

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

Meeting Summary  
November 26, 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, Bill Harmon (alternate for Mary Harmon), Sally Storms (alternate for Dolores Storms), Dale Smith, Dan Peterson, Lynne Anderson (alternate for Bev Rowley), Dick Anderson (alternate for Howard Rowley and Josh Roath), Greg Sweeney, Brian Farmer, Tammera Kirk (alternate for Sandra Roath), Jeff Storms, Jill Short (alternate for Jim Wood and Max Smith), Luke Short (alternate for Pat Wood), Jim Peterson, John Harkness, Karen Averitt, Kathleen Werr, John Werr, Linda Cannon, Mary Sterling, Darrell Johnson, Mike Carney, Mike Lithgow, Pam Zarko, Rick Noll, Andy Huddleston, Tom Wimpy, Mike Kanyer, Debbie Kanyer, Dan Reiner, Dean Cumings, Jeremy Sikes, Walt Edelen, Jason Sargent, Tom Metzger, Becki Kniveton.

**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).

### **Public Comment:**

- Andy Huddleston informed the group that he called Community Trade and Economic Development (CTED) about the \$75,000 grant for 2008. Currently the funds are assigned only for beaver tube installation. If the Committee wants to change this, the Committee will need to write a letter to Senator Morton to present to the Legislature's short session in early January 2008. The Committee unanimously agreed that they would like to have flexibility to apply the funds to implementation projects prioritized by the Committee (and not only for beaver tubes).
- Sacheen Lake Sewer District is working with Ecology to make sure that they can satisfy the conditions of the permit before purchasing the replacement tubes. The project is adequately funded with \$15,000 unless further study or an engineering report is needed to support the installation of the four foot tubes.
- Bryony asked Jeff Storms to schedule the meeting with Pend Oreille County and Ecology on the beaver tube replacement project prior to the Committee's next meeting (on December 10) so that Jeff can report any additional needs for the beaver tube replacement project to the Committee on December 10.
- Andy reported that there is \$15,000 remaining in the current grant for the beaver tube replacement project and about \$15,000 remaining to cover administrative costs. This grant has now been extended until June 2008.
- Luke noted that it is important to include administrative funds into the new grant to cover the POCD's administration of the new grant. Andy will check with CTED to see if administration can be included within the prioritized implementation projects.

**October 22, 2007 Meeting Summary Review:** The following corrections were discussed and agreed to by the Committee. The final meeting summary will be posted on the web site at <http://www.spokanecounty.org/wqmp/projects/ASP/WestBranch.asp>.

- Page 8, last paragraph was edited to read, “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”.

**Fertile Valley to Harworth Road Wetland Delineation – Presentation by Becki Kniveton, Shannon and Wilson**

Becki works with Shannon and Wilson and is a certified Professional Wetland Biologist. Becki worked on the wetland delineation project along the Little Spokane River, between Fertile Valley Road and Harworth Road. The following points summarize Becki’s presentation:

- A wetland is an area that is inundated or saturated by surface water or groundwater at a frequency or duration sufficient to support, under normal circumstances and do support, a prevalence of vegetation typically adapted to saturated soil conditions. Wetlands typically include swamps, marshes, bogs and similar areas.
- Shannon and Wilson used Washington State Department of Ecology’s wetland identification and delineation manual. There are three criteria typically used to identify wetlands:
  - Hydrophytic vegetation – plants that are adapted to live in wetlands. If greater than 50% of the plant species are obligate, facultative wet or facultative, the vegetation meets the criteria of hydrophytic vegetation.
  - Hydric soils – soils that are wet for much of the growing season. In the field hydric soils are often organic (such as peat and muck), gray or black and contain redox features such as orange-brown mottling.
  - Wetland hydrology – the ground is inundated or saturated for at least 5% to 12.5% of the growing season. In the Newport area, this is equivalent to being inundated or saturated for at least 6 to 15 days.
- To delineate the wetland, Shannon and Wilson completed the following:
  - Recorded vegetation types (e.g., obligate, facultative, upland)
  - Dug test pits to about 18-inches to assess soils.
  - Flagged / GPS the boundaries.
  - Reviewed aerial photos.
- The purpose of this project was to document the current wetland boundary and characterize the wetland according to Pend Oreille County code. The Army Corps of Engineers and Washington State recognize a wetland delineation report as valid for about 5 years. After 5 years, a new delineation may be needed to assess if the boundaries have changed.

- The main types of vegetation shown on the wetland map produced for this report are aquatic bed (e.g., pond lilies), palustrine emergent (e.g., cattails and iris) and scrub shrub vegetation (e.g., willow and spirea).
- Shannon and Wilson also reviewed older aerial photographs. In comparison to 1955 aerial photos, Shannon and Wilson did not detect significant change in the wetland boundary between 1955 and 2006 based on the aerial photographs. The rock slope boundary to the wetlands may result in little change to the wetland boundary even if the water level rises a foot or two since the water is unable to spread out.
- Shannon and Wilson characterized the wetland in accordance with Washington State Department of Ecology's Wetland Rating System for Eastern Washington. This rating system considers wildlife habitat, the ability of the wetland to improve water quality and the ability of the wetland to store flood water. Based on this rating, Shannon and Wilson characterized the wetland as Class II. This wetland is influenced by flow and water elevations in the Little Spokane River.
- In Pend Oreille County, Class II wetlands require a 25 foot buffer for low impact land uses (such as residential land use with one house per 5 acres) and a 100 foot buffer for high impact land uses (such as a large residential development or commercial development).
- Becki noted that this wetland is one of the most beautiful and undisturbed wetlands that she has seen.

**Q:** Where are the beaver dams?

**A:** These are not shown on the wetland map since we did not survey them. It was not in our scope to survey in the beaver dams.

**Q:** What are the various wetland categories?

**A:** Class I is the highest category. Class IV is the lowest category. This wetland did not achieve Class I status because it does not have a constricted outlet so the wetland lets out as much water as flows into the wetland – so this wetland does not appear to store a lot of flood waters. In Pend Oreille County, there is no minimum size for a wetland.

**Q:** There is an area within this wetland that was mined for peat in the 1950s. Does this make it a peat system?

**A:** No. A peat system must have peat soils and be dominated by peat vegetation types. This area was not dominated by peat vegetation types.

**Q:** What buffer is required for logging?

**A:** I do not know. Logging is regulated by DNR through the forest practices act. In this case the wetland would also be regulated by the Army Corps of Engineers and by Pend Oreille County Critical Areas Ordinance and through the Pend Oreille County Shoreline Master Program because the wetland is associated with Sacheen Lake and the Little Spokane River.

**Q:** If water is supplied to a wet land area by a spring, is this considered a wetland?

**A:** The area would need to be delineated and characterized to determine if it is a regulated wetland. If the water source is artificial and could be removed, it could be argued that the area should not be regulated as a wetland.

**Q:** Where did you get your wildlife information?

**A:** From field observations and information on the priority habitat and species maps from Washington State Fish and Wildlife.

**Q:** Did you notice any trees that died due to rising water levels?

**A:** We did see dead trees but it was hard to say what caused the trees to die.

**Q:** Did the study identify projects to improve water quality?

**A:** We did characterize the wetland in terms of its ability to improve water quality but did not identify potential projects.

**Q:** Were there any invasive plants?

**A:** Most of the plants are native. There are some areas of reed canary grass and yellow flag iris that are invasive. It is a relatively undisturbed area with a variety of wildlife niches and good connection between wetlands and uplands.

**Q:** Roughly how many acres did you delineate?

**A:** About 120 acres at a cost of about \$20,000. We walked the entire boundary of the wetland where possible and also viewed the rest of the wetland, as best we could, from the edge. The remainder of the wetland could not be accessed without a boat and boat access was not in our scope of work.

Jeremy Sikes (Ecology) said that this is good value for the area delineated.

**Q:** How was this project prioritized?

**A:** Brian said that there was discussion about installation of beaver tubes in 2005 / 2006 and that Ecology was concerned that activities may impact the wetlands in this area. Ecology suggested that the POCD put in an application for Terry Hussman grant funding to cover the wetland delineation.

Jim Peterson said that it would have been nice for the landowners to have been informed about this project. Jim noted that this study was completed without the permission of some landowners.

Andy provided additional CD copies of this final wetland delineation report.

### **Decision to Clarify Holman vs. Griffith**

Bryony noted that there is an action in a draft format in the current draft of the WB LSR action plan to clarify the Holman vs. Griffith ruling. This was discussed at the last meeting and it was clear that some Committee members are not familiar with the ruling. To find out if we needed someone at this meeting to explain the ruling, Bryony said that

she conducted a phone survey, phoning as many Committee members as she could reach and asked the following questions:

- Do you have any questions about what the Holman vs. Griffith ruling means? ... *to help me decide if we need to have someone at our meeting who can answer questions on the ruling.*
- How does the ruling impact you / the organization you represent? ... *to help me understand the interests of Committee members.*
- Could we use the objectives identified at our last meeting as criteria for decision making? Are there any other objectives we have missed? ... *to help me feel that we have captured the range of objectives for this action (e.g., access to the stream for fly fishing).*
- Are you planning to attend the next meeting? ... *so that I have an idea of attendance and to remind members to designate alternates / make proxies as needed.*

Bryony emailed / mailed the results of the phone survey out to the Committee on November 20. Based on the survey results, Bryony asked Tom Metzger (Pend Oreille County Prosecuting Attorney) to attend this meeting to provide an overview of the ruling and to answer questions before the Committee decides whether or not to include this action within the WB LSR action plan.

The following points summarize Tom's presentation and the Committee's discussions:

- Washington State encourages landowners to make their property available to the public for recreational purposes. If a landowner opens their property for recreation and charges no fee, the landowner is immune from liability for unintentional harm. This is documented in RCW 4.24.210.
- If a landowner posts no trespassing signs, the landowner is also not liable for any unintentional harm to trespassers. The standard is basically the same.
- For any liability issue, there has to be:
  - a duty of care (i.e., the level of care owed to the person) such as having no intention to harm;
  - a breach (i.e., a violation of the duty); and
  - a damage (i.e., harm).
- A landowner is not liable unless they intentionally harm someone recreating / trespassing on their property.
- If activities on one property damage another property, this is a very different matter.
- In the situation of a landowner allowing installation and maintenance of beaver tubes and if individuals are hurt by the tubes, anchoring materials or debris associated with past and current tubes – I believe that there would not be a case to sue for harm since any harm caused is not intended by the landowner.
- It is important to understand how solid the basis is for the Holmon vs. Griffith ruling. The complaint alleged a number of things. In response, the opposition filed a "demurrer" which does not contest the complaint but rather says, "so what". This is important – since nothing that was stated in the complaint was challenged. This resulted in the non-navigable ruling.
- Ecology has said that they do not consider the investment of time and money in this issue as a priority. Placing effort in obtaining an Attorney General's opinion

is a waste of time since the Attorney General is most likely to say, "Let the court decide."

- In summary, the opinion clearly states that Washington State has adopted common law in ownership and that, if a stream is non-navigable, the upland property owners own to the middle of the stream. The location of the middle of the stream would need to be determined by the court.
- There is no clear decision in common law of what navigable means.
- The only situation for which this becomes a priority is if the two viewpoints cannot come to resolution (e.g., if a party wants to install beaver tubes and the landowners says that they will not allow this). The solutions are either: 1) the two parties work together to a resolution; or 2) the parties sue each other. Litigation involving the Holmon vs. Griffith ruling will cost a lot of money and will take a great deal of time and may not result in a decision that the parties are happy with.
- The Holmon vs. Griffith case alleged that the ruling applies to 10 miles upstream and 10 miles downstream of where the infraction occurred (i.e., approximately the lower 20 miles of the Little Spokane River to the confluence with the Spokane River). However, the discussion about navigability does not make this clear and the non-navigability ruling could be interpreted to apply to the entire Little Spokane River watershed.
- The Kettle River is the only other river in Washington State that has a similar non-navigable status. In this case, Washington State did not appear in court to defend the allegations.
- Any waterbody over 10 acre-feet of water is considered a public water body. If the land around the water body is private and the owner does not provide permission to access the waterbody, the waterbody cannot be accessed by the public without trespassing.

**Q:** Can you provide us some guidance? The Sacheen Lake Sewer District currently has a project to replace the existing 2-foot beaver tubes with 4-foot beaver tubes on the beaver dam downstream of Sacheen Lake that is on downstream landowners' property. This is not a recreational effort so is liability an issue?

**A:** The current condition of the downstream land arguably results from past activities such as dynamiting that would have resulted in spreading of debris. These past conditions are not the result of the activities of the downstream property owners.

- It appears to make much more sense to figure out what might work to address the situation (e.g., a study with recommendations) and make an agreement between the parties. Litigation will be very expensive, time consuming and may not provide answers.
- To address the liability issue, the parties could put together a simple agreement that states, for example,
  - The parties agree that the work that needs to be conducted is XXXX on land owned by XXXX.
  - The landowners make no warranty as to how safe the land is or is not.

- The landowners will allow XXXX on the land so long as XXXX assumes the risks associated with being on the land and conducting this work.
- XXXX agrees not to sue the landowners.

Bryony handed out the draft action to clarify the ruling. This action was submitted by the Committee to the WRIA 55/57 WIT on August 29, 2007 as a short term, high priority action. In response, the WRIA 55/57 WIT requested the Committee provide reasons why the Committee recommends clarifying the ruling. This issue has been discussed in the past by the WRIA 55/57 Planning Unit and WIT and the decision was made by the WRIA 55/57 Planning Unit in the past not to take this on within the WRIA 55/57 Watershed Planning process.

Bryony surveyed the Committee. Most Committee members present did not want to include the action to clarify the ruling in the Committee's action plan. However, a minority of the Committee members present did want to include the action to clarify the ruling in the Committee's action plan.

The minority explained to others why they wanted the ruling clarified:

- This is one attorney's opinion on this ruling. We would like to have additional opinions.
- There has been a continuous delay in taking action to address the concerns at Sacheen Lake. The concerns are:
  - High water and flooding at Sacheen Lake causing property damage.
  - Erosion of the shoreline as a result of high water.
  - Water well contamination as a result of high water.
  - Flooding of septic systems as a result of high water.
  - Restrictions imposed by the downstream landowners on the Sacheen Lake Sewer District volunteers to control flooding by maintenance of the beaver tubes.
- If clarifying this ruling may result in removal of the restrictions on volunteers to maintain the beaver tubes, then we would like clarification of the ruling to be taken on. We would like a clear definition on the limits (i.e., geographic extent) of this ruling.
- We feel that this ruling should be addressed in this public forum since there is a potential that this type of non-navigability status could be applied throughout the state.
- Clarification of the ruling could be used as a tool to allow water to flow from Sacheen Lake. We want water to flow from Sacheen Lake as it would naturally by allowing the water to flow down the channel by cleaning out the beaver tubes.

Tom noted that an educated and informed guess from his perspective is that if the non-navigability status and recreational access were to be taken on by the court, it is likely that the public will be excluded from the properties unless allowed on the property by the landowners.

Currently, the Sacheen Lake Sewer District has signed an agreement with the downstream landowners of Dam #3 stating that volunteers belonging to the organization "Save-Our-Sacheen" are currently not allowed on the landowners' property to maintain the beaver tubes. The landowners clarified that this is because they have been threatened with a law suit from the Save-Our-Sacheen organization.

Tom noted that the Sacheen Lake Sewer District volunteer hours could be listed with labor and industries and if there are liability issues there would be labor and industry coverage for the volunteers. The liability issues could also be addressed in a contract / agreement between the Sacheen Lake Sewer District and the downstream landowners.

Mary clarified that the current access agreement between her as a landowner and the Sacheen Lake Sewer District does not include Save-Our-Sacheen members at this time and since 2006 because Save-Our-Sacheen members have threatened her with suit and have come down on to her land and have gone beyond the parameters of the hydraulic permits (for example, Jeff Storms has received a citation from Washington State Fish and Wildlife for going beyond the hydraulic permit approval). Mary clarified that she does allow people on her property to clean out the beaver tubes – just not people who are members of Save-Our-Sacheen.

Mary also noted that she has issues with what constitutes flooding and that flooding is being overused in this situation. The 100-year flood level at Sacheen Lake is 9.8 (measured at the Sacheen Lake level gage). Historic water levels are posted on the Save-Our-Sacheen website and there have only been a couple of instances in the last few years when the lake level has reached 9.8. One of these instances occurred in January 2006 after a snowmelt event. When Pend Oreille County staff surveyed the alleged damages after the January 2006 event, Pend Oreille County found that no legally permitted septic or basement had been flooded.

Mary said that she is willing to work with the Sacheen Lake homeowners to get the water levels down to a manageable level but that she is not willing to see activities that result in a wholesale draining of wetlands.

Mike said that no one is suggesting draining the wetlands.

Mary said that the landowners would like to see engineering and good science to support the 4-foot tubes.

**Q:** What happens if you are directed by the Pend Oreille County Commissioners to take a different tack?

**A:** Tom responded by saying that if you can convince the County Commissioners that they want to pull resources to litigate this issue, they can direct that.

Mike noted that the vast majority of people who have been doing volunteer work to maintain the beaver tubes are now prevented from doing this volunteer work.

Darrell noted that the tubes are cleaned regularly in the summer by Sacheen Lake Sewer District employees but that the tubes are not cleaned in the winter months.

Bryony suggested that the following could be considered to allow the tubes to be cleaned out on a regular basis:

- An agreement between Save-Our-Sacheen and the landowners to allow the volunteers to do this maintenance work; and / or
- Contractors hired by Save-Our-Sacheen / the Sacheen Lake Sewer District to do the maintenance work; and
- A maintenance protocol as part of the agreement that would establish how and a schedule for tube maintenance.

**Q:** What would the situation be if the 1900 Holmon vs. Griffith case had not happened?

**A:** Mike Lithgow responded by saying that the issue would essentially be the same and that Washington State Fish and Wildlife and Pend Oreille County would require the same permits for beaver tube replacement and maintenance.

Jeff asked that the Committee work through the objectives to clarify the ruling. Jeff noted that his opposition to the ruling is related to state money being spent on a private river.

Rick noted that Washington State owns the water in the stream. Brian noted that the same permissions are needed from landowners whether the activity is planned for the Little Spokane River, the Kettle River or any other river in Washington State. Brian noted that the non-navigability ruling does not impact how state funds are spent on the Little Spokane River.

Bryony said working through the objectives / strategies would not be a good use of time unless the Committee agrees to include the action to clarify the ruling.

Jeff said that the Sacheen Lake Sewer District did apply for a grant to help out with sewerage but that the District was not eligible for the funds since the District members' total income was just above the low income criteria.

Bill noted that the Committee will take on the Sacheen Lake concerns if the action to clarify the ruling is not taken on by the Committee. Bill said that he does not see a direct connection between the Holmon vs. Griffith ruling and the concerns at Sacheen Lake.

The Committee requested that the decision be put to a vote. Bryony stated the vote as, "Do the Committee members present want to include the action to clarify the Holmon vs. Griffith ruling in the Committee's action plan?" The results of the vote are as follows:

- Those in favor of not including the action - 25
- Those in favor of including the action - 4
- Those abstaining - 2

The vote results in the action to clarify the ruling being removed from the action plan.

**Public Comment:**

- Burt provided handouts with diagrams showing how to construct and set up wood duck boxes.
- Sacheen Betterment Association and Ladies of the Lake are having a tree lightening party on Sunday December 2, 3 pm at the new fire station on Highway 211.
- Bryony asked Andy to ask CTED if it would be appropriate for the Committee to provide a general scope for use of the additional \$75,000 of funding after the next meeting (as opposed to detailed project scopes).

**Membership:**

Dale Smith has now attended three consecutive meetings and is confirmed as Committee member based on his past attendance and recent attendance at three consecutive meetings.

Bryony reported the remaining membership actions / report from POCD calls as:

- Bill Harmon and Mike Carney will check with Dean and Tju Tju to see if they are interested in attending and being Committee members.
- Carolyn Russell has said that she does not want to be a member but is interested in receiving information via email.
- Carolyn Russell said that she would inform Kitty Russell and ask Kitty to contact the POCD if she is interested in attending meetings. If the POCD does not hear back, Kitty will be removed as a voting member but will continue to receive information via email.
- Steve Petroni emailed Bryony to say that he is not interested in attending and does not want to receive information via email.
- Susan Ruby and Tammy Magnuson would like to receive information via email but do not need to be voting members.

Bryony said that the Committee could consider a vote to remove Dean, Tju Tju, Carolyn, Kitty, Steve, Susan and Tammy as voting members at the next Committee meeting. These individuals have been given sufficient notice of this potential action over the last three months via calls from POCD staff.

**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 – 8:00 pm** on Monday December 10, 2007. Bryony will bring coffee for the next meeting. The meeting will include:

- Project prioritization for 2008 / 2009 and a general request to Senator Morton for the scope of the 2008 / 2009 Committee funding.
- Vote to remove Committee members who have not attended the last three or more Committee meetings.

The first quarter 2008 meetings are scheduled for Jan 28, Feb 25 and Mar 24.

Additional ideas for workshops / educational presentations in 2008 are:

- Work Plans and Quality Assurance Project Plans (QAPPs).

- Ken Merrill (Ecology) on a particular water body / the Kennedy report / potential options to address flooding at Sacheen / low water level at Eloika.
- 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 the loon lake sediment characterization / forest practice regulations.
- Ecology / Spokane County Conservation District presentation on WB LSR water quality impairment and TMDLs.
- Ecology presentation on rivers and lakes.
- WDFW on WB LSR wildlife habitats (contact Jeff Lawlor / Steve Zender)

**Adjourn:**

- Bryony adjourned the meeting at 8:40 pm.
- Digital recording files for this meeting will be mailed to the POCD. Digital recording files of this meeting are:
  - WBLSR Committee 112607.wav