

# Walla Walla Watershed Management Partnership

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**SUBJECT: Review of draft guidelines and criteria for Partnership programs**

**DATE: December 8, 2009**

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The Walla Walla Watershed Management Partnership has been given authority to develop two unique pilot programs, one for “local water plans” and one for “water banking.” Information on the scope of these two programs is available in RCW 90.92, which is the law enacted in 2009 authorizing this program in the Walla Walla basin. In order to implement this new legislation, Partnership Board with significant input from the Partnership’s Water Resource Panel is developing guidelines and criteria to govern these programs.

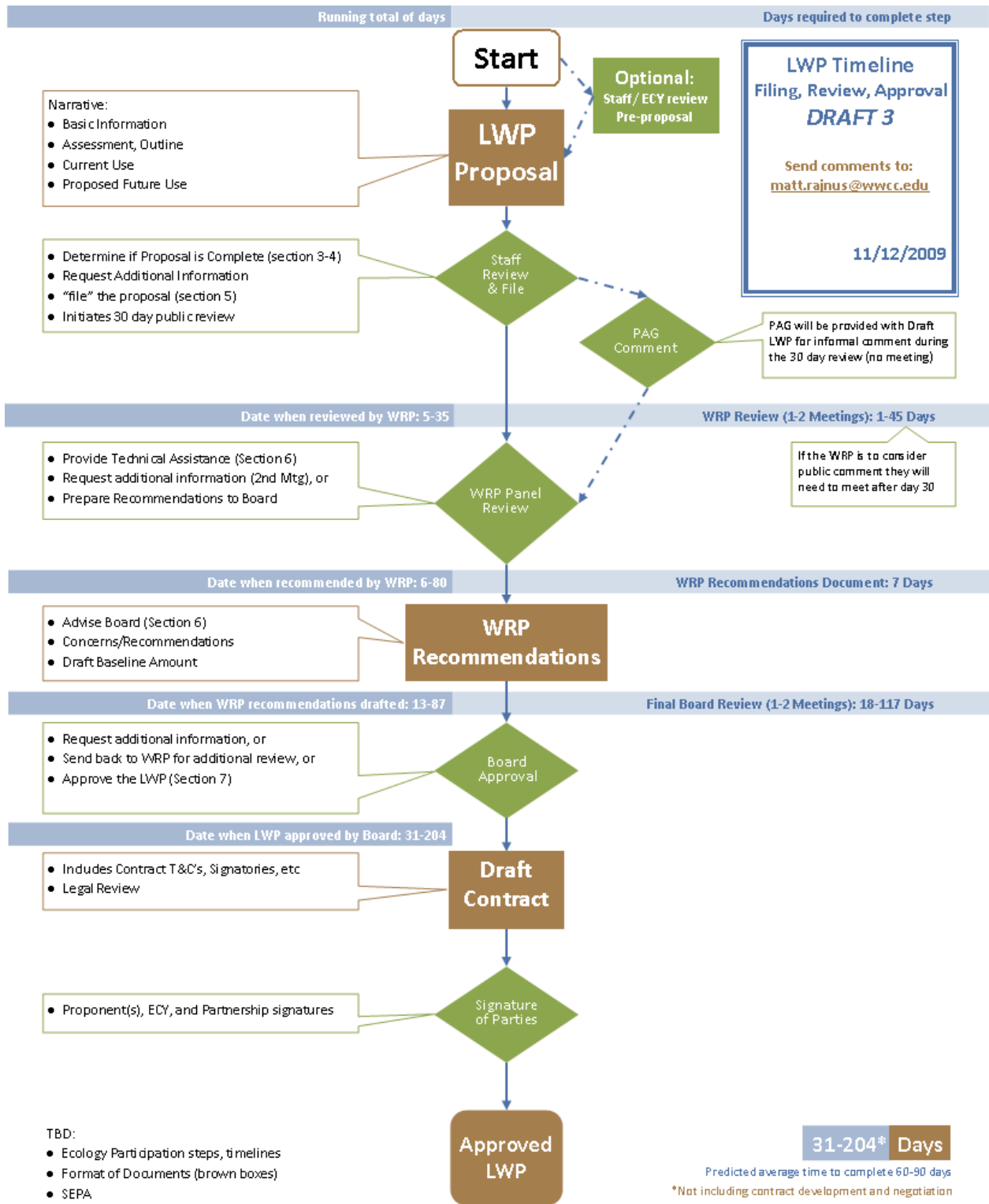
These guidelines and criteria have been drafted and preliminarily reviewed by the Board and the Water Resource Panel. At the December 8, 2009 meeting of the Policy Advisory Group (PAG), you will be asked to comment on these guidelines and criteria. There will be time on the agenda for an initial overview and comments will be accepted in written or electronic form through December 15, 2009. Electronic comments can be emailed to [matt.rajnus@wwcc.edu](mailto:matt.rajnus@wwcc.edu).

The discussion at the December 8<sup>th</sup> PAG meeting will revolve primarily around the following:

- The timeline for filing, review and approval of a Local Water Plan
- The PAG’s role in the review of Local Water Plans
- PAG input on the “Baseline Water Use” portion of the guidelines (Section 4.1.1)

Work in the month of December will focus on revisions and refinement of the guidelines and criteria; final versions of these program governance documents are to be considered by the Partnership Board for adoption at their January 5, 2010 monthly meeting. Your feedback is valuable, so you are asked to please review the attached draft guidelines and criteria and prepare now to offer your comments or questions at the December 8<sup>th</sup> meeting.

Thank you. If you have any questions, please contact Program Director Matt Rajnus at 509.524.5217 or [matt.rajnus@wwcc.edu](mailto:matt.rajnus@wwcc.edu).



# Guidance and Criteria for Implementation of Chapter 90.92 RCW

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Review Draft 3

12/01/2009

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# Local Water Plans

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## SECTION 1.0 PURPOSE

### 1.1 Overview

The purpose of this document is to establish the processes, guidelines and criteria for filing, review and approval of a local water plan (LWP) under the leadership of the Walla Walla Watershed Management Partnership (Partnership) with the advice of the Water Resource Panel.

A local water plan is a voluntary water management plan developed by local water right holders to manage their water use in a manner that substantially enhances stream flows in exchange for greater flexibility in exercising their water rights. This guidance is consistent with Chapter 90.92.080 Revised Code of Washington, and is subject to revision as necessary to effectuate the purpose of this Chapter.

## SECTION 2.0 ROLES AND RESPONSIBILITIES

### 2.1 Applicants

Applicants are responsible for preparation of proposed LWPs. This includes providing all information deemed necessary by the Partnership Board (Board) and or Water Resource Panel (WRP) to inform the review and approval process. (Note: water users are the default applicant, if a third-party is involved in the submittal of an application they may be treated as a co-applicant at the discretion of the Board)

### 2.2 Partnership Board

It is the Board's responsibility to review proposed LWPs, considering the advice of the WRP and comments from interested parties submitted during the public notice period. To become effective, a LWP must be approved by both the Board and the Department of Ecology (Ecology). The Board may approve a proposed LWP, send it back to the applicant for modification or amendment, or deny the proposed LWP.

### 2.3 Partnership Staff

The role of Partnership staff is to provide support and assistance to the Board in administering the LWP process, including coordinating among applicants, the WRP, the Policy Advisory Group (PAG) and the Board. Staff will provide pre-proposal support if requested by the applicant, process submittals according to the Board's adopted guidelines and criteria, and coordinate the review and approval process for proposed LWPs. Staff will also be responsible for seeing that public notice and appropriate SEPA requirements are met (need to determine SEPA responsibilities).

### 2.4 Water Resource Panel

The Water Resource Panel (WRP) may offer technical assistance in the development of proposed LWPs, and will provide advice to the Board on the approval, denial or modification of proposed LWPs based on their technical review of the proposals. To verify that the proposed LWPs meet the requirements of RCW 90.92.080, the WRP may request additional information from the applicant.

## 2.5 Policy Advisory Group

The Policy Advisory Group (PAG) will be available to advise on issues concerning coordination of efforts or input on policy questions as requested by the Board. PAG members will be notified of proposed LWPs as part of public comment/notification period(s). The PAG may be convened to provide input on proposed LWPs at the request of the Board.

## 2.6 State Agencies

It is the responsibility of WA Dpt. of Ecology (Ecology) & WA Dpt. of Fish & Wildlife (WDFW) to provide technical and policy assistance in evaluation of proposals through the WRP and PAG, should they choose to participate. It is the responsibility of Ecology to approve Local Water Plans consistent with RCW 90.92.090. Further it is the responsibility of Ecology to make the conditions of a local water plan permanent, consistent with RCW 90.92.110.

# SECTION 3.0 WATER USER ORGANIZATIONAL GUIDELINES

**Purpose:** The purpose of this section is to provide guidelines regarding how individuals and groups must be organized in order to be eligible to submit a proposed LWP. Individual water users, or a group of water users, may submit a LWP provided that they have legal authority to implement changes to the water rights as proposed.

**Statutory Reference:** "A water user or group of water users within the planning area, organized as provided in guidelines adopted by the board, may submit a proposed local water plan to the board." {RCW 90.92.080(2)}

## 3.1 Individual Water Users

Individual applicants must demonstrate to the satisfaction of the Board the following:

**3.1.1.** *That the applicant owns or otherwise controls the entire place of use of the water right(s) included in the proposed LWP. Or, if applicant does not own or control the entire place of use of water right(s), the following must be established:*

- i) Documentation that conveys authority from all other landowners within place of use of right(s) to the applicant; to utilize the right for the duration of the proposed LWP, or
- ii) Documentation which establishes what portion of the water right the applicant legally controls, and proposes to include in the LWP.

## 3.2 Groups of Water Users

**3.2.1.** *That the applicant group owns or otherwise controls the entire place of use of the water right(s) included in the proposed LWP. Or, if the applicant does not own or control the entire place of use of water right(s), the following must be established:*

- i) documentation that conveys authority from all other landowners within place of use of right(s) to the applicant group; to utilize the right for the duration of the proposed LWP, or
- ii) Documentation which establishes what portion of the water right the applicant legally controls, and proposes to include in the LWP.

**3.2.2.** *The primary contact(s) is/are identified and documented for the group.*

**3.2.3.** *The individual(s) that has decision making authority for the group is identified and documented.*

**3.2.4.** *Document that the group has complete ownership or control of the water rights included in the proposed LWP, or, if there is not total ownership or control, that the group has authority from the other landowners within the place of use of the rights to use the rights as proposed for the duration of the LWP.*

**3.2.5.** *Provide documentation that specifies what will occur in the event that any one of the water users chooses to opt out of the proposed LWP.*

## **SECTION 4.0 REQUIRED ELEMENTS FOR PROPOSED LWP**

**Purpose:** The purpose of this section is to list and describe the elements required for a proposed LWP under RCW 90.92.080(3). This section also includes additional elements the Board has designated to be included in a LWP.

**Statutory Reference:** RCW 90.92.080(3) (a) – (f)

### **4.1 Elements Required by Statute - RCW 90.92.080(3)**

**4.1.1.** *A determination by the board of the baseline water use for all water rights involved in the local water plan, based on the guidelines adopted by the Board, and in consultation with the water resource panel - RCW 90.92.080(3)(a) based on one of the following two options:*

- i) *Applicant will provide data regarding the historical use of water under the subject rights(s), as outlined in the Baseline Water Use Calculation sheet approved by the Board (To be completed as Appendix A). The Board will utilize this data to calculate and make a final determination on the baseline water use for purposes of the proposed LWP. The baseline documents regarding water use that are submitted by the water users may not be used by the department to determine the validity of the water rights in any future administrative or regulatory actions (RCW 90.92.080(3)(a).*
- ii) *If water identified for stream flow enhancement in the proposed LWP is requested to be placed into the Trust Water Right Program, the baseline water use will be calculated consistent with Chapter 90.42 RCW.*

**4.1.2.** *A clearly defined set of practices that provide for flexibility of water use – RCW 90.92.080(3)(b)*

The applicant will provide information which clearly describes how water will be managed within the proposed LWP. This information should include maps, diagrams, and/or narrative descriptions as necessary to define water management practices under

the local water plan including any flexibilities which will be utilized to use and apply water in ways not otherwise authorized in the water right(s).

Practices which may be proposed include:

- i) Change or add to the authorized place of use {RCW 90.92.080(4)(a)};
- ii) Change or add points of diversion/withdrawal {RCW 90.92.080(4)(a)};
- iii) Change the period or season of use for water application {RCW 90.92.080(4)(a)};
- iv) Change or add a source of water supply {RCW 90.92.080(4)(b)};
- v) Implement conjunctive use of surface and ground water sources {RCW 90.92.080(4)(b)};
- vi) Shallow aquifer recharge to supplement shallow groundwater withdrawals or to replenish the aquifer {RCW 90.92.080(4)(c)}

**4.1.3.** *An estimate of the amount of water that would remain instream either long term or during critical flow periods for fish – RCW 90.92.080(3)(c)*

The proposed LWP must provide an estimate of the water that will remain instream as banked water in the form of a specified reduction in instantaneous quantity (Qi) or annual quantity (Qa), and/or conditional reductions based on critical flow periods for fish.

- i) If a proposed LWP will leave water instream as a result of reductions in Qi/Qa from the baseline determination, no further information will be required other than an estimate of the instream flow contribution.
- ii) If a proposed LWP will leave water instream during critical flow periods, sufficient information regarding critical flow periods for fish at the site (focusing on ESA listed fish and Spring Chinook) will be required. This information should include:
  - (a) Identification of fish and key aquatic species utilizing stream reaches affected by implementation of the proposed LWP
  - (b) Life stage/habitat requirements for key species in stream reaches affected by the proposed LWP (e.g. timing of contribution relative to critical flow needs for salmonids)
  - (c) Potential impacts to surface water temperature and other water quality factors through implementation of the proposed LWP in the affected reaches.
- iii) Additionally, if a proposed LWP will provide instream flow via any method other than direct reduction in surface diversion, sufficient information and analysis as necessary to assist in the evaluation of the quantity, quality and timing of this water for instream flow contribution will be required. Depending on the proposed method such information may include (but is not limited to):
  - (a) Water balance estimates, including surface-groundwater interactions
  - (b) Site specific hydrologic assessments
  - (c) Recharge plans for shallow aquifer recharge projects

**4.1.4.** *Performance measures and options for achieving reductions in total water use from baseline RCW 90.92.080(3)(d)*

The applicant will identify performance measures and options which quantify proposed reductions in total water use from baseline, along with timelines for achieving those reductions. These performance measures will be used to assess progress towards meeting achieving reductions in total water use from baseline, as well as to help

document the effectiveness of water management changes. Examples of performance measures include irrigation efficiency upgrades and changes to cropping patterns.

**4.1.5.** *Performance measures for tracking improved stream flows either long term or during critical periods for fish– RCW 90.92.080(3)(e)*

The applicant will provide performance measures which incorporate the estimated instream flow contribution identified in section 4.1.3, locations at which they will be assessed, along with timelines to track progress towards achieving the instream flow contribution. The timelines will be either long term or specific to critical flow periods for fish. These performance measures will be used to assess progress towards achieving performance goals and inform efforts to improve streamflows, fish habitat, and other related parameters.

**4.1.6.** *Measurement, tracking and monitoring measures and procedures that ensure the implementation and enforcement of the measures for flexibility of water use, enhancement of the stream flows, and other elements, terms, and conditions in the local water plan. – RCW 90.92.080(3)(f)*

The applicant will describe the measurement, tracking and monitoring measures and procedures to be employed to ensure the implementation and enforcement of the elements, terms and conditions of a LWP. Diversion/withdrawal source metering, stream flow monitoring, groundwater level measurement and operational controls (i.e. headgate regulation) are examples of tools which may be utilized for this process. Measures and procedures to be implemented in the event of non-compliance should also be identified.

**4.1.7.** *Identification of where water made available for stream flow enhancement will be deposited – RCW 90.90.080(5)(d)*

The applicant may choose between the water bank under RCW 90.92.070(1)(b) or the State Trust Water Rights Program.

**4.1.8.** *Commitment Criteria – RCW 90.92.080(5)(e) and RCW 90.92.080(8)*

- i) The minimum term of a proposed LWP is one year. LWPs of >5 years will be preferred.
- ii) The maximum term of a proposed LWP will be the expiration date of the legislation or ten years, whichever is lesser.

## **4.2 Elements Required by Board**

**4.2.1.** *Map(s) of Project Area*

Map of LWP area which illustrates the proposed set of practices that provide for flexibility in the use and application of water, and the estimated location and extent of the proposed instream flow improvements. Maps should include:

- i) Delineation of the boundaries of the plan/project area;
- ii) Place of use and points of withdrawal/diversion of existing water rights;
- iii) Place of use and points of withdrawal/diversion in the proposed LWP;
- iv) Any proposed infrastructure changes;
- v) Spatial representation of instream flow improvements;

- vi) Location of the measures to be used for measurement, tracking and monitoring as required under RCW 90.92.080(3)(f).

#### **4.2.2. Copies of Water Rights**

Copies of all water rights relevant to the proposed LWP, including provisions/conditions regarding their use and relationship to other water rights (i.e. “supplemental rights”).

#### **4.2.3. Data Collection and Management**

To provide quality assurance and help ensure that the objectives of this section met, the following data collection and management procedures should be incorporated into the proposed LWP as appropriate and necessary:

- (a) Tasks required to collect data
- (b) Members of data collection team identified with roles and responsibilities defined
- (c) Data collection schedule/frequency
- (d) Sampling and measurement procedures used to acquire the data, including:
  - (i) Equipment description, maintenance and calibration
  - (ii) Site selection/location
  - (iii) Standard operating procedures
  - (iv) Quality Control measurements/samples
- (e) Data management procedures including:
  - (i) Field logs
  - (ii) Chain of custody or lab reports
  - (iii) Photos, drawings
  - (iv) Results
- (f) Data assessment, including:
  - (i) Periodic review
  - (ii) Documentation for annual reporting

#### **4.2.4. Dependencies**

Overview of any items upon which the implementation of the proposed LWP would be contingent, such as securing funding, permitting requirements, agreements, infrastructure changes, etc.

## **SECTION 5.0 LWP FILING PROCESS – GUIDELINES & CRITERIA**

**Purpose:** The purpose of this section is to provide guidelines and criteria for the filing of a LWP proposal. Filed LWP applications will be posted at [www.wallwallawatershed.org](http://www.wallwallawatershed.org).

**Statutory Reference:** “The board shall adopt guidelines and criteria for filing, review and approval of a local water plan.” {RCW 90.92.080(1)}

### **5.1 Guidelines for Filing**

#### **5.1.1. Pre-Proposal Meeting with Staff (Optional, but recommended)**

- i) Staff meets with applicant to provide assistance with the proposed LWP to ensure it is consistent with RCW 90.92.080.

- ii) Staff may address concerns and suggest changes and/or request additional information or data needs

**5.1.2. LWP Proposal Submitted to Staff**

- i) Staff reviews LWP proposal for completeness and may request additional information from the applicant.

**5.1.3. Staff Files LWP Proposal**

- i) Staff may file a complete LWP proposal consistent with the filing criteria (section 5.2)
- ii) Staff will make LWP proposals, or a summary thereof, available to the Board.
- iii) Staff will refer a filed LWP to the Water Resource Panel for review, comment and recommendation, consistent with Section 6.0.
- iv) Staff will prepare and provide public notice of the proposed LWP consistent with RCW 90.92.090. Fill out detail, potential Appendix to include forms?

## **5.2 Criteria for Filing**

**5.2.1.** *The proposed LWP must contain, in adequate detail, the Required Elements outlined in Sections 3-5. {RCW 90.92.080(3)}*

# **SECTION 6.0 LWP PROPOSAL REVIEW PROCESS – GUIDELINES & CRITERIA**

**Purpose:** The purpose of this section is to provide guidelines and criteria for the review and evaluation of proposed LWPs.

**Statutory Reference:** “The board shall adopt guidelines and criteria for filing, review and approval of a local water plan.” {RCW 90.92.080(1)}

## **6.1 Guidelines for LWP Review**

**6.1.1. WRP Evaluation of LWP**

- i) WRP provides technical evaluation of proposal for compliance with criteria described in Section 6.2 and adherence to {RCW 90.92.080}.
- ii) WRP will advise on the baseline water use determination. {RCW 90.92.080(3)(a)}
- iii) May request additional information or data from applicant.
- iv) May consider any public comment received under section 5.1.3.iv). {RCW 90.92.090(1)}
- v) WRP issues report(s) providing advice to Board. If consensus is not reached by WRP, a minority report may be submitted.

**6.1.2. LWP Submitted to Partnership Board**

- i) Upon receiving the WRP technical evaluation and advice on a draft LWP staff will place the draft LWP on the Board agenda for discussion.
- ii) The board may upon reviewing a draft LWP:
  - (a) Request additional information be presented at a subsequent meeting.
  - (b) Place the draft LWP on a subsequent meeting agenda for approval.
  - (c) Approve the draft LWP consistent with Section 7.0.

## **6.2 Criteria for Technical Evaluation of Proposed LWP**

- 6.2.1.** *The proposed LWP must substantially enhance instream flow conditions. {RCW 90.92.090(2)}*
- 6.2.2.** *The LWP must not impair other existing water rights, unless written approval obtained by the owner of impaired water right. (RCW 90.92.120(1)(c))*
- 6.2.3.** *The LWP must not impair existing instream flow rights, unless the Board and Ecology agree that the benefits provided by the proposed LWP outweigh the impacts on existing instream flow rights. {RCW 90.92.120(1)(c)}*
- 6.2.4.** *Public comments/concerns must be accepted in the proposed LWP.*
- 6.2.5.** *The total water use proposed under the LWP must not exceed that which was determined to have been used in the Baseline Water Use Determination.*
- 6.2.6.** *The LWP must be economically sustainable for the duration of the proposed project*

## **SECTION 7.0 APPROVAL PROCESS – GUIDELINES & CRITERIA**

**Purpose:** The purpose of this section is to provide guidelines and criteria for approval of a proposed LWP.

**Statutory Reference:** “The board shall adopt guidelines and criteria for filing, review and approval of a local water plan.” {RCW 90.92.080(1)}

### **7.1 Partnership Board Approval Guidelines**

- 7.1.1.** *Subsequent to the following the Board may approve, reject or send a proposed LWP back to the applicant for modification or amendment:*
  - i) All documents, public comments and WRP report(s) relevant to the proposed LWP are made available for Board for review.
  - ii) Review of relevant proposal documents including recommendations, reports, and public comments.
  - iii) Requests for additional information or clarification from applicant, staff, WRP or PAG are met.
- 7.1.2.** *If the proposed LWP is approved by the Board, the Board will then forward the LWP to Ecology for consideration for approval.*
- 7.1.3.** *If both the Board and Ecology approve the proposed LWP, staff will develop a final LWP Contract (Contract) in coordination with the Board, Ecology and the applicant(s).*

### **7.2 Criteria for Board Approval of proposed LWP**

- 7.2.1.** *The LWP must contain, in adequate detail, the Required Elements outlined in Section 3. {RCW 90.92.080(3)}*
- 7.2.2.** *The LWP must substantially enhance instream flow conditions. {RCW 90.92.090(2)}*
- 7.2.3.** *The LWP must not impair existing out of stream water rights, unless written approval obtained by the owner of impaired water right. {RCW 90.92.120(1)(c)}*

- 7.2.4.** *The LWP must not impair existing instream flow rights, unless the Board and Ecology agree that the benefits provided by the LWP outweigh the impacts on existing instream flow rights. {RCW 90.92.120(1)(c)}*
- 7.2.5.** *Public comments/concerns must be accepted on the LWP.*
- 7.2.6.** *The total water use proposed under the LWP must not exceed that which was determined to have been used in the Baseline Water Use Determination.*
- 7.2.7.** *The LWP must be economically sustainable for the duration of the proposed project.*
- 7.2.8.** *The State Environmental Policy Act (SEPA) requirements must have been met.*
- 7.2.9.** *In accordance with RCW 90.92.080(5), all water right holders participating in the LWP must:*
  - i) *agree to allow a portion or all of their baseline water use to remain instream;*
  - ii) *have existing operable water conveyance infrastructure in place and available to use;*
  - iii) *agree that any water made available for stream flow enhancement may not be diverted from the water source and used during the term of the LWP, but instead must be deposited into the water bank or placed into trust water rights program;*
  - iv) *measure and monitor their water use, stream flows upstream and downstream of the boundaries of the plan, and groundwater levels within the boundaries of the plan;*
  - v) *Commit to staying in the program consistent with the criteria established by the Board.*

### **7.3 Final Contract Approval Guidelines**

- 7.3.1.** *Board reviews Contract; may request modification of terms or conditions of Contract*
- 7.3.2.** *If approved, all documents and supporting material for the Contract are forwarded to Ecology for State Environmental Policy Act (SEPA) compliance and consideration for approval.*
- 7.3.3.** *The Board, Ecology, and all water users participating in the LWP must all agree to abide by the terms and conditions of the LWP. {RCW 90.92.090(3)}*
- 7.3.4.** *If contract is not approved by any of the parties, proposal may be remanded back to the Board for further action.*
- 7.3.5.** *LWP becomes effective with signatures on Contract by Executive Director of Board, director of Ecology, and all water users associated with the LWP, agreeing to terms and conditions of the Contract. {RCW 90.92.090(3)}*
- 7.3.6.** *Any person not party to the LWP and aggrieved by Ecology's decision may appeal the decision to the Pollution Control Hearings Board as provided under RCW 43.21B.230. {RCW 90.92.100(1)}*

## **SECTION 8.0 REPORTING GUIDELINES**

**Purpose:** The purpose of this section is to provide guidance regarding annual reporting guidelines which outline the required content of the report and timeline for submittal.

**Statutory Reference:** “The water users must submit annual reports to the department and the board regarding contract performance, consistent with the guidelines adopted by the board.” {RCW 90.92.080(7)}

## 8.1 Reporting Frequency

The water user or water user group contact, as organized under Section 3 of this document, will be responsible to submit a LWP Annual Report (“Report”) to the Board annually.

**8.1.1.** *Unless otherwise mandated by the Board, the initial Report will be due January 15<sup>th</sup> of the year after the LWP is signed, and then by January 15<sup>th</sup> every year thereafter for the length of the contract*

**8.1.2.** *A specific 12 month reporting period will be identified*

## 8.2 Information Required for Annual Report

The LWP Annual Report will contain the following information:

**8.2.1.** *Monitoring data results and analysis*

- i) Groundwater levels within boundaries of the LWP
- ii) Stream flows upstream and downstream of the boundaries of the LWP
- iii) Water diversion/withdrawal meter data
- iv) Portion of baseline water use contributed to instream flow.
- v) Other measurement, tracking and monitoring tasks required in the LWP.

**8.2.2.** *Project evaluation*

- i) Successes realized
- ii) Problems encountered
- iii) Reports on non-compliance of any LWP provisions
- iv) Proposed changes to LWP provisions/conditions
- v) Updates on any projects related to the LWP

## 8.3 Electronic Submittal to Board

**8.3.1.** *The Report will be submitted electronically to Partnership staff and made available for review by the Partnership Board and Ecology.*

# SECTION 9.0 DISPUTE RESOLUTION & REVOCATION PROCESS

**Purpose:** The purpose of this section is to provide a dispute resolution process for water users, the Board, and Ecology to resolve differences regarding the implementation and enforcement of the LWP.

**Statutory Reference:** “The board shall develop a dispute resolution process for water users, the board, and the department to resolve disputes regarding the implementation and enforcement of a local water plan.” {RCW 90.92.080(1)}.

## 9.1 Initiation of Dispute Resolution Process

**9.1.1.** *The dispute resolution process may be initiated as a result of one of the following:*

- i) A complaint submitted to the Board by a water user or users participating in a LWP concerning a violation of the terms and conditions of a LWP.

- ii) A determination by the Board, through LWP oversight, annual reports or other information, that a violation of the terms and conditions of a LWP has occurred.
- iii) Complaints regarding violation of the terms and conditions of a LWP submitted to the Board by third parties.

## **9.2 Dispute Resolution – Terms and Conditions of a LWP**

- 9.2.1.** *Complaints regarding potential violation of terms and conditions of a LWP should first be submitted to Partnership staff. Staff shall collect and compile all available information and data related to the complaint and make it available to the Board. Complaint info will simultaneously be made available to Ecology and the water users in the LWP.*
- 9.2.2.** *The Board may, after review of the complaint, remand the complaint to staff for informal discussions between the affected parties in an attempt to resolve the dispute. Staff will have up to 30 days to work with affected parties to achieve resolution, in coordination with the Board and Ecology.*
- 9.2.3.** *In lieu of 9.2.2, or if those efforts are unsuccessful, the Board may appoint a subcommittee which may include one or more members of the Board, WRP and Ecology to hold discussions with the affected parties in order to seek resolution to the dispute. A recommendation to the Board regarding resolution of the complaint will be made, or an extension requested, within 30 days of appointment of the subcommittee.*
- 9.2.4.** *The Board, Ecology, and the water users may jointly decide to employ a neutral third party ('facilitator') to facilitate discussions and mediate possible resolutions to the dispute.*
- i) The Board will provide Ecology and water users with a list of potential candidates to serve as a facilitator. All parties must agree on the selection.
  - ii) The Board, Ecology and the water users will each submit reports detailing their respective positions regarding the dispute. Reports shall be provided to each party and to the agreed upon facilitator. The reports shall be submitted to the all parties no later than 14 days after the facilitator has been employed.
  - iii) Meetings and discussions will be arranged by the facilitator. This process will have up to 60 days to reach resolution to the complaint.
  - iv) Facilitator costs will be born equally by: the Partnership, Ecology, and water users participating the LWP unless otherwise agreed to.
  - v) Upon conclusion of the discussions, the facilitator will prepare and submit a report to the Board which describes the issues associated with the complaint together with and recommendations.
- 9.2.5.** *The Board will review all reports, documents, testimony, and other information collected with regards to the complaint. All negotiations, submitted reports and documents shall remain confidential and cannot be used by any party for purposes other than negotiations.*

- 9.2.6.** *If resolution to the complaint is agreed upon by the Board, Ecology and the water users, and the resolution requires an amendment to the LWP, the decision to amend the LWP by Ecology is appealable to the Pollution Control Hearings Board under RCW 43.21B.230. {RCW 90.92.100(1)}*
- 9.2.7.** *The Board has sole discretion to seek compliance with a LWP that is not in compliance with its terms and conditions. {RCW 90.92.090(4)}*
- 9.2.8.** *If the Board determines a good faith effort has been made by the parties and the dispute cannot be resolved, the Board may revoke the LWP for noncompliance with its terms and conditions. {RCW 90.92.090(4)}*
- 9.2.9.** *The Board may make the revocation of the LWP effective immediately, or at some future date, but in no case any later than the end of the irrigation season (specify a season?) during which the revocation action takes place.*
- 9.2.10.** *If the Board revokes a LWP due to noncompliance, the water users in the LWP must thereafter exercise the water rights only as the water rights were authorized and conditioned prior to the approval of the LWP, and all rights and duties that were terms in the LWP lapse and are not valid or enforceable. {RCW 90.92.090(4)}*
- 9.2.11.** *This dispute resolution process will be included within the terms and conditions of all approved LWP's.*

### **9.3 Dispute Resolution - Impairment Claims**

- 9.3.1.** *A water rights holder who believes the holder's water right has been impaired by any action under Chapter 90.92 may submit a complaint to the Board and follow the process outlined in Section 9.2, above, or may directly request that Ecology review the impairment claim. {RCW 90.92.100(2)}*
- 9.3.2.** *If Ecology receives an impairment review request, and determines that some action under Chapter 90.92 is impairing existing water rights, Ecology, the Board, and the water users must amend the LWP to eliminate the impairment, unless express written approval is obtained from the holder of the impaired water right allowing for the injury to that right. {RCW 90.92.100(2)} {RCW 90.92.120(c)}*
- 9.3.3.** *Amendment to the LWP must be agreed upon by Ecology, the Board, and water users associated with the LWP. If agreement on an amendment to the LWP to eliminate the impairment cannot be reached, the LWP will be considered out of compliance with its terms and conditions and subject to revocation by the Board.*
- 9.3.4.** *Ecology's decision to alter or not alter an LWP is appealable to the Pollution Control Hearings Board under RCW 43.21B.230. {RCW 90.92.100(2)}*

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# Water Banking

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## SECTION 1.0 PURPOSE

### 1.1 Overview

The purpose of this guidance document is to establish the processes, guidelines and criteria for water banking agreements under the leadership of the Walla Walla Watershed Management Partnership (Partnership).

A water banking agreement is any agreement that exercises the Board's authority to manage banked water or acquire water rights; either under RCW 90.42 or under RCW 90.92 as follows:

- "On the basis of agreed upon terms and conditions between the water right holder and the Board {RCW 90.92.070(2)(a)."
- "If the right, or portion thereof, is a result of a local water plan {RCW 90.92.070(2)(b)."
- "As mitigation for impairment for authorization to instream flows and other existing water rights" {RCW 90.92.070(2)(c-d).

This guidance is consistent with Chapter 90.92 Revised Code of Washington, and is subject to revision as necessary to effectuate the purpose of this Chapter.

## SECTION 2.0 ROLES AND RESPONSIBILITIES

### 2.1 Water Right Holders

Interested Water Right Holders are responsible for providing all information deemed necessary by the Partnership Board (Board) to inform the review and approval process.

### 2.2 Partnership Board

The Board has sole authority to accept, acquire, or otherwise approve or deny entry of water rights into the water bank.

### 2.3 Partnership Staff

The role of Partnership staff is to pursue participation in the program at the direction of the Board and to provide support and assistance to the Board in administering the water banking mechanism. Staff will also develop draft water banking agreements based on information provided by interested Water Right Holders.

### 2.4 Water Resource Panel

The Water Resource Panel (WRP) will be available to advise on water banking agreements as requested by the Board.

### 2.5 Policy Advisory Group

The Policy Advisory Group (PAG) will be available to advise on water banking agreements as requested by the Board.

### 2.6 Ecology

Ecology will maintain a record of the participation of water rights under this authority, sufficient to provide the participants the assurances identified in RCW 90.92.070 (4-6).

## **SECTION 3.0 REQUIRED ELEMENTS FOR A WATER BANKING AGREEMENT**

**Purpose:** The purpose of this section is to list and describe the elements necessary for a water banking agreement described under RCW 90.92.070, but will serve to guide all water banking agreements.

**Statutory Reference:** RCW 90.92.070

### **3.1 Elements Required by Statute - RCW 90.92.070(1-6)**

**3.1.1.** *Identification of a temporary or permanent basis for participation {RCW 90.92.070(1)}*

**3.1.2.** *Identification of one of the following three modes for participation:*

- i) On the basis of agreed upon terms and conditions between the water right holder and the Board {RCW 90.92.070(2)(a)}.
- ii) If the right, or portion thereof, is a result of a local water plan {RCW 90.92.070(2)(b)}.
- iii) Management of a water right banked as mitigation for impairment for authorization for other purposes {RCW 90.92.070(2)(c-d)}.

### **3.2 Elements Required by Board**

**3.2.1.** *Copies of Water Rights*

Copies of all water rights, involved in the draft water banking agreement, including provisions/conditions regarding their use and relationship to other water rights (i.e. “supplemental rights”).

**3.2.2.** *Dependencies*

Overview of any items upon which the water banking agreement would be contingent, such as securing funding, permitting requirements, agreements, infrastructure changes etc.

**3.2.3.** *Commitment Criteria*

- i) There is no minimum term for a water banking agreement, but agreements of longer term will be preferred.
- ii) The maximum term of a water banking agreement will be:
  - (a) The expiration date of the legislation if temporarily banked under RCW 90.92.070(2)(a) or (b).
  - (b) Permanent, if banked under RCW 90.92.070(2)(a), (b), or (d) and utilizing the State Trust Water Right Program RCW 90.42.080 {RCW 90.92.070(3)(b)}.

## **SECTION 4.0 WATER BANKING FILING PROCESS – GUIDELINES & CRITERIA**

**Purpose:** The purpose of this section is to provide guidelines and criteria for the filing of a water banking agreement for Board approval.

**Statutory Reference:** “manage banked water as authorized by this chapter, acquire water rights by donation, purchase, or lease.” {RCW 90.92.050(1)( f),(g), and (i)}

## 4.1 Guidelines for Filing

**4.1.1.** *Water Right Holder provides information to Staff identified in Section 3*

**4.1.2.** *Staff complete a draft water banking agreement based on the information provided.*

**4.1.3.** *Agreement is considered filed upon completion of draft agreement by staff.*

## 4.2 Criteria for Filing

**4.2.1.** *The proposed agreement must contain, in adequate detail, the Required Elements outlined in Section 3.*

# SECTION 5.0 LWP PROPOSAL REVIEW PROCESS – GUIDELINES & CRITERIA

**Purpose:** The purpose of this section is to provide guidelines and criteria for the review and evaluation of proposed water banking agreements.

**Statutory Reference:** “manage banked water as authorized by this chapter, acquire water rights by donation, purchase, or lease.” {RCW 90.92.050(1)( f),(g), and (i)}

## 5.1 Guidelines for Review

**5.1.1.** *Draft Agreements Submitted to Partnership Board*

i) Staff will submit draft agreements to the Board no later than five days prior to a regularly scheduled Partnership Board meeting.

ii) Review will proceed based on the type of agreement proposed (see section 3.1.2):

*(a) Review of an agreement proposed “On the basis of agreed upon terms and conditions between the water right holder and the Board {RCW 90.92.070(2)(a).”*

(i) If the agreement is an: “agreement not to divert” or any other agreement that does not involve financial compensation, the Board may take action on the agreement without further review.

(ii) If the agreement involves financial compensation the project will be evaluated based on criteria established in section 5.2, the Board may also choose to request a recommendation from the Water Resource Panel on the technical aspects of the proposed agreement.

*(b) Review of an agreement proposed “If the right, or portion thereof, is a result of a local water plan {RCW 90.92.070(2)(b).”*

(i) Such an agreement will be approved as part of the LWP approval

*(c) Management of a water right banked as “mitigation for impairment for authorization for other purposes” {RCW 90.92.070(2)(c-d).*

- (i) TBD in a future draft.

## 5.2 Criteria for Review

As drafted these review criteria only apply to transactions involving financial compensation. Any transactions not involving financial compensation that meet the filing criteria would be reviewed without further consideration.

### 5.2.1. Evaluation Criteria:

- i) The agreement enhances in stream flow.
- ii) Irrigation District consent can be obtained (if applicable).
- iii) The transaction will not impair other existing rights.
- iv) Third party impacts can be avoided or reduced to acceptable levels.
- v) The transaction price (\$/cfs or \$/ac-ft) is less than any limit imposed by the Board.
- vi) Legal and administrative barriers are surmountable.
- vii) Funding is available to consummate the transactions.

## SECTION 6.0 APPROVAL PROCESS – GUIDELINES & CRITERIA

**Purpose:** The purpose of this section is to provide guidelines and criteria for approval of a draft water banking agreement.

**Statutory Reference:** “manage banked water as authorized by this chapter, acquire water rights by donation, purchase, or lease.” {RCW 90.92.050(1)( f),(g), and (i)}

### 6.1 Approval Guidelines

**6.1.1.** *All relevant documents are made available by staff for Board review.*

**6.1.2.** *Board will review relevant documents.*

**6.1.3.** *Board may request additional information or clarification from water right holder, staff, WRP or PAG*

- i) *Board approves or denies a draft water banking agreement based on the type of agreement proposed (see section 3.1.2):*
  - (a) *Approval of an agreement proposed “On the basis of agreed upon terms and conditions between the water right holder and the Board {RCW 90.92.070(2)(a).”*
    - (i) If the agreement is an: “agreement not to divert” or any other agreement that does not involve financial compensation, the Board may approve the agreement via the consent agenda.
    - (ii) If the agreement involves financial compensation the project will be considered for approval based on the criteria established in 6.2.
  - (b) *Review of an agreement proposed “If the right, or portion thereof, is a result of a local water plan {RCW 90.92.070(2)(b).”*
    - (i) The Board may approve the agreement via the consent agenda.

(c) *Management of a water right banked as mitigation for impairment for authorization for other purposes {RCW 90.92.070(2)(c-d).*

(i) TBD at a future date.

## **6.2 Approval Criteria**

As drafted these approval criteria only apply to transactions involving financial compensation. Any transactions not involving financial compensation that meet the filing criteria would be approved without further consideration.

**6.2.1.** *Any issues requiring further attention identified during the agreement review conducted under section 5.2 have been addressed.*

**6.2.2.** *The transaction price (\$/cfs or \$/ac-ft) is cost effective.*

**6.2.3.** *Irrigation District consent has been obtained.*

**6.2.4.** *The transaction will not impair other existing rights*

**6.2.5.** *Third party impacts have been avoided or reduced to acceptable levels.*

**6.2.6.** *Legal and administrative barriers have been surmounted.*

## **SECTION 7.0 REPORTING GUIDELINES**

**Purpose:** The purpose of this section is to provide guidance regarding reporting guidelines which outline the required content of the report and timeline for submittal.

**Statutory Reference:** “manage banked water as authorized by this chapter, acquire water rights by donation, purchase, or lease.” {RCW 90.92.050(1)( f),(g), and (i)}

### **7.1 Reporting Frequency**

The water right holder will be responsible to submit a report.

**7.1.1.** *Unless otherwise mandated by the Board, annual reports will be required, with the initial Report to be due January 15<sup>th</sup> of the year after the water banking agreement is signed, and then by January 15<sup>th</sup> every year thereafter for the length of the contract*

**7.1.2.** *A specific 12 month reporting period will be identified in the water banking agreement.*

### **7.2 Information Required for Report**

The Report will contain the following information:

**7.2.1.** *Monitoring data results*

i) Water diversion/withdrawal meter data.

**7.2.2.** *Project evaluation*

i) Report of any non-compliance.

ii) Proposed changes to provisions/conditions.

### **7.3 Electronic Submittal to Board**

**7.3.1.** *The Report will be submitted electronically to Partnership staff and made available for review by the Partnership Board and Ecology.*

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## APPENDIX A – BASELINE WATER USE DETERMINATION

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### OVERVIEW

In order to approve a Local Water Plan (LWP), the Board must establish the baseline water use for all rights involved in the draft LWP (RCW 90.92.080(3)(a)). While the process for determining baseline is not defined in the legislation, we are guided by the legislatively stated purposes for determining a baseline and the ultimate application of the baseline.

The purpose of the baseline is to quantify the current use of water to meet the goal of the Local Water Plan. That goal is to enhance stream flows through a Local Plan based on a process that encourages and provides incentives to local water users to participate. Therefore it is to be flexible principle.

Baseline is specifically not meant to be a determination of the legal extent and validity of a water right (See 90.92.120(1)(a)).

There are safety measures to insure there will not be enlargement of water rights and impairment.

- Baseline quantification is not binding as a permanent determination.
- The baseline determination is moot when the Local Water Plan (LWP) expires.
- Documents submitted by the right holder cannot be used by Ecology in the future.
- Before a LWP becomes permanent, the extent and validity analysis can be done.
- Complaints may be filed, and LWPs subsequently amended.
- A LWP can only be approved if it will substantially enhance instream flow.

The establishment of Baseline Water Use guidelines is therefore somewhat of a balancing in providing “Flow for Flexibility.”

The following Baseline Water Use Determination guideline option is a draft intended to focus consideration and discussion of alternatives. The final version of the LWP Guidelines & Criteria will include two options for calculating “baseline”.

- 1) An option adopted by the Board after consultation with the Water Resources Panel, and
- 2) The option to use current Ecology guidance related to Trust Water Rights

## DRAFT BASELINE WATER USER DETERMINATION GUIDELINE

**Purpose:** The purpose of the baseline determination is to quantify the historic beneficial use of water to meet the goal of Local Water Plans. That goal is to enhance stream flows through implementation of Local Water Plans, utilizing a process that encourages and provides incentives for water users to participate in development of those Plans. The baseline determination is intended to be a flexible principle. A baseline determination is specifically not meant to be a determination of the legal extent and validity of a water right (See 90.92.120(1)(a)).

### Data Provided by Applicant per Guidance Document – Section 4.1.1

*The data below is required to be submitted for the most recent seven years prior to the LWP submittal, with the exception of most recent two, to the extent they are available. Data requirements may be modified on a case by case basis at the discretion of the Board.*

1. Electrical Power records for pump(s)
2. Pump/motor information. i.e. size, make, model, pump set depth
3. Irrigation scheduling information provided by water user. Includes data such as: application method(s), line spacing, set times, nozzle size, number of sprinklers operating pressures
4. Water source meter records
5. Farm Service Agency (FSA) crop records (acres & crop type)
6. Dated aerial photographs which delineate area included in the proposed LWP

### Procedures for Baseline Water Use Determination:

*Calculations for water use are to be made for the most recent 7 years preceding the submittal of the proposed LWP, excluding the most recent two.*

1. Determine the instantaneous pumping capacity ( $Q_i$ ) of the pumping plant(s).
2. Determine the season of use – time during which water is beneficially used.
3. Using aerial photos and FSA records, confirm the maximum number of acres that have actually been irrigated.
4. Using power records and information regarding the pump/motor, estimate the annual quantity of water pumped
5. Using the Washington State Irrigation Guide and/or WSU (AgWeatherNet) ET data, estimate crop irrigation requirements for crops/acres grown.
6. Estimate annual water application based on irrigation scheduling information.
7. Compare results of (4), (5) and (6), together with source meter records, if any, and determine the most reasonable estimate for highest one year of beneficial use of water for the period reviewed. This constitutes the baseline water use for purpose of the LWP.

### Alternate Procedures (Acreage Expansion/Trust Water Right):

1. If irrigated acres or purposes of use are proposed to be added to right, the baseline water use will be calculated following the procedure in RCW 90.03.380(1), except that there will be no averaging; calculated or estimated return flows are subtracted from the highest one year of use within the period described to arrive at annual consumptive quantity (ACQ), which then constitutes the baseline water use for purposes of the LWP.
2. If water identified for stream flow enhancement in the proposed LWP is requested to be placed into the Trust Water Right Program, the baseline water use will be calculated consistent with Chapter 90.42 RCW.

## **FOR DISCUSSION:**

### **Advantages:**

1. Does not consider 5 consecutive years of non-use for potential relinquishment consideration.
2. The annual consumptive quantity determination eliminates the averaging requirement, resulting in more “wet water” for consideration in the LWP.
3. Provides a review period when records are most readily available, providing a more accurate representation of actual water use than a review with a longer look back period.
4. Eliminates the most recent 2 years of use, helping to prevent “front loading” of water use.

### **Disadvantages:**

1. Seven year look back period may be a disadvantage to some water users, i.e. those that have instituted water conservation measures prior to the 7 year period.
2. May not be representative if the legitimate highest water use was recorded in the most recent two years.
3. May disregard extensive period of non-use of water prior to 7 year review period.

## WATER RIGHT EXTENT AND VALIDITY – ECOLOGY

### METHODOLOGY

**Description:** The procedures below describe the legal process by which Ecology evaluates the validity and extent of an existing water right proposed for change. The purpose of describing this process is to provide a reference to contrast proposed methods for baseline water use determinations.

#### **Validity:**

1. Review historical use of water under the water right from 1967 to present.
2. Determine if there have been 5 successive years of non-use of water under the right during that time period.
3. If there have been 5 successive years of non-use, determine if any of the statutorily defined “sufficient cause” for non-use exceptions to relinquishment (RCW 90.14.140) apply.
4. Evaluate the historical use of water under the right to determine if it has been forfeited due to common law abandonment.

*If the right has not been relinquished or abandoned, proceed to extent review, below.*

#### **Extent:**

1. Select lowest 5-consecutive period of beneficial use from 1967 to present;
2. Select highest one year of beneficial use out of that low five; this represents the extent of the annual quantity of water under the right.
3. Determine the instantaneous pumping capacity of the pumping plant(s).
4. Determine the maximum number of acres that have actually been irrigated.
5. Determine the season of use within which the right has been exercised.

*The result of 2, 3, 4 and 5 determine the extent of beneficial use of water under the water right.*

**Addition of Irrigated Acres/Purpose of Use:** If the applicant proposes to add irrigated acres or purposes of use to a water right, a statutorily defined (RCW 90.03.380) process is to be used:

1. Determine the most recent 5-year period of continuous beneficial use of the right.
2. Determine of estimate the annual amount of water diverted during those years.
3. Subtract estimated amount of return flows for each of those years.
4. Average the two years with the greatest use out of the 5.

*The result constitutes what is known as the ‘Annual Consumptive Quantity’, which represents the quantity which may be considered for change when adding acres or purposes of use.*