



Strategic Plan Advisory Committee Meeting Packet

Wednesday, July 22, 2020

1:00 – 4:30 p.m.

[WebEx](#) Meeting

Meeting Packet Contents:

- Agenda (Pg. 2-3)
- SPAC Roster (Pg. 4)
- June 24 Draft SPAC Meeting Summary (Pg. 5-14)
- Advisory Group on Water Trust, Banking, and Transfers: Draft Findings and Potential Policy Tools (Pg. 15-27)
- Discussion Guide: Current Conditions and Accomplishments to Date (Pg. 28-34)

WebEx Instructions:

- **Join Online:**
 - <https://cascadia.webex.com/cascadia/j.php?MTID=me4727fbb2fe5c5587e85e1bfcebf465b>
 - Meeting ID: 133 277 6078
 - Password: wallawalla
- **Join by Phone:** (650) 479-3208
 - Meeting ID: 133 277 6078
- *For any technical issues, please contact Brent Edgar at brent@cascadiaconsulting.com or (206) 449-1172.*



AGENDA

Wednesday, July 22, 2020

1:00 – 4:30 p.m

WebEx Meeting (See instructions on Page 2)

Please try to sign into the meeting at 12:45 to allow time to address any technical difficulties. The meeting will start promptly at 1:00 p.m.

Time*	Agenda Item (Action items are marked with “!”)	Reference Materials	Presenter(s)
1:00 (15 mins)	Welcome, Introductions, Review Agenda <ul style="list-style-type: none"> • Welcome • Opening remarks • Introductions • Review agenda • Review and approve meeting summary 		<ul style="list-style-type: none"> • Susan Gulick, Facilitator • Tom Tebb, Ecology • Judith Johnson, WWMP
1:15* (15 mins)	Updates <ul style="list-style-type: none"> • Update from the Data, Studies and Monitoring (DSM) Working Group • Update from the Ecological Function Working Group • Update from the Water Supply Needs Working Group • Update on Report to the Legislature 		<ul style="list-style-type: none"> • Working Group Representatives (Steve Patton and Gary James) • Dave Christenson, Ecology & Chris Hyland, WWMP
1:30* (40 mins)	Water Rights in WA and OR <ul style="list-style-type: none"> • Overview of processes in each state (water right transfers, banking, speculation, etc.) • Ecology’s Advisory Group on Water Trust, Banking & Transfers • SPAC questions and discussion 	<ul style="list-style-type: none"> • Advisory Group on Water Trust, Banking and Transfers: Draft Findings and Potential Policy Tools 	<ul style="list-style-type: none"> • Dave Christenson, Ecology • Chris Kowitz, OR Water Resources
2:10* (30 mins)	USGS Groundwater Study <ul style="list-style-type: none"> • Overview and context • Goals of study • Next steps • SPAC questions and discussion 		<ul style="list-style-type: none"> • Sue Kahle and Hank Johnson, USGS
2:40*	10 MINUTE BREAK		
2:50* (70 mins)	SPAC Discussion: Current Conditions <ul style="list-style-type: none"> • Review Working Group outputs • SPAC additions, revisions, clarifications 	<ul style="list-style-type: none"> • Discussion Guide (to be sent prior to meeting) 	<ul style="list-style-type: none"> • SPAC Member Discussion • Caroline Burney & Amanda Cronin, Working Group Coordinators • Susan Gulick, Facilitator
4:00* (10 mins)	Topics for August SPAC Meeting/Future Meetings <ul style="list-style-type: none"> • Review additional materials from Working Groups for Strategic Plan • Presentation Ideas from past discussions: <ul style="list-style-type: none"> ○ Army Corps of Engineers – Bennington Lake ○ Overview of Irrigators and Irrigation in Watershed ○ Past, current and potential funding sources for basin projects ○ Using LIDAR to anticipate how and where hydrology impacts flooding ○ Bi-State Flow Study ○ How is each state addressing the instream flow protections? ○ Basin hydrology, including existing monitoring sites ○ Forest management ○ Existing and future conservation projects ○ Flood Control: Mill Creek, Nursery Bridge, Other? 		<ul style="list-style-type: none"> • Susan Gulick, Facilitator

	<ul style="list-style-type: none"> ○ Agency programs and roles in watershed (which agencies?) ○ Other 		
4:10* (10 mins)	Public Comment		<ul style="list-style-type: none"> ● Susan Gulick, Facilitator
4:20* (10 mins)	Updates and Next Steps <ul style="list-style-type: none"> ● Action items ● Updates/announcements ● Upcoming meetings <ul style="list-style-type: none"> ○ SPAC, Working Groups 		<ul style="list-style-type: none"> ● Susan Gulick, Facilitator ● Caroline Burney, Cascadia Consulting
4:30*	Adjourn		<ul style="list-style-type: none"> ● Susan Gulick, Facilitator

* All times are estimates and subject to change.

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SPAC Roster

Primary Contact						Alternate Contact		
Name	Preferred phone	Other phone	Email	Affiliation	Representing	Name	Phone	Email
Teresa Kilmer	(509) 386- 4024		teresa@wwriver.com	Walla Walla River Irrigation District	Agriculture			
Allison Newhouse	(509) 308-3548		allison.newhouse@yahoo.com	Little River Group	Agriculture			
Annie Byerley	(208) 720-0947		annie.bye@gmail.com	Walla Walla Watershed Management Partnership	Agriculture			
Mark Wagoner	(509) 520-1230		markswagoner@gmail.com	Gardena Farms Irrigation District	Agriculture			
Mike Talbott	(509) 629-0560		mike@columbiainet.com	Columbia County	Local Govt			
Todd Kimball	(509) 524-2505		tkimball@co.walla-walla.wa.us	Walla Walla County	Local Govt			
John Shafer	(541) 278-6203		john.shafer@umatillacounty.net	Umatilla County	Local Govt			
Steven Patten	(541) 938-8274		steven.patten@milton-freewater-or.gov	City of Milton-Freewater	Local Govt	Brian Steadman		brian.steadman@milton-freewater-or.gov
Dale Bambrick	(509) 962-8911 x802	(360) 481-5742	Dale.bambrick@noaa.gov	NOAA National Marine Fisheries Service	Fed Govt	Colleen Fagan		colleen.fagan@noaa.gov
Cindy Boen	(509) 301-7478	(509) 527-7246	cindy.a.boen@usace.army.mil	US Army Corps of Engineers	Fed Govt	Bret Walters		Bret.I.walters@usace.army.mil
Susan Adams	(206)755- 7162		susan@washingtonwatertrust.org	Washington Water Trust	Environmental	Alexandra James	(509) 525-3136	alex@bmlt.org
Ralph Perkins	(509) 520-3020		barbperk@POCKETINET.COM	Walla Walla Basin Watershed Council	Environmental	Brian Wolcott	(541) 938-2170 (509) 520-2526	brian.wolcott@wwbwc.org
Mark Wachtel	(509) 499-2241	(509) 892-7860	mark.wachtel@dfw.wa.gov	Washington Department of Fish and Wildlife	State Govt			
Chris Kowitz	(971) 600-6137		chris.c.kowitz@oregon.gov	Oregon Water Resources Department	State Govt			
Chris Marks	(541) 429-7213	(541) 215-0296	chrismarks@ctuir.org	Confederated Tribes of the Umatilla Indian Reservation	Tribal Govt			
Judith Johnson	(509) 301-2973		jsj@bmi.net	Walla Walla Watershed Management Partnership	Ex-Officio			
Tom Tebb	(509) 574-3989		gteb461@ecy.wa.gov	Washington State Department of Ecology	Ex-Officio			



Draft Meeting Summary

Wednesday, June 24, 2020 | 1:00 – 4:30 p.m
 Online Only Meeting | WebEx

Agenda:

Time*	Agenda Item (Action items are marked with "I")	Objective & Reference Materials	Presenter(s)
1:00 (15 mins)	Welcome, Introductions, Review Agenda <ul style="list-style-type: none"> Welcome Opening remarks Introductions Review agenda Review and approve meeting summary 	<ul style="list-style-type: none"> <i>Agenda</i> <i>Draft meeting summary</i> 	<ul style="list-style-type: none"> Susan Gulick, Facilitator Tom Tebb, Ecology Judith Johnson, WWWMP
1:15* (10 mins)	Report to the Legislature <ul style="list-style-type: none"> Status updates SPAC questions and discussion 		<ul style="list-style-type: none"> Dave Christensen, Ecology Chris Hyland, WWWMP
1:25 (30 mins)	Working Group Updates <ul style="list-style-type: none"> Update from the Data, Studies and Monitoring (DSM) Working Group Update from the Ecological Function Working Group Update from the Water Supply Needs Working Group SPAC questions and discussion 		<ul style="list-style-type: none"> <i>Working Group Representatives (TBD)</i> <i>Susan Gulick, Facilitator</i>
1:55 (30 mins)	Walla Walla Spring Chinook Hatchery – Summary and Status <ul style="list-style-type: none"> History and project description Construction and operation schedule Goals and anticipated benefits Part of comprehensive water/fish restoration effort 		<ul style="list-style-type: none"> <i>Gary James, CTUIR Fisheries Program Manager</i>
2:25*	10 MINUTE BREAK		
2:35* (90 mins)	SPAC Discussion: Scope and Scale of Strategic Plan Issues within the Basin <ul style="list-style-type: none"> What are the key challenges and opportunities within these areas? <ul style="list-style-type: none"> o Touchet o LWWR/Spring Branches o Mill Creek/Yellowhawk o Mainstem 	<i>Discussion Guide</i>	<ul style="list-style-type: none"> <i>SPAC Member Discussion</i> <i>Susan Gulick, Facilitator</i>
4:05* (10 mins)	Presentations for Future Meetings <ul style="list-style-type: none"> USGS Groundwater Study Flood Control: Mill Creek, Nursery Bridge, Other? Potential funding sources for basin projects Agency programs and roles in watershed (which agencies?) Other 		<ul style="list-style-type: none"> <i>Susan Gulick, Facilitator</i>
4:15* (10 mins)	Public Comment		<ul style="list-style-type: none"> Susan Gulick, Facilitator
4:25* (5 mins)	Updates and Next Steps <ul style="list-style-type: none"> Action items 		<ul style="list-style-type: none"> Susan Gulick, Facilitator

	<ul style="list-style-type: none"> • Updates/announcements • Upcoming meetings <ul style="list-style-type: none"> ○ SPAC, Working Groups 		<ul style="list-style-type: none"> • Caroline Burney, Cascadia Consulting
4:30*	Adjourn		<ul style="list-style-type: none"> • Susan Gulick, Facilitator

*All reference materials are available [online](#).

Welcome, Introductions & Review Agenda

Susan Gulick, Facilitator, reviewed the agenda and led roll call. See **Appendix A** for attendance.

Susan Gulick reviewed the meeting summary. All SPAC members approved the [Meeting Summary](#).

Report to the Legislature

Dave Christensen, Washington Department of Ecology, provided an update on the Legislative Report.

- Ecology and the Partnership are working together on the report.
- A draft of the report will be available for SPAC review later this summer.

Working Group Updates

Data, Studies, and Monitoring Working Group:

Steven Patten, City of Milton-Freewater provided an update on the Data, Studies, and Monitoring Working Group (DSM WG):

- Reviewed and discussed data and information on:
 - Instream flow gauge data from Oregon Water Resources Department, United States Geological Survey, and Washington Department of Ecology.
 - Out of Stream Data for Municipal, Rural-Domestic, Commercial-Industrial, and Agricultural users.
- Discussed key studies regarding:
 - Water rights evaluations
 - Infrastructure
 - Reclaimed water
 - Water conservation
 - Bi-state flow study
 - Surface groundwater interactions
 - Basalt aquifer groundwater
 - Managed Aquifer Recharge
 - Habitat
- Identified next steps for gathering monitoring information from Oregon and Washington.
- WG members are continuing to provide data and information while the consultant team is coordinating the following next steps:
 - Synthesizing data and studies to inform current conditions
 - Internal quality assurance
 - Populating current conditions strategic plan sections
 - WG and SPAC review of draft strategic plan sections
- Discussion:
 - A committee member asked what the synthesis of the data and studies will look like
 - Data from the WG will be populated into the Strategic Plan outline which will be brought to the SPAC and WG for review and refinement.
 - A committee member asked about monitoring and performance metrics for projects
 - The WG is gathering information and putting together options for the SPAC's consideration.
 - The SPAC will take those recommendations and shape them for the strategic plan.

Water Supply Needs Working Group:

Steven Patten, City of Milton-Freewater provided an update on the Water Supply Needs WG.

- Discussed high-level desired future conditions as they relate to water supply or out of stream demands in the basin. Key themes include:
 - Manage water supply for sustainability and balancing needs for agriculture, population growth, and instream

- Current climate variability challenging for agricultural operations
- Active engagement in water conservation by Municipalities and Agriculture
- Discussed key challenges to meeting water supply needs in the basin, including:
 - Meeting future growth water demand
 - Improved storage for in-basin water during surplus
 - Water conservation funding and technology
 - Water rights and over-appropriation
- Began discussion of water use across sectors (municipal, commercial/industrial, rural/domestic, and agricultural) including how will each sector meet future demand and what metrics will be used to track progress?
- Discussion:
 - A committee member asked whether the WG will consider water supply quantities needed for aquatic resource enhancements?
 - The Water Supply Needs WG is focused on out-of-stream water needs. The Ecological Function WG will discuss water supply needed for instream water needs.

Ecological Function Working Group:

Gary James, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), provided an update on the Ecological Function WG:

- Discussed high-level overview of desired future conditions as they relate to ecological function. Themes include:
 - Enough water instream to maintain ecological function
 - Recovery and delisting of species, including summer steelhead
 - Address levee issues and floodplain reconnection
 - Flood risk reduction
 - Connect instream flow with water quality concerns, especially temperature
 - Multi-benefit
- Discussed baseline instream flow data, habitat considerations, and connections to water quality

Walla Walla Spring Chinook Hatchery: Project Briefing

Gary James, CTUIR provided an overview of the Walla Walla Spring Chinook Hatchery. The hatchery is located on the South Fork Walla Walla River near Milton-Freewater. It will be located at the site of an existing adult holding and spawning facility that's currently managed by CTUIR. The project aims to augment fish populations available for harvest and help establish a spring Chinook population in the Walla Walla Basin.

The hatchery is one component of a comprehensive water strategy, including:

- Instream flow enhancement
- Fish passage improvement: Many fish passage projects have been completed in the Basin, and there are several other projects planned.
- Floodplain enhancement
- Artificial propagation – salmon reintroduction
- Monitoring and evaluation
- Harvest management

Spring Chinook returns have decreased since 2010. The hatchery will help to produce more fish and increase returns. The current average 10-year return is 322 fish; the return goal with the hatchery is 5,250 fish. Steelhead have followed a similar pattern and their returns have decreased since 2010.

Discussion:

- Tom Tebb shared that it will be important to capture fish and wildlife recovery goals in the 2050 Plan, so that we can align efforts and funding opportunities.
 - Additionally, it will be important to show the progress already made to highlight where there are gaps and future opportunities.
 - Chris Marks added that the WGs are playing a valuable role in bringing information and recommendations to the SPAC.
- A committee member asked whether there is any genetic analysis in the hatchery program that builds back the native stock as opposed to the Carson genetic stock?
 - There are no more native salmon. The Carson genetic stock is a conglomerate from an upriver gene pool. As fish are released, CTUIR is cognizant of wild and hatchery genetics to build diversity in the hatchery and natural spawning.
- A committee member asked what percentage of fish passage projects remain to be completed?

- There are existing bottlenecks in fish passage such as channelization at Nursery Bridge.
- These efforts will be documented in the 2050 Plan.
- Committee members asked whether CTUIR considered using stock from the Yakima Basin?
 - CTUIR has been using Carson stock for the last 30 years so the hatchery is established with the Carson stock.

Potential Future presentations

Susan Gulick led a discussion around what presentations should be brought to future SPAC meetings. SPAC members suggested the following future presentations:

- Army Corps of Engineers – Bennington Lake
- Irrigators
 - Ex. Gardena Farms Irrigation District
- USGS Groundwater Study
- Funding sources from different entities
 - Ex. [Ecology](#)
- Using LIDAR to anticipate how and where hydrology impacts flooding
- Bi-State Flow Study
- How is each state addressing the instream flow protection issue?
- Basin hydrology, including existing monitoring sites
- Current water rights law and management practices
- Forest management
- Existing and future conservation projects

Discussion:

- Committee members agreed that a presentation on the USGS Groundwater Study will be beneficial but may be a bit premature, as the study is still in the scoping phase.
 - Preliminary information on the USGS Groundwater Study is available [here](#).
- Committee members agreed that the next SPAC meeting should include a presentation on water rights and laws from Dave Christensen and Carrie Sessions.
 - Kristina Ribellia added that she can provide information on Western Water Market's current water market activity in the basin and their future vision.

Sub-Basin Discussion:

Susan Gulick and Amanda Cronin, AMP Insights, facilitated a discussion around challenges and opportunities within geographic areas. See Appendix B for the updated Sub-Basin discussion guide.

SPAC members provided edits and clarification to the discussion guide. A summary of updates is below:

Touchet River Drainage:

- Characteristics:
 - Significant channelization. Ability to retain baseflow has been significantly compromised.
 - Towns in the Touchet basin are mostly along alluvial fans.
 - Opportunities for additional vegetation and restoration.
- Challenges:
 - Low flow issues in lower Touchet
 - Significant reaches with losing conditions.
 - Temperature challenges.
 - Flood risk for Dayton and Waitsburg related to the condition of the levee and the build-up of material in the stream channel.
- Opportunities:
 - Large annual water supply and potential for water supply projects in Upper Touchet.
 - Committee members expressed concern around dewatering irrigated agriculture.
 - Maintain complexity through floodplain activation. Build up groundwater supplies.
 - Riparian restoration to assist with water temperature issues.
 - Funding from a variety of agencies (Local, State, and Federal).
 - Passive aquifer recharge in losing reaches
 - Expand fish rearing and spawning areas downstream
 - Dryland agriculture conservation practices have led to retaining more moisture in the soil.
 - Optimize flood water protections around towns and critical infrastructure and then allow flood waters to reconnect on farmland

- Provide compensation for landowners.
- Upgrade City of Dayton's wastewater treatment plant
- Discuss forest health with Federal managers of upland forested areas.

Little Walla Walla River/Spring Branches Drainage:

- Characteristics:
 - The East and West LWWR are distributaries of the Walla Walla River.
 - There are also spring branches including Mud Creek, Johnson Creek, Dugger Creek, Schwartz Creek, Big Spring, and Lewis Spring.
 - USFWS documented non-native Brook Trout population, juvenile steelhead, spring chinook salmon, and red band trout in East LWWR.
- Challenges:
 - Teresa Kilmer expressed concern that we should not attempt to address flow problems in the mainstem by taking water out of the LWWR.
 - LWWR is controlled with head gates at Milton-Freewater. Flow is managed to reduce flood risk and property damage.
 - Fish passage barriers.
 - Private property issues for diversions.
 - Lack of awareness around water shortages.
- Opportunities:
 - Run LWWR closer to natural system.
 - Address whole Spring Branches system, not just LWWR by running LWWR during winter months.
 - Emphasize importance of groundwater recharge to support surface flow.
 - Ongoing education and training to communicate water shortages.

Mill Creek/Yellowhawk Creek Drainage:

- Challenges
 - Fish passage at Mill Creek.
 - Tri-State Steelheaders, CTUIR, and Snake River Recovery Board have worked on improving fish passage and secured funding for 3 miles of improvement through the channel.
 - Fish passage issues at Bennington Lake.
 - Due to development in Yellowhawk Creek and Lower Mill Creek, ACOE's flood operations at Bennington Lake have adopted a lower volume of water in the lake. This means that flood operations are operated more frequently which impacts fish populations.
 - There is opportunity for additional water storage at Bennington Lake but there will need to be a fish screen at the diversion.
 - Water quality and temperature issues.
- Opportunities:
 - Diversion dam at Yellowhawk Creek being redone.
 - ACOE's construction of juvenile passable dam at Yellowhawk Creek diversion will help reduce fish stranding issues.
 - Address fish passage issues at Bennington Lake.
 - ACOE is conducting a flood risk study for Mill Creek through Walla Walla.
 - Continue to fund improvements at Mill Creek.

Mainstem Walla Walla River Area:

- Challenges
 - Fish passage issues at Nursery Bridge due to channel incision.
 - Levee vegetation issue: 8 or 9 mile stretch that lacks vegetation.
 - CTUIR is working on identifying specific opportunities within that reach.
 - Will need to identify funding sources.
 - Integrate habitat and fish passage with flood prevention work by ACOE.
 - Discussed at EF WG meeting: Tribes and others are working on identifying specific opportunities within that reach
 - Much of the Walla Walla River is channelized by private and public levees, exacerbating a naturally high bed load movement that impacts fish spawning and rearing.
 - Means up to 2 feet of bed deposits that can impact fish who are trying to rear in those reaches.
 - Declining groundwater levels in the alluvial aquifer will mean that the losing reaches of the Walla Walla River will likely increase in both length and magnitude, including near McDonald Bridge where the river already often goes dry in the summer.
 - These are the areas we're seeing lethal temperatures for salmonids.
- Opportunities:
 - Landowners along the Milton-Freewater flood control levee are willing to do a levee setback.
 - Augment flows in the Tumulum branch of the Walla Walla River.
 - Need to determine the amount of flow need to augment flows in the Tumulum to support CTUIR's hatchery goals.
 - Irrigation efficiency projects (ex. Gardena Farms, Hudson Bay District Improvement Company).
 - Potential corresponding MAR to offset impacts to streams and well users in those areas.

Public Comment

- Brian Wolcott added that there is an opportunity for additional water storage on Mill Creek at Bennington Lake. If there are water quality issues, water could be piped to irrigators.
- Arnold Coe shared that the Plan needs to address bedload management.
 - WWBWC conducted a bed stability study for the Basin for the N and S fork of the Mainstem Walla Walla.
 - WGs will discuss this issue.

Updates and announcements:

- Upcoming meetings:
 - SPAC: July 22 from 1-4 pm via WebEx.
 - WGs:
 - Ecological Function: June 15 from 1 – 3 pm via WebEx.
 - Water Supply Needs: July 16 from 1 – 3 pm via WebEx.
 - Data, Studies, and Monitoring: July 21 from 1-3 pm via WebEx.

DRAFT

Appendix A. Attendance

SPAC Members in Attendance:

Name	Affiliation
Adams, Susan	WWT
Bambrick, Dale	NMFS, NOAA
Boen, Cindy	USACE
Byerley, Annie	WA Irrigation at-large
Kilmer, Teresa	Walla Walla River ID
Kimball, Todd	Walla Walla County
Kowitz, Chris	OWRD
Marks, Chris	CTUIR
Newhouse, Alli	OR Irrigation at-large
Patten, Steven	City of Milton-Freewater
Perkins, Ralph	WWBWC
Talbott, Mike	Columbia County
Tebb, Tom	Ecology, <i>Ex-Officio</i>
Wachtel, Mark	WDFW
Wagoner, Mark	Gardena Farms Irrigation District

SPAC Members Not in Attendance:

Name	Affiliation
Shafer, John	Umatilla County
Johnson, Judith	WWWMP, <i>Ex-Officio</i>

Other Attendees:

Name	Affiliation
Beard, Chris	Ecology
Beeler, Brook	Ecology
Birdsall, Doug	WWWMP
Brown, Ron	
Burney, Caroline	Cascadia Consulting
Christensen, Dave	Ecology
Coe, Arnold	WWWMP
Cronin, Amanda	Amp Insights
Culp, Jon	WA Conservation Commission
Downes, Melissa	Ecology
Dymecki, Sarah	WWT
Fagan, Colleen	NMFS, NOAA
Gardipe, Jamie	DOH Office of Drinking Water
Grandstaff, Mark	WDFW
Gulick, Susan	Sound Resolutions
Haller, Dan	Aspect Consulting
Hyland, Chris	WWWMP
James, Gary	CTUIR
Lancaster, Ryan	Ecology
Poppleton, Tim	Ecology
Ribellia, Kristina	Western Water Market
Richartz, Sandra	Senate Republican Caucus
Ryf, Katherine	Landau Associates
Short, Jaime	Ecology
Sikes, Jeremy	Ecology
Tarbutton, Scott	Ecology
Thurston, Sean	
Trumbull, Travis	
Wolcott, Brian	Walla Walla Basin Watershed Council

Discussion Summary: Challenges and Opportunities within Sub-Basins

Touchet Area

Key characteristics and attributes of the Touchet area include:

- The predominate land use is a mix of irrigated and dryland agriculture. Irrigation generally occurs along the river corridor. Dryland wheat is the predominate crop away from the river.
- The area has a rural character with small towns (Dayton, Waitsburg, Prescott, Touchet) and not a lot of growth.
- There is distinct variation in precipitation from the lower Touchet to the upper Touchet River tributaries.
- Poor riparian function in some areas, minimal shade; significant CREP plantings
- Mid to lower Touchet channelized low to medium riparian value; significant CREP buffers implemented which represents improved habitat in the future as trees grow;

Key challenges within this area include:

- Improving flows in the lower Touchet so critical fish species can access high quality habitat in the upper watershed; several losing reaches
- With fairly intact buffers the lack of instream habitat complexity and lack of woody debris is a challenge; CREP buffers sit above channel
- Addressing temperature challenges in mid to lower Touchet
- Significant channelization; reduced ability to maintain baseflow
- Flood control levy repair/maintenance high priority in Dayton (sediment build-up issue) and Waitsburg
- Need to improve instream habitat suitable for spawning and rearing from Dayton to Waitsburg
- Lack of water to fully meet agricultural water demands every year

Opportunities to address these challenges may include:

- Water right acquisitions.
- Irrigation efficiencies.
- Transitioning some irrigated wheat to dryland wheat.
- Further direction of municipal reclaimed water and effluent to support stream flow via Managed Aquifer Recharge (MAR).
- Stormwater management for improved water quality and flood mitigation.
- Retiming higher flows; store during high flows for use during the low flow season
- Opportunity to increase channel complexity and floodplain function and retain high flows
- Build storage capacity to support irrigation; store high flows for use in the later season
- Incentives to increase the life of CREP contracts
- Waitsburg has excess water within their water right
- Conservation efforts on dryland ag. (no-till, retain organic matter, crop rotations) have a positive impact on springs and surface flows

Discussion Questions: Touchet Area

1. Are there additional water-related challenges or opportunities you would add to the list? Why?
2. What are the best opportunities in this area to address over-appropriation?
3. What water-related questions would you like the strategic plan to address within this sub-basin?

Little Walla Walla River (LWWR)/Spring Branches Area

Key characteristics and attributes of the Little Walla Walla/Spring Branches area include:

- This area consists of the East and West LWW Rivers distributaries. There are also spring branches: Mud Ck, Johnson Ck, Dugger Ck, Schwartz Ck, Big Spring, Lewis Spring, etc.
- Documented fish use in East LWWR-non-native brook trout; juvenile steelhead, spring chinook and redband trout
- The conveyance provides water for agricultural irrigation.
- Groundwater-fed springs and streams support habitat.
- The Little Walla Walla and spring branches provides cold water refugia for rearing and cool water inputs to the mainstem Walla Walla River.
- The landscape has unique aesthetic values.

- The area bisects the OR-WA border.
- LWWR controlled with headgate originally for flood control

Key challenges within this area include:

- Dry and low stream flows (year-round and seasonally) that are insufficient for habitat and limit out of stream water rights.
- Importance of recharge to supporting surface flow and alluvial groundwater for domestic and irrigation use
- Lack of public awareness of the critical nature of recharge

Opportunities to address these challenges may include:

- Increase flow from the main stem to the LWWR.
- Expanding the monitoring network to improve understanding between dry year/season and spring branch low flow.
- Expanding the MAR system to support flow in the spring branches.
- Opportunity to change the amount of flow that goes to the LWWR from the Tualum Branch; recent winter flow releases (20cfs) to LWWR supports instream flow recharge
- Better understanding of spring capacity
- Ongoing education and training to communicate water shortages

Discussion Questions: Little Walla Walla River/Spring Branches Area

1. Are there additional water-related challenges or opportunities you would add to the list? Why?
2. What are the best opportunities in this area to address over-appropriation?
3. What water-related questions would you like the strategic plan to address within this area?

Mill Creek/Yellowhawk Area

Key characteristics and attributes of the Mill Creek/Yellowhawk area include:

- The Cities of Walla Walla and College place are within the floodplain of Mill Creek.
- Mill Creek is part of an engineered Army Corps of Engineers flood control project that places Mill Creek in a concrete channel throughout the City of Walla Walla.
- Yellowhawk is a distributary of Mill Creek meaning it flows out of Mill Creek and into the Walla Walla river upstream of the confluence of Mill Creek and the Walla Walla River.
- Upper Mill Creek supports relatively good habitat conditions for fish.
- The City of Walla Walla relies on surface flow from Mill Creek for municipal supply.
- Mill Creek still producing significant steelhead and bull trout populations could produce more fish including Spring Chinook

Key challenges within this area include:

- Poor channel habitat, which impacts fish migration to spawning grounds in the upper watershed.
- Flooding impacts on the Cities of Walla Walla and College Place.
- High temperatures and low flow conditions in Mill Creek.
- Increased development around Walla Walla and reliance on permit-exempt wells.
- Fish passage at Mill Creek dam a significant issue, ladder closed at 400cfs, need new fish ladder; 2001 fish kill
- A flood protection target triggers diversion into Bennington Lake and fish can be stranded

Opportunities to address these challenges may include:

- Floodplain and levee modification.
- Water conservation (agricultural and municipal conservations, reclaimed water / purple pipe, etc.).
- Water right acquisitions.
- Managed aquifer recharge.
- Aquifer storage and recovery.
- Stormwater management for improved water quality and flood mitigation.
- Riparian habitat restoration.
- Partnership on instream channel passage improvement in the concrete channel- complete 2023/24; but Bennington Lake management and Mill Creek dam are still unresolved
- Improved water storage and management at Mill Creek Dam and Bennington Reservoir including the potential for additional water storage at Bennington Reservoir, with new fish screen at the diversion that can handle larger volumes of water and reconsidering Bennington lake recreational fill of 30cfs (in rule) for potential flow enhancement in Mill Creek
- Need to address underground section and the levied reaches of Mill Creek
- Capacity to store water in Bennington Lake in winter; could supply irrigators in lieu of surface flow, could be gravity fed to irrigators out of the lake

Discussion Questions: Mill Creek/Yellowhawk Area

1. Are there additional water-related challenges or opportunities you would add to the list? Why?
2. What are the best opportunities in this area to address over-appropriation?
3. What water-related questions would you like the strategic plan to address within this sub-basin?

Mainstem Walla Walla

Key characteristics and attributes of the main stem Walla Walla area include:

- It includes a unique hydrology and distributary system.
- There are both losing and gaining reaches in the main stem.
- Irrigation occurs nearly year-round.
- The river starts in OR ends in WA, bisecting the state line.
- Headwater areas are relatively undeveloped.
- A variety of agricultural crops grown in the area, including grains, orchards, vineyards, onions, asparagus, and alfalfa seed.

Key challenges within this area include:

- Meeting agricultural demand with surface water, especially in dry years.
- Concerns that declining groundwater levels signal long-term sustainable source water issues for agriculture and City of Milton-Freewater.
- The need for cool, clean water source in gaining reaches of the main stem, especially in low flow periods.
- Fish migration challenges and fish stranding due to low flows in the lower watershed.
- Legal and physical protection of instream flow water rights across the state border.
- Reach-specific channel/levee structures that create sub-optimal habitat.
- Fish passage challenge at Nursery bridge associated with levees; further downcutting at Nursery bridge- alluvial groundwater problem
- Lack of riparian vegetation through the levied reach (8-9-mile reach) is expensive to address
- ACOE continued focus on flood control rather than ecological function through levied reach
- Private and public levees, exacerbates high bed flow movement, increases bed scour, bury redds and hurt rearing
- Bedload management and deposits negatively impact fish habitat
- Declining groundwater levels in the alluvial aquifer will mean that the losing reaches of the Walla Walla River will likely increase in both length and magnitude, including near McDonald Bridge where the river already often goes dry in the summer.
- Much of the Walla Walla River is channelized by private and public levees, exacerbating a naturally high bed load movement that impacts fish spawning and rearing.

Opportunities to address these challenges may include things such as:

- Building a reservoir and/or pump exchange with the Columbia River to support irrigated water use and leave more water in the river for fish.
- Managed aquifer recharge.
- Water right acquisitions to augment flows
- Levee setback (some willing landowners now), channel modification and/or floodplain restoration.
- Municipal and agricultural Aquifer Storage and Recovery (ASR).
- Conversion to crops that need less irrigation.
- Stormwater management for improved water quality and flood mitigation.
- GFID and HBIC additional irrigation piping opportunities could increase flows during migratory periods, would need to be complimented by MAR to offset conveyance losses from piping

Discussion Questions: Mainstem Walla Walla

1. Are there additional water-related challenges or opportunities you would add to the list? Why?
2. What are the best opportunities in this area to address over-appropriation?
3. What water-related questions would you like the strategic plan to address within this area?

Draft Findings and Potential Policy Tools – for Meeting 6

Advisory Group on Water Trust, Banking, and Transfers

DRAFT; July 13 2020

Notes

This paper is a draft document. Concepts included have not been approved by Ecology leadership. They are reflective of the current thinking of Ecology Water Resources staff after completion of the Advisory Group on Water Trust, Banking, and Transfers; they should not be interpreted as a commitment to pursue (or not pursue) specific policy actions.

In this document, we present draft findings and potential policy tools for each of the four topics discussed. The draft findings reflect our central takeaways from the Advisory Group meetings. There are then three categories of potential policy tools presented.

- *Potential Ecology Recommendations and Actions* – These are policy concepts that Ecology is considering for recommendation to the Legislature. This category also includes actions that Ecology can implement within our existing authority and which we currently plan to act upon.
- *For Future Legislative Evaluation* – These are policy concepts that Ecology is not recommending, but we believe merit further evaluation by the Legislature. Policy concepts in this category are worthy of continued discussion despite not currently being ripe for implementation or because the concept implicates actions for other state agencies or local governments, and thus would need broader legislative discussions.
- *Considered but not Recommended* – These are policies that Ecology considered and discussed with the Advisory Group and does not recommend for legislative consideration.

Topic 1: Out-of-basin transfers

Findings

- F.1.1 Downstream out-of-basin transfers can be a valuable tool for providing water for new uses while also boosting instream flows (in those cases where the water in the intervening reach is not subject to withdrawal for other out-of-stream uses). Often, these transfers provide much needed flexibility for water management.
- F.1.2 The needs of each basin are unique – it will be difficult (and likely unwise) to seek one solution that fits all basins. For example, some basins could see greater ecological or economic impacts of water moving downstream than other basins. Management considerations are also often basin-specific, such as whether instream flows are met in the basin-of-origin or whether the basin-of-origin is closed to new appropriation.
- F.1.3 If water rights transferred downstream cannot be transferred back upstream, out-of-basin transfers may foreclose the potential for new out-of-stream uses in the basin of origin, which limits the capacity for future economic growth. Some participants expressed that

limiting downstream, out-of-basin transfers could prevent these economic losses. Others argued, however, that most downstream, out-of-basin transfers are driven by greater macro-economic factors, such as commercial agricultural enterprises outcompeting traditional family farms, and that limitations on the downstream sale of water rights are an inappropriate response. They voiced concern that limitations on agricultural water marketing would place an undue burden on farmers seeking to capitalize on a major asset.

- F.1.4 Economic realities may make it difficult for communities in headwater basins to compete in an open marketplace for available water rights. In these basins, meeting long-term goals to keep water rights from being transferred downstream out-of-basin may require outside or state-level investment in local water banking programs or partnerships to level the playing field.

Policy Tools – Potential Ecology Recommendations and Actions

- P.1.1 Create an administrative tool or implement a process or procedure such that a water right transferred downstream may be moved back upstream without a finding of impairment to intervening users. Ecology would still not approve a transfer that would cause impairment to an existing water right beyond what would have occurred in absence of the original downstream transfer. **Note, we are consulting with our attorneys on whether this could be implemented through existing authority or whether additional statutory authority would be necessary, and on whether it would face legal barriers.**

Objective: Create greater flexibility such that downstream, out-of-basin transfers are no longer “permanent” and may be transferred back upstream	
Pro’s	Con’s
Increased flexibility to move water rights back upstream after they have been transferred downstream	Could be costly, time consuming, and complicated to implement
Potential impacts on the local economy due to downstream transfers could become reversible	Moving a right back upstream after an extended period of time may result in ecological impacts, especially given the impacts of climate change
	This may not help resolve the issue if water is more valuable downstream, and thus the headwater basins still are negatively affected by downstream out-of-basin transfers
	Water rights in the affected reach issued after the downstream transfer may be subject to interruption if the subsequent upstream transfer would otherwise impair senior rights, including instream flows

- P.1.2 Authorize “conservation easements” on water rights to limit their use to the basin-of-origin. An entity could purchase the easement, which would have the effect of limiting transfer of the water right so it could not be transferred out of the basin-of-origin for future

consumptive uses. **Note, we are consulting with our attorneys on whether this could be implemented through existing authority or whether additional statutory authority would be necessary, and on whether it would face legal barriers.**

Objective: Provide a non-regulatory tool to keep water rights in the basin-of-origin	
Pro's	Con's
Provides a mechanism to keep water rights in the basin of origin	

Policy Tools – For Future Legislative Evaluation

- P.1.3 Establish that before a water right may be sold for transfer out of the basin of origin, state, local, and tribal governments, and non-profits would be provided a “right of first refusal.” Parties would have a set duration of time to make an offer.

Objective: Increase the opportunity for water rights to stay in the basin of origin	
Pro's	Con's
Provides a mechanism to keep water rights in the basin of origin	Such a tool could be an unconstitutional taking of property rights
Increases local control	Disclosure of the sale before the sale is final could complicate or derail the transaction
Could maintain economic benefits in the local community	Lengthens the processing time for out-of-basin transfers
Does not prevent the marketing and sales of water rights	Requires a new source of funding to implement. Without funding this could create process with no result

- P.1.4 Require that before the place of use of a water right may be transferred downstream out-of-basin, Ecology must determine that the change will not be detrimental to the public interest.

Objective: Prevent downstream out-of-basin transfers that would be detrimental to the public interest	
Pro's	Con's
Can be an effective way to evaluate the impacts of a downstream out-of-basin transfer and provide a mechanism to prevent it	Public interest is largely undefined and subjective
A requirement for a public interest review is not a novel idea in Washington water law (see, RCW 90.42.040; 90.44.100; 90.03.290; and 90.44.540)	It is unclear at what geographic scale would be appropriate to measure the impacts – at a county level, regional, or statewide?
A public interest test already exists for new water rights and for changes to most groundwater rights	Using a public interest test could start to value some beneficial uses over others, which many participants thought was unwise

	The core issue may be the loss of economic opportunities for farming in upstream communities – and preventing a water right from moving downstream will not incentivize people to keep farming; thus, the policy tool is misplaced
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P.1.5 Create a revolving loan fund or grant program to fund purchases water rights for use in the basin of origin.

Objective: Assist tribes, local governments, and nonprofits in acquiring water rights to keep in the basin of origin	
Pro’s	Con’s
Creates a funding source to help tribes, local governments, and nonprofits to participate in the water market	The unavailability of water rights for sale may be more of a limiting factor than funding
	Could be administratively costly to establish and operate

Policy Tools – Considered but not Recommended

P.1.6 Authorize Ecology to “close” a basin (or subbasin) to out-of-basin transfers through rulemaking.

Reasoning: Incentive and market-based solutions provide a more effective mechanism to keep water in a basin. Ecology also has concerns with closing a basin through rulemaking, even if specific statutory authority were provided to do so. We would need clear criteria for what would justify this rulemaking, which could be difficult to articulate and/or measure. In addition, even with authority to adopt rules with this standard, rulemaking requires that the benefits outweigh the costs and it’s unclear whether that would be the case. Lastly, rulemaking is costly and time consuming for the agency. With other rulemaking priorities, it is unclear when Ecology will have resources to undertake this rulemaking in the near term.

P.1.7 Restrict the number of water rights that may be transferred for use out-of-basin from any one WRIA.

Reasoning: It is unclear how Ecology would determine the appropriate number of water rights (or the quantity of water) that can be transferred.

Topic 2: Transparency in water right sales

Findings

F.2.1 There was general sentiment among participants that the public notice requirements of sales and transfers are not the problem. Instead, Ecology should be concerned that online postings of transfer applications are not sufficiently accessible to the general public.

- F.2.2 Increased knowledge of sales and prices could help to develop a more robust marketplace for trading water rights.
- F.2.3 The statutory requirement to post notice of water right transfers in the newspaper is outdated. However, local newspapers may still provide a useful medium for public notice in some rural areas with limited internet access.
- F.2.4 There was common agreement that limiting who can buy a water right (such as prohibiting out-of-state entities) is unwise. Differentiating between in-state and out-of-state buyers of water rights is likely to be problematic (and potentially unconstitutional). See P.2.4 for details.

Policy Tools – Potential Ecology Recommendations and Actions

- P.2.1 Modernize the requirement that notice of water right transfers is published in local newspapers. Amend RCW 90.03.380 to allow Ecology to publish notice electronically.

Objective: Improve transparency	
Pro's	Con's
Newspaper posting is archaic, costly and reaches a limited audience	Particularly in rural areas, newspapers still provide the only notice to many people and the advertising supports local papers
Cost savings for the agency	
Modern means of communication will reach a broader audience	

- P.2.2 Make water right transfer application information more accessible to the public through administrative improvements. Post water right change applications in an integrated, publicly-accessible GIS interface. Note, Ecology can implement this within existing authority. We have begun work on this project and anticipate completion by 2022.

Objective: Improve transparency	
Pro's	Con's
Improves access to information about water right transfers	Requires some administrative resources to implement

Policy Tools – For Future Legislative Evaluation

- P.2.3 Align disclosure laws for water rights sold separately from land with the laws for land sales. Require that water right sales (including prices) are reported to the state and made publically available.¹

¹ This could potentially tie to the Real Estate Excise Tax, which is collected on water right sales. Though collected, our current understanding is that this information is not currently tracked or published in publically-available, searchable database.

Objective: Improve transparency	
Pro's	Con's
Improves market transparency	Administratively costly for both the state and local governments
Could make more water rights available with knowledge of prices	Might increase the price of water, including the cost of water right acquisitions
In the event that trading of water rights in transactions distinct from the appurtenant land becomes common, such recording would simplify tracking ownership of water rights and create greater certainty of ownership	Unclear that the need for this information outweighs the cost of the undertaking

Policy Tools – Considered but not Recommended

P.2.4 Limit who can buy a Washington water right.

Reasoning: This policy option would have significant negative implications because out-of-state entities, like the Bureau of Reclamation, play an important role in water management in Washington. Implementation could hinder water management in interstate basins.

In addition, such a regulation limiting out-of-state entities would have easy workarounds and loopholes. Any entity can buy land in Washington, and it would be incongruent to restrict who can buy water.

P.2.5 Provide advance public notice of sales including price disclosure.

Reasoning: This could set the expectation that Ecology or local governments could prevent a sale from happening, which they would not have authority to do. This also has high potential to disrupt sales. In addition, participants noted that we do not require advance public notice of land sales and that water rights should not be treated any differently.

P.2.6 Require that any water right sale be reported to county commissioners.

Reasoning: It is unclear what benefit would come from reporting all sales. It could also set the expectation that local governments could prevent a sale from happening, which they would not have authority to do.

Topic 3: Private investment & marketing of water rights – Use of the Trust Water Rights Program (TWRP)

Findings

F.3.1 There is lack of consensus and common understanding of basic terminology of the trust program, including terms such as *temporary donation* and *transfer into trust*. The most important distinction between “types” of trust water rights is the intended end use of that

water right – or more precisely, the role that Ecology will play in managing the right. This is not clear in statute.

- F.3.2 Lack of clarity in chapter 90.42 RCW promotes confusion and disagreement on terms, standards, and processes, which could result in use of the Trust Statutes in ways not intended by the legislature or impairment to existing water rights.
- F.3.3 The flexibility of the TWRP is one of its greatest assets. Limiting its flexibility by clarifying certain definitions and processes could hamper creative water solutions. Several participants expressed opinions that the value of flexibility outweighs any potential concerns over “abuse” of the TWRP.
- F.3.4 There is broad agreement that a water right being used for mitigation should first undergo a tentative determination of extent and validity. There was general sentiment (but not consensus) that Ecology already has the statutory authority to require this condition.
- F.3.5 There was no consensus whether or not the TWRP enables speculation in water rights and, if so, whether this activity constitutes a significant problem. Moreover, there was no common definition for “speculation” accepted by the group. To some, the non-consumptive beneficial use of the right for instream flow is comparable to any other beneficial use, shielding it from classification as speculation. To others, this non-consumptive use is simply legal cover for “speculative” behavior.
- F.3.6 Many participants were not concerned over use of the TWRP in ways that yield private profit. They contend that private use rights are inherently intended to drive public benefits through efficient use of the resource through private incentives, and that the intentions of the owner should not matter as long as rights are being beneficially used in accordance with the Water Code. Therefore, water right owners are allowed to profit from instream uses just as from out-of-stream uses. Moreover, the ongoing streamflow benefits of trust water rights provide the opportunity for a “win-win” scenario to both public and private interests.
- F.3.7 Some participants, however, voiced concern over the scenario whereby a person buys a water right with no plan to put it to beneficial use themselves (other than instream flows), but rather with the express intent of simply reselling the water right at a later time for a higher price. They view this activity as speculative and therefore abusive.

Policy Tools – Potential Ecology Recommendations and Actions

Note that statewide, the Trust Water Rights Program is governed by chapter 90.42 RCW. Trust water is also governed by chapter 90.38 RCW, which is strictly applied to the Yakima Basin. Ecology is not currently considering any changes to chapter 90.38 RCW.

- P.3.1. Differentiate between water rights that are placed in trust for the purpose of instream flow enhancement and protection from relinquishment versus water rights that are placed in trust to be used as mitigation. Clarify terminology such that there is a common definition for widely used terms. Note, Ecology is currently evaluating whether to pursue these changes in

statute, rule, or policy. If such clarification were pursued through statutory amendment, we anticipate it would require substantial changes to chapter 90.42 RCW, if not a near-complete rewrite.

Objective: Create two categories of trust water rights to clearly differentiate their end use	
Pro's	Con's
Clarifies both Ecology's administrative role and the water right holder's long-term intentions for use, reducing potential speculation	Lack of consensus on terminology and proper distinctions indicates this could be a difficult and potentially lengthy process
Provides clarity on administrative processes	Clarity could reduce flexibility for water right holders when their future plans are uncertain
Ensures that use of trust water rights will not impair existing rights	

P.3.2. Amend chapter 90.42 RCW to clarify that any water right being used for long-term² or permanent mitigation must first undergo a tentative determination of extent and validity. Because temporary donations to the TWRP generally do not undergo a tentative determination of extent and validity, this policy would clarify that temporary donations may not be used to mitigate for long-term or permanent uses.³ Note, we believe this could be accomplished through a surgical, brief amendment to chapter 90.42 RCW (as opposed to P.3.1, which would necessitate a more comprehensive amendment).

Objective: Ensure that new mitigated uses will not impair existing water users or instream flows	
Pro's	Con's
Added clarity from the Legislature will increase certainty and reduce legal risk	Unclear whether this is necessary – existing statutory authority may be sufficient
Ensures that use of trust water rights will not impair existing rights	Limits flexibility – although the use of donations for mitigation is often inadvisable, it may be appropriate in some unique circumstances
This distinction would help to keep track of which rights can be used for mitigation	
Helps to prevent the scenario whereby a permanent use is mitigated by a temporary trust right	

P.3.3. Update the Trust Water Guidance document as to clarify administrative processes for trust water and water banking. Note, Ecology can pursue this under existing authorities. We have begun this work and anticipate completion by Summer 2021.

² Long term could be defined as more than 5 years in the same way chapter 90.42 RCW establishes different processes and standards for leases shorter than five years versus longer than 5 years.

³ Note, there could be provision to grandfather any donations that are actively being used as mitigation.

Objective: Clarify administrative practices	
Pro's	Con's
Increased clarity and consistency	

Policy Tools – For Future Legislative Evaluation

None.

Policy Tools – Considered but not Recommended

P.3.4. Limit use of the TWRP such that that individuals who buy a water right must plan to put the water to beneficial use themselves.

Reasoning: Placing a right into the TWRP inherently constitutes putting the water to beneficial use, and it is within a water right owner’s prerogative to dedicate a right to non-consumptive beneficial use while determining future out-of-stream use. Therefore this restriction would have no effect. However, if this restriction is applied so that the purchaser must plan for out-of-stream use, it would functionally give priority to out-of-stream uses over instream uses.

P.3.5. Limit the number of trust water rights that can be removed from trust in any given year.

Reasoning: We have not seen that water being withdrawn from trust has caused streamflow problems. Also, it would be difficult to determine the appropriate number of water rights that could be removed. If the limit were based on geographic distribution, it would be difficult to track administratively.

P.3.6. Restrict how long a temporarily donated water right may remain in trust.

Reasoning: Data shows that most rights are in the TWRP for 5 years or shorter, so any limit above that timeframe would have limited utility. In addition, there can be significant streamflow benefits to water rights being left in the TWRP. We see little utility in mandating removal from trust after a specified duration. Also, it is unclear what limitations Ecology would then be able to place on that right to either remove it from trust or prevent its re-donation for another 10-year period.

Topic 4: Private investment & marketing of water rights – Water banking

Findings

F.4.1 Water banks play a critical role in reallocating water between beneficial uses, including instream flows. Both public and private water banks play an important role.

F.4.2 There was general agreement among participants that it can be concerning when a bank that provides water to meet basic health needs gains disproportionate market power or becomes a monopoly. However, participants debated whether the appropriate remedy is through carrots (incentivizing competition) or through sticks (increased regulation).

- Some participants expressed that there should be greater government regulation of water banks providing water for public health and safety (like in-home use). Though there was no clear recommendation on what that that regulation should entail, some participants recommend learning lessons from oversight of public utilities.
 - Other participants argued that while monopolistic behavior can be worrisome, increased regulation is not warranted. They expressed that the solution to monopolies would be to reduce barriers to entry as to increase bank competition. They expressed that rather than regulating the marketplace, Ecology should be positioned to support more banks.
- F.4.3 Many participants expressed that rather than expanding the regulation of water banking, Ecology should focus on how the state can better support banking where it can play a critical role in addressing public health and safety and other water supply challenges. Every basin is unique, and so are the conditions that drive the need for water banks.
- F.4.4 It is important to recognize the role that Ecology’s regulatory actions have played in driving banking activity, both positive and negative. When writing instream flow rules, Ecology should consider how the regulation may enable or hinder market conditions conducive to water banking and/or speculative or monopolistic activity.
- F.4.5 Many participants expressed that transparency in water banks helps to ensure equity and fairness, especially regarding prices that banks charge customers. It was noted that the bill passed in 2016 (SB 6179) requiring that banks disclose their costs and fees for mitigation resulted in significant improvement.
- F.4.6 Many participants thought it would be appropriate for water banks to pay the full administrative cost of bank establishment.
- F.4.7 Staffing and capacity limitations at Ecology sometimes results in lengthy processing times for water bank agreements and related water right change applications. It may also contribute to inconsistent practices that create uncertainty for clients. Additional resources for implementation of the TWRP would benefit state water management.

Policy Tools – Potential Ecology Recommendations and Actions

- P.4.1. Require that prospective bankers submit a “water banking prospectus” in which they outline their business plan.⁴ The prospectus would be made available for public comment. Ecology would use the comments received to inform the trust water right agreement (or water banking agreement) negotiated with the banker. Note, this proposal would be tied to P.4.2, Cost Recovery. The legislature could consider adding specific elements to be addressed in

⁴ Information such as intended uses and customers, and the suitability of the mitigating water right to meet those uses.

the prospectus. If P.4.2 were not pursued, we could implement this policy under current authority.

Objective: Increase transparency on water banking activity	
Pro's	Con's
Requires bankers to engage with Ecology early in the process	If not paired with cost recovery in P.4.2, this would create new administrative costs on Ecology
Clarity about the purpose of a water bank at the onset would serve the public's interest in understanding how the public's water resources are being managed, and to understand potential impacts on the state	There is no cut-and-dry delineation of what constitutes a water bank. There could be confusion on when a prospectus is required
Public comment could inform the terms and conditions of the water banking agreement	
Formalizes and standardizes the process for creating a water bank	

P.4.2. Authorize Ecology to recover the administrative costs of developing water banking agreements. Amend chapter 90.42 RCW to establish a fee for reviewing and processing the water banking prospectus.⁵ Also establish that Ecology may require that applicants use the cost reimbursement process for associated water right change applications that are submitted to Ecology.

Objective: Minimizes the public resources that are spent towards an activity that mostly results in private benefits	
Pro's	Con's
User pays; the burden is on the banker	The cost could be burdensome for non-profits or local governments seeking to water bank
Will fund additional resources for Ecology to help with permitting, which will allow Ecology to process applications more quickly and build more capacity and consistency among staff	

P.4.3. Clarify Ecology's authority to require water banks to address issues beyond ensuring that there is no impairment to senior water rights. This could include requirements to create enhanced stream flow benefits, or other stipulations for additional consumer or environmental protection. **Note, we are consulting with our attorneys on whether this could be implemented through existing authority or whether additional statutory authority would be necessary, and on whether it would face legal barriers.**

Objective: Provide greater consumer or environmental protections in banking agreements

⁵ This could be a flat fee or based upon a fee schedule. The fee will be based upon the amount of staff time Ecology spends in working with potential bankers on developing a trust water right agreement or water banking agreement.

Pro's	Con's
Provides clear authority for more specific provisions in water banking agreements that address environmental enhancement and/or level of service and operational issues	Oversight of these provisions would require additional resources at Ecology
Provides a way to address unique issues in each water bank development with lower legal risk of being arbitrary and capricious	If specific authorities are not detailed in statute, would require Ecology rulemaking. Rulemaking is costly and time consuming for the agency. With other rulemaking priorities, it is unclear when Ecology will have resources to undertake this rulemaking in the near term

P.4.4. Require that draft water banking agreements are posted for public comment before being finalized. Ecology will consider public comment before finalizing terms of the agreement. Note, Ecology plans to pursue this under current authorities. No statutory changes are needed.

Objective: Increase transparency and opportunity for public comment	
Pro's	Con's
Increased transparency. Under the current system, it's difficult for the general public to know what's in these agreements	Will lengthen the time it takes to develop water banking agreements
May give the public greater input on the terms and conditions placed on a water bank	Related to P.4.3, certain comments may require conditions for water banking agreements that are outside Ecology's current authority

Policy Tools – For Future Legislative Evaluation

None.

Policy Tools – Considered but not Recommended

P.4.5. Amend chapter 90.42 RCW to establish that water banks must define their service area and then have a “duty to serve” within that area.⁶

Reasoning: Ecology originally considered this policy as a way to prevent price discrimination and ensure that a customer is not denied service based upon who they are. There was also hope that this could decrease the number of banks established to serve the same customers. However, this policy option could result in reduced competition and increased cost to consumers. In addition, this could create an expectation that water will be available in a given area and lead to increased development pressure.

⁶ Meaning that the bank could not deny providing mitigation to any customer in their defined service area.

- P.4.6. Amend chapter 90.42 RCW to establish that Ecology may prioritize working on water banks serving the greatest public need (such as public health and safety or creating a new water supply solutions).

Reasoning: Prioritizing “public health and safety” might be seen as endorsing a priority for domestic water use, which is contrary to the Water Code. This policy option would contribute to the perception that Ecology would be “picking winners and losers” in water banking. And, if Ecology deprioritized an application, it may be years before we process it. Instead of pursuing this, we believe it is preferable to authorize cost recovery as to provide Ecology with the resources to process trust water agreements and banking proposals in a timely manner.

- P.4.7. Clarify in statute that Ecology may deny a proposal to establish a new water bank.

Reasoning: This policy option would result in the perception that Ecology would be “picking winners and losers” for new water banks.

DRAFT



Strategic Plan Advisory Committee

DISCUSSION GUIDE: Current Conditions and Accomplishments to Date

July 22, 2020

Introduction

The Working Groups and the consultants have been compiling data on current conditions in the basin. Below are highlights from the sections on current conditions and accomplishments to date. We want to see if SPAC members agree with our preliminary conclusions, have additional questions or content to add to the development of current conditions, or have guidance on how to prioritize current problems and challenges that need to be highlighted in the Strategic Plan.

Water Quantity

1. Groundwater

- **Shallow alluvial aquifer** is locally connected to rivers and creeks. Throughout basin, water levels are declining about 0.25-0.50 feet per year and less cool water is discharging to rivers and creeks. Groundwater levels rise locally near some managed aquifer recharge (MAR) sites.
- **Deep basalt aquifer.** The basalt aquifer partially supplies the North Fork/South Fork headwaters. Basin-wide basalt aquifer water levels decline about 1-4 feet per year (potential concern for headwaters). Locally, declining water levels limit water supply for irrigators and increase irrigator pumping operation costs.

2. Surface water

- **Peak flows.** Increased precipitation and a warming climate lead to larger volumes of runoff/flooding. Variation in intensity of climate events is more difficult to manage.
- **Ecological flows.** The majority of reaches on the Walla Walla River, Touchet River, and Mill Creek have low flow prescriptions to meet the needs of fish.
- From June through September (based on 2017 data):
 - **Walla Walla River Mainstem.** About 60% of the river's total water budget (total flow in/out of river) is diverted for irrigation. The remaining budget relates to tributary inflow and channel gains/losses.
 - **Little Walla Walla River (LWWR)/Spring Branches Area.** *Data collection and synthesis in progress.*

- **Touchet River.** About 55% of the river’s total water budget (total flow in/out of river) is diverted to irrigation. The remaining budget relates to tributary inflow and channel gains/losses.
- **Mill Creek/Yellowhawk Creek.** About 71% of the river’s total water budget (total flow in/out of river) is diverted to irrigation, municipal use, Bennington Lake storage, and/or Yellowhawk Creek. The remaining budget relates to tributary inflow and channel gains/losses.

Discussion Questions:

- Do you agree with the summary of the current conditions? If not, what is incorrect or missing?
- What are the top priority concerns that need to be highlighted in the strategic plan?
- What additional questions or information would you want the Working Groups to address?

Water Quality Concerns

The table summarizes water quality issues in the basin.

Water Body	Temp	Fecal Coliform	pH	Dissolved O ₂
E. Little Walla Walla River	✓			
Mill Creek	✓	✓	✓	✓
Touchet River	✓	✓	✓	✓
Touchet River, NF (EF)	✓	✓		✓
Touchet River, SF	✓	✓		
Walla Walla River	✓	✓	✓	✓
West Little Walla Walla River	✓			

In addition, the Walla Walla River has TMDL’s related to 4,4’ – DDT; 4,4’ – DDE; chlordane; dieldrin; heptachlor epoxide; hexachloro-benzene. PCBs are ubiquitous in the watershed and have a ripple effect. For example, the cost of monitoring PCBs is so burdensome, the Walla Walla Basin Watershed Council has halted MAR site operations and development on the Washington side of the basin.

Discussion Questions:

- Do you agree with the summary of the current conditions? If not, what is incorrect or missing?
- What are the top priority concerns that need to be highlighted in the strategic plan?
- What additional questions or information would you want the Working Groups to address?
- Are there specific PCB questions or concerns the SPAC would like addressed by the Working Groups and/or within the strategic plan?

Fish and Wildlife

1. ESA listed species
 - Bull trout - threatened
 - Middle Columbia River Steelhead - threatened

2. Critical fish and wildlife species
 - Spring Chinook
 - Redband Trout
 - Pacific Lamprey
 - Western Brook Lamprey
 - Freshwater mussels

Discussion Questions:

- Should any species be added to or removed from this list?
- What additional questions or information would you want the Working Groups to address?
- What are the top priority concerns that need to be highlighted in the strategic plan?
- Should these species be addressed? If so, how?
 - a. Reptiles/amphibians?
 - b. Birds?
 - c. Mammals?

Habitat

1. Upper Mainstem Walla Walla

- Limiting factors: decreased baseflow, reduced habitat diversity, channel stability, Passage obstructions, elevated sediment load, and high temperatures.
- Development in floodplain threatens floodplain / riparian function.

2. Little Walla Walla River (LWWR)/Spring Branches Area

- Limiting factors: low flow and invasive species (e.g., reed canary grass and jewel weed) restrict flow in the stream channel. Unscreened diversions present hazards for fish on both the WA and OR sides of the creek.
- Restoration priorities: flow augmentation to improve habitat for fisheries (if accompanied by fish screening), preserve riparian vegetation and provide flow for exercising water rights in the “springs” portion of the watershed.

3. Lower Walla Walla River (downstream from Dry Creek)

- Limiting factors: low flow, lack of instream habitat diversity, poor riparian function, elevated stream temperatures, and elevated sediment loads. Channel straightening reduces stream channel complexity and floodplain function.

4. South and North Forks of Walla Walla River

- Limiting factors: lack of instream habitat diversity and poor riparian/floodplain habitat in some reaches, channel stability, flow, sedimentation, and elevated temperature.

5. Touchet River - Mainstem

- Limiting factors: sedimentation, habitat diversity, flow, channel stability, and temperature. Development and agricultural practices threaten floodplain / riparian function in some reaches.

6. Touchet River - Headwaters

- Limiting factors: channel stability, reduced habitat diversity, key habitat, and sediment load. Development encroaching on floodplain threatens floodplain / riparian function in some reaches.

7. Mill Creek Headwaters

- Limiting factors: reduced habitat diversity, key habitat, and obstructions. Development encroaching on floodplain threatens floodplain / riparian function in some reaches.

8. Lower Mill Creek

- Limiting factors: fish passage obstructions, sediment load, habitat diversity, flow, temperature, and key habitat quantity.

9. Yellowhawk Creek

- Limiting factors: development in floodplain, several partial fish passage barriers exist, physical shape of channel, and scouring.

Discussion Questions:

- Do you agree with the summary of the current conditions? If not, what is incorrect or missing?
- What are the top priority concerns that need to be highlighted in the strategic plan?
- What additional questions or information would you want the Working Groups to address?

Out of Stream Uses

The table below summarizes water use by state and sector. Note – total annual use values for agriculture will change based on data provided by WSU (request in process). Percentages will change based on updated ag numbers and commercial/industrial inputs.

	Oregon		Washington	
	Total Annual Water Use (acre-feet)	% of Total	Total Annual Water Use (acre-feet)	% of Total
Agriculture	63,000	96%	120,000	88%
Municipal	2,100	3%	15,000	11%
Commercial / Industrial	<i>In progress</i>	<i>In progress</i>	<i>In progress</i>	<i>In progress</i>
Rural / Domestic	600	0.9%	2,000	1.5%
Total	65,700		137,000	

The table below summarizes **municipal water use** for 2016-2019 and was provided by municipalities, except for WA Group A & B, Dayton, and Prescott, which were estimated based on averages. Spokane and Richland are provided for comparison only.

Municipality	Average daily water use (gallons per capita)	Total annual water use (acre-feet)
Walla Walla	250	9,728
Milton-Freewater	236	1,931

Municipality	Average daily water use (gallons per capita)	Total annual water use (acre-feet)
WA Group A & B	191	1,718
Waitsburg	149	1,645
College Place	141	1,250
Dayton	191	586
Weston	179	138
Prescott	191	75
Spokane	217	
West Richland	197	

Rural-Domestic Water Use

Rural-domestic water users are mandated to comply with the Instream Flow Rule if: (1) wells draw from the shallow gravel aquifer; (2) wells are in an area zoned for land parcels of 10 acres or less (high-density area). Requirements include daily use limits; mandates for mitigation (for 1,000 gpd for outdoor water use from exempt wells, from May to November); new water right for instream flows; seasonal closures of all surface waters and the gravel aquifer between June 1st and November 30th.

Discussion Questions:

- Do you agree with the summary of the current conditions? If not, what is incorrect or missing?
- What are the top priority concerns that need to be highlighted in the strategic plan?
- What additional questions or information would you want the Working Groups to address?

Recreation, tourism, and quality of life

Discussion Questions:

- What key conditions would SPAC like addressed in this section?

Accomplishments to date

A preliminary list of accomplishments to date is attached on page 6.

Discussion Questions:

- Should additional entities be added to the list?
- Do SPAC members have any additional input or guidance on the list of accomplishments?

PRELIMINARY ACCOMPLISHMENTS LIST

- ▶ [Walla Walla Watershed Management Partnership \(cited in their 2018 report to legislature\) \[1\].](#)
 - **Education:** Provides a forum for open public discussion. Facilitates communication between different interests in the Basin whose work is often siloed in different community sectors. Hosted public “Water Rights 101” forums in 2016 and 2017 in three towns in the Walla Walla Valley. Introduced people to the complexity of water rights and water management.
 - **Local Water Plans:** “Flow from Flexibility” program invites water rights holders to develop water management plans that enhance stream flows in exchange for greater flexibility in exercising their water rights. The Partnership has approved seven Local Water Plans, with three partially implemented, one not yet implemented, and three expired/inactive (as of 2018).
 - **Water Banking:** Partnership’s most popular program (in number of participants and in partner satisfaction). Provides options to water rights holders to voluntarily deposit water rights while protecting themselves from relinquishment.
 - **Water Transactions:** The Partnership acquires water through purchases and leases (transferred to the State Trust Program) to reduce the impact of over-appropriation on vulnerable fish populations. As of 2018, the Partnership had one lease pending with Gardena Farms Irrigation District (GFID); the previous lease expired in 2017 and leased an average of 2004.8 acre-feet per year. The Partnership also had a lease with Probert Family Ranches that expired in 2015 and leased an average of 1196.2 acre-feet per year. As of 2018, the Partnership was working on three future leases, two on the Touchet River, and one on a tributary to the Little Walla Walla River.
 - **Agreements not to Divert (ANTD):** ANTDs help the Walla Walla Basin deal with critical low-flow periods and extend the conservation of water downstream. These agreements are made with more junior rights, agreeing to leave them instream upon the Partnership’s request; all water involved in ANTDs is placed in the Water Bank. Two ANTDs were secured in 2015, though neither have been activated (as of 2018).
 - **Critical Low-Flow Plan (CLFP):** The CLFP is a framework to bring the community together to help in times of drought crisis. CLFPs are voluntarily established and provide irrigators with a guide to provide effective drought assistance. Option contracts offer a payment to water rights holders to bypass water, reduce surface diversions near passage barriers, or rely on basalt wells rather than surface or shallow aquifer rights. Ideally made with senior water-rights that irrigate reliably in the spring and fall. Two option contracts are in place but have not been called on (as of 2018).
 - **Exempt Well Mitigation Exchange:** The Partnership facilitates an Exempt Well Mitigation Program, providing mitigation credits for sale to new permit-exempt well holders that require mitigation under the Walla Walla Instream Rule. The program generates credits by purchasing existing water rights and transferring them to the State Trust Water Right program. The Exchange contains 24.84 acre-feet of water and sold 2.75 as credits to five homes; the remaining balance in the bank is capable of supplying credits to 45 additional houses (as of 2018).
- ▶ [Walla Walla County Conservation District](#)
 - **Conservation Reserve Enhancement Program (CREP)¹:** started in 1999, CREP provides tools to improve degraded riparian buffer zones along streams in Walla Walla

¹ Conservation Reserve Enhancement Program (CREP) 2-pager; Walla Walla County Conservation District.

County (only working lands outside of the incorporated areas of the county are eligible). Reduces soil erosion and pollution to streams, provides habitat for wildlife and fish, and provides protection for farmers and ranchers from regulatory action. Accomplishments as of 2019 include: Just under 1.5 million native trees & shrubs planted in addition to grass stands. Over 190 contracts on ~3600 acres. Buffer widths range from 50 to 180 feet. 196.9 miles of stream bank protected with buffers.

- **Creating Urban Riparian Buffers Program (CURB)²**: started in 2006, Walla Walla County Conservation District's CURB program provides educational outreach on restoring riparian zones in urban areas (e.g., community workshops, public presentations and booths, informational mailings, and project tours) to urban residents. Accomplishments as of 2020 include: 41 Urban Riparian Buffers installed; 11,928 feet of stream bank cover restored; over 7,200 trees, shrubs & perennials planted.
- **Fish Screens & Flow Meters Program³**: In 2001, area irrigators, the Walla Walla County Conservation District (WWCD), the Washington Department of Fish and Wildlife, the Snake River Salmon Recovery Board, and the Washington Dept. of Ecology developed a program to help cover the cost of upgrading to National Marine Fisheries approved fish screens. Along with the fish screens, irrigators were provided with modern water meters to help them use their water more efficiently. Accomplishments as of 2019 include: 377 fish screens installed in Walla Walla County; 529 flow meters installed on surface diversions and wells in Walla Walla County; and 67 data loggers installed with flow meters.

▶ [Walla Walla Basin Bi-State Flow Study \(2017 & 2019\) \[2\]](#)

The 2017 Walla Walla Basin Integrated Flow Enhancement Study documented geographical context, objectives, stakeholders, and evaluation of over 100 water supply projects. The 2019 update documents the current status of the flow study (completed in 2019), building upon stakeholder work in the 2017 report. The 2019 update includes new evaluations of storage and pump exchange options, fisheries information, and basin environmental data.

The objective of these studies is *“to improve streamflows in the Walla Walla River mainstem to support harvestable populations of native fish species, while maintaining long-term viability of agricultural, municipal, commercial, and residential water uses.”* The Flow Study Steering Committee approved Walla Walla mainstem streamflow targets of 150 cfs from April 1-June 15; 100 cfs from June 16-June 30; and 65 cfs from July 1-November 30.

▶ [Accomplishments from the following entities will be added as data is received:](#)

- Confederated Tribes of the Umatilla Indian Reservation
- Snake River Salmon Recovery Board
- Walla Walla Basin Watershed Council
- Blue Mountain Land Trust
- Kooskooskie Commons
- Tri-State Steelheaders
- Columbia County Conservation District

² Creating Urban Riparian Buffers (CURB) 2-pager; Walla Walla County Conservation District.

³ Fish Screens & Flow Meters – Reducing ESA-listed Salmon Mortality. Walla Walla County Conservation District.