June 3, 2020

The Honorable Pat McCarthy
Washington State Auditor
P.O. Box 40021
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RE: Formal Walla Walla Watershed Management Partnership Response to Performance Audit Report

I appreciate the opportunity to comment on this audit. As background, I have worked as a technical consultant to the Partnership Board and staff since it was authorized in 2008. I also was employed as Regional Watermaster with Department of Ecology for SE Washington from 1989 to 2009 and participated in the development of the legislation creating the pilot project. I believe it is important that this audit represent an accurate evaluation of Partnership activities for use not only in identifying successes and failures of the Partnership, but in evaluating this pilot project serving as a tool in consideration of similar type endeavors in the future.

I would echo many of the comments already made regarding the report content. While I believe the audit provides an accurate critique on many aspects where Partnership activities did not meet expectations, I also think this analysis misrepresents Partnerships authorities and functions analysis in two major aspects: The degree to which the Partnership actually assumed water management activities within the Walla Walla Basin, and in determining the extent to which Partnership activities improved instream flows.

1. <u>The Partnership's Water Management Role</u>

The report states *"The legislation…gave the Partnership unique statutory authority to manage water-use decisions without the limitations that are typically imposed by Ecology's regulations." Pg.9* I am not familiar which what specific Ecology regulations are referenced by this statement. All activities of the Partnership are subject to compliance with Ecology rules, specifically WAC 173-532, and State water law. Nothing in RCW 90.92 suspended compliance with existing rules/laws. The Partnership was not provided any regulatory authority; Ecology has maintained that function in the Basin throughout the existence of the Partnership.

The report states *"The statutory pilot allowed the Partnership to conduct four activities not authorized in other watersheds absent Ecology's regulatory oversight."* Pg. 9 and listed those activities. Three of the activities listed do no conform with this definition.

1. **Water Banking**: The Partnership has 2 water banks; the one described to provide an incentive for water right holders to conserve water, and a mitigation bank. The mitigation bank is not unique in the state, nor is it absent Ecology regulatory oversight, as they must approve water going into that bank, and regulate the provisions of allocations out of the bank.

2. **Local Water Plans**: The report fails to note here that Ecology is required to provide signatory approval to a proposed LWP for it to be adopted. LWP's are not created absent ECY oversight.

3. **Water Right Acquisition**: This is hardly a unique authority. Any person or entity in the state can purchase or lease a water right and place it in the Trust program; in fact the Partnership found itself in competition with the Washington Water Trust within the Walla Walla basin in this regard. Nor is this absent Ecology regulatory authority. Ecology is required to approve an application to place a right into Trust, whether that application comes from the Partnership or anyone else.

My point here is I think the perception of flexibility granted through RCW 90.92 is much broader than the reality of what was authorized. This report perpetuates this misconception. Former Ecology Director Jay Manning, at the very inception of the Partnership concept, famously stated that he would like to see the basin do whatever they wanted to with the water, "provided WWIII did not break out." The legislative authority granted through RCW 90.92 was much more restrictive than this initial vision, and far from conveying all water management authority to the Partnership, provided authorities that were shared or performed conjunctively with Ecology. No regulatory authority was granted to the Partnership, and Ecology has retained and exercised, throughout the existence of the Partnership, primary water management activities in the Basin. They have continued to make decisions on applications for new water rights and to change existing water rights, and to regulate water rights through an Ecology Watermaster stationed within the basin. The Walla Walla Basin Flow Study and WW 2050 have further enhanced their management presence in the basin.

2. Assessing Improvements to Instream Flow

Suppose a stream is flowing at a rate of 5 cfs and 1 cfs is added at a point in that stream. One-half mile below, that 1 cfs is pumped out. Another half-mile further down, a stream gage measures a flow of 5 cfs. Did that 1 cfs improve instream flow?

I believe the analysis of instream flow benefit in this draft report is fundamentally flawed. There is no consideration of how water right diversions in this basin impact instream flows, and as a result the wrong questions are asked.

As noted in the draft report, the streams in the Walla Walla Basin have been chronically over-appropriated since the turn of the century – there is insufficient water to satisfy existing rightholders in the summer irrigation season, much less water for fishery and recreational resources. Ecology employs a Watermaster whose primary responsibility in the summer irrigation season is the regulation of junior surface water rights in favor of senior rights downstream.

It is important to note that Ecology does not currently regulate in favor of Trust instream flow rights below their point of diversion in the Basin – those flows become available for appropriation by rightholders downstream, as are instream flow contributions not in Trust. So junior rightholders that may otherwise be shut off can continue to pump given the additional flows. If junior rights are diverting additional flows put into the system, then it stands to reason there will be no measurable instream flow improvement at the lower end of the basin, until and unless the upstream junior water rights are either regulated off or are fully satisfied.

A more appropriate analysis would be to assess the extent and duration of surface water right regulation over the same period of time. I believe that analysis would show a general reduction in those aspects of regulation have generally decreased over time, which would attest to instream flow contributions provided by Partnership and other entities in the Basin. Until such time as all water right holders are satisfied during the summer irrigation season, it is unlikely in most months that instream flow improvements will be reflected in the lower basin. Instream flow benefits have accrued to particular reaches of streams within the basin, benefits which are not be demonstrated at the downstream gage utilized in the analysis.

Finally, the analysis uses a gage on the lower Tucannon River as a control to measure climatic variations, because *"few engineering or water conservation projects have been implemented."* Pg. 41 This characterization of the Tucannon River is in error; in reality it is the complete opposite. The Tucannon River is a BPA Model Watershed and has had more engineered instream and riparian habitat/flow restoration projects implemented, proportionally, than most any other basin in the Pacific Northwest. As a result of these efforts, the minimum base flow of the Tucannon has increased by approximately 10-12 cfs over the last 14 years (http://tucannonriver.org/). The Tucannon is a poor selection for a control on the basis stated in the analysis.

Best Regards,

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