

## **WEST BRANCH LITTLE SPOKANE RIVER WATERSHED COMMITTEE**

Meeting Summary

October 22, 2007

Riverside Fire Station, 3818 E. Deer Park – Milan Rd., Riverside, WA

### ***FINAL***

Bryony Stasney (facilitator) opened the meeting at 6:00 p.m.

**Attendees Present:** Burt Covert (alternate for Bill Harmon), Dolores Storms, Dale Smith, Dan Peterson, Lynne Anderson (alternate for Dick Anderson), Gil McGee, Greg Sweeney (alternate for Mary Harmon), Howard Rowley, Bev Rowley (alternate for Tammera Kirk), Jeff Storms, Sally Storms, Jill Short (alternate for Jim Wood), Luke Short (alternate for Pat Wood), John Harkness, Karen Averitt, Linda Cannon, Mary Sterling (alternate for Kathleen Werr), Darrell Johnson, Mike Carney, Mike Lithgow, Pam Zarko, Andy Huddleston, Josh Roath, Sandra Roath, Tammy Magnuson, Max Smith, Mike Kanyer, Debbie Kanyer, Reid Eichner, BiJay Adams.

**Introductions:** Everyone introduced themselves. Bryony asked everyone to sign-in to the meeting and to check and edit the information on the sign-in sheet. Bryony introduced herself as the Committee's facilitator. Bryony's contact information is: Bryony Stasney, [bstasney@golder.com](mailto:bstasney@golder.com), 208-676-9933 (office) and 208-755-1010 (cell).

### **Management Options for Eurasian Watermilfoil – Presentation by BiJay Adams, Liberty Lake Sewer and Water District**

Bijay is the Lake Manager for the Liberty Lake Sewer and Water District and past President for Washington Lake Protection Association.

#### ***Eurasian Watermilfoil (Myriophyllum spicatum) Characteristics***

- Like native aquatic milfoils, Eurasian Watermilfoil has feather-like underwater leaves and emergent flower spikes.
- Eurasian Watermilfoil is: invasive; spreads rapidly - primarily via fragmentation and auto-fragmentation in the autumn; crowds out native species; and clogs waterways and blocks sunlight and oxygen from underlying waters.
- Eurasian Watermilfoil leaf: submersed is 2-4 cm long; feather-like, arranged in whorls of 4 around the stem; square tip leaves; and typically have greater than 14 leaflet pairs per leaf.
- Eurasian Watermilfoil is often confused with:
  - Northern milfoil (*Myriophyllum sibiricum*) a native, more robust looking species which has fewer than 14 leaflet pairs per leaf.
  - Coontail (*Ceratophyllum demersum*)

Native species can also be invasive – but are not as invasive as Eurasian Watermilfoil. In western Washington, a hybrid native - Eurasian Watermilfoil that is resistant to herbicides has been documented.

Eurasian Watermilfoil can be killed by drying and freezing to a point where the plant is no longer viable. If the plant stays moist, there is a risk that plant fragments may be viable.

Eurasian Watermilfoil is no longer sold as an aquarium plant.

### ***Management Strategies Outlined for Washington State***

- Manual Methods - hand pulling, cutting, raking, bottom screening.
- Environmental Manipulation - water level drawdown, nutrient reduction.
- Mechanical Controls - rotovation, harvesting/cutting, diver dredging.
- Biological Controls - Grass Carp, Milfoil Weevil.
- Chemical Controls - aquatic herbicides (both selective and non-selective to milfoil).

It is important to remove viable plant fragments from the water during the management activity so avoid spreading the infestation (e.g., with a pool skimmer or vacuum).

Barriers can work but need constant checking and maintenance (and may be appropriate for swimming areas).

It is also important to reduce non-point and point sources of nutrients (e.g., phosphorus and nitrogen) to the lake / river (e.g., lawn fertilizers, sediment loads, excess biomass, failing septic).

50 acres of Liberty Lake was dredged in 1980 for about \$50,000. Bijay said that there is not obviously less milfoil in the dredged area. Liberty Lake has small scale infestations throughout the lake.

### ***Planning before Implementation***

- In Washington, the development of an integrated aquatic plant management plan is required for waterbodies with well-established populations of non-native, invasive aquatic plants, before grants can be awarded for implementation (control projects).
- Ecology requires that each of the management strategies are assessed for the waterbody in the integrated aquatic plant management plan and the key applicable control measures are noted.
- Grants are available for the development of integrated aquatic plant management plans and early infestations.

Bijay wrote the Liberty Lake integrated aquatic plant management plan for about \$12,000 over a year. This plan is available from the web sites in the references below.

### ***References***

- Washington State Department of Ecology Aquatic Plants, Algae and Lakes website: <http://www.ecy.wa.gov/programs/wq/links/plants.html>
- Liberty Lake Sewer and Water District: [www.libertylake.org](http://www.libertylake.org)

**Public Comment:**

- Jeff Storms said that he attended the last Pend Oreille Conservation District meeting. The District plans to approach the Pend Oreille County Commissioners on October 29 at 2:30 pm to request \$25,000 from County general funds for administration. Jeff requested that the Committee, lake associations and individuals send letters of support for the Pend Oreille Conservation District to the County. Mike Lithgow noted that general funds may be limited. The Committee agreed to a letter of support. Jeff Storms said that he would draft the letter and send it to Bryony in an email in a day or two. Bryony said that she would attach a list of the Committee members to the letter and mail it out to Pend Oreille County.
- Jeff Storms asked what the cut off date is to provide recommendations to the WRIA 55/57 group. Jeff Storms said that he is requesting that WDFW and Ecology provide input on the scope of a hydrologic study for Sacheen Lake to support sizing the beaver tubes. Bryony noted that Brian Farmer had said that Jeff Lawlor would need to provide input on the scope if WDFW would like a hydrologic study done. Bryony said that the WRIA 55/57 DIP is scheduled to be complete by the end of the year. Bryony asked Jeff Storms to research this and bring his findings back to the Committee at the next meeting.
- Bryony noted that Becki Kniveton of Shannon and Wilson agreed to present on the Fertile Valley Bridge to Harworth Road wetland delineation project at the November 26 Committee meeting. Shannon and Wilson requested reimbursement for travel time and mileage (total \$1,142). The Committee agreed by consensus to accept the offer. Andrew confirmed that there are funds (over and above the \$15,000 for the beaver tube project) to cover the needed \$1,142.
- Bryony noted that Ken Merrill from Ecology is also planning on attending the November 26 Committee meeting.

**October 8, 2007 Meeting Summary Review:**

The draft October 8 meeting summary was accepted by the Committee without changes. The final meeting summary will be posted on the web site at <http://www.spokanecounty.org/wqmp/projects/ASP/WestBranch.asp>.

**Water Quality Issues (review and consolidate):**

Bryony made sure everyone had copies of the handout entitled, "*Draft list of West Branch Little Spokane River Issues not Addressed for the WRIA 55/57 DIP*". Bryony worked with the Committee to complete review and clarification of the issues under the categories of: non-point sources (shoreline erosion, beaver dams), habitat, education, management / oversight / funding.

**Non-Point Sources – Shoreline Erosion**

Three concerns noted:

1. Motorized water craft (motor boats / jet skis) cause bank erosion from wakes;
2. Shoreline development causes bank erosion due to clearing vegetation along the shoreline; and
3. Highwater / flooding causes shoreline scouring / sloughing.

Potential solutions for wake erosion include:

- Creation and enforcement of no wake zones. Recommend in a letter to the County Commissioners.
- Inclusion of no wake zones within County Shoreline Master Programs.
- Enforce a ban on boats that create wakes.
- Enforcement (by sheriff or County boat patrol) of existing boating law that states that boats cannot travel greater than 5 mph within 100 feet of a natural or manmade structure.
- Lake associations can receive a permit (written authorization from sheriff) to place buoys with speed limits.
- Pend Oreille County hire an enforcement officer.

Potential solutions for erosion caused by shoreline development include:

- Maintaining and replanting vegetative buffers along streambanks – and making this a requirement within Shoreline Master Programs and Comprehensive Planning.
- Education for homeowners as to the importance of streambank vegetation.

Potential solutions for highwater/flooding include:

- Armoring along specific reaches.

Potential implementing entities include: Counties, Lake Associations and WB LSR Committee.

Potential funding sources: not discussed.

Discussion:

- None of the lakes in Pend Oreille County have elevations set by FEMA for 100 year floods. Since 2002, new development requires a flood plain development certificate. FEMA has assigned elevations to the flood plain development certificate. These certificates are on record at the County. Two years ago, the Sacheen Lake level rose above the FEMA assigned 100 year flood elevation.

***Non-Point Sources – Beaver Dams***

Three concerns noted:

1. Beaver dams cause elevated water levels upstream of the dams and elevated water levels may impact lake shore property / home owners;
2. Beaver dam removal / maintenance and improper debris disposal causes impacts to the stream and shoreline downstream of beaver dams; and
3. Illegal beaver dam removal.

Potential solutions for elevated water levels:

- Manage the height of existing beaver dams.
- Install and maintain beaver tubes to allow water to flow through the dam.

Potential solutions for downstream impacts:

- Development of work plans and monitoring plans for beaver dam maintenance and tube activities.
- Regular maintenance of tubes.

Potential solutions for illegal beaver dam removal:

- Enforcement for illegal beaver dam removal.

Potential implementing entities include: WDFW, Ecology, lake associations / sewer and water districts.

Potential funding sources: not discussed.

**Habitat**

Two concerns noted:

1. There appear to be decrease in populations of frogs, turtles and fish.
2. It appears that the North American Bittern no longer occurs in the WB LSR (maybe since its food – fish and frogs – are declining).

Potential solutions:

- Inventory habitats.
- Identify wildlife corridors.
- Identify areas of land for protection / conservation for wildlife.
- Educational signs to inform public not to disturb nests at critical times.
- Protect wildlife corridors / conservation land through Critical Areas Ordinance and Shoreline Master Program.
- Protection for Blue Herons.

Potential implementing entities include: WDFW.

Potential funding sources: not discussed.

Discussion:

- Eloika Lake has 30 to 40 wood duck boxes that are filled.
- Mark Simpson (NRCS) is a good resource for Pend Oreille County.
- Dissolved oxygen and flooding have been addressed elsewhere by the Committee.

**Education**

The Committee agreed that education be considered as a potential solution to some of the issues – rather than a separate concern. The Committee requested that educational presentations be included within regular Committee meetings.

***Management / Oversight / Funding***

Bryony noted that the concerns listed under this category are potential solutions. Discussion included a question as to why property owners around lakes are being required to pay more to maintain the lakes when the lakes are public property.

**Review Little Spokane River Navigability:**

Bryony reminded the Committee that action WB.ED1-5 (Clarify the Holman vs. Griffith ruling) is included within the action plan that the Committee submitted to the WRIA 55/57 group in September 2007. However, the WRIA 55/57 Watershed Plan does not include recommendations that are relevant to this action. This action would therefore need to be presented to the WRIA 55/57 group as a new recommendation for consideration during the WRIA 55/57 Watershed Plan and Detailed Implementation Plan update. Bryony said that she has communicated with Rob Lindsay (Spokane County and Lead Agency for WRIA 55/57) and Sara Hunt (Ecology lead) that the WRIA 55/57 group has requested that the objectives of an action to clarify the Holman vs. Griffith ruling be made clear to the WRIA 55/57 group.

Jeff Storms noted that an Attorney General review through Ecology will not work due to attorney – client privilege.

Bryony reviewed past discussion that the Committee has had on Holman vs. Griffith. The following excerpts that summarize this discussion are taken from past Committee meeting summaries:

***From 042307 WB LSR Committee meeting summary:***

**Little Spokane River Navigability:**

*Bryony passed around copies of the Memorandum of Understanding (MOU) between the Washington State Department of Ecology (Ecology), Washington State Department of Fish and Wildlife (WDFW) and Pend Oreille County related to Management of Water Resources in Lakes of the Little Spokane River Watershed (signed and dated December 2005). Russ noted that this MOU was developed because Pend Oreille County felt that the issues identified in the MOU were not addressed sufficiently in the WRIA 55/57 Watershed Plan.*

*Brian Farmer from Ecology noted that a group of people that are now involved in the WB LSR Committee requested in 2005 that the Washington State Attorney General's office review Griffin v. Holman (Supreme Court 1900) and related case law and prepare a written opinion on the jurisdiction of local and state government.*

*Brian asked the Committee to review and consider three questions that were originally drafted by Ecology and WDFW for submission to the Washington State Attorney General's office. Ecology would like guidance from the group today as to whether or not they would like the Attorney General's office to pursue this effort. After discussion on the three questions, the Committee agree by consensus that they would like Ecology to pursue this effort, to pose the three questions (listed as numbers 1 through 3 below) to*

*the Attorney General's office and would like Ecology to add a fourth question (listed as number 4 below).*

- 1. What is the geographic restriction, if any, to Griffin v. Holman (Supreme Court 1900) and the applicability of this case to all the tributaries to the Little Spokane River?*
- 2. What, if any, subsequent case law supports or contradicts the court's definition of navigability and ownership of the fishery within the Little Spokane River and what is the definition of navigable water?*
- 3. How does the public trust doctrine apply in light of the court's decision in Griffin v. Holman (Supreme Court 1900)?*
- 4. What are the liability issues for landowners who own land alongside the Little Spokane River and any tributaries that are covered by the court's decision in Griffin v. Holman (Supreme Court 1900)?*

***From 062507 WB LSR Committee meeting summary:***

***Update on Attorney General's Review of Little Spokane River Navigability***

*Brian Farmer (Ecology) said that Ecology's Water Resources Program had asked the Attorney General to review what would be required to review the Griffin v. Holmon case. The Attorney General's office provided information back on what would be involved in terms of time and resources. Ecology's Water Resources Program decided to withdraw the request due to the higher priorities of adjudication and instream flow rule writing.*

*The memorandum of understanding states that activities will be undertaken as time and resources allow so Ecology feels that they have met their obligation. Brian said that the Attorney General's office indicate that the review would take several years due to the amount of case law.*

*Greg asked that if documentation can be provided to the Committee. Brian said that he would find whatever is in writing and provide what he can to the Committee.*

Greg Sweeney confirmed that Brian Farmer did provide documentation but that this information was not useful to better understand why the Attorney General had decided not to pursue this request.

Bryony asked this group what they are hoping to achieve by clarifying the *Griffin v. Holmon* ruling. After discussion, the Committee summarized their objectives as:

1. Improve accessibility and public access to the Little Spokane River for recreation. Clarification of the *Griffin v. Holmon* ruling could be included as a recommendation with the Pend Oreille County Shoreline Master Program update to achieve the objective of improving accessibility and public access to the Little Spokane River and its tributaries. For example, under the current ruling, the public cannot fly fish along the Little Spokane River and its tributaries without prior approval from property owners on either side of the stream.

2. Clarify the uncertainties associated with the ruling such as the geographical extent of the ruling and landowner liability. This objective to clarify of the *Griffin v. Holmon* ruling does not intend to overturn the ruling but to gain understanding of what can and cannot be done within the stream in light of the ruling (e.g., how does this ruling effect installation of a flow control structure at the outlet of Eloika Lake).

Potential solutions discussed included:

- Make the request to clarify the ruling through a state Senator to the legislature.
- Create a friendly suit that forces the questions. This would likely require significant funds and time.
- Include as a recommendation to the WRIA 55/57 group.
- Address through the recreation sections of the Pend Oreille County Shoreline Master Program update and Comprehensive Planning.
- Hire a lawyer to complete legal research without a lawsuit.
- Leave as is (since clarification of the ruling would entail significant funds and time).

Discussion included:

- Due to the ruling, the Little Spokane River and its tributaries are considered private. We will be asking for public funds to be spent on a river and tributaries that are considered private. Will Ecology limit funding for projects on the Little Spokane River due to this ruling?
- This is a public access issue – the ruling effectively restricts public access.
- Approval from landowners will be needed to install flow monitoring gages. Discussion ensued that this is required on any stream.
- The water within the Little Spokane River is a water of the state.
- The Little Spokane River is one of the only streams in Washington state for which property owners have water deeds. Discussion included whether or not property owners with these deeds also own the water within the Little Spokane River that flows through their property.
- When the Spokane County Conservation District wanted to float the river they had to call all property owners to get authorization.
- Water control structures cannot be installed on private property without landowner permission. However, if the Little Spokane River is defined as navigable, then flow control structures would also require permitting from the Army Corps of Engineers.

- The ruling is a civil issue and has nothing to do with water quality and water quantity.
- If you put in to the river at a public access point and travel on the water – this is OK. The issue occurs if people step on to the bank or on to the stream bed (since the bed and bank to the center are owned by the property owners on either side of the channel).
- I am not clear if it is legal to get out of a canoe and portage over a beaver dam.
- Whether or not this ruling is in place, I would still have concerns about wetland habitat.
- It seems that it would be costly and time consuming to pursue this.
- In some areas (e.g., in the vicinity of the Dartford gage), landowners who own property on both sides of the river have fenced across the river. This is a safety concern for those traveling on the river. There was a question about whether or not this is legal.
- I put up a no trespassing sign on the bank at my property (the first time in 29 years) because I have been threatened with two law suits and have realized that I am potentially liable for people on my property.
- What is the *Griffin v. Holmon* ruling? A 1900 ruling that established that property owners who own property along the bank on the Little Spokane River also own the land under the river to the center of the channel.

Bryony surveyed the group to see if there was consensus to clarify the *Griffin v. Holmon* ruling. Bryony tabled the decision to the next meeting since: 1) a couple of Committee members did not know about the ruling; and 2) a few Committee members appeared unsure. Bryony asked the Committee members to come to the next meeting prepared to make a decision and potentially to vote on this (if consensus is not reached to clarify the ruling). If a vote is needed, a minority report can be included in the Committee's action plan. Bryony said that she can receive proxy votes via mail / email prior to the meeting and that people can also provide their vote to their alternate to present on their behalf at the meeting. A few Committee members walked out of the meeting at this time.

**Public Comment:**

- Rob Lindsay (Spokane County) will no longer be attending meetings on a regular basis. Rob will continue to interact with the WB LSR Committee as the WRIA 55/57 Lead Agency (to coordinate as needed to blend the Committee's actions within the WRIA 55/57 Detailed Implementation Plan) and to support the needs of Eloika Lake, as time and funding allow.

- The Committee discussed the need to continue to have facilitator. Bryony said that she will extend her project timeline until March as a no cost time extension and will do some research on grant funding for facilitators.
- Howard noted that the Buck Creek bridge has been completed. However, some gravel needs to be removed to allow fish to travel from Horseshoe Lake to the creek. Howard said that he has spoken to the property owners and that they would be fine with the gravel being removed by a backhoe. Mike Lithgow said that Pend Oreille County would be the lead for the JARPA since a shoreline permit will be needed.
- John Harkness noted that one the Diamond Lake Water and Sewer District has received authorization to drill a new replacement well.
- John Harkness said that he had spoken to Ray King. Ray told John that he would call Bryony about ISSUE WB.WR2 (The Diamond Lake Water and Sewer District is in need of additional water rights and additional capacity for sewage lagoons).

**Membership:**

The Pend Oreille Conservation District has not heard back from Steve Petroni or Kitty Russell as to whether or not they are interested in being involved with the West Branch LSR Committee. Bryony suggested that the POCD call / email Steve and Kitty again and give them another month to respond. Bryony said that the Committee should anticipate a vote on this at the next meeting.

**Next Meeting (agenda, tasks and announcements):**

The next Committee meeting will be at the Riverside Fire Station, 3818 E. Deer Park – Milan Road, Riverside, WA at **6 – 8:30 pm** on Monday November 26, 2007. Bryony will bring coffee for the next meeting. Sandra will bring cookies. The meeting will include:

- A presentation from Shannon and Wilson on the wetland delineation between Fertile Valley and Harworth Road.
- A presentation from Ken Merrill (Ecology) on lakes.
- Vote to clarify the *Griffin v. Holmon* ruling.
- Vote to remove Committee members who have not attended the last three or more Committee meetings.

The December meeting will be held on December 10. Mary Sterling said that she would book the room at the fire station for Monday December 10, January 28, February 25 and March 24.

**Additional ideas for workshops / educational presentations:**

- Shannon and Wilson on the 2007 Sacheen Lake wetland delineation project.
- Work Plans and Quality Assurance Project Plans (QAPPs).
- Hydrology of the WB LSR watershed by the Spokane County Conservation District (based on review of the gaging completed to date by the Spokane County Conservation District).
- DNR presentation on forest practice regulations.

- Ecology / Spokane County Conservation District presentation on WB LSR water quality impairment and TMDLs.
- Ecology presentation lakes.
- WDFW on WB LSR wildlife habitats (contact Jeff Lawlor / Steve Zender)

**Adjourn:**

- Bryony adjourned the meeting at 8:30 pm.
- Digital recording files for this meeting will be mailed to the POCD. Digital recording files of this meeting are:
  - WBLSR Committee 102207.wav