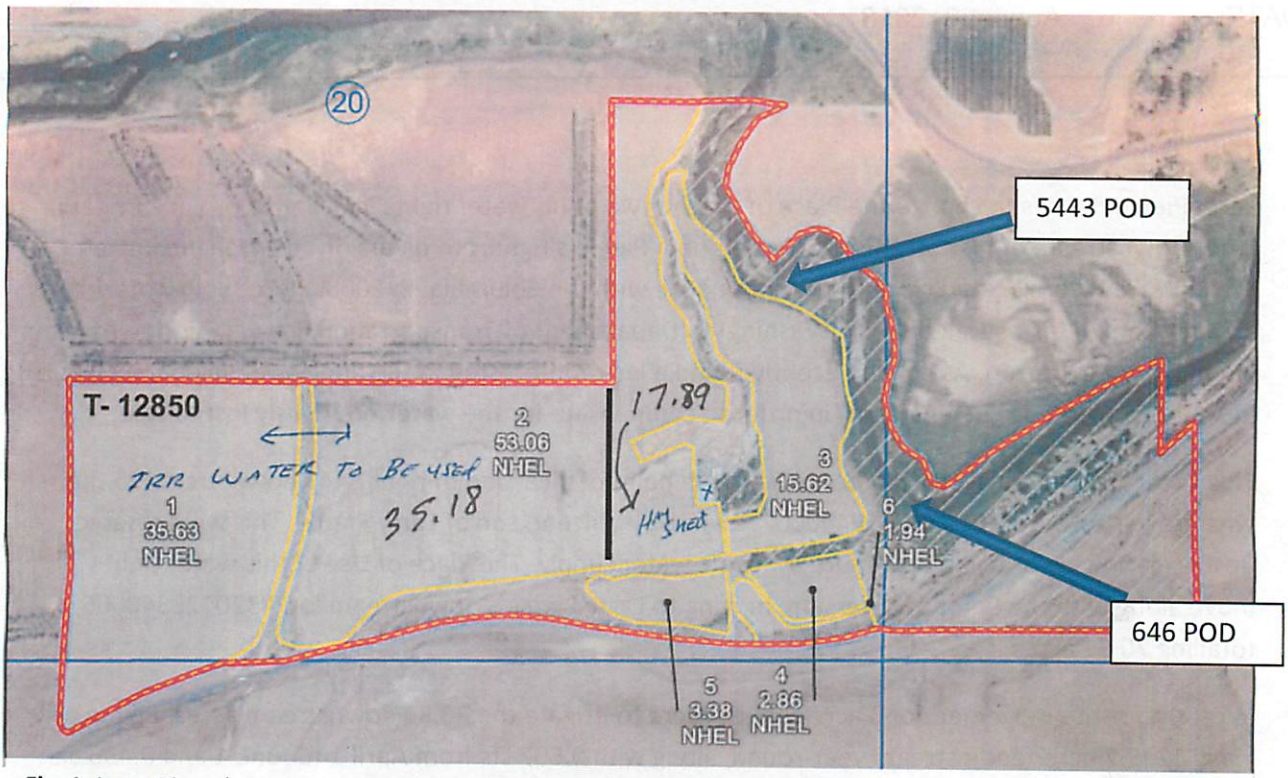

Fig. 1: Larry Pierce's current property boundaries. Irrigated cropland is outlined in yellow. The black line marks the boundary between the old and proposed new places of use.

Baseline Water Use: This section outlines the "paper" water right available on the Pierce property. A more formal assessment can be conducted—the common Partnership procedure equivalent to a Department of Ecology Report of Exam (ROE) though more forgiving of the water right's past.

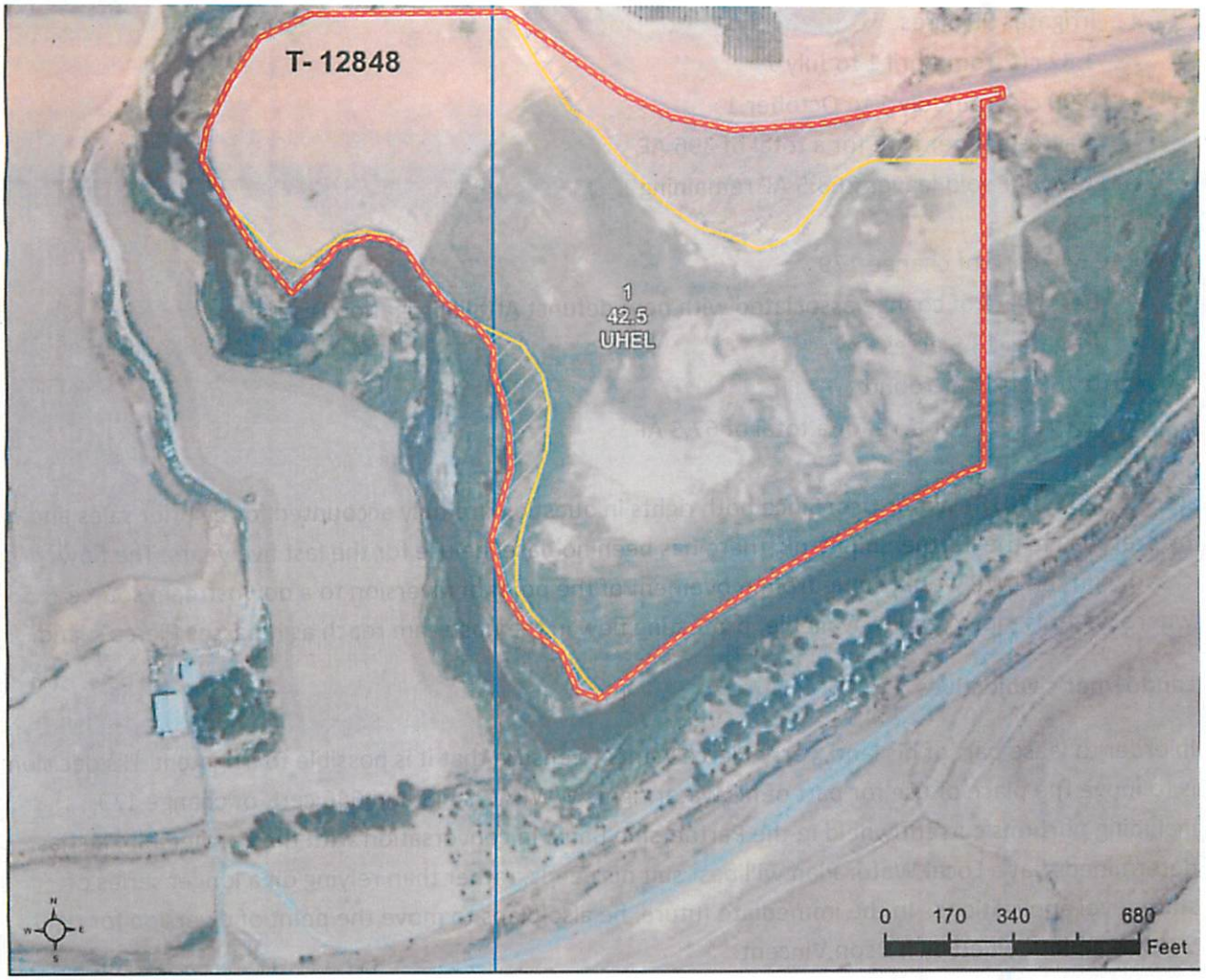

Fig 2: Land sold to Department of Transportation by Larry Pierce.

In 2011, Pierce banked three rights with the Partnership: SWC 5443, SWC 646 cert. 179, and SWC 10582. SWC 10582 was sold off as part of a mitigation deal with the Horse Heaven Hills Conservancy, and the banking agreement was cancelled in 2017. A further 127.5 acre-feet from right no. 5443 having been sold in 2008 to WDOT, a total of 268.5 AF remains in the Partnership Bank.

Since selling the rights to the land sold off, Pierce has continued to lease it for farming, using the water right appurtenant to it (10582). This lease began a ten-year term in 2009 and will expire in 2019.

Each of these rights is a surface diversion with no groundwater addition. WWRAC 5443 currently lacks a meter. The agreement with Larry Pierce will not be considered in effect until a meter is attached, allowing for monitoring of water use.

WWRAC 5443 cert. 9777:

- Irrigates 99 acres
- 1.32 cfs from April 1 to July 1
- 0.99 cfs from July 1 to October 1
- 4 acre-feet per acre for a total of 396 AF
- 127.5 AF sold leaves 268.5 AF remaining

WWRAC 646 cert. of change 179

- Certificate of change associated with now-defunct Attalia Irrigation District
- Irrigates 13.5 acres
- 0.268 cfs year-round
- 5 acre-feet per acre for a total of 67.5 AF

Recent (2014-2018) Water Use: Since both rights in question are fully accounted for by prior sales and by presence in the Partnership Bank, there has been no baseline use for the last five years. The flow creation in the LWP would come from movement of the point of diversion to a downstream source where water is more readily available, protecting flow in the upstream reach as it passes Pierce's land.

Landowner's Objectives

In order to lease part of his land, Larry Pierce wants to ensure that it is possible to irrigate it. His decision is to move the place of use for part of his water rights WWRAC 5443 and 646 cert. of change 179, including portions currently held in the Partnership Bank. In conversation with the Partnership, he has determined that a Local Water Plan will best suit his needs, rather than relying on a longer series of state-level applications. In the immediate future, he also plans to move the point of diversion for right 5443 to a plot owned by his son Vincent.

Pierce has determined that 3 acre-feet per acre will be sufficient to grow crops on the new place of use, meaning that a total of 212.43 AF will need to be moved downstream to water 70.81 acres. 67.5 of these acre-feet will come from the Attalia 179 right, while the remaining 144.93 will come from the Walla Walla River certificate (page 5443, #9777).

Strategies to Benefit Landowner

Grant him the right to move places of use of the existing non-utilized, banked rights with the desired amounts. By the standards of Local Water Plans, his needs are fairly simple, and according to his own observations, flow has always been present in the Walla Walla to fulfill them, even during the drought season of 2015. This is likely due both to the nearby McNary Wetlands and the fact that much of the water subsumed into the gravel aquifer between Walla Walla and Touchet returns to the surface nearer the Columbia.

In addition to the above, create a legal framework for Pierce to move the point of diversion of right 5443 downstream toward McNary Pool. This would also require granting him an easement to build a pipe through federal land. Vincent Pierce (landowner Larry Pierce's son) has requested that 1 acre-foot per year (0.003 cfs) from right 646 be left in place in order to irrigate the quarter-acre lawn at the Pierce's Green Valley RV park. This would require another place of use change.

Tools to Benefit Instream Flow

Move the POD of Pierce's most used water right, 5443/9777, placing the main diversion closer to McNary Pool (see map), which has a much readier year-round water supply due to its connection to the Columbia River. As the whole right would be available from a larger supply, water in the more critical reaches upstream would be left in the river, creating habitat. Pierce has indicated that moving the POD was always part of his long-term plan.

In order to move the places of use, the Partnership has requested that 123.57 acre-feet be left instream from Pierce's property in order to augment flows all the way to the mouth of the Walla Walla. Using the same proportion of the total combined rights, further request 0.607 cfs to remain instream from April 1 to July 1, and 0.456 cfs from July 1 to October 1. The total amount of surplus after the rights are moved will lead to sustained flows preserved in the final reach of the Walla Walla. Furthermore, the agreement can be monitored with little effort, especially compared to agreements that involve aquifer recharge.

The Conservation Reserve Enhancement Program (CREP) is a critical component has been a condition of prior LWPs (see Hassler) and additional riparian shading could benefit the lower reaches of the Walla Walla River. The Water Resources Panel supports making CREP a necessary condition of the LWP, as some believe that protecting the water right in trust would not provide "substantial" benefit as defined by RCW 90.92.

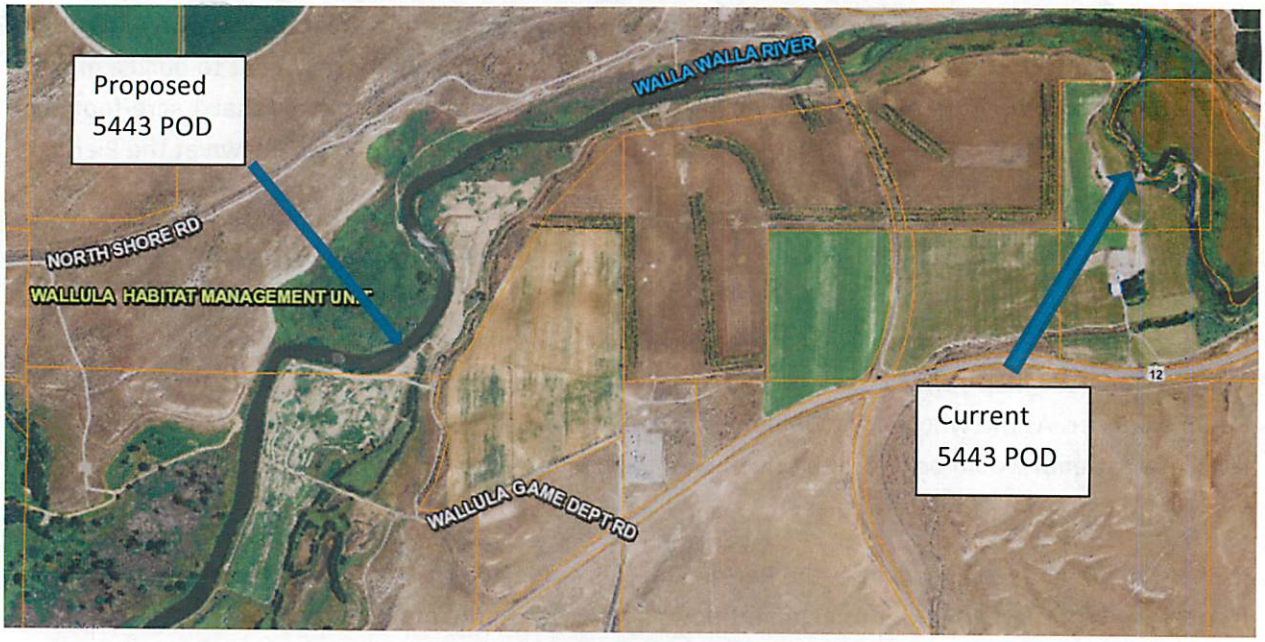

Fig 3: New location of POD of right 5443 cert. 9777, moved closer to McNary Pool. The location is on property belonging to Larry Pierce's son, Vincent.

Required Administrative Changes

The point of diversion on water rights 5443/9777 will move to the spot designated on the above map, the closest point on the Walla Walla River to the western vertex of parcel #320719440004 belonging to Vincent Pierce.

Right 5443/9777 should be split into two units, one of which will remain where it is to be preserved as instream flow and the other of which will be moved downstream to irrigate parcel #320720340005. Right 646 will also be split into two, with 1 acre-foot per year moved to the site of Pierce's Green Valley RV park (24676 US-12, Touchet, WA 99360) while the rest is moved to parcel #320720340005.

Larry Pierce's two Water Banking agreements with the Partnership are hereby considered cancelled, as both of the rights in question are fully involved in the LWP.

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 rights holder who believes the holder's water right has been impaired by any action 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 shall survive 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 implementing monitoring and compliance terms of the Local Water Plan. Access will be used solely for the purpose of allowing 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:

Local Group:	**Partnership:**
Larry Pierce P.O. Box 15 Touchet, WA 99360 Tel: 509-730-1119 Fax: 509-394-2983 Email: gfid13@360comm.net	Walla Walla Watershed Management Partnership 500 Tausick Way Walla Walla, WA 99362 Attn: Chris Hyland Tel: 509-524-5217 Fax: 509-524-5209 Email: chris.hyland@wwcc.edu

Ecology:
WA State Department of Ecology PO Box 47600 Olympia, WA 98504 Tel: 360-407-6222 Fax: 360-407-6989

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APPROVAL SIGNATURES

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.

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.

8-9-2018

Larry Pierce, Water Right Holder — Date

8/9/2018

Chris Hyland, Executive Director, Walla Walla Watershed Management Partnership — Date

9/10/2018

Maia Bellon, Director, WA State Department of Ecology — Date