



Walla Walla Watershed Management Partnership
For Fish ■ For Farms ■ For Everyone ■

Guidelines and Criteria for Implementation of Chapter 90.92 RCW

ADOPTED 01/05/2010; AMENDED 04/06/2010; 12/07/2010; 01/04/2011; 12/06/2011

Table of Contents

CHAPTER 1 – INTRODUCTION.....	1
CHAPTER 2 – LOCAL WATER PLANS.....	1
CHAPTER 3 – WATER BANKING – NON-USE AGREEMENTS	11
CHAPTER 4 – EXEMPT WELL MITIGATION EXCHANGE	14
CHAPTER 5 – LOCAL WATER RIGHT ACQUISITIONS FOR INSTREAM FLOW	17

Chapter 1 – Introduction

This document represents the technical guidance for the implementation of RCW 90.92 by the Walla Walla Watershed Management Partnership (Partnership). If you are interested in participating in these programs you are encouraged to contact Partnership Staff, or visit the Partnership website, www.wallawallawatershed.org, where information has been compiled for potential participants.

Alternatively, if this technical guidance is of interest to you and you find this document leaves questions unanswered, be reminded that these programs are being administered by a Board and committees specifically crafted to “pilot local water management”. Meaning that it will be the people as much as the guidance document that will guarantee success of the program, but also that the document is part of a pilot program and as such is a living document that will be updated and reviewed as the pilot progresses. If you have specific comments on something that should be considered in the next review please notify Partnership staff at 509.524.5217 or guidelines@wallawallawatershed.org.

Chapter 2 – Local Water Plans

Section 1.0 PURPOSE

1.1 Overview

The purpose of this chapter 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 (WRP).

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.

[Org. 01/05/2010, Amd. 04/06/2010]

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), Staff or WRP to inform the review and approval process.

2.2 Partnership Board

The Board reviews proposed LWPs. Review includes consideration of the advice of the WRP as well as other comments submitted during the public notice period. The Board and the Washington State Department of Ecology (Ecology) must both approve a proposed LWP before approval becomes final. The Board may approve, return for modification or amendment, or deny any proposed LWP.

2.3 Partnership Staff

Staff provide support and assistance to the Board in administering the LWP process. Such support includes coordination between an applicant, the WRP, the Policy Advisory Group (PAG) and the Board. Staff provide pre-proposal support upon request, process submissions pursuant to adopted guidelines and criteria, post requisite public notices, and coordinate the review of proposed LWPs. Additional information may be requested by Staff to ensure the requirements of RCW 90.92.080 are met.

2.4 Water Resource Panel

The WRP provides advice and recommendations to the Board based on a technical review of a proposal. The WRP may also, in the Partnership’s discretion, provide technical assistance in developing proposed LWPs.

2.5 Policy Advisory Group

The PAG advises the Board on policy issues. PAG members are notified of proposed LWPs as part of the public comment and notification process. The PAG may also be convened by the Board, at its discretion, to provide input on a proposed LWP.

2.6 State Agencies

Ecology and the Washington Department of Fish & Wildlife (WDFW) may, at their discretion, provide technical and policy assistance in evaluation of proposals. Failure of either Department to provide such assistance does not preclude approval of a local water plan. Ecology and the Board must both approve a proposed LWP before approval becomes final.

[Org. 01/05/2010]

Section 3.0 WATER USER ORGANIZATIONAL GUIDELINES

This section provides guidelines on eligibility for submission of a proposed LWP to the Board. A proposed LWP may be submitted by either an individual water users or a group of water users.

3.1 Individual Water Users

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

- 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. If the applicant does not own or control the entire place of use, the following must be submitted with the proposal:*
- i) Documentation that conveys authority from all other landowners within the place of use to the applicant such that the applicant has a legally enforceable right to use the water right for the duration of the proposed LWP, or
 - ii) Documentation establishing that the applicant has legal control over that portion of a water right that is subject of the LWP.

3.2 Groups of Water Users

- 3.2.1** *Group applicants must demonstrate the following to the satisfaction of the Board that the applicant group owns or otherwise controls the entire place of use of the water right(s) included in the proposed LWP. If the applicant does not own or control the entire place of use the following must be submitted with the proposal:*
- i) Documentation that conveys authority from all other landowners within the place of use to the applicant group such that the applicant group has a legally enforceable right to use the water right for the duration of the proposed LWP, or
 - ii) Documentation establishing that the applicant group has legal control over that portion of a water right that is the subject of the LWP.
- 3.2.2** *Primary contacts are identified and documented for the group.*
- 3.2.3** *Individuals with decision making authority for the group are identified.*

[Org. 01/05/2010]

Section 4.0 REQUIRED ELEMENTS

This section lists and describes the necessary requirements for a proposed LWP pursuant to RCW 90.92.080(3). This section also includes additional elements the Board requires for LWPs.

4.1 Elements Required by Statute - RCW 90.92.080(3)

The following items are required for final approval of a LWP:

- 4.1.1** *A determination by the board of the LWP 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 pursuant to RCW 90.92.080(3)(a).*
- i) LWP Baseline Water Use will be determined, as outlined in Appendix A. The Board will use this data to calculate and make a final determination on the LWP Baseline Water Use for purposes of the proposed LWP.
 - ii) The documents regarding water use that are submitted by the water users may not be used by Ecology to determine the validity of the water rights in any future administrative or regulatory actions {RCW 90.92.080(3)(a)}.
 - iii) The applicant may choose to have their LWP baseline water use calculated based on current Ecology guidelines.
- 4.1.2** *A clearly defined set of practices that provide for flexibility of water use – RCW 90.92.080(3)(b)*

The applicant must provide information that clearly describes how water will be managed within the proposed LWP. This information includes maps, diagrams, and 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, but are not limited to:

- i) Change or add to the authorized place of use {RCW 90.92.080(4)(a)};
- ii) Change or add points of diversion or 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 will remain instream long term or during critical flow periods for fish – RCW 90.92.080(3)(c)*

The applicant must provide an estimate of the water that will remain instream in the form of a specified reduction from its LWP baseline in instantaneous quantity (Qi), annual quantity (Qa), or reduction during critical flow periods for fish.

- i) If a proposed LWP will leave water instream as a result of reductions in Qi or Qa from the LWP baseline, 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 necessary to make such an assertion regarding critical flow periods for fish at the site (Primarily ESA listed fish and Spring Chinook or other native species of interest) will be required.
- iii) If a proposed LWP will provide instream flow by a method other than direct reduction in surface diversion, sufficient information and analysis must be provided to assist in the evaluation of the quantity (Qi), quality and timing of this water for instream flow contribution. 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 must identify performance measures and options that quantify proposed reductions in total water use from the LWP baseline, along with timelines for achieving those reductions. These performance measures will be used to assess progress toward achieving reductions in total water use from the LWP baseline, as well as 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 long term or during critical periods for fish– RCW 90.92.080(3)(e)*

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

4.1.6 *Measurement, tracking and monitoring measures and procedures that ensure 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 must 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 or withdrawal source metering, stream flow monitoring, groundwater level measurement and operational controls are examples of tools which may be utilized for this process.

4.1.7 *Agree to allow a portion or all of their baseline water use to remain instream, as specified in the approved local water plan – RCW 90.92.080(5)(a)*

The applicant must agree to leave the water identified in 4.1.3 (RCW 90.92.080(3)(c)) instream. This amount will be placed in the water bank under RCW 90.92.070(2)(b).

4.1.8 *Have existing operable water conveyance infrastructure in place and available for use – RCW 90.92.080(5)(b)*

The applicant must describe their existing operable infrastructure for involved water rights. An applicant is not required to have infrastructure in place and available for use that would be required by practices proposed under 4.1.2.

4.1.9 *Identification of where water made available for stream flow enhancement will be deposited – RCW 90.92.080(5)(c)*

By default water made available for stream flow enhancement under 4.1.7 will be placed in the water bank under RCW 90.92.070. The applicant may request that upon approval of a LWP that this be transferred to the State Trust Water Right Program.

4.1.10 *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 greater than 5 years are preferred.
- ii) The maximum term of a proposed LWP will be the expiration date of the authorizing legislation or ten years, whichever is less.

4.2 Elements Required by Board

In addition to statutory requirements, the Board requires the following items for final approval of a LWP:

4.2.1 *Map(s) of Plan Area*

A map, or series of maps, of the project area illustrating the proposal. Map(s) should include:

- i) Delineation of the boundaries of the plan area;
- ii) Place of use and points of withdrawal or diversion of existing water rights;
- iii) Place of use and points of withdrawal or diversion in the proposed LWP;
- iv) Any proposed infrastructure changes;
- v) Approximation of the reach experiencing 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);
- vii) Reference to the Township, Range and Section illustrated;
- viii) Use of either a published map, USGS quad, or recent aerial photography as a base.

4.2.2 *Copies of Water Rights*

Copies of all water right documents relevant to the proposed LWP, including provisions and conditions regarding their use and relationship to other water rights.

4.2.3 *Contingencies*

Applicants must identify any and all items on which implementation of the proposed LWP is contingent such as funding, permitting requirements, third party agreements, infrastructure changes, etc.

[Org. 01/05/2010, Amd 01/04/2011]

Section 5.0 FILING PROCESS

This section provides guidelines and criteria for filing a proposed LWP. Applications will be posted at www.wallawallawatershed.org.

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 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 makes the LWP proposal available to the Board,
- iii) Staff refers the filed LWP proposal to the Water Resource Panel for review, comment and recommendation consistent with 0,

- iv) Staff prepares and provides public notice of the proposed LWP pursuant to RCW 90.92.090.

5.2 Criteria for Filing

- 5.2.1** *A proposed LWP must contain, in adequate detail, the required elements outlined in Sections 3, 4.1.2-4.1.4, 4.1.7-4.1.10, and 4.2. {RCW 90.92.080(3)}*

[Org. 01/05/2010, Amd. 12/06/2011]

Section 6.0 REVIEW PROCESS

This section provides guidelines and criteria for the review and evaluation of proposed LWPs.

6.1 Guidelines for LWP Proposal Review

6.1.1 WRP Evaluation of LWP Proposal

- 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 LWP baseline water use determination. {RCW 90.92.080(3)(a)},
- iii) WRP may request additional information or data from applicant,
- iv) WRP may consider any public comment received under section 5.1.3.iv. {RCW 90.92.090(1)},
- v) WRP issues a report containing advice to the Board. If consensus is not reached by WRP, a minority report may be submitted to the Board.

6.1.2 Preparation of a Draft LWP

- i) Staff will incorporate the following into a draft LWP:
 - (a) The proposed LWP document,
 - (b) The WRP Report,
 - (c) A summary of how and when procedural steps have been completed,
 - (d) A general Terms & Conditions section.

6.1.3 Review of a Draft LWP

- i) The Draft LWP developed under 6.1.2 will be utilized for SEPA,
- ii) The Board will review a Draft LWP based on the Criteria in 6.2,
- iii) The Draft LWP will be jointly reviewed with the Participant and Ecology, the purpose of this review will be:
 - (a) Discuss and incorporate any necessary response to SEPA,
 - (b) Negotiate additional (non-template) terms & conditions as necessary.

6.2 Criteria for Technical Evaluation of Proposed LWP

Review of a proposed LWP will be based on the following:

- 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 is obtained by all owners of impaired water rights. (RCW 90.92.120(1)(c))*
- 6.2.3** *Public comments and concerns must be taken into consideration in the proposed LWP.*
- 6.2.4** *The total water use proposed under the LWP must not exceed the LWP Baseline Water Use Determination.*
- 6.2.5** *The LWP must be economically sustainable for the duration of the proposed project*

[Org. 01/05/2010, Amd 01/04/2011, 12/06/2011]

Section 7.0 APPROVAL PROCESS

This section provides guidelines and criteria for approval of a proposed LWP.

7.1 Board Approval Guidelines

7.1.1 Prior to Board action:

- i) A Final LWP based on the outcomes of the joint review under iii), has been prepared by Staff and reviewed by the Board.

7.1.2 Potential Board actions:

- i) Deny the LWP,
- ii) Approve the Final LWP. Upon Board approval, the LWP will be signed by the Executive Director.

7.2 Criteria for Board Approval

Board approval of a Final LWP is contingent on the following:

- 7.2.1** *The LWP must contain, in adequate detail, the required elements outlined in Section 4. {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 is obtained by the owners of the impaired water rights. {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 taken into consideration in 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 LWP 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 have been met.*

[Org. 01/05/2010, Amd 01/04/2011, 12/06/2011]

Section 8.0 REPORTING GUIDELINES

This section provides guidance regarding annual reporting guidelines, which outline the required content of the report and timeline for submittal.

8.1 Reporting Frequency

The LWP water user contact is required to submit an annual report ("Report") to the Board and Ecology regarding contract performance.

8.1.1 *The reporting period and annual Report due date shall be identified in the LWP, but cannot be later than January 15th of the year after the LWP contract is signed, and January 15th every year thereafter for the length of the contract.*

8.1.2 *The Report may be submitted electronically.*

8.2 Information Required for Annual Report

The Report shall contain the following information, with the parameters of each of the reporting elements subject to further definition by the Board based on WRP recommendations.

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 or withdrawal meter data (data-logging required),
- iv) Portion of LWP baseline water use contributed to instream flow, and
- v) Other measurements, tracking and monitoring tasks required by the LWP,
- vi) Photo documentation of the project area.

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 or conditions,
- v) Updates on any projects related to the LWP.

[Org. 01/05/2010, Amd 04/06/2010, 01/04/2011, 12/06/2011]

Section 9.0 DISPUTE RESOLUTION & REVOCATION PROCESS

This section provides a dispute resolution process for water users, the Board, and Ecology.

9.1 Initiation of Dispute Resolution Process

9.1.1 *The dispute resolution process in 9.2 will be initiated by any of the following:*

- i) A complaint submitted to the Board by a water user or group of users participating in an approved LWP concerning a violation of the terms and conditions of a LWP that specifically requests the matter be resolved through the dispute resolution process.
- ii) A determination by the Board that a violation of the terms and conditions of an approved LWP has occurred.

9.1.2 *An impairment claim submitted to the Board will follow the process in 9.2.*

Such claim may also be filed with Ecology {RCW 90.92.100(2)}

9.1.3 *Determinations that a LWP is ineligible for filing under 0, not recommended for approval under 0, or denied by the Board under 0 may be appealed to the Board in a public meeting. A decision by the Board shall be final.*

9.1.4 *Any person not party to an approved LWP may appeal the decision directly to the Pollution Control Hearings Board {RCW 90.92.100}.*

9.2 Dispute Resolution – Non-Compliance with Terms and Conditions

A LWP will adhere to the following process for dispute resolution and revocation related to non-compliance

9.2.1 *The Board at its discretion may seek compliance with a LWP that is not in compliance with its terms and conditions. However, failure to seek compliance does not waive the right of the Board to seek compliance at a later time. {RCW 90.92.090(4)}*

9.2.2 *If the Board determines that the LWP is not in compliance with its terms or a participant submits a complaint alleging violations of the terms and conditions of a LWP, the following dispute resolution process must be invoked to seek compliance and resolution.*

- i) Staff shall collect and compile all available information and data related to the complaint and make it available to the Board and the Participant. Staff shall contact and seek input from all interested parties, including Ecology and the Participant. If the dispute or complaint is in regard to Board action, the Board shall proceed to selection of a neutral third party facilitator under 9.2.2.iv.
- ii) Staff will facilitate meetings and discussions between the Board and 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 and consultation with the Board and Ecology.
- iii) If the staff efforts are unsuccessful, the Board shall appoint a committee, 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 of the dispute. The committee shall have 30 days to seek resolution and may ask for one 30 day extension by the Board. The decision of the committee must be unanimous and will be binding on the parties. If the committee cannot make a unanimous decision, a neutral third party shall be employed as provided in section iv).
- iv) *The Board or Ecology may decide to employ a neutral third party (“facilitator”) to facilitate discussions and mediate possible resolutions to the dispute. If a facilitator is requested by the Board:*
 - (a) 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.
 - (b) The parties 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 all parties no later than 14 days after the facilitator has been employed.
 - (c) Meetings and discussions will be arranged by the facilitator. This process will have up to 60 days to reach resolution to the complaint.
 - (d) Facilitator costs will be born equally by: the Partnership, Ecology, and water users participating in the LWP.
 - (e) The facilitator shall provide the guidelines and process for the discussions.
 - (f) The decision of the facilitator will be final.

9.2.3 *All negotiations, submitted reports and documents shall remain confidential and cannot be used by any party for purposes other than negotiations.*

9.2.4 *If the Board determines the dispute cannot be resolved and there has been a violation of the terms of the LWP by the participants of a LWP, the Board may revoke the LWP for noncompliance with its terms and conditions. {RCW 90.92.090(4)}*

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 during which the revocation action takes place.

9.2.5 *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)}*

9.3 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)}*

- i) *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.*

[Org. 01/05/2010]

APPENDIX A – LWP BASELINE WATER USE DETERMINATION

The purpose of the LWP baseline water use determination is to quantify the historic beneficial use of water to meet the goal of Local Water Plans [LWP]. This is an environmental baseline that is used to determine if a LWP is meeting the goal of enhancing stream flow conditions through implementation of a LWP that encourages and provides incentives for water users to forego use of a portion of the LWP Baseline. The LWP baseline determination is intended to be a flexible principle. It is not a determination of the legal extent and validity of a water right {RCW 90.92.120(1)(a)}. In this regard the Partnership may consider factors in addition to the procedures stated herein, including the rights and opportunities of the participants to have fully used the authorized water rights but for circumstances that meet the standards for the exceptions to relinquishment under RCW 90.14.140. LWPs must result in protecting ecological functions {RCW 90.92.010} by enhancement of flow conditions; as such the WRP will make recommendations and the Board will provide a final ruling on whether a LWP meets this criteria.

Data Provided by Applicant per Guidance Document – Section 4.1.1

The data below is required to be submitted to the extent it is available. Data requirements may be modified or alternative methods may be used on a case by case basis if recommended by the WRP or otherwise required by the Board.

1. Pump or motor information, e.g. size, make, model, pump set depth
2. Irrigation scheduling information, Including data such as: application method(s), line spacing, set times, nozzle size, number of sprinklers operating pressures
3. Crop records, Farm Service Agency (FSA) crop records preferred (acres & crop type)
4. Dated aerial photographs which delineate area included in the proposed LWP

Procedures for LWP Baseline Water Use Determination:

Calculations for water use are to be made for up to the 15 most recent years preceding the submittal of the proposed LWP.

1. Determine the Qi (instantaneous pumping capacity) of the current system
 - a) Irrigation system inventory (sprinklers, nozzle size, pressure, pump curve)
2. Acreage Determination
 - a) FSA records/maps, GIS, GPS, Aerial maps
3. Determine the Qa (duty) of the highest use crop
 - a) Look back up to 15 years to see the crop history
 - b) Determine Washington Irrigation Guide (WIG) crop irrigation requirements for highest use crop
 - c) Divide the WIG number for that crop by the efficiency of the existing irrigation system.

Flood ¹	50%	Hand Set / Wheel Lines	75%	Pivots	80%-90%
--------------------	-----	------------------------	-----	--------	---------

[Org. 01/05/2010, Amd. 04/06/2010, 01/04/2011]

¹ Further efficiency numbers are available at: <http://www.ecy.wa.gov/programs/wr/rules/images/pdf/guid1210.pdf>

APPENDIX B – PUBLIC NOTICE TEMPLATE

BEFORE THE WALLA WALLA WATERSHED MANAGEMENT PARTNERSHIP BOARD WALLA WALLA, WASHINGTON

Notice of Proposal for a Local Water Plan (SUMMARIZE PROPOSED CHANGES TO WATER RIGHTS).

TAKE NOTICE: That on (INSERT DATE), (INSERT APPLICANT(S) NAME) of (INSERT LOCATION) filed a proposal for a Local Water Plan with the Walla Walla Watershed Management Partnership to (DESCRIBE PROPOSED CHANGES AND CERT/PERMIT NUMBER OF WATER RIGHT).

That said right, under priority date of (INSERT DATE), authorizes diversion/withdrawal of up to (INSERT QUANTITIES) cubic feet per second/gallons per minute, (INSERT QUANTITY) acre-feet per year from (INSERT SOURCE) at a point located within the (INSERT LOCATION OF DIVERSION/WITHDRAWAL). That said right authorizes water to be used for (INSERT PURPOSE OF USE) from (INSERT SEASON OF USE) within the following legal description: (INSERT LEGAL DESCRIPTION OF PLACE OF USE).

The applicant proposes to change the (DESCRIBE PROPOSED CHANGES).

Any person wishing to formally comment on this proposal for a Local Water Plan may do so by filing written comments with the Walla Walla Watershed Management Partnership office located at the Water & Environmental Center, Walla Walla Community College, 500 Tausick Way, Walla Walla, WA., within thirty (30) days from (INSERT DATE OF INITIAL POSTING).

Any interested party may submit comments and other information to the Walla Walla Watershed Management Partnership Board regarding this application. The comments and information may be submitted in writing or verbally at any public meeting of the board held to discuss or decide on the application. This application will be on the board agenda during its regular meetings to normally be held on the first Tuesday of each month until completion of application (check website for current meeting dates and agenda (<http://www.wallawallawatershed.org/calendar>)). Note: This notice does not constitute notice of a meeting for the purposes of the Open Public Meetings Act, RCW 42.30.

[Org. 01/05/2010]

Chapter 3 – Water Banking – non-use agreements

SECTION 1.0 PURPOSE

1.1 Overview

The purpose of this chapter is to establish the guidelines and criteria for water non-use agreements; a type of water banking agreements under the leadership of the Walla Walla Watershed Management Partnership (Partnership). A water non-use agreement is any agreement under RCW 90.92.070(2)(a) where the water right holder submits a water banking non-use application (application) and it is approved by the Board to not use a portion or all of their water right, or under RCW 90.92.070(2)(b) as part of the approval of a LWP. Water banked under this chapter will be for instream flow use only and will not be available for re-allocation or as mitigation for other uses. 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.

[Org. 01/05/2010, Amd. 04/06/2010]

SECTION 2.0 ROLES AND RESPONSIBILITIES

2.1 Water Right Holders

Interested water right holders are responsible for preparation of an application providing all information deemed necessary by the Partnership Board (Board) to inform the review and approval process.

2.2 Partnership Board

The Board accepts, acquires, or otherwise approves or denies entry of water rights into the water bank.

2.3 Partnership Staff

Staff pursues participation in the program at the direction of the Board, and prepares necessary documentation for the Board to take action.

2.4 Water Resource Panel

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

2.5 Policy Advisory Group

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

2.6 Ecology

Ecology may be requested to accept the transfer of a permanent trust water right under RCW 90.92.070(3)(b).

[Org. 01/05/2010, Amd. 04/06/2010]

SECTION 3.0 REQUIRED ELEMENTS

This section lists and describes the elements necessary for an application.

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

By statute, an application must contain the following:

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

3.2 Elements Required by Board

The Board requires that an application also contain the following:

3.2.1. *Copies of Water Rights*

- i) Applicants must provide copies of all relevant water right documents, including provisions and conditions regarding their use and relationship to other water rights.

3.2.2. *Contingencies*

Applicants must identify any and all items on which the water banking agreement is contingent such as funding, permitting requirements, third party agreements, infrastructure changes, etc.

3.2.3. *Commitment Criteria*

- i) There is no minimum term, but longer terms will be preferred.
- ii) The maximum term will be the expiration date of the legislation.

[Org. 01/05/2010, Amd. 04/06/2010]

SECTION 4.0 FILING PROCESS

This section provides guidelines and criteria for the filing of an application for Board approval.

4.1 Guidelines for Filing

4.1.1. *Water Right Holder completes an application including the information identified in Section 3.*

4.1.2. *Application is considered filed upon successful completion of staff review.*

4.2 Criteria for Filing

4.2.1. *The application must contain, in adequate detail, the required elements outlined in Section 3.*

[Org. 01/05/2010, Amd. 04/06/2010]

SECTION 5.0 REVIEW PROCESS

This section provides guidelines for the review and evaluation of an application.

5.1 Guidelines for Review

5.1.1. *Necessary documentation submitted to the Board*

- i) Staff will submit necessary documentation to the Board no later than five days prior to a regularly scheduled Board meeting.
- ii) The Board may take action without further review.

[Org. 01/05/2010, Amd. 04/06/2010]

SECTION 6.0 APPROVAL PROCESS

This section provides guidelines for approval of an application.

6.1 Approval Guidelines

6.1.1. *The Board may:*

- i) *Request additional information from water right holder, Staff, WRP or PAG*
- ii) *Take action to approve or deny an application.*

[Org. 01/05/2010, Amd. 04/06/2010]

SECTION 7.0 REPORTING GUIDELINES

This section provides guidance regarding reporting guidelines which outline the required content of the report and timeline for submittal.

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 15th of the year after the application is approved, and then by January 15th every year thereafter for the length of the agreement.*

7.1.2. *The report may be submitted electronically.*

7.2 Information Required for Report

The Report will contain the following information:

7.2.1. *Monitoring data results*

7.2.2. *Project evaluation*

- i) Report of any non-compliance.
- ii) Proposed changes to provisions/conditions.

[Org. 01/05/2010, Amd. 04/06/2010]

SECTION 8.0 AMENDMENT PROCESS

This section provides guidelines for amendment of an application approved under Chapter 3 Section 6.

8.1 Guidelines for Amendments

A water right holder of a previously approved water banking agreement can request an amendment of the portion of the right banked or the term of the agreement via one of the following options:

8.1.1. *By making such request as part of an annual report*

8.1.2. *By otherwise making the request in writing*

All other requests for changes to a water banking agreement shall result in the issuance of a new agreement.

8.2 Approval Guidelines

8.2.1. *The Board may:*

- i) *Request additional information from water right holder, Staff, WRP or PAG*
- ii) *Take action to approve or deny the amendment.*

8.3 Criteria for Approval

The amendment request must contain the following information:

8.3.1. *Proposed changes.*

8.3.2. *Signature of all parties, or their successors, that signed the original agreement.*

[Org. 12/06/2011]

Chapter 4 – Exempt Well Mitigation Exchange

Section 1.0 PURPOSE

1.1 Overview

The purpose of this chapter is to establish the guidelines and criteria for a program to help new permit-exempt well users mitigate for their outdoor water use through participation in the Walla Walla Exempt Well Mitigation Exchange (Exchange). Chapter 173-532 Washington Administrative Code identifies that any new outdoor water use from permit-exempt wells in “the gravel aquifer in the high-density area” requires mitigation May 1 to November 30 by the Washington State Department of Ecology (Ecology).

Ecology committed to help individual water users meet the mitigation requirement through an Exchange beginning in 2007; the Walla Walla Watershed Management Partnership (Partnership) provides local administration of the Exchange in cooperation with Ecology. Roles and responsibilities for administration of the Exchange are agreed to by Ecology and the Partnership.

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.

[Org. 12/07/2010]

Section 2.0 ROLES AND RESPONSIBILITIES

2.1 Water Right Holders

Interested water right holders may sell or donate all or a portion of their water right(s) to the Trust Water Right Program (TWRP) for the purpose of mitigation of new water use from wells through the Exchange.

2.2 Exempt Well Users

Exempt well users must identify if WAC 173-532-050 exempt well provisions apply. If WAC 173-532-050 applies, the new well owner must adhere to all water use requirements and restrictions imposed by Ecology. Exempt well users may apply for mitigation credit through the Partnership and Ecology as described herein.

2.3 Partnership Board

The Board shall enter into agreement with Ecology to define the roles and responsibilities of each party in administering the Exchange. This agreement includes Partnership responsibilities to acquire water rights from willing water right holders, work with Ecology to transfer water rights to the TWRP for mitigation, accept and approve mitigation credit applications, receive payment for mitigation from new well users, track the balance of mitigation water available, and provide public information on the Exchange.

2.4 Partnership Staff

At the direction of the Board, Partnership staff will pursue acquisition of water rights, assist exempt well users applying for mitigation, prepare documentation for Board action, and coordinate with Ecology on the issuance of mitigation certificates and placement of rights in the TWRP for mitigation.

2.5 Water Resource Panel

The Water Resource Panel (WRP) will be available to give advice as requested by the Board.

2.6 Policy Advisory Group

The Policy Advisory Group (PAG) will be available to give advice as requested by the Board.

2.7 Ecology

Ecology shall enter into agreement with the Partnership to define the roles and responsibilities of each party in administering the Exchange. This agreement includes Ecology responsibilities to transfer valid water rights acquired by the Partnership to the TWRP for mitigation of outdoor water use, issue mitigation certificates to mitigating well users, receive meter data, ensure compliance and provide public information on the Exchange.

[Org. 12/07/2010, Amd. 12/06/2011]

Section 3.0 ACQUISITION OF WATER RIGHTS FOR MITIGATION

This section describes guidelines and criteria related to the acquisition of a water right, placing it in the TWRP for mitigation, payment, and making it available for mitigation through the Exchange.

3.1 Acquisition

3.1.1. Criteria for Acquisition

- i) Mandatory elements
 - (a) Evidence of a valid Water Right within WRIA 32,
 - (b) A surface Water Right or “shallow/gravel aquifer” Groundwater Right,
 - (c) Documentation of beneficial use of water under the water right.
- ii) Priority elements
 - (a) Place of use located in or adjacent to the “high-density area” or other priority areas as determined by the Partnership Board,
 - (b) Consumptive use of >10 ac-ft, <100 ac-ft.

3.1.2. Board Approval

- i) Staff and legal counsel will review the request for acquisition and determine whether it meets the criteria; and thereafter negotiate and draft a proposed trust water agreement with the water right holder,
- ii) The proposed agreement with a water right holder will be submitted to the Board,
- iii) The Board will review the proposed trust water agreement based on the criteria in 3.1.1 and will approve the agreement contingent upon successful transfer into the TWRP based on 3.2.

3.2 Transfer to Trust Water Right Program

3.2.1. *Water Rights to be acquired under 3.1 will be placed in the TWRP for the purpose of: instream flow and mitigation for new permit-exempt wells, in amounts documented in a Report of Examination.*

3.3 Payment

3.3.1. *Payment will be determined on a per acre/ft basis for consumptive use verified in the Report of Examination, or another method approved by the Board and agreed to by the water right holder.*

3.4 Availability as Mitigation Credit

3.4.1. *A right will be available as mitigation credit through the Exchange upon finalization of the transfer into the TWRP.*

[Org. 12/07/2010, Amd. 12/06/2011]

Section 4.0 MITIGATION CREDIT APPLICATION ELEMENTS

This section lists and describes the elements necessary for an exempt well user to apply for mitigation credit from the Exchange.

4.1 Elements Required by Board

The Board requires that an application for mitigation credit contain the following:

- 4.1.1.** *Applicant contact information,*
- 4.1.2.** *Copy of well construction log,*
- 4.1.3.** *Copy of property deed including parcel number,*
- 4.1.4.** *Building permit number,*
- 4.1.5.** *Payment of a mitigation credit fee set by the Board and payable by check.*

4.2 Elements Recommended by Board

The Board recommends that an application for mitigation credit contain the following:

- 4.2.1.** *Evidence of an installed water meter as required by Ecology.*

[Org. 12/07/2010]

Section 5.0 FILING PROCESS

This section provides guidelines and criteria for the filing of a mitigation credit application for Board approval.

5.1 Guidelines for Filing

- 5.1.1.** *Applicant makes a written request providing the information identified in Section 4 and any other information that the applicant believes may be relevant.*
- 5.1.2.** *Partnership staff will review the request and information provided. Application is considered filed upon successful completion of staff review.*

5.2 Criteria for Filing

5.2.1. *The mitigation credit application must contain, in adequate detail, the required elements outlined in Section 4.*

[Org. 12/07/2010]

Section 6.0 REVIEW PROCESS

This section provides guidelines for the review and evaluation of a mitigation credit application.

6.1 Guidelines for Review

6.1.1. *Necessary documentation submitted to the Board*

- i) Staff will submit necessary documentation to the Board no later than five days prior to a regularly scheduled Board meeting.
- ii) The Board may take action without further review.

6.2 Criteria for Review

6.2.1. *The Board will review the mitigation credit application based on:*

- i) Adherence to the filing criteria,
- ii) The request is consistent with the intent and policies of chapter 90.92 RCW and the Partnership-Ecology agreement to administer the Exchange under WAC 173-532,
- iii) The Exchange has mitigation credits available or the Board otherwise agrees to place the application approved but effective dependent upon acquiring additional mitigation credits in the Exchange.

[Org. 12/07/2010]

Section 7.0 APPROVAL PROCESS

This section provides guidelines for approval of a mitigation credit application.

7.1 Approval Guidelines

7.1.1. *The Board may:*

- i) Request additional information from staff or the applicant before taking action,
- ii) Take action to approve the application and issue a letter of mitigation credit approval,
- iii) Deny the mitigation credit application based on failure to meet review criteria.

7.2 Recording

7.2.1 *Staff will issue the mitigation credit approval letter to the applicant and provide documentation to Ecology that the applicant has obtained mitigation.*

7.2.2. *Upon receipt of an Ecology mitigation certificate, the applicant must record the document with the County.*

7.3 Refunds

7.3.1. *The applicant may request a full refund of the fee if the mitigation credit application is denied or Ecology does not issue a mitigation certificate.*

[Org. 12/07/2010]

Chapter 5-Local Water Right Acquisitions for Instream Flow

Section 1.0 PURPOSE

1.1 Overview

The purpose of this chapter is to establish the processes, guidelines and criteria for acquiring water rights by donation, purchase or lease transaction agreements on a temporary or permanent basis under the leadership of the Walla Walla Watershed Management Partnership (Partnership) as authorized in RCW 90.92.050 and using available tools under RCWs 90.92.070 and 90.92.080. Water rights acquired under Chapter 5 will be for instream flow use only and will not be available for re-allocation or as mitigation for other purposes. The goal and purpose of these instream flow water right acquisitions is to enhance flows for the benefit of fisheries and other aquatic/riparian resources in the Walla Walla Basin.

The Partnership will acquire water rights on its own or in cooperation with the Columbia Basin Water Transactions Program (administered by the National Fish and Wildlife Foundation with funding from the Bonneville Power Administration), the Washington State Department of Ecology (Ecology), and/or other entities that may provide funding for such purposes. Water rights acquired by the Partnership may be banked in the Partnership's water bank and/or processed by Ecology to change their purpose and place of use to instream flow under the Trust Water Right Program.

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.

[Org. 12/06/2011]

Section 2.0 ROLES AND RESPONSIBILITIES

2.1 Water Right Holders

Interested water right holders may voluntarily enter into a transaction agreement to sell, lease or donate all or a portion of their water right to the Partnership for instream flow enhancement on a temporary or permanent basis. Water right holders are responsible for providing all information deemed necessary by the Partnership Board, staff, and funding entity to inform the transaction agreement review and approval process which may include trust water right application, public notice and access for monitoring agreement compliance.

2.2 Partnership Board

The Partnership Board (Board) reviews and makes decisions on water right transaction agreements. Board review includes the consideration of advice from the Water Resource Panel as well as other comments submitted during the public notice period. The Board approves or denies water right transaction agreements, with approved transaction terms then forwarded to the funding entity for final processing and approval as required by the funding entity. The Board facilitates the transfer of funds from the funding entity through the Partnership to the water right holder consistent with terms in the transaction agreement and the Partnership agreement with the funding entity.

2.3 Partnership Staff

At the direction of the Board, Partnership employees, consultants and designated agents (collectively referred to as Partnership staff) will pursue the acquisition of water rights; develop and negotiate transaction agreements; facilitate the Partnership review and approval process acting as the lead contact with the water right holder(s); and if approved implement approved transaction agreements through coordination with the Board, water right holder, and funding entity on the application and approval of water rights into the Partnership Water Bank and/or water right transfers to the Trust Water Right Program. Partnership staff will coordinate with the water right holder and funding entity to complete all necessary applications, proposals, and/or environmental compliance documents for the transaction, and monitor implementation of agreements.

2.4 Water Resource Panel

The Water Resource Panel (WRP) will give advice on each potential water acquisition to the Board based upon a technical review of the draft transaction agreement. Each draft transaction agreement will be presented to the WRP for their consideration and opportunity to review, prior to the transaction agreement being forwarded to the Board for final approval.

2.5 Policy Advisory Group

The Policy Advisory Group (PAG) will be available to give advice on water acquisition policy issues as requested by the Board.

2.6 Funding Entity

A given funding entity may have other requirements in addition to what the Partnership requires for a transaction. The transaction will have to comply with any of these additional measures.

2.7 Ecology

Water rights acquired by the Partnership or in cooperation with funding entities may be held by the Washington State Department of Ecology in the Trust Water Right Program under RCW 90.42. Water rights acquired by the Partnership requiring Ecology's change in purpose to instream flow will be subject to RCW 90.03. All permanent water right acquisitions will be placed in Ecology's Trust Water Right Program consistent with RCW 90.92.070(3)(b).

[Org. 12/06/2011]

Section 3.0 WATER RIGHT TRANSACTION AGREEMENT ELEMENTS

This section describes the guidelines and criteria for elements in a water right transaction agreement to be voluntarily entered into by a water right holder and considered for approval by the Partnership Board.

3.1 Criteria for Water Right Transaction Agreements

3.1.1. *Mandatory elements*

- i) Evidence of a valid surface water right, or a ground water right which has a demonstrated hydraulic connection with the surface water flow of a particular reach of stream within the Basin [RCW 90.42.040(2)].
- ii) Documentation that the water right has been exercised for the purposes authorized in the water right, and that the right has not been relinquished for failure to beneficially use the water rights for the authorized purposes for five consecutive years without sufficient cause.
- iii) Expressed interest by the water right holder to negotiate and enter into a transaction agreement with the Partnership to lease, sell, donate, or otherwise forego use of all or a portion of their water right to enhance instream flows.

3.1.2. *Priority elements*

- i) There is no minimum term for a water right transaction agreement, but agreements of longer term and permanent agreements are preferred,
- ii) Solicitations made by staff and transaction agreements proposed to the Partnership may be prioritized by size of the water right, location, priority date, and/or use of the Columbia River Instream Flow Atlas (see <http://www.ecy.wa.gov/biblio/1112015.html>) with the emphasis on prioritization being what will provide the most aquatic benefit in the shortest amount of time.
- iii) The maximum term of a temporary water right transaction agreement will be the expiration date of the Partnership's authorizing legislation or ten years, whichever is less, provided that if the authority of the Partnership is extended, the temporary water right transaction agreement may be extended upon the agreement of the Partnership and the water right holder, or the water right holder may seek to transfer the water right to the Trust Water Right Program for an extended period. A water right banked on a permanent basis must be transferred to the State of Washington Trust Water Right Program consistent with RCW 90.42.080 [RCW 90.92.0770(3)(b)].

3.2 Transaction Agreement Elements Required by Board

3.2.1. *Valid Water Rights and maps of the place of use.* Water right holders must provide copies of and transaction agreements must include all relevant, valid water right documents, including provisions and conditions regarding their use, maps identifying the authorized place of use of the water right(s) and the parcels where water use occurs, and relationship to other water rights. Documentation of beneficial water use is required.

3.2.2. *Contingencies Identified.* For inclusion in the transaction agreement, water right holders must identify any and all items on which the water right transaction agreement is contingent such as funding, permitting requirements, third party agreements, infrastructure changes, etc.

3.2.3. *Control use of water right.* Water right holders entering into a transaction agreement must own or otherwise control the entire place of use of the water right(s) included in the agreement. If the applicant does not own or control the entire place of use, the following must be included in the transaction agreement:

- i) Documentation that conveys authority from all other landowners within the authorized place of use to the applicant such that the applicant has a legally enforceable right to use the water right for the duration of the proposed transaction agreement, or
 - ii) Documentation establishing that the applicant has legal control of that portion of the water right that is subject of the transaction agreement.
 - iii) For temporary water right transactions:
 - (a) Documentation that shows all reasonable efforts have been made to obtain authorizations from the other landowners, and;
 - (b) The Partnership finds that the temporary water right transaction will not impair other rights.
- 3.2.4. Transfer to Trust Water Right Program or Partnership Water Bank.** The transaction agreement must identify the disposition of the water right under the transaction agreement, to either be transferred to the:
- i) Trust Water Right Program during the term of the agreement in amounts documented in a Report of Examination with the water right holder agreeing to the management of the trusted water by Ecology, or
 - ii) Partnership Water Bank during the term of the agreement in amounts documented in a Report Water Banking non-use agreement with the water right holder agreeing to the management of the banked water by the Partnership.
- 3.2.5. Payment.** Payment terms and conditions, to include rate, amount, funding source and timing of payment, will be defined in the water right transactions agreement.
- 3.2.6. Compliance monitoring and reporting.** Applicants must agree and the transaction agreement must include provisions to grant Partnership access to the property described by the authorized place of use of the relevant water right(s) for monitoring and reporting to ensure agreement compliance.

[Org. 12/06/2011]

Section 4.0 WATER RIGHT TRANSACTION AGREEMENT DEVELOPMENT

This section describes guidelines and criteria related to the process of developing a water right transaction agreement between a water right holder and the Partnership.

4.1 Guidelines and Criteria for Developing a Draft Transactions Agreement

4.1.1. Pre-development Meeting(s) with Partnership Staff (Optional, but recommended)

- i) Staff meets with the water right holder(s) to provide assistance in evaluating the options available for water right transactions to enhance instream flow.
- ii) Staff will address criteria and required elements for a water right transaction agreement defined in Section 3.

4.1.2. Water right holder provides information to Staff identified in Section 3.0.

4.1.3. Agreement Development Meeting(s) with Partnership Staff.

- i) Staff meets with the water right holder to review information provided by the water right holder and determine whether it meets the mandatory and priority elements of Section 3.0.
- ii) A letter of intent to negotiate may be offered to the water right holder if there is interest to proceed, outlining the transactions agreement concept process including a negotiation term of up to six months during which time the water right holder agrees to deal exclusively with the Partnership. The letter will be signed by the Partnership Executive Director and require signature by the water right holder. If criteria are not met, Staff will present options for the water right holder to consider to improve their position with respect to transaction agreement approval and/or provide information on the availability of other water management tools appropriate to the situation.
- iii) Staff and legal/water rights expertise will coordinate with the water right holder and the funding entity as necessary to develop a draft transactions agreement within the period agreed to in the letter of intent to negotiate.

4.1.4. A draft transactions agreement will be developed by Partnership staff and reviewed by the water right holder.

The draft transactions agreement will include, in adequate detail, the required elements outlined in Section 3.2. With water right holder approval, Staff will move forward to facilitate the Partnership review, negotiation and approval process for the draft transactions agreement.

4.1.5. *When SEPA is required, staff will assist in completing that documentation.*

[Org. 12/06/2011]

Section 5.0 WATER RIGHT TRANSACTION AGREEMENT REVIEW

This section describes guidelines and criteria related to the review and evaluation of a water right transaction agreement between a water right holder and the Partnership.

5.1 Guidelines and Criteria for Review

5.1.1. *Water Resource Panel (WRP) Evaluation and Review*

- i) The draft transaction agreement is provided to the WRP at least five days in advance of a WRP meeting scheduled for review of the agreement. The water right holder will be invited and encouraged to attend this meeting.
- ii) WRP will perform a technical review of a draft transaction agreement for compliance with criteria described in Section 3.0. WRP may request additional information from the water right holder or staff.
- iii) WRP may make recommendations to Staff and the water right holder to consider in developing a final transaction agreement.
- iv) WRP issues a report containing advice to the Board. If consensus is not reached by the WRP, a minority report may also be additionally submitted to the Board.

5.1.2. *Staff Preparation of Final Draft Transaction Agreement*

- i) Staff will coordinate with the water right holder to review and consider incorporating WRP recommendations into a final draft transaction agreement for Board consideration. Terms and conditions must include consideration of funding entity requirements, processes, timelines and compliance elements.
- ii) Staff will also coordinate, to the degree necessary, with the funding entity for preparation of this document.
- iii) Staff will provide the final draft transaction agreement to the Board at least five days in advance of a Board meeting scheduled for review of the agreement.
- iv) Staff will provide the Board with the WRP Report, a summary of how and when procedural steps have been completed, and Staff recommendation.

5.1.3. *Board Evaluation and Review*

- i) Board will evaluate and review, considering criteria described in Section 3, the final draft transaction agreement with WRP and Staff recommendations; the water right holder will be invited and encouraged to attend the Board meeting(s) where evaluation and review will occur.
- ii) The final draft transaction agreement will be jointly reviewed with the water right holder; the purpose of this review will be to negotiate additional terms and conditions as deemed necessary by the Board
- iii) Board may request additional information from the water right holder, Staff, WRP or PAG.
- iv) Board may take action on the final draft transaction agreement without further review.

[Org. 12/06/2011]

Section 6.0 WATER RIGHT TRANSACTION AGREEMENT APPROVAL

This section describes guidelines and criteria for approval and revision of a final transaction agreement between a water right holder and the Partnership.

6.1 Approval Guidelines and Criteria

6.1.1. *Water Right Holder Approval*

- i) The water right holder approves and signs the final transaction agreement.

6.1.2. *Board Approval*

- i) Board will consider criteria and required elements described in Section 3.0 when taking action.
- ii) Board may take action to approve and sign the final transaction agreement, or may deny the transaction agreement, as part of the consent agenda.

6.1.3. *Revision of Transaction Agreement*

- i) Following approval by the Board and water right holder, a final transaction agreement may be revised as requested by the water right holder, Board or funding entity. Substantive revisions must be formally requested, compelling Staff coordination of a negotiation and revision process, documenting proposed changes within a draft amended transaction agreement or documenting why changes may not be made.
- ii) A draft amended transaction agreement may be reviewed by the WRP before being considered for joint review and approval by the Board and water right holder.
- iii) A final transaction agreement referred back to the Board by the funding entity shall be considered for amendment or withdrawal by the water right holder and the Board.

[Org. 12/06/2011]

Section 7.0 TRANSACTION IMPLEMENTATION AND FUNDING

This section describes guidelines and criteria for implementation and funding of a transaction agreement between a water right holder and the Partnership.

7.1 Implementation of Transaction Agreements

7.1.1. Funding Entity Processing and Approval

- i) Upon Board approval of a water right transaction agreement, Staff will submit the transaction agreement to the funding entity or entities in accordance with the entity requirements. Additional Staff submittals may include completion of a proposal/checklist, application for Trust Water Right, or other standard transaction activities required within the funding entity's review and approval process.
- ii) See Appendix C for a matrix of elements required by Ecology for the different types of water right transactions from Ecology document GUID 1220 "Guidance for Processing and Managing Trust Water Rights," published in June, 2011. Public notice is required prior to the creation of a Trust Water Right.
- iii) The funding entity may conduct its analysis process and quantification of beneficial use of water to include technical, water use and cost-basis review of the transaction. Review of beneficial use of water can include, but is not limited to, aerial photos, affidavits of water use, crop records, personal photos and pump/meter records. Because this process can take several months, staff will monitor progress of the transaction through the funding entity analysis process, providing information and coordinating communications between the water right holder, Board and funding entity.
- iv) Transactions approved by the funding entity may be issued a Decision Document, Agency Approval, or other documentation by the funding entity to complete the file. Certification of the water right change or Trust Water Right status may be issued. For Trust Water Rights, a Contract Agreement signed by the water right holder and the Ecology Water Resources Program may be required. For water rights placed in the Partnership Water Bank, a non-use agreement signed by the water right holder and approved by the Partnership may be required.
- v) Transactions not approved by the funding entity may be referred back to the Board for consideration of amendment or withdrawal.

7.1.2. Implementation and Exercising Water Rights

- i) Approved transactions shall be implemented in compliance with the terms and conditions in the final water right transactions agreement.
- ii) Water rights acquired for instream flow purposes shall be considered exercised when approved by the Board, and the agreement provisions for payment, reporting and monitoring compliance will become effective upon funding entity approval.

7.2 Funding Transaction Agreements

7.2.1 Funding Entity Processing and Approval

- i) Upon funding entity approval, the Board is authorized to invoice the funding entity for the transaction. The Partnership facilitates the funds transfer from the funding entity to the water right holder consistent with terms in the transaction agreement. Actual payment must be consistent with the funding entity's requirements, which may require that the water right is being exercised consistent with the transaction agreement.
- ii) If the water right holder defaults in its transaction agreement with the Partnership at any point during the term of the agreement, the water right holder is obligated to return funds associated with the default

period back to the Partnership and/or return any funds remaining from the balance assigned to fund the transaction associated with the default.

[Org. 12/06/2011]

Section 8.0 REPORTING AND MONITORING COMPLIANCE

This section provides guidance regarding reporting and monitoring compliance of water right transaction agreements.

8.1 Reporting

8.1.1. Annual Report

- i) The water right holder is required to submit an annual report to the Board, with the reporting period and annual due date identified in the transaction agreement. The annual report shall contain the following information:
 - (a) Statement of compliance or non-compliance, signed by the water right holder; Any non-compliance elements shall be explained as to the circumstances of the non-compliance, and what measures have or will be taken to bring those elements in to compliance.
 - (b) Documentation required in the transaction agreement,
 - (c) Identification of additional information relevant to the transaction.
- ii) Reports provided by the water right holder may be public information and shared with the funding entity.
- iii) The duration of the monitoring period shall be commensurate with the type and complexity of water right transaction, and will be defined in the transaction agreement.

8.2 Monitoring Compliance

8.2.1. Field Monitoring and Compliance

- i) Field monitoring access terms and conditions shall be identified in the transaction agreement, enabling Staff to conduct field visits to ensure terms compliance with the transaction agreement, including review of water use, diversion/withdrawal activity, and cropping activities.
- ii) Basin conditions may be reviewed by Staff for compliance determination, including data collected from ground water monitoring wells and stream flow gauges.
- iii) The water right holder is required to immediately notify Staff if agreement compliance is compromised.
- iv) The intervals and duration of compliance monitoring of permanent transactions will be identified in the transaction agreement.

8.2.2. Effectiveness Monitoring

- i) The Board and/or funding entity may adopt an accounting framework using well defined measures of progress to track the effectiveness of flow restoration as a tool to improve aquatic habitat conditions. Staff may conduct effectiveness monitoring under of transaction agreements to include but not limited to:
 - (a) Project compliance
 - (b) Flow accounting
 - (c) Flow impacts
 - (d) Aquatic habitat impacts

[Org. 12/06/2011]

APPENDIX C – MATRIX OF ELEMENTS FOR DIFFERENT TRUST WATER RIGHTS TRANSACTIONS

ADAPTED FROM SOURCE: Washington Department of Ecology, GUID-1220 WATER RESOURCES PROGRAM GUIDANCE “GUIDANCE FOR PROCESSING AND MANAGING TRUST WATER RIGHTS” June, 2011

Summary Matrix of Trust Water Transaction Types, Processes, and Considerations

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Source of Trust Water Right	Permanent acquisition of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Short-Term lease of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Long-Term lease of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Water Right holder donates all or part of a water right. [RCW 90.42.080(1)(b); RCW 90.38.020(1)(b)]	Conveyance of all or a portion of net water savings of water rights existing as of July 28, 1991. TWR results from operational or system improvements. [RCW 90.42.080(1)(a)];
Application	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Consolidated Application for Irrigation Efficiencies Grants Program/Trust water Rights Program
Notice – Public and Agencies	Consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)]	Notice is required prior to creation of the TWR. [RCW 90.42.040(8)] Instead of using a newspaper, the notice may be posted on Ecology’s website, and local governments may be notified by email. [RCW 90.42.040(5)(c)]	Notice is required consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)]	Notice is required prior to creation of the TWR. [RCW 90.42.040(5) and (8)] Instead of using a newspaper, the notice may be posted on Ecology’s website, and local governments may be notified by email. [RCW 90.42.040(5)(c)]	Consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)]

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Extent and Validity of Water Right	Extent and validity based on RCW 90.03.380.	Not more than the lesser of : 1) Extent and validity based on RCW 90.03.380,OR 2) the highest use within the previous five years before the lease [RCW 90.42.080 (5) and (8)], ---OR 3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR 4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]	Not more than the lesser of :1) Extent and validity based on RCW 90.03.380, OR 2) the highest use within the previous five years before the lease, [RCW 90.42.080 (5) and (8)], ---OR 3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused. [RCW 90.42.080 (11)], OR 4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]	RCW 90.03.380 DOES NOT apply; therefore, a determination of extent and validity is not applicable. [RCW 90.42.080 (4) and (5), and RCW 90.38.040(6)] However, quantification of the donation is based upon, 1) the highest use within the previous five years before the lease, 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)] <u>Statewide:</u> For all other purposes, extent and validity is based on 1) RCW 90.03.380. [RCW 90.42.080(5)], OR, 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR, 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]	May require evidence of a valid water right. [RCW 90.42.030(2)]

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Impairment Analysis	Prior to authorizing change of purpose. [RCW 90.03.380] and exercising the TWR. [RCW 90.42.040(4)]	When requested RCW 90.42.080(8)] **	Prior to authorizing change of purpose. [RCW 90.03.380] and exercising the TWR. [RCW 90.42.040(4)]	Prior to exercising the TWR. [RCW 90.42.040(8)]	Prior to exercising the TWR. [RCW 90.42.040(4)]
Quantification of Water Placed in Trust	Quantify using extent of validity. [RCW 90.03.380]	Not more than the lesser of: 1) Not more than the greatest water use within the five-years prior to the trust water lease, less any water used by the right holder. [RCW 90.42.080(8)] , AND 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]	Not more than the lesser of: 1) the quantities from the extent and validity determination AND 2) the greatest water use within the five-years prior to the lease, less any water used by the right holder. [RCW 90.03.380 and RCW 90.42.080(8)] OR, 3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR, 4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]	1) Permanent and temporary donations for instream flows are limited to the greatest water use within the five-years prior to the donation, less any water retained by the donor. [RCW 90.42.080(4) , RCW 90.38.020(4) and (7)], OR, 2)for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)] For all other purposes, quantification is based on extent and validity. [RCW 90.42.080(5)] , Add 2) and 3)	Net water savings created by the water conservation project as determined by the state and the right holder prior to funding. [RCW 90.42.030(2)]

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Public Interest Evaluation	Must not impair the public interest. [RCW 90.42.040(4)]	Not a consideration. [RCW 90.42.040(8)]	Must not impair the public interest. [RCW 90.42.040(4)]	For instream flow, not a consideration. [RCW 90.42.040(8)] For donations for other than instream flows, public interest evaluation is required prior to creation. 90.42.040 (4) (a) &(c)	Must not impair the public interest. [RCW 90.42.040(4)] State shall obtain public benefits [RCW 90.42.030(1)]
Quantification of Water Right Remaining with Right Holder	Must not exceed historic water right less water placed into Trust [RCW 90.03.380(1)]	Must not exceed historic water right less water placed into Trust RCW 90.42.080(8)	Must not exceed historic water right less water placed into Trust RCW 90.42.080(8)	Must not exceed historic water right less water placed into Trust RCW 90.42.080(8)	Must not exceed historic water right less water placed into Trust RCW 90.42.030(2)
Decision Document	Trust Water Right Report with Order ROE. [RCW 90.03.380 (1)]	Trust Water Right Report with an Order ROE [RCW 90.03.380 (1)]	Trust Water Right Report with an Order ROE [RCW 90.03.380 (1)]	Acknowledge by letter. If the TWR is to be authorized for a new purpose of use a Trust Water Right Report is issued [RCW 90.42.040(2)]	Trust Water Right Report with and Order.ROE [RCW 90.42.040(2)]
Final Document to the Trust Water Right Program and to the Right Holder	Trust Water Certificate. Superseding Certificate or Certificate of Change to right holder for any remainder of the water right. RCW 90.42.040(2) Update the deed.	Trust Water Certificate. Contract Agreement signed by the water right holder and the Water Resources Program. [RCW 90.42.040(2)] <u>Y</u> .	Trust Water Certificate. Contract Agreement signed by the water right holder and the Water Resources Program. [RCW 90.42.040(2)]	For permanent donations, a Trust Water Certificate is issued to the State of Washington and a Superseding Certificate or Certificate of Change is issued to the donor for any remainder of the water right. For temporary donations, the acknowledgement letter. [RCW 90.42.040(2)]	For permanent acquisitions, a Trust Water Certificate is issued to the State of Washington and a Superseding Certificate or Certificate of Change is issued to the water right holder for any remainder of the water right. For temporary donations, the acknowledgement letter. [RCW 90.42.040(2)]

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Exercise of Trust Water Right	A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a) & (2)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c)	A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c)	A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c)	Shall be held or authorized for beneficial public use. [RCW 90.42.040(1)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c)	Public benefits to be obtained to be at least comparable to public moneys expended. [90.42.030(1) RCW]
Modification of a trust water right	Consistent with the purposes associated with public funding. To obtain the maximum net benefits [RCW 90.54.020(2)] If impairment is found while exercising the TWR.[RCW 90.42.040(4)]	Consistent with the purposes associated with public funding. To obtain the maximum net benefits. [RCW (90.54.020(2)] If impairment is found while exercising the TWR. [RCW 90.42.080(8)]	Consistent with the purposes associated with public funding. To obtain the maximum net benefits [RCW 90.54.020(2)] If impairment is found while exercising the TWR. [RCW 90.42.040(4)]	To obtain the maximum net benefits [RCW 90.54.020(2)] If not donated for instream flows and impairment is found while exercising the TWR. [RCW 90.42.040(4)] If donated for instream flow purposes, use may be modified to avoid impairment [RCW 90.42.080(4)]	Consistent with the purposes associated with public funding. If impairment is found while exercising the TWR. [RCW 90.42.040(4)] To obtain the maximum net benefits. [RCW 90.54.020(2)]
11/2010					