



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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October 14, 2009

The Honorable Laura Grant
WA State Representative
P.O. Box 40600
Olympia, WA 98504-0600

RE: Columbia Snake River Irrigators Conservation Proposal

Dear Representative Grant:

On behalf of Governor Gregoire, I am responding to your September 15, 2009, letter regarding the operation and maintenance (O&M) water conservation proposal being advanced by the Columbia-Snake River Irrigators Association (CSRIA). The Governor and I share your interest in promoting water use efficiency measures as a means of extending our scarce water resources; however, water made available through such measures should not be used in a manner that adversely affects other beneficial uses.

Your letter raises two issues regarding the CSRIA proposal:

- Does the Department of Ecology (Ecology) concur with the O&M conservation program as proposed by CSRIA?
- Could the proposal, or a modified form of the proposal, be implemented without legislative authorization?

Ecology, through its Office of Columbia River (OCR), collaborated with CSRIA regarding their O&M conservation proposal during the last legislative session when that proposal was before the legislature in the form of HB 1334 and SHB 1334. Ecology concurred with a number of aspects of the CSRIA proposal as embodied in SHB 1334, including the:

- Amount of potential annual water savings from O&M conservation measures;
- Advantages of a program that serves to incentivize conservation; and
- Value to the state of establishing a privately-funded conservation program that provides benefits to both instream resources and irrigators.

The CSRIA legislation also raised a number of concerns both at Ecology and with external stakeholders. Despite several attempts to reach a compromise that would address those concerns, we were unable to do so.

The basic premise of the CSRIA proposal is that O&M conservation would create additional water supplies that could split to allow one-half of the savings to be spread to new land and one-half to be left in the river as a diversion reduction. However, their portrayal of savings from O&M conservation as



representing additional water supply is overly simplistic. In reality, all of the water savings from O&M conservation is water that, prior to implementation of the conservation measures, would have returned to the river from which it was diverted. O&M conservation is intended to greatly reduce the occurrence of excess water applications to crops, water that would typically seep through the soil and enter ground water. Prior to implementation of the O&M conservation measures, that excess water would return to the river downstream of the diversion and at a later point in time. Thus, the proposal to spread one-half of the conserved water to new lands would result in that water being lost to the river of origin. If that water historically returned to the river during a critical flow period, such as July and August, loss of that return flow could have adverse impacts on the river. Conversely, if that water historically returned to the river during periods of time when flows in the river are relatively high, there may be no significant impacts to the river associated with spreading a portion of the conserved water.

CSRIA's spreading proposal is most problematic in situations where the O&M conservation measures, and associated reductions in diversions from the river, have been in place for many years. Since the CSRIA proposal is intended to apply retroactively, increasing irrigation diversions to take advantage of the spreading provision would be viewed as decreasing flows in the river, not increasing them. Ecology interprets Chapter 90.90 RCW as a mandate to aggressively pursue development of new water supply for both out-of-stream and instream uses, not develop one at the expense of the other.

Ecology is, and has been, receptive to an O&M conservation program involving out-of-stream use of a portion of water savings, provided that the timing of return flows is sufficiently understood to allow a determination that such use would not adversely affect conditions in the river. In addition, Ecology favors a prospective program, not the retrospective program advocated by CSRIA. On September 9, 2009, Ecology presented the CSRIA O&M conservation proposal to the Columbia River Policy Advisory Group (PAG) to seek stakeholder input. Many of the PAG members expressed strong opposition to the proposal on grounds similar to those articulated above.

It should be pointed out that Ecology, in good faith, entered into a Voluntary Regional Agreement (VRA) with CSRIA to provide the technical basis for implementation of an O&M conservation program. The agreement, signed by Ecology and CSRIA on July 18, 2008, stipulates that full implementation of an O&M conservation program for new water rights under the VRA would not occur until the potential to achieve a reasonable level of predictability concerning return flow timing could be demonstrated through three, mutually agreed upon pilot projects. Part A of the VRA states that:

Phase 2 [full implementation of the O&M conservation program] will be entered into by written agreement of Ecology and CSRIA only if the parties agree to the following:

- 1) The types of conservation projects identified by CSRIA appear to be capable of providing water in sufficient quantities to support issuance of the new water rights envisioned in Section E [pertaining to new water rights] of this VRA

Ecology is investing over \$1 million in the pilot projects, which are currently being implemented, and intends to use the information gained from these projects to inform its decision making regarding an expanded program.

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In regard to the second issue raised in your letter, CSRIA's assertion that the O&M conservation program could be implemented by Ecology without a statutory amendment, Ecology consulted with the Office of Attorney General regarding the extent of our authorities. Based on input from the Office of Attorney General, Ecology does not concur with CSRIA's assertion. Ecology believes that implementing a program of irrigating additional acres (increasing consumptive use) through temporary changes using nonconsumptive irrigation savings would require modification of statute.

While there are obvious differences between Ecology's and CSRIA's positions on this matter, we believe CSRIA should be complemented for advancing innovative approaches to promoting water conservation as a source of new water supply. We believe there is potential for Ecology to collaborate with CSRIA and other stakeholders to develop a modified proposal capable of providing both instream and out-of-stream benefits without adversely impacting stream flows during critical periods. It is our intent to have a modified proposal available for the legislature to consider in advance of the 2010 legislative session.

Thank you for your interest and leadership in water supply development. If you have any questions, or would like to discuss this matter further, please contact Derek Sandison, our Director of the Office of Columbia River, at derek.sandison@ecy.wa.gov /509-662-0516.

Sincerely,



Polly Zehm,

Interim Director

cc: Representative Brian Blake
House Speaker Frank Chopp
Representative Lynn Kessler
Senator Chris Marr
Representative John McCoy
WSDA Director Dan Newhouse

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bcc: Derek Sandison
Evan Sheffels
Ken Slattery
Ted Sturdevant
Tom Tebb