



November 20, 2006

Derek I. Sandison, Regional Director
 Central Regional Office
 Washington State Department of Ecology
 15 West Yakima Avenue, Suite 200
 Yakima, WA 98902

Dear Mr. Sandison:

American Rivers, Washington Rivers Conservancy (WRC) and the Washington Environmental Council (WEC) (referred to collectively as the Conservation Groups) appreciate the opportunity to comment on the Draft Programmatic Environmental Impact Statement (DPEIS) for the Columbia Water Management Program. As you know, American Rivers and WEC played a lead role in the negotiations that culminated in passage of the Columbia River Management Act (the Act), and each of the Conservation Groups and our members have a strong commitment to and interest in ensuring that the waters of the Columbia River and its tributaries are managed in a manner that protects river health for the benefit of people, fish and wildlife.

At the outset, we commend Ecology for its prompt action to implement the bill and to involve the various stakeholders early in the implementation phase. The Columbia River Water Management Program is an ambitious, multi-faceted initiative that will require open communication, accurate information, and good faith efforts to find cost-effective solutions to water supply challenges. The Conservation Groups look forward to working with Ecology and the other stakeholders toward this end.

Ecology's Aggressive Pursuit of New Supplies Is Justified Only to Meet Instream and Consumptive Needs that are in the Public Interest

The DPEIS states that its purpose is to "assist Ecology, federal, state, and local governments and agencies, tribal governments, and stakeholders in formal development and implementation of the Management Program as directed by the Columbia River Management Act." (DPEIS at 1-8) Section 1 of the Act states that the statute's purpose is to develop new water supplies "in order to meet the economic and community

21-2 development needs of people and the instream flow needs of fish." RCW 90.90.005(1) (emphasis added).

The Conservation Groups are deeply concerned that the DPEIS fails to adequately explain the link established in the Act itself between the program's water supply development components and the need for additional water. The failure to link supply with need manifests throughout the DPEIS in an overemphasis on the legislative directive to "aggressively pursue" supplies; the Act says nothing about the extent to which new supplies are required. The lack of linkage between supply and need in the DPEIS is likely to mislead stakeholders regarding the Act's mandate and the nature of the program. It is imperative that Ecology clearly and accurately define its responsibilities at the outset.

To remedy this flaw, Ecology should revise the relevant portions of the DPEIS (e.g., pp. 2-1, 2-2) to clearly state that the aggressive pursuit of new supplies will occur only in the context of meeting water needs that are in the public interest. In addition, Ecology should explain in the final PEIS the specific steps it will take to determine "need" and how it will determine whether supplying water to meet the need is in the public interest. Clearly, the long-term supply and demand forecasts required by the Act will be helpful, but they alone will not be sufficient because they do not answer the question of whether meeting the demand is in the public interest. For the same reason, it is inappropriate to use water right applications alone as the measure of needed supply.

21-3 Accordingly, the program must include a means for timely determination of whether a proposed water use for which supply would be developed is in the public interest; it is not enough that the proposed use be a legally recognized beneficial use. Indeed, the Washington State Supreme Court has stated plainly that the public interest is not always served through diversionary uses such as irrigation, and that sometimes retaining water instream better serves the public interest. *Dept. of Ecology v. U.S. Bureau of Reclamation*, 188 Wash. 2d 761, 772-73 (Wash. 1992). Specific criteria for determining whether a proposed use is in the public interest should also be established to ensure consistency and transparency in agency decision-making.

Ecology's draft supply and demand forecast illustrates the importance of this step. Currently pending before Ecology are requests for new agricultural water rights totaling 211,323 acre-feet, and some interest groups are advocating building out the Columbia Basin Project, which would irrigate an additional 400,000 acres. Draft Supply and Demand Forecast at ES-12-13. However, the initial modeling conducted by Washington State University indicates that water demand for irrigated agriculture is likely to be stable or decline over the next 20 years. *Id.* Moreover, the most robust economic study to date evaluating the likely impact of significantly expanding irrigated agriculture along the mainstem Columbia indicates that doing so would have a negative impact on farming communities and Washington State. DPEIS at 3-71.

In light of this information, it clearly would not be in the public interest for Ecology to pursue new water supplies to enable build out of the Columbia Basin Project or to add significant amounts of new irrigated acreage in the area. The mere fact that agriculture is

21-3 a recognized beneficial use does not mean that providing more water to expand crop production under such circumstances is in the public interest; the opposite is likely true. Thus, Ecology needs to establish a transparent and credible process in this program for making public interest determinations prior to spending millions of taxpayer dollars to increase supply. This is particularly important in the case of expensive capital projects, such as new surface storage facilities. The DPEIS is silent on this fundamental aspect of the program, and this silence impedes the ability of stakeholders to ensure that development and implementation of the program is consistent with the Act and other applicable laws and policies.

Columbia River Mainstem Water Resources Information System

21-4 Chapter 2, which describes the Columbia River Water Management components, omits a key component: development of a water resources information system to enable Ecology to effectively manage water based on informed decisions. The legislature specifically directed Ecology to develop an information system in Section 6 of the Act that "provides the information necessary for effective mainstem water resource planning and management." Section 6 identifies some, but not all, of the information required to effectively manage Columbia River water. The final PEIS should contain a description of the water resources information system Ecology is developing, including the types of information that Ecology believes are necessary for effective management, a development timeline, and an explanation of how Ecology intends to use this information system in conjunction with other program components to achieve program goals.

Socioeconomic Analysis

21-5 The Conservation Groups appreciate Ecology's inclusion of highly relevant socioeconomic information in the DPEIS. Understanding the socioeconomic context in which the Act is being implemented is absolutely essential to the program's success and ensuring that any investments made are in the public interest.

21-6 The socioeconomic sections of the DPEIS need to be revised substantially to accurately reflect the relevant economic information that has been developed to date. In particular, the DPEIS leaves the reader with the impression that the estimated monetary values for irrigated crops estimated by Huppert et al. are valid when considered at the local level, and that the monetary values estimated by Williams and Capps are valid only when looked at from a statewide or regional perspective. (DPEIS at 3-71). This is erroneous.

21-7 An admitted omission in the Huppert et al. analysis is the fact that it did not account for price changes that would be caused by increasing the quantity of crops that would be grown on new irrigated acreage. (Huppert et al. at 22-25). The assumption in the Huppert et al. report that marginal changes in monetary value will equal current averages is not realistic under basic economic principles, and yet it is portrayed as such in the DPEIS. Thus, the marginal crop values estimated by Huppert et al. are not accurate at any level -- local, state or regional. The DPEIS should be revised accordingly.

21-8 This major flaw in the Huppert et al. study, and Ecology's failure to acknowledge it, ripples through the socioeconomic discussion. For example, Table 3-22 estimates changes in statewide employment related to diverting one million acre-feet of water for out-of-stream use, and the estimate of large increases in agricultural employment is based on the erroneous estimates of crop value discussed above. Again, this leaves the reader with the impression that the Huppert et al. estimates are valid and that increasing irrigated acreage for crop production along the Columbia will have major positive effects for the local economy, which is not accurate, as pointed out in the Williams and Capps and Griffin reports:

Substantial revisions of the socioeconomic section (pp. 3-66 – 3-76) are necessary to accurately reflect the best economic information available and explain its relevance to implementing the program. In particular, it should state unequivocally that the Huppert et al. study's assumptions about the value of crops that would be grown on new irrigated acreage are unrealistic, and that the value estimates in the Williams and Capps report are based on a market assessment and represent the most accurate information available to Ecology. The final PEIS should then discuss the likely economic impact on specific economic issues (e.g., value of goods and services, jobs and income, etc.) based on the Williams and Capps estimates. If Ecology does not do this, it must explain the rationale for choosing different values.

21-9 Not surprisingly, the flaws in the general discussion of socioeconomic issues and information in chapter 3 of the DPEIS lead to inaccuracies in the impact analysis in chapter 4. In particular, the discussion of long-term impacts of new storage on the agricultural sector suffers from the fatal flaws in the Huppert et al. study identified above. The statement in the DPEIS that "[r]ecent studies of water-related economic issues in the Columbia River basin have reached different conclusions, reflecting different assumptions about how households, farms, communities, businesses, and the state as a whole would respond to a change in the management of the area's water supplies" (p. 4-19) misleadingly implies that the assumptions made in the Huppert report are reasonable when they are not -- a fact admitted by the Huppert study team. (Huppert et al. at 23-24).

This is not a situation in which different economists conducted the same analysis and reached different conclusions; Williams and Capps conducted the essential market analysis that Huppert et al. admittedly did not do and that they acknowledged was a major shortcoming in their report. The entire discussion of likely long-term impacts on the agricultural sector that follows the above-referenced quote on pages 4-19 – 4-21 is flawed because it implies that the Huppert et al. estimates are valid. This major shortcoming of the DPEIS must be rectified in the final PEIS.

21-10 Lastly, the summary Economic Review section (1.3.1.4) should be substantially revised to expressly identify the shortcomings in the Huppert et al. study and to present the findings in the Williams and Capps study, which are not mentioned. In particular, the final PEIS should clearly state that the Williams and Capps study included a critical market analysis that the Huppert et al. study did not include, and that it shows a large

21-10 negative economic impact would be caused by a substantial expansion of irrigated agriculture along the Columbia River.

Responses to Policy Issues Raised in Chapter 6

6.2 *Ecology's role with respect to development of storage*

The DPEIS proposes two policy options that would define Ecology's approach to the development of new water storage facilities: (1) review projects only as proposed by applicants; or (2) aggressively pursue storage options. The Conservation Groups submit that the policy choice presented is based on an inaccurate interpretation of the Act by Ecology. As discussed at length previously in these comments, the Act does not, contrary to the statements on page 6-2 of the DPEIS, direct Ecology to aggressively pursue storage options. Rather, it directs Ecology to aggressively pursue new *water supplies* using various tools, including storage and conservation. RCW 90.90.005.

21-11 In light of the unambiguous statutory language, it is not appropriate for Ecology to elevate one particular water supply tool above others. Storage should be considered by Ecology only after there has been a demonstrated water supply need that serves the public interest, and only as one of the options available to meet the need. In fact, the Act expressly states that new storage facilities should only be pursued after a thorough analysis of alternative supply tools and their relative costs and benefits, RCW 90.90.010(3), indicating that storage options should be rigorously scrutinized relative to other supply tools. The final PEIS should be revised to remove this policy option from consideration. Ecology should consider storage options only as necessary to meet a demonstrated need, and must evaluate storage relative to other water supply alternatives as directed by the Act.

6.2.1 *Calculating net water savings from conservation*

21-12 Ecology proposes that it will consider *any* conservation project that meets the requirements of the Act and the Trust Program, including projects that were implemented prior to July 1, 2006 but are not currently managed within the Trust program. (DPEIS 6-2). This sentence needs additional clarification as to its intent. Our concern is that it suggests that projects already in place and already funded may be potentially considered for funding by the Columbia River Act. It may also be helpful to clearly state that the Trust Water Rights Program only allows for inclusion of water beneficially used within the previous five-year period.

21-13 Two alternatives have been proposed for calculating "net water savings": use of Ecology's Guidance-1210 methodology or the development of new methodologies that incorporate scientific evidence on the benefits of the new water savings to instream flows. (DPEIS 6-2). While Guidance-1210 may provide certainty to Ecology and some project proponents in quantifying the consumptive use portion of a water right, we support efforts by Ecology and others to use additional proven methodologies that provide credible evidence of "wet water".

We anticipate that there will be a diversity of projects that applicants will be proposing for funding within the program. There may not be a single standard method to calculate the water savings that meets the complexity of the different projects. The acquisition of water rights is a good example of the types of projects where site-specific data is the only means of truly analyzing how much "wet water" may be available for instream flow and also determining the site specific locations of where and when the water is available instream.

21-13 We recommend that any changes by Ecology to existing methodologies be promulgated through rule-making. This will ensure sufficient public process in validation and acceptance of new methodologies. Incorporating new standards and methodologies will also require additional education and training of project applicants and Ecology staff. This will ensure consistency within regional staff while providing additional certainty to project proponents and water right owners that may diminish concerns of different interpretations for calculating net water savings.

Finally, the Conservation Groups would note that instream flow protection and restoration and the issuance of new water rights are inextricably linked in the Act. The ability to identify instream flow benefits is a key factor in quantifying "new" water to allow for water rights and is a key component to successful implement of the Act.

6.2.2 *Funding criteria for conservation projects*

21-14 The Columbia River Management Act, as noted elsewhere in our comments, is designed to address the demonstrated water needs of both people and fish. At present, the need for additional instream flow in the Columbia and Snake rivers – particularly during summer months – is well documented, as is the need for additional water in many of the tributaries in the basin.¹ Further, as Ecology observes, segregating conservation funds to strictly support out-of-stream uses does not comport with the broader aims of the legislation.² Were all of the water placed into trust simply used as mitigation to offset new permits, the stated intent of the Act to bolster instream flows throughout the basin would be largely frustrated. While Ecology instead appears to favor a one-third / two-third split that mimics the water division for storage projects, this would seem to be simply a division of convenience based on the perceived discretion of Ecology.

¹ The Conservation Groups also note that while Section 4 of the Act emphasizes the months of July and August for the Columbia River and April through August for the Snake River, Ecology need not consider only those months when weighing the impacts to instream flows and salmon survival from additional withdrawals. Documentation exists to support the fact that there are impaired flows at other times of the year, and it should be noted that high flows are also necessary for well-functioning river and estuary systems.

² As noted in comments submitted by the Conservation Groups on Ecology's Draft Legislative Report (dated Nov. 8, 2006) and as acknowledged by Ecology on page 6-4, the one-third funding encompasses more than simply conservation efforts. However, the question posed in 6.2.2 is framed in terms of "conservation," and we will direct our comments to that point.

The Conservation Groups instead support a policy establishing that water placed into the Trust Water Rights Program should generally remain permanently instream. Indeed, the language of the Act specifically exempts users in the Columbia Basin from the requirement to place water into trust if "directed to" reducing groundwater usage in the Odessa sub-area, lending credence to the interpretation that trust water should otherwise bolster instream flows. The Conservation Groups believe that significant savings are currently available through the efficient use of water that would eliminate perceived "needs" and would relieve the pressure to transfer water in and out of the Trust program, forcing Ecology into an ongoing role as water broker for the basin. As available water becomes scarcer in the state, parties should have an incentive to maximize the use of existing supplies.

Should Ecology determine that some ratio is required in order to efficiently administer the non-storage fund and achieve the purposes of the Act, the Conservation Groups would advocate for a two-thirds / one-third split in favor of instream flows. We believe that such an allocation is in the best interest of the state for several reasons. First, the Act's allocation of new water supplies obtained through new storage benefits out-of-stream needs at a 2/3 to 1/3 ratio. Thus, to ensure a more equitable overall allocation between instream and out-of-stream needs, instream needs should receive a larger percentage of water obtained through conservation and other water supply tools besides storage.³

Second, the fact that some public funds are available under the Act to mitigate for out-of-stream uses where private parties are the primary beneficiaries constitutes a significant concession by the conservation group negotiators who developed the bill. A strong argument could be made that the cost of obtaining mitigation water for out-of-stream uses should be borne by the water right holders, not the public. Accordingly, the majority of the public funding dedicated to conservation and other non-storage supply tools should be used to acquire water that will serve the general public, namely instream flow enhancement. This approach is consistent with Ecology's irrigation efficiency program, which requires that a portion of the water saved by the conservation measure or irrigation efficiency be placed as a purchase or a lease in the trust water rights program to enhance instream flows. The irrigation efficiency program requires that the proportion of saved water placed in the trust water rights program be equal to the percentage of the public investment in the conservation measure or irrigation efficiency.⁴

We encourage Ecology to give significant weight to conservation and other non-storage water supply tools that have substantial instream flow benefits. This will lead, appropriately, to funding projects that do more than move water short distances between out-of-stream users. The project funding criteria should make this a paramount consideration. Ecology should also implement conservation and other non-storage water supply projects that will provide benefits to tributary rivers and streams regardless of whether additional water is, as a result, added to the Columbia River for out-of-stream use.

³ It should be noted that the non-storage allocation is half the size of the storage allocation.

⁴ Budget Proviso language, Sec. 316, Department of Ecology, Water Irrigation Efficiencies (01-H-010)

21-15 [Lastly, we support the involvement of the Conservation Commission, Conservation Districts and groups like Washington Rivers Conservancy in designing, planning and implementing projects with water right holders. Their expertise in working with landowners and water right holders on irrigation efficiency projects and acquisition is an important component of getting projects completed on the ground in a timely manner.

6.2.3 *Defining acquisition and transfer*

Two policy alternatives have been proposed for defining "acquisition and transfer" of water within the context of Section 2 of the Act, which prohibits Ecology from expending funds from the Columbia River Water Supply Account that will result in "water acquisition or transfers from one water resource inventory area to another." RCW 90.90.010(2)(a). Under the first alternative, "acquisition and transfer" would be defined as water obtained from any non-storage project. Under the second alternative, only water obtained from the direct purchase of a water right would fall within the definition. (DPEIS 6-7).

21-16 [The Conservation Groups strongly encourage Ecology to adopt the narrower interpretation and limit the application of the prohibition to only the direct purchase of water rights.⁵ There are several compelling reasons that the narrower interpretation should be adopted. First, a broad interpretation would substantially limit the number of tools Ecology has to effectuate the primary intent of the legislation, which is to provide new water to meet out-of-stream and instream water needs. Second, the Conservation Groups understand that the concern this language was intended to address was the fear that large water right purchases or transfers would be used to take water from one geographic area and make it available for extraction in a downstream WRIA in a manner that would harm limit economic activity in the WRIA of origin. This problem would not materialize if more efficient water use in the WRIA of origin obtained through a conservation project maintains economic activity while at the same time makes water available for both instream flow enhancement and new out-of-stream use outside the WRIA.

21-17 [There is another policy issue related to this language that is implied but not expressly identified in the DPEIS but nonetheless must be resolved; namely, whether funds from the account can be used for the purpose of addressing instream flow needs in the WRIA even though the water could subsequently be withdrawn from the Columbia or Snake river mainstem in a different WRIA for an out-of-stream use. The Conservation Groups strongly encourage Ecology to interpret the prohibition narrowly in a manner that does not preclude the use of funds from the account for the direct purchase of water rights in a manner that would benefit the mainstem of the Columbia and Snake rivers during periods of demonstrated need (i.e., during the spring and summer salmon and steelhead migration

⁵ The fact that the definition of "acquisition and transfer" we support and encourage Ecology to adopt is much narrower than the definition that appears in the Trust Water Rights statute is irrelevant. There is no conflict if the terms are defined differently in the two statutes and thus no need for consistency.

21-17 seasons) within the WRIA of origin. In other words, as long as a direct purchase would provide a substantial instream flow benefit (a legally recognized beneficial use) within the WRIA of origin, the use of account funds should be permitted.

6.2.4 *Conditioning water rights on instream flows*

The DPEIS proposes two alternatives for processing water rights: 1) apply instream flow water rights created by the Columbia River instream flow rule to new permits or changes of season of use that authorize use outside the season where the conserved water or acquired water right was beneficially used; or 2) waive instream flow water rights created by the Columbia instream flow rule where new permits or transfers shift consumptive demand away from critical periods and benefit aquatic species.

21-18 We support alternative #2 as long as the withdrawals authorized by the new permit or transfer of an existing permit do not result in flow depletions during the period of April through September in both the Columbia and Snake rivers, which is implied in the DPEIS when it describes shifting demand to the October through March period. It bears emphasis that federal flow targets have been established for salmonids listed under the Endangered Species Act in both rivers from April through August, and that September is typically a low-water month when listed and unlisted fish are still migrating. It would be inappropriate to shift demand to months other than July and August in the Columbia that are still within the April through September period, as this would negatively impact fish. In addition, it should be made clear that this provision would apply only to mainstem flows.

21-19 In light of the limited information provided in the DPEIS, the Conservation Groups do not support a one-time determination through rule-making that shifting water use from July and August to October through March will always serve overriding considerations of the public interest (OCPI) justifying waiver of the Columbia instream flow rule. Determinations of OCPI should be made after careful analysis of all relevant factors, and we believe that such a determination requires an OCPI finding on a case-by-case basis. We recommend that this issue be discussed by the Policy Advisory Group prior to issuance of the final PEIS.

6.2.5 *Initiating voluntary regional agreements*

Ecology has proposed two alternatives regarding the aggressiveness with which the agency will pursue Voluntary Regional Agreements (VRAs): 1) process VRAs as they are proposed; and 2) aggressively pursue VRAs. (DPEIS 6-8, 9).

21-20 We support alternative #1, process VRAs as they are proposed. VRAs should be approved only if there is a demonstrated need for new water rights consistent with the public interest. Ecology should not use its limited resources to establish VRAs absent a justified request that a VRA be created to provide water for a need that serves the public interest.

6.2.6 *Processing voluntary regional agreements*

Three alternatives have been identified for processing VRAs: processing applications according to the Hillis Rule, amending the Hillis Rule to give a priority to processing applications to convert interruptible water rights, and amending the Hillis Rule to give priority processing for new water rights from VRAs. (DPEIS 6-12).

21-21 We recommend adoption of the first alternative, under which all applications would be processed under the Hillis Rule without preferential treatment for applications under a VRA. The Hillis Rule safeguards not only the public interest but also provides certainty and fairness to all water right applicants. There is no language in the Columbia River Act to suggest that the legislature intended that VRAs were to receive any priority processing or special treatment, or that they should be acted on independently of other new water rights.

6.2.7 *Defining "no negative impact" to instream flows of the Columbia and Snake rivers*

The DPEIS notes that the Act allows no negative impact to river flows during July and August on the Columbia River and from April through August on the Snake River as a result of a VRA. Four possible ways to measure a net reduction in instream flow are proposed: 1) same pool and downstream; 2) same major reach; 3) same pool but not downstream; and 4) same pool, but only downstream of the point of net water savings.

21-22 We recommend a different alternative than the four presented, which is largely a blend of alternatives #1 and #4. As a general rule, new withdrawals should not be authorized above the point at which the conserved water enters the mainstem river for conservation projects that supply water directly to the mainstem. Thus, withdrawals above the point of water savings, even if in the same pool, should not be permitted (consistent with alternative #4). An exception should be recognized if the water savings is achieved in a tributary stream where there are significant tributary benefits from the water savings as well as the mainstem. In such a case, Ecology should be able to permit withdrawals from the mainstem within the same pool that the tributary feeds in recognition of the tributary benefit provided by the water savings (consistent with alternative #1), but not in a riverine reach such as the Hanford Reach or tailwater areas with riverine conditions.

The Conservation Groups are open to Ecology allowing withdrawals anywhere downstream of the point at which water savings is obtained in the mainstem provided that such savings would still exist at the point of diversion under the new right. This determination would need to account for evaporation and other factors that might diminish the amount of saved water available at the point of the new diversion.

6.2.8 *Defining the main channel and one-mile zone*

21-23 Ecology is seeking input on how it interprets the language in the Columbia River Management Act defining the mainstems of the Columbia and Snake rivers to include

21-23 "all water ... within the ordinary high water mark [OHWM] of the main channel ..." and "all ground water within one mile of the [OHWM]." The interpretation will apply to water rights issued on the mainstem, how Ecology defines "no negative impact" on instream flows of the mainstem, and to the agency's development of a water resource inventory. The policy choice presented in the DPEIS is whether to include backwater areas (i.e., areas backed up by dams at tributary mouths and a one-mile groundwater zone from those tributary backwater areas) or to exclude tributary backwater areas.

We recommend including tributary mouths backed up by dams in the mainstem definition, as dams have essentially turned these river mouths into part of the mainstem river. This would better ensure that there is no negative impact to mainstem flows from new water rights, whether they withdraw water directly from the mainstem river or from ground water that is within one mile of the OHWM. And, as the DPEIS notes, including backwater areas "provides a larger inventory of water rights, and could improve Ecology's ability to plan for and manage the Columbia River water resources." (DPEIS 6-17).

6.2.9 Coordinating VRA mitigation and processing new water rights⁶

21-24 The Conservation Groups believe that the existing statutory scheme for processing applications should remain in place. Parties – VRA and non-VRA alike – should not be encouraged to prematurely submit applications without mitigation water having been secured. To allow for "skipping" would only create an incentive to claim a more advantageous position in the queue without having fulfilled the requirement for real mitigation water. Moreover, allowing Ecology to skip applications would add to the permitting backlog while increasing the political pressure on the state to expend public money on mitigation.

Regardless, the Department of Ecology absolutely should not process applications and issue any permits without real water having been secured to offset withdrawals, as is suggested in passing on page 6-18. Ecology must avoid needlessly creating additional interruptible rights – even if purportedly only temporary.

6.2.10 Coordinating VRA and non-VRA processing

21-25 Three alternatives have been proposed for processing VRA and non-VRA applications: staying with the existing priority system by grouping together all applications within a one-mile corridor on the Columbia River, grouping the applications by region or grouping the applications by WRIA. (DPEIS 6-19). We support the third option of grouping all applications together in individual WRAs, as we believe this will provide a more comprehensive oversight and accounting of the 1-1 mitigation of new water rights including any out-of-WRIA transfers.

⁶ Ecology asserts that it intends to "aggressively pursue funding of storage and conservation projects to make mitigation water available" for VRAs. Again, the legislation indicates that new water supplies are for documented needs, and as Ecology has acknowledged, any new rights must be in the public interest. The simple existence of VRAs should not be considered sufficient to justify the expenditure of public funds.

6.2.11 Funding projects associated with a VRA

21-26 The Conservation Groups believe that to the extent that conservation money is used to provide water for mitigation, Ecology need not distinguish between VRA and non-VRA applicants.

6.2.12 Inclusion of exempt wells in water use inventory

21-27 The Conservation Groups strongly support the inclusion of exempt wells in the information system to be developed by Ecology. As stated in the Act, the overarching goal is to devise a system to "better understand current water use and instream flows" in the Columbia "that provides the information necessary for effective mainstem water resource planning and management" RCW 90.90.040(1). To ignore exempt wells would compromise the overall effort and read restrictive language into the Act that does not exist.

• Out-of-stream water rights and mitigation water under VRAs

Though not specifically raised in the DPEIS, the Conservation Groups wish to comment on another critical policy issue that should be addressed in the final PEIS: the relationship between water rights issued pursuant to VRAs and the mitigation water that must be secured to offset instream flow impacts resulting from the exercise of those water rights. Section 5 of the Act requires that any consumptive water rights issued pursuant to VRAs not reduce instream flow in the Columbia and Snake rivers during certain periods of the year. RCW 90.90.030(2).

21-28 To comply with this mandate, mitigation water secured to offset new withdrawals must be available in a quantity equal to the amount of the withdrawal for as long as the new consumptive water right is exercised. Thus, either permanent sources of mitigation water must be secured to offset new, permanent water rights, or alternatively, new water rights must be conditioned such that Ecology can limit the exercise of the water right to the quantity of mitigation water available when there is insufficient mitigation water to fully offset the withdrawal. Should Ecology elect not to condition new water rights this way, it cannot rely on short-term water leases or other non-permanent sources of mitigation water to issue new, permanent water rights. This is an issue that should be addressed in the final PEIS.

Conclusion

21-29 The Conservation Groups appreciate the opportunity to comment on the DPEIS, and we offer our comments to assist Ecology in developing a final PEIS that is consistent with the Act and will guide implementation of the Columbia Water Management Program in a manner that best serves the interest of Washington's citizens. We are concerned, however, that there is still significant ambiguity regarding key aspects of the Program (e.g., VRAs) and that interested organizations and individuals including ourselves have been asked to comment on all aspects of the Program in a short time period. Under such circumstances, Ecology should continue to solicit input from the interested parties through the Policy Advisory Group over the next several months so that as many issues as possible can be raised and vetted prior to issuance of the final PEIS.

Thank you for your consideration.

Sincerely,



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FDR

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Michael Mayer
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Dan Silver

Comment Letter No. 21 – American Rivers, Washington Environmental Council, Washington Rivers Conservancy

- 21-1. Comment noted.
- 21-2. Comment noted.
- 21-3. Comment noted. Ecology’s preferred policy alternative concerning interpretation of the legislative requirement to “aggressively pursue” new water supplies is contained in Sections 2.3.1 and 6.1.2.
- 21-4. Information on the Water Resources Information System has been added to Section 2.1.2.6.
- 21-5. Comment noted.
- 21-6. Comment noted. Sections 3.2.2 Columbia Basin Specifics and 4.1.1.1 Socioeconomics– Long-Term Impacts have been amended to describe more clearly the relationship between the studies by Huppert et al. (2004) and Williams and Capps, Jr. (2005). The conclusions of both studies have been integrated into the Final EIS to show how their results complement each other and to reflect the uncertainty of determining long-term impacts.
- 21-7. Comment noted. See the response to Comment 21-6.
- 21-8. Comment noted. See the response to your Comment 21-6.
- 21-9. Comment noted. See the response to your Comment 21-6.
- 21-10. Comment noted. See the response to your Comment 21-6.
- 21-11. See the response to Comment 12-1.
- 21-12. See the response to Comment 9-8. Ecology would acquire net water savings through the funding of eligible projects or management practices that yield trust water rights. In some cases, water rights might not have been fully used on July 1, 2006 but the rights would be valid unless relinquished or abandoned. The program could include securing agreements to alter future use of the right or prevent resumption of that use, not unlike the purchase of a development right. See the revised Section 6.2.2 in the Final EIS. Acquisitions to the Trust Water Right Program are either subject to RCW 90.03.380 or are exempted from it. If subject to RCW 90.03.380, the right transferred to the Trust Program is subject to an extent and validity review and is limited to the quantities determined to be valid. If the acquisition is exempt from RCW 90.03.380, then the Trust Program is instead limited to the most recent five-years use.
- 21-13. See the response to Comment 9-8.
- 21-14. See the response to Comment 9-9.

- 21-15. Ecology is organizing a Technical Advisory Group (TAG) for the purpose of recommending project evaluation criteria. It will also review projects against those criteria.
- 21-16. See the response to Comment 9-10.
- 21-17. Ecology interprets RCW 90.90 to mean that acquisitions within a WRIA could be used for instream flows or out-of-stream use on the mainstem Columbia within the WRIA. It could be used for instream flow at any point downstream from the WRIA of origin. If legislative approval is obtained, the water could be withdrawn downstream outside the WRIA of origin.
- 21-18. See the response to Comment 9-11.
- 21-19. See the response to Comment 12-1.
- 21-20. See the response to Comment 9-12.
- 21-21. See the response to Comment 9-13.
- 21-22. See the response to Comment 9-14.
- 21-23. See the response to Comment 9-15.
- 21-24. See the response to Comments 9-13 and 9-16.
- 21-25. See the response to Comment 9-17.
- 21-26. See the response to Comment 9-18.
- 21-27. See the response to Comment 9-19.
- 21-28. See the response to your Comment 21-12 and Comment 9-9.
- 21-29. Comment noted.



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for Environmental Law & Policy

November 22, 2006

Derek L. Sandison, Regional Director
 Washington Department of Ecology
 Central Regional Office
 15 W. Yakima Ave., Suite 200
 Yakima, WA 98902-3452

Re: Comments on Draft Programmatic EIS – Columbia River Water Management Program¹

Dear Mr. Sandison:

The Center for Environmental Law & Policy (“CELFP”) is a non-profit membership organization working to defend and develop ecologically and socially responsible water laws and policies. CELFP believes that informed, responsible water management is the only way to ensure a legacy of clean, flowing waters for Washington. CELFP has been involved with the Columbia River Management Plan since its inception and our research into and involvement with Columbia River issues dates back even further. CELFP is the only environmental organization that has appealed Columbia River water right permitting decisions, and CELFP is currently a party to a continuing settlement agreement governing future allocations of river water to the Quad Cities of Kennewick, Richland, West Richland, and Pasco. (PCHB 02-216)

The State of Washington is at a crossroad in terms of water management. Faced with climate change and population increases it is crucial that the state engage in deliberate, informed, and thoughtful water management planning now, in order to prevent water conflicts and disastrous impacts later. Policy decisions based on incomplete or erroneous information will place Washington’s waters in further jeopardy and shift the burden to future generations. CELFP has previously expressed concerns about the quality and reliability of the 2006 Water Supply Inventory and Long-Term Water Supply and Demand Report (Inventory) in a letter dated 11/1/2006 (incorporated here by reference), and we have similar concerns about the accuracy and adequacy of the draft EIS.

I. GENERAL COMMENTS:

- ✓ Critical terms such as “conservation”, “no negative impact”, and “Voluntary Regional Agreement” must first be defined by rule-making, and then applied consistently before any analysis in the draft EIS or Inventory report can be meaningful.

¹ The Center for Water Advocacy, www.wateradvocacy.org, P.O. Box 583, Clifton, Colorado, 81520 joins in the submission of these comments. The Center for Water Advocacy (CWA) is a non-profit public interest entity dedicated to protecting water resources in the Northwest. CWA conducts legal and scientific research, analysis, policy and litigation in its efforts to protect and restore water quantity, water quality and water rights for the health of the watershed ecosystem, preservation of cultural identity, and the benefit of the public.



Center for Environmental Law & Policy

November 22, 2006

- 22-4 [✓ The draft EIS fails to adequately address the statute’s dual purpose of benefiting both instream and out of stream uses.
- 22-5 [✓ The consideration of the CSRIA Voluntary Regional Agreement is premature and inappropriate within this draft EIS.
- 22-6 [✓ Adoption of the Final EIS for Watershed Planning under Chapter 90.82 RCW, 2003 does not compensate for the deficiencies in this draft EIS.
- 22-7 [✓ The historical and background information listed in Chapter 1.3 contains numerous inaccuracies and omissions as to the background of litigation surrounding Ecology’s issuance of water rights from 2000 to 2003, and should be corrected.²

II. COMMENTS SPECIFIC TO CHAPTER 6.0 – POLICY DISCUSSION

22-8 [Section 6.1: Description and analysis of policy alternatives for implementing the management program.
 This section admits that the impacts of policy alternatives on each element of the environment are not being evaluated here. This statement sums up a major flaw of the entire EIS: insufficient identification and analysis of various potential alternatives and the environmental impacts of those alternatives. Conspicuously absent, for example, are discussions of the impacts to endangered species, and the ESA ramifications of various policy alternatives. ESA implications are especially crucial factors in analyzing how to apply the arbitrary “no negative impact in July and August” standard, and the environmental impacts of diverting water from instream flows in order to fill off-channel storage reservoirs.

Section 6.2 – Selecting storage projects

22-9 [The section (and, indeed, the entire EIS) improperly presupposes that storage creates “new water” that will serve the dual purposes of the statute: that is, for instream and out of stream benefits. This is a major flaw, in that the EIS fails to examine whether there is any conceivable storage management regime that could result in benefits to instream aquatic values. The EIS offers two alternatives under this section: Review projects only as proposed by applicants, or Aggressively pursue storage options. Given that the EIS does not analyze how or whether “new” water supplies can be obtained through storage, the only alternative in the public interest at this time is the first: Review projects only as proposed by applicants. Ecology should not pursue projects itself without first developing data and evidence that storage can indeed equate to a “new water supply”. The initial burden of providing this evidence should be on the proponent, not the public and taxpayers.

Section 6.2.1 Calculating net water savings

22-10 [There is a serious legal flaw here in stating that Ecology will consider any conservation project implemented before July 1, 2006 (the date the CRWMP law became effective). If water was conserved before 7/1/2006, it should be viewed as already “in stream” and as part of the baseline from which to prospectively calculate benefits. The preferable alternative: Develop a rule for calculating net water savings.

² Among other things, this section falsely implies that the \$10 an acre foot scheme” resulting from a settlement between the CSRIA and Ecology resulted in the issuance of water right permits. However, five such water right decisions were appealed by Tribes, and in 2005 the Washington State Court of Appeals ultimately ruled against Ecology and the water right applicants. The applications were remanded to Ecology. The permits have never been issued. This section also fails to list the PCHB decision in *CELFP vs. Ecology and the Quad Cities*, PCHB 02-216, which resulted in the cities receiving a very large water right (178 cfs & 96,619 acre feet/year) in return for their agreement to, among other things, exercise water conservation measures and provide mitigation for 168 cfs of the allotted amount.

22-11 Section 6.2.2 – Funding criteria for conservation projects. Here, the second listed alternative is the best one. Funding projects to benefit only instream flows and water quality is the only choice that meets the intent of the statute, especially given the amount of water to be diverted out of the mainstem into the Odessa subarea, and the arbitrary and unbalanced requirement to allocate 2/3 of “new” water from new storage facilities to out of stream uses. Rule-making is advised to develop criteria for funding conservation projects.

22-12 6.2.3 Defining Acquisition and Transfer
Acquisition can only be interpreted to mean direct, permanent purchase of water rights. Anything less, such as leases, temporary contracts for drawing down reservoirs, and conservation savings are indefinite in duration and scope. Issuing permanent out-of-stream consumptive water rights based upon time-limited “mitigation” does not meet the test of adequate mitigation. Transfers of ownership can already occur under existing statutes without Ecology intervention or involvement as part of the CRWMP; these provisions should not be modified as a result of the CRWMP.

22-13 Section 6.2.4 Conditioning Water Rights on Instream Flows
All of the analyses and alternatives under this section are flawed, and point out the greater deficiencies throughout the EIS. The 1980 instream flow rules must be upheld and not waived; nor should interruptibility or individual permit mitigation conditioned upon the FCRPS Bi-Op Target Flows (as in the 2003 Quad Cities permit S4-30976, giving them access to 178 cfs and 96,619 acre feet/year) be waived or changed as a result of the CRWMP. There are absolutely no facts or circumstances shown in the EIS or the Water-Supply and Demand Inventory Report to justify a consideration of OCPI — particularly given the dearth of evidence that there is likely to be any appreciable increased demand for municipal water supplies in the foreseeable future.

22-14 Section 6.2.5 – Initiating Voluntary Regional Agreements
Ecology does not have a legislative mandate to solicit VRA's. The first policy alternative is the only one that is reasonable. Why would Ecology even consider “aggressively pursuing” VRA's? This presupposes that VRA's are more beneficial to the public interest than normal processing of water right applications under existing laws. It also improperly presupposes that VRA's will result in “new water supplies”. There is no showing anywhere in the EIS or elsewhere that this might be true.

22-15 Section 6.2.6 Processing VRA's
The section inaccurately implies that Policy 1021 re: processing water right applications for “nonconsumptive” projects is legally supportable and an accurate interpretation of Hillis and WAC 173-152-020. Another questionable and unsubstantiated statement is that “New water can be obtained from a new water right or change of an existing right.” Nowhere does the EIS discuss or analyze how this feat can be accomplished. CELP can see no reason to amend the Hillis Rule for purposes of processing water right applications pursuant to VRA's. The first alternative listed (Process applications according to the Hillis Rule) should be the only one seriously pursued.

22-16 Section 6.2.7 – Defining “No Negative Impact”
The entire discussion of defining “no negative impact” should await rule-making. This is an extremely controversial and complex concept, and will likely be the subject of litigation. Alternative 4C-4, “Same Pool, but only downstream of the point of net water savings” is the only alternative that could be seriously considered as adequate.

22-17 Section 6.2.8 Defining the Main Channel and One-Mile Zone
The way Ecology has always defined this (as outlined in the second alternative) is the most appropriate way to approach this. Question: If the river course shifts over time, or shrinks or expands in width, does the one-mile boundary also change? CELP recommends that Ecology immediately assemble aerial photos and other data showing the parameters of the river on 7/1/2006 (the effective date of the statute) and use this information as the perpetual mapping baseline. If there were backwater areas on 7/1/2006, these should be considered as part of the mainstem “pools”.

22-18 Section 6.2.9 Coordinating VRA Mitigation and Processing New Water Rights
CELP lacks sufficient comprehension of the discussion or alternatives suggested to make a recommendation at this time. Further, CELP has no knowledge of the 1993 Quad Cities permit as mentioned on p. 6-18. Could this somehow be intending to refer to the 2003 Quad Cities permit S4-30976, based upon a 1991 water right application?

22-19 Section 6.2.10 and 6.2.11 – Coordinating VRA & Non-VRA processing, and Funding Projects Associated with a VRA
See below for additional discussion of why CELP believes that this EIS has inappropriately handled issues related to VRA's. As for funding issues and VRA's: Ecology should spend NO conservation or storage money to assist in providing mitigation water for VRA's that intend to cover out of stream water uses. The proponents of VRA's should provide their own mitigation water. Ecology's expenditures should be solely for providing water to improve instream flows for fish – the otherwise forgotten-in-this-EIS dual beneficiary of the supposedly balanced CRWMP.

22-20 Section 6.2.12 Inclusion of Exempt Wells in Water Use Inventory
YES! Metering and reporting of water use from exempt wells MUST be included in the information system in order to meet the intent of RCW 90.90.050(1).

III. COMMENTS TARGETED TOWARD SPECIFIC ISSUES

22-21 1. THE CONSIDERATION OF THE CSRIA'S APPLICATION FOR A VRA IS IMPROPERLY CONSIDERED WITHIN THE DRAFT EIS BECAUSE: (A) THERE IS NO MEANS FOR MEASURING A VRA'S INSTREAM FLOW IMPACTS, MAKING THE DATA UNACCEPTABLY INCOMPLETE UNDER SEPA; (B) PROCEEDING WITH THE EVALUATION OF A SPECIFIC PLAN FOR A VRA UNDER THIS GENERAL EIS IS IN VIOLATION OF THE GENERAL REQUIREMENTS OF AN EIS; (C) ECOLOGY'S ANSWER TO CELP'S ORIGINAL SCOPING COMMENTS REGARDING THIS EXACT CONCERN IS INAPPROPRIATE BECAUSE IT IS AN INCOMPLETE READING OF THE APPLICABLE WAC.

22-22 (a) There is no set means for measuring a VRA's impacts to instream flows making the “no negative impact” pre-requisite for approval of a specific plan impossible to determine.
In order for a VRA to be approved, it must have “no negative impact” on the Columbia River mainstem instream flows during July and August as a result of the new appropriations issued under the agreement. (April through August for the Snake River; pg. 2-13). A VRA also “may not impair or diminish a valid water right or a habitat conservation plan approved for purposes of compliance with the federal Endangered Species Act (ESA). (pg. 2-13). The EIS fails to demonstrate how the “no negative impact” requirement shall be met by VRA's in general because it does not propose a meaningful means for measuring water conserved through mitigation measures. The EIS states: “There is no existing policy on how or where to measure whether a withdrawal of water

22-22 pursuant to a VRA would result in a net reduction in stream flow." (pg. 2-18). How then can a specific proposal by the Columbia and Snake River Irrigators Association (CSRIA) for a VRA be evaluated when there is no existing policy in place for measuring the primary prerequisite for its approval—that it (1) have "no negative impact" on instream flows and (2) not impair or diminish other water rights or ESA habitat plans? The answer is that it cannot. A specific plan cannot be properly evaluated if no means are in place to measure whether the primary prerequisites for approval can actually being met.

22-23 Under SEPA WAC 197-11-080, this gap in data is unacceptably incomplete for consideration of a specific proposal such as the CSRIA VRA. Under this section, Ecology may only proceed without such vital information if the costs of obtaining it are exorbitant (WAC 197-11-080(3)(a)) or the means of gathering it are speculative or unknown (b). This is not the case here. Ecology has not proven that the costs would be exorbitant to find out how the impacts of VRA's will be measured to know if they have an impact on stream flows. Ecology has also not proven that the means of obtaining such information are speculative or unknown. There is actually evidence to the contrary on this point. Ecology does know how to obtain such information, it actually suggests four alternative means for acquiring it. (See pg. 6-14 to 6-16). Each of these alternatives has its flaws, but if Ecology has the capability to obtain the information needed to determine how and where to measure instream flow for VRA's, they should certainly do so before considering a specific request like that from the CSRIA. WAC 197-11-080(3)(b) actually mandates that they do so. This WAC section goes on to state that if Ecology does choose to proceed without the vital information, the agency "shall weigh the need for the action with the severity of possible adverse impacts which would occur if the agency were to decide to proceed in the face of uncertainty." Yet in this case if Ecology proceeds in the face of uncertainty - without an adequate or set means of measuring the impact to instream flows from the CSRIA VRA - it will most likely do so in violation of the statutory mandate of "no negative impact." The agency cannot know whether the entire concept of VRA's actually meets its requirements without first having a functioning measuring mechanism in place to meet the conditions for approval.

(b) Proceeding without the necessary information on how to measure the impact on instream flows from VRA's in general yet agreeing to evaluate a specific plan for a VRA is in violation of WAC 197-11-402(10).

22-24 Proceeding at this point in the planning process without having a set policy for how to measure whether VRA's would result in a net reduction of instream flow would violate WAC 197-11-402(10). This section of the regulation states the general requirements of an EIS and requires that "EIS's shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made." Ecology has no means of measuring the effect of VRA's on instream flow, therefore it cannot assess the environmental impact on either instream flows, habitat for ESA species, or other vested water rights. By proceeding with the specific plan outlined in the early action CSRIA VRA without a means to know whether the conditions of (1) no negative impact and (2) no impairment to ESA habitat or vested water rights are met for the use of VRA's in general, suggests that Ecology has already decided to implement VRA's in any manner it chooses at the time, and that the inadequate "lip service" treatment given in the EIS will simply be used as an excuse to justify any future deal or decision that Ecology chooses to make on a VRA - regardless of how broad or how potentially damaging the environmental or policy ramifications may be. Critical data and critical definitions of terms are missing to meaningfully assess the environmental impact of VRA's. Proceeding without this information is a violation of both WAC 197-11-080 and WAC 197-11-402.

(c) Ecology's response to CELP's scoping comments on the VRA issue is an incomplete reading of WAC 197-11-055 because when read in its entirety the section supports CELP's argument that the consideration of the CSRIA VRA is inappropriate within this EIS.

22-25 Ecology's answer to CELP's earlier comment regarding the inappropriateness of considering the CSRIA VRA early action within this EIS is an incomplete reading of the WAC 197-11-055. Ecology justified its consideration of the specific plan CSRIA VRA by citing to WAC 197-11-055(1): "Integrating SEPA and agency activities. The SEPA process shall be integrated with agency activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems." (See Appendix C; SEPA Comments). Ecology responded to CELP's concerns that the specific VRA for the Irrigators was premature by stating that this is an allowable integration of SEPA and agency activities. However, Ecology is failing to read the quoted regulatory section in its entirety. Section (2) of the regulation in question states:

Timing of review of proposals. The lead agency shall prepare its threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified. (Emphasis added).

(A) A proposal exists when an agency is presented with an application or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the environmental effects can be meaningfully evaluated. (Emphasis in the original).

CELP's scoping comment about the inappropriateness of considering the early action VRA for the irrigators was a concern about timing in the review of proposals, so the entire regulatory section should be read to address CELP's concerns. These sections require that the "environmental impacts be reasonably identified" and "meaningfully evaluated" in order for a determination to be made. With the acknowledged gaps in data by Ecology as to the means for measuring the impacts of VRA's on instream flows, these regulatory sections are not satisfied. Ecology cannot cite to section (1) of the WAC and neglect section (2) when it clearly relates to CELP's concern. Proceeding with a specific proposal for the CSRIA VRA when the general pre-requisites for a VRA's approval cannot be measured in order to know its impact violates the regulatory section as a whole. Early incorporation does not mean that the impacts have been reasonably identified or meaningfully evaluated.

2. THE CONSIDERATION WITHIN THE EIS OF THE CSRIA EARLY ACTION VRA IS AN IMPROPER APPLICATION OF THE SEPA PHASING REQUIREMENT UNDER WAC 197-11-060(5).

22-26 The EIS seems to present itself as a phased review. (See pg. S.4 "Project Phasing and Schedule of Future Environmental Review") This section states that "[p]rojects will be evaluated as they are developed and ready for environmental review..." (pg. S-10). (See definition of "phased review" under SEPA WAC 197-11-060(5)). This WAC section also mandates under subpart (e) that "[w]hen a lead agency knows it is using phased review, it shall so state in its environmental document." Section S.4 of the EIS seems to suggest it is attempting to be characterized as a phased review. Assuming it is a phased review, this particular EIS does not satisfy the necessary components of the selected review process, because it is considering the specific project proposals (early actions) along side the broad and preliminary components of the plan. This is not the correct order of consideration for a phased review. A phased review is meant to "assist agencies and the public to focus on issues that are ready for decision and exclude from consideration issues already decided or

not yet ready. Broader environmental documents may be followed by narrow documents..." WAC 197-11-060(5)(b). Phased review is appropriate when: "the sequence is from a nonproject document to document of narrower scope such as site specific analysis (see, for example WAC 197-11-443)" WAC 197-11-060(5)(c)(i). WAC 197-11-443(2)'s example of this states:

(2) A nonproject proposal may be approved based on an EIS assessing its broad impacts. When a project is then proposed that is consistent with the approved nonproject action, the EIS on such a project shall focus on the impacts and alternatives including mitigation measures specific to the subsequent project and not analyzed in the nonproject EIS." (emphasis added).

By proposing the specific early actions in this EIS, Ecology is not following the order for consideration of a phased review EIS. The purpose of the phased review is to consider the broad aspects of the projects first and then the specific projects within the findings of the broad, preliminary findings. In the case of the Columbia River EIS, Ecology is considering both the broad and specific proposals in the EIS simultaneously in violation of SEPA's phased review regulations.

3. THE INSTREAM FLOW REQUIREMENT OF THE DUAL GOALS OF PROVIDING IN-STREAM AND OUT-OF-STREAM USES FOR WATER IN THE COLUMBIA BASIN IS NOT MET BY THIS EIS.

The purpose of the Columbia River Water Management Act is to direct the Washington State Department of Ecology to "aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses". (emphasis added). Despite the dual purpose of the plan, the Columbia River EIS does not provide a meaningful effort in meeting the instream flow component. While the means used to achieve benefits to out-of-stream uses such as irrigation are more clear, these means fail to simultaneously meet the goal of benefiting in-stream uses. The goal of providing for instream flow is not met for the following reasons:

1. Storage projects harm instream flows and this EIS only considers storage projects versus no storage projects. The means of satisfying the goal of supplying water to out-of-stream uses is being satisfied by the storage projects while at the same time failing to meet the goal of providing water for instream uses. It is not merely failing to meet the goal for instream use, it is actively working against it by the very nature of the means suggested: dams and reservoirs.
2. There is no showing that water collected in storage units can be of sufficient quality or managed in a manner to facilitate healthy fish populations; yet the EIS proceeds as if there is no doubt or disagreement that stored water later released in any quality or quantity will meet the statute's mandate of improving instream conditions for aquatic life.
3. Water allocated by Ecology from the Water Trust Fund is not earmarked toward instream flows but instead toward irrigation and other out of stream beneficial uses. This allocation scheme fails to address the goal for providing water for improved instream flow.
4. It only serves an out-of-stream goal to exempt from the Trust Program any water savings achieved via conservation in the Columbia Basin Project, so long as that water is used in the Odessa Subarea as a replacement source for ground water. Furthermore, alternatives for achieving instream flow benefits that are at least comparable to the amount of mainstem water loss diverted to the Odessa subarea must be examined and evaluated. The omission of such a discussion is yet another glaring example highlighting the insufficiency of the EIS and the need for substantial supplementation.

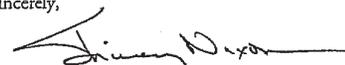
IV. CONCLUSION & RECOMMENDATIONS

The SEPA process is an important venue for examining the potential alternatives for implementing the Columbia River legislation. We therefore urge Ecology to delay further SEPA action including the development of a final EIS until definitions of crucial terms are agreed-upon, weak or missing portions of the EIS can be filled-out, inaccuracies corrected, and sufficient data can be gathered to form a proper foundation for implementing the Columbia River law.

- ✓ As we addressed in our SEPA scoping comments, CELP urges Ecology to immediately engage in rule-making designed to establish operative definitions for terms such as "conservation", "water use efficiency" and to set definitions and minimum guidelines for consideration of Voluntary Regional Agreements.
- ✓ We urge Ecology to spend no more taxpayer money on developing storage projects, negotiating or implementing voluntary regional agreements, or issuing water rights for new out of stream uses until such time as Ecology can fill in the many glaring data gaps and deficiencies in the Water Supply Inventory report and this draft EIS, and can compile the basic information necessary for effective water resource planning and management.

Thank you for considering these comments.

Sincerely,



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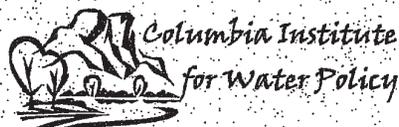
cc: Governor Christine Gregoire
 Senator Eric Poulsen
 Representative Kelli Linville
 Representative Maralyn Chase
 Rebecca Penn, Seattle University School of Law

Comment Letter No. 22 – Center for Environmental Law and Policy

- 22-1. Comment noted.
- 22-2. Comment noted.
- 22-3. See Section 6.1.1 in the Final EIS for definitions of these terms for use in this EIS. Ecology plans to include definitions for these and other important terms in policy and/or rulemaking for the program.
- 22-4. See the response to Comment 21-3.
- 22-5. See the responses to Comments 2-19 and 2-27.
- 22-6. The Final EIS for Watershed Planning under Chapter 90.82 RCW was adopted in accordance with WAC 197-11-630 (see Section 1.6). The document was adopted to supplement the information in Management Program EIS. Information in the EIS for the Management Program is intended to supplement the Final EIS for Watershed Planning.
- 22-7. Section 1.3 has been revised in the Final EIS.
- 22-8. As stated in Section 6.1, the impacts of the Policy Alternatives on each element of the environment were not evaluated, because the Policy Alternatives relate to how Ecology will implement the Management Program and would have limited or no impact on the elements of the environment.
- The environmental impacts of the Management Program components, including impacts on endangered species and impacts of diverting flows for off-channel storage, are included in Chapters 4 and 5. The discussion of how the alternatives could affect endangered species has been expanded in the Final EIS. Evaluation of potential impacts to listed endangered species will be an important consideration as specific projects are evaluated for implementation. See the Master Response regarding July/August mitigation.
- 22-9. See the response to Comment 12-1.
- 22-10. See the response to Comment 9-8.
- 22-11. See the response to Comment 9-9. Ecology has elected to use the account funds to obtain both instream and out-of-stream benefits. See the revised Section 6.2.3 in the Final EIS. Ecology does not interpret RCW 90.90 to require all of the account funds for purposes other than new storage projects (acquisition, conservation, etc.) to be used exclusively for instream flow improvements.
- 22-12. See the response to Comment 9-10.
- 22-13. See the response to Comment 9-11.
- 22-14. See the response to Comment 9-12.

- 22-15. See the response to Comment 9-13.
- 22-16. See the response to Comment 9-14.
- 22-17. See the response to Comment 9-15.
- 22-18. See the response to Comment 9-16. Permit S4-30976P was issued in 2003, not 1993 as stated in the draft PEIS.
- 22-19. See the responses to Comments 9-17, 9-18, and the response to your Comment 22-11.
- 22-20. See the response to Comment 9-19.
- 22-21. See the response to Comment 2-27. Before public notice of the draft VRA occurs, Ecology will negotiate several elements of the draft VRA to clarify such things as the area covered and the specific water users and water rights covered. Ecology also will ensure that a process of annual project planning with SEPA review of the specific projects in any given year will be incorporated into the VRA.
- 22-22. As noted in the response to comment 2-27, Ecology will establish an implementation plan for the VRAs, which will be subject to review under SEPA. Ecology will account for trust water rights and permits that rely on trust water rights through a combination of measuring, reporting, field verification and aerial photo assessment.
- 22-23. The Programmatic EIS has framed the potential range of impacts associated with implementing VRAs. Ecology will establish an implementation plan for the VRAs that will be subject to SEPA review. A more detailed discussion of the approach to SEPA review associated with the CSRIA VRA is provided in Section 2.6.
- 22-24. See the response to Comment 22-22 and 22-23.
- 22-25. The Programmatic EIS discusses the potential range of impacts associated with VRAs, including the CSRIA VRA. Additional detail about this proposal will be evaluated as part of subsequent SEPA review for the VRA Implementation Plan. Ecology is committed to compliance with all applicable regulatory and statutory requirements, and will provide additional detail about specific impacts as project-specific information is available.
- 22-26. Refer to the Master Response regarding a Programmatic EISs. The Programmatic EIS describes the broad range of potential impacts associated with VRAs, and acknowledges that a VRA application has been received. Ecology has committed to developing an implementation plan for VRAs that will more specifically outline criteria for measuring impacts and mitigation effectiveness associated with the VRAs, including the CSRIA VRA. This sequence of broad to more narrow evaluation is consistent with WAC 197-11-060(5) (b).
- 22-27. See the revised Section 2.1.2.4 in the Final EIS regarding Ecology's program for improving instream flows.

- 22-28. See the response to Comment 22-27. See also the responses to Comments 9-9, 9-10, 21-17, and 22-11.
- 22-29. Large new storage facilities will be evaluated for their benefits and environmental impacts on a site-specific basis. Ecology does not agree that modification of existing storage operations, ASR and other smaller storage activities, conservation, and acquisitions will not meet the program objectives.
- 22-30. See the response to Comment 22-11.
- 22-31. The exemption from the Trust Program for water savings in the Columbia Basin is legislatively mandated (RCW 90. 0.010(5)). The Lake Roosevelt drawdown proposal includes 27,500 acre-feet for stream flow enhancement in non-drought years and an additional 17,000 acre-feet in drought years. Ecology will further evaluate the impacts of the Lake Roosevelt drawdowns in a Supplemental EIS.
- 22-32. Ecology agrees that the SEPA process is an important venue for describing potential impacts associated with implementing the Columbia River Water Management Program. Ecology believes that a broad framing of the full range of potential issues is appropriate at this time, and that the level of information currently available is adequate to inform decision makers of the full range of broad impacts associated with implementing the program. Additional project-level evaluations consistent with SEPA and/or NEPA will be conducted to fill in project-specific information and specifically quantify impacts associated with the specific components of the program.
- 22-33. See the response to Comment 22-3.
- 22-34. Comment noted.



November 20, 2006

Washington Department of Ecology
15 West Yakima, Suite 200
Yakima, WA 98902

Re: Columbia River Water Management Program
Programmatic Environmental Impact Statement

Dear Department of Ecology Staff,

These comments are submitted on behalf of the Columbia Institute for Water Policy, an organization that promotes sustainable, equitable and ethical use of the water resources of the Columbia watershed.

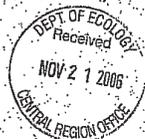
The Columbia River Water Management Program PEIS is a problematic document. While chock full of detail (some accurate, some not), the more serious problems of the PEIS result from its overall approach. *The PEIS ignores or avoids a host of opportunities to develop a progressive, sustainable, economically well-grounded water management program that would promote the public interest, rather than maintain a status quo that imposes harsh, difficult-to-mitigate costs on people and the environment.*

The PEIS fails to consider comprehensive impacts of dams & industrial agriculture. The Columbia watershed is one of the most heavily dammed river basins in the world. Unrelenting development of dams, reservoirs and irrigation projects have destroyed untold riverine, terrestrial, wildlife and cultural resources.¹ As the analytical foundation for a new dam & reservoir construction program, one would expect the PEIS to include a thorough analysis of the cumulative effects of past water development activities that have so thoroughly altered and damaged the basin. Such an analysis is not present. Its absence suggests a bias toward water storage projects and away from preservation and restoration of ecosystems.

The PEIS fails to assess sustainable agriculture options. Any new publicly-funded program intended to assist the agricultural economy should focus on sustainable agriculture: policies to promote small-scale, local farming that minimizes use of chemicals, maximizes soil building, and enhances the natural resource base.² The PEIS could analyze the opportunities to use this new public program to promote sustainable farming. Instead, the concept of promoting sustainable agriculture is discarded.

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23-4 *The PEIS fails to analyze social justice impacts.* Water development projects tend to discriminate against people of color and low income communities.³ Eastern Washington irrigated agriculture operates on the backs of immigrant labor and tribal communities. New Columbia water projects that are designed to promote industrial agriculture will exacerbate these problems. The PEIS ignores real-world social, economic, and health problems associated with new water projects, and fails to assess policies that could alleviate existing and future environmental injustice.

23-5 *The PEIS fails to analyze how proposed water management will impact endangered salmon and lead to endangered species litigation.* The legislative determination that the impacts of new water rights need only be mitigated in July and August contradicts both mainstream scientific thought and Columbia River hydro/irrigation project operational rules. If the Department of Ecology issues water rights in conflict with federal requirements it will (1) violate the Endangered Species Act and (2) hasten the extinction of wild salmon in the Columbia River basin. The PEIS should, but does not, analyze the full range of consequences that will flow from the legislative choice to ignore endangered species requirements.

23-6 *The PEIS fails to consider instream flow options.* The Columbia water bill, HB 2860, promises repeatedly that the program is to be designed with twin goals, one of which is to improve instream flows in the Columbia River. But the PEIS does not identify or discuss necessary improvements in flow, nor does it discuss options for how to achieve those improvements. The PEIS ignores modern concepts of instream flow analysis, e.g., the "natural flow regime," which the Washington Department of Fish & Wildlife is incorporating into its instream flow analysis.⁴ The PEIS also fails to

23-7 analyze water quality problems caused by dams and the questionable approach of using dam & reservoir projects to improve fisheries habitat. Again, the bias is toward building dams, not improving the Columbia River ecosystem.

23-8 *The PEIS fails to consider market solutions.* Economic choices have environmental consequences. Existing demand for water in the Columbia watershed is not simply for water, but for "free" water - i.e., water that is subsidized by the public and provided to water users at less than the true cost to develop it. Virtually all demand can be controlled and met through economic policies and methods, including appropriate pricing, water banks, acquisitions and transfers, and other mechanisms.⁵ The PEIS asserts that such analysis is outside its scope, but in fact, the state is making an economic choice to not study water markets as a mechanism to address water supply needs.

23-9 *The PEIS is disconnected to the Water Supply Inventory.* Although the documents were issued almost simultaneously by the same program within the Department of Ecology, the PEIS fails to consider and incorporate the findings of the new Water Supply Inventory (WSI). Important WSI findings include that (1) future demand for irrigated agricultural lands is projected to be flat, and (2) aggressive water conservation projects could effectively meet future water supply needs. Because of these findings, the PEIS should, but does not, examine a "water conservation only" alternative. Why is the state spending \$200 million-plus on a dam building program if its own analysis shows that water conservation can fix the problem?

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23-10 The PEIS scope is arbitrary. The PEIS excludes some water development projects in the Columbia basin, while others are pronounced to be within the scope of the program. No criteria are set forth, other than language of the statute, to determine what is in and what is out. However, because SEPA requires consideration of cumulative impacts, the PEIS should consider the interrelated effects of all ongoing water development programs, regardless of which agency in charge.

After a hundred years of water management policies that have over-appropriated most of Washington's rivers and destroyed many of their values, including fish and wildlife habitat, recreation and aesthetic beauty, one would hope that Washington state had learned that more dams, more reservoirs, and more destruction of habitat, is not the answer. One would hope the state would

- 23-11
- Promote ecologically sustainable water programs.
 - Adopt a precautionary approach to water management
 - Consider the social justice impacts of its actions before moving forward.

The Columbia Water Management Programmatic EIS indicates that is not to be the case.

Thank you for the opportunity to provide comments.

Sincerely,



Rachael Paschal Osborn
Executive Director

cc: Governor Christine Gregoire
Senator Eric Poulsen
Senator Lisa Brown
Senator Karen Fraser
Representative Kelli Linville
Representative Timm Ormsby
Representative Alex Wood

Please contact the Columbia Institute if you would like to receive copies of any of the following articles.

23-12 ¹ See World Commission on Dams, Ortolano, L., et al., Grand Coulee Dam and the Columbia Basin Project, USA (2000), www.dams.org.

² The U.S. Agricultural Research, Extension & Teaching Act, 7 U.S.C. §3103(18), defines sustainable agriculture as:

an integrated system of plant and animal production practices having a site-specific application that will, over the long-term—

- (A) satisfy human food and fiber needs;

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- (B) enhance environmental quality and the natural resource base upon which the agriculture economy depends;
- (C) make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;
- (D) sustain the economic viability of farm operations; and
- (E) enhance the quality of life for farmers and society as a whole.

³ Environmental Justice Coalition for Water, Thirsty for Justice: A People's Blueprint for California Water (2005), <http://www.ejcw.org/>.

23-12 ⁴ See Poff, N.L., et al, "The Natural Flow Regime," BioScience (Dec. 1997). This seminal paper sets forth how the dynamic nature of river flows serves to protect and restore ecological integrity. Maintaining variability in instream flows promotes essential river functions, such as channel maintenance, biological productivity, riparian vegetation recruitment and diversity, and fish & wildlife life cycles. The point is that river ecology requires focus on more than just minimum flows, but high flows, and the duration, timing and variability and of flows. On the web at http://www-personal.umich.edu/~dallan/pdfs/Poff_1997.pdf.

⁵ Glennon, Robert, "The Quest for More Water – Why Markets Are Inevitable," at the PERC (Property & Environment Research Center, Bozeman, MT) website: <http://www.perc.org/perc.php?id=823>.

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- 23-1. Comment noted.
- 23-2. The cumulative impacts sections (4.3 and 5.5) have been revised to incorporate the impacts of past storage and irrigation development.
- 23-3. Ecology would consider including sustainable agriculture in developing the project funding criteria; however, the legislature did not provide authority for Ecology to make use of sustainable agriculture practices a prerequisite or condition of receiving funding from the Account. The conservation and other water use efficiency measures promoted by the legislation are consistent with sustainable agricultural practices.
- 23-4. The evaluation of social justice impacts is not a requirement under SEPA; however, the EIS does examine socioeconomic impacts of the Management Program. The socioeconomic sections were included to provide a general understanding of potential economic and social impacts of the Management Program. Section 4.1.1.7 describes both positive and negative impacts that could accrue to the region as a result of the Management Program.
- 23-5. See the Master Response regarding July/August mitigation. Ecology does not intend to issue water rights that would conflict with other federal, state, or local regulations.
- 23-6. See the revised Section 2.1.2.4 in the Final EIS regarding Ecology's Program for improving instream flows.
- 23-7. See the response to Comment 22-28.
- 23-8. As stated in Section 2.4.3, the Legislature considered water marketing and water banking options, but did not specifically authorize them as part of the Management Program. This does not preclude Ecology from pursuing these options in the future.
- 23-9. The Water Supply Inventory was released after the Draft EIS was released. Section 2.1.2.4 of the Final EIS has been revised to incorporate a summary of the results of the inventory. The Legislature and Ecology will use the information from the inventory to guide development of the Management Program.

The inventory indicates that the total annual amount of conservation appears to be adequate to meet the estimated demand for new water rights. However, the inventory highlights three considerations that may reduce the actual amount of water available to meet water rights applications. These are 1) a small portion of the annual conservation potential is likely to accrue directly to the Columbia River; 2) the total annual amount of conservation is distributed on a monthly basis and may not meet demand during peak irrigation season; and 3) the time lag between a point of withdrawal or conservation and return flow may further reduce the amount of conservation savings available.

- 23-10. See the Master Response regarding a Programmatic EIS. See also Section S.4 regarding future review of projects. The cumulative impacts discussion has been expanded in the Final EIS.
- 23-11. Comment noted.
- 23-12. Inclusion of the accompanying reference list is acknowledged.

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November 22, 2006

Mr. Derek I. Sandison, Regional Director
Central Regional Office
Washington State Ecology
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902

sent via email: Sandison, Derek [DSAN461@ECY.WA.GOV]

RE: Draft Programmatic Environmental Impact Statement for the Columbia River Water Management Program

Mr. Sandison:

I. Introduction

I write on behalf of Columbia Riverkeeper and Citizens for a Clean Columbia. Columbia Riverkeeper, which is based in Hood River, Oregon and White Salmon, Washington, is a non-profit organization with a mission to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Citizens for a Clean Columbia is a non-profit citizens' group based in Wenatchee, Washington who advocate for clean water and a healthy Columbia River system for humans, fish, and wildlife. Both organizations have members that use and enjoy the Columbia River for recreational, scientific, aesthetic, and economic purposes. Those interests may be harmed by components of the Department of Ecology's ("Ecology") actions in the Columbia River Water Management Program and this Draft Programmatic Environmental Impact Statement ("DPEIS").

II. The DPEIS is vague and overly broad.

The DPEIS does not contain adequate information for the public to meaningfully comment. One major problem is that Ecology attempts to jam too many policy decisions into the DPEIS instead of providing well-reasoned analyses and the environmental impacts of alternatives. In addition, the DPEIS is simply too vague and too broad. The generalizations in the DPEIS make the document nearly meaningless. For example, regarding surface water quality, the DPEIS states:

Long-term effects of surface water quality could be variable and depend on the current allowable uses and the newly added beneficial uses. Supplying additional beneficial uses of water from a storage facility may reduce return flows if new consumptive uses are allowed from a facility that was previously allocated non consumptive uses. This may be significant and would depend on the amount of water allocated relative to the available volume of water.
DPEIS at 4-8-4-9

24-2 In essence, this states that the effects of the Management Program could be variable and there may be some impact if certain things happen. It is unclear how the public is supposed to provide meaningful comments on this.

24-3 The DPEIS is also deficient because it does not clearly explain the environmental review process for the Management Program. The DPEIS should include a section that explains whether there will be additional public input on policy making, rulemaking, or additional SEPA or NEPA processes for individual projects, policies, and programs. What is the relationship between the DPEIS and subsequent environmental review? In addition, the DPEIS should express whether Ecology is conducting a phased review process under SEPA. WAC 197-11-060(e) ("When a lead agency knows it is using phased review, it shall so state in its environmental document").

24-4 As it stands, the DPEIS fails to give the public an understanding of how it can meaningfully participate in this vague and ambiguous program that has tremendous environmental and social implications. We recommend that Ecology slow down and analyze each component of this Program individually. Because the general nature of the DPEIS precludes meaningful participation, Ecology must engage in the SEPA process for each proposed project.

24-5 In addition, the DPEIS is misleading because of the underlying premise that building dams and issuing additional water rights is a foregone conclusion. The statute has the dual purpose of protecting instream uses and developing new water supplies. Therefore, instream uses, including salmonids, are equally important in the statute as issuing more water rights. The public would not know this by reading the DPEIS, however. The DPEIS focuses on the means by which Ecology plans to issue more water rights. The DPEIS gives some lip service to instream conservation, but does not seriously consider this as an equal component of the Program. Any thoughtful observer, including Ecology, realizes that the Program spelled out in the DPEIS is not designed to protect fish, but to issue more water rights. In order to reflect the statutory intent, the DPEIS should spend equal effort explaining how the Program will protect instream uses. The purpose of a DPEIS is to thoroughly assess the alternatives, including the no action alternative, of any proposal.

III. The DPEIS must consider whether more water supplies are needed and the public interest when weighing the alternatives.

24-6 The DPEIS fails to analyze whether each component of the Management Program is needed. The Legislature required Ecology to develop water supplies. The Legislature did not, however, tell Ecology to pursue water supplies blindly without considering the level of need for more water and the effect on the public interest. The DPEIS should thoroughly consider the need for more water supplies and discuss whether the need is in the public interest.

24-7 In assessing the need for more water, Ecology relied on the Draft Columbia River Water Supply Inventory and Long-Term Water Supply and Demand Forecast Report (Forecast Report). The Forecast Report was likely drafted simultaneously with the DPEIS. A more logical process would be to draft the Forecast Report, take public comments, modify

the Forecast Report, then base the DPEIS on the need described in the Forecast Report. Because of the importance of the Forecast Report, Ecology should have the Report peer-reviewed.

Instead of waiting for a reliable Forecast Report, the DPEIS and the Forecast Report proceeded on parallel tracks, which demonstrates that Ecology developed the DPEIS without considering the level of need for additional water supply, if any. There is no discussion in the DPEIS of whether the Forecast Report demonstrates a need for additional water supplies. In fact, the Forecast Report admitted that the data and predictions were unreliable at this stage. In addition, the Forecast Report is not at all clear that there is a genuine need for additional water supply. The Washington State University study showed that agriculture, by far the dominant water use, is not expected to grow.

Each "need" should be analyzed in the context of the greatest public interest. Ecology should not just issue water rights to all beneficial uses. Ecology should weigh the value of the competing beneficial uses. For example, agriculture is a beneficial use, but this does not end of inquiry of whether additional water should be allocated to all agricultural users. Is it best for the public interest to conserve flow as instream rights to improve fish populations instead of building dams for new water rights? Considering that lack of water quantity and quality are major impediments to salmon recovery, does it make sense issue additional water rights and expand irrigation projects that reduce water quality all the while spending millions of dollars on salmon recovery? Is it best for the public interest to issue water rights based on the promise of unspecified conservation when the river is overallocated? The DPEIS should analyze these alternatives in the context of new dams and VRAs.

After Ecology analyzes whether new water supply projects are needed and the project is in the public interest, then the DPEIS should examine alternatives to meet the need. The scope of any project must be limited to meeting the need. Ecology cannot assume that it needs to grant unlimited water rights without examining whether these rights, and the means to obtain additional water, benefit the public interest. The DPEIS's assumption that the State must find new water, regardless of the consequences, is a fundamental flaw of the DPEIS.

IV. The DPEIS fails to analyze the impact of issuing new water rights

The Management Program is premised on the general idea of issuing new non-interruptible water rights derived, in part, on water conserved by agriculture and other uses. The DPEIS fails to analyze the environmental impact of overallocating the river's water. Overallocation could occur because Ecology's knowledge of water availability is not precise and/or the proposed conservation programs do not work.

Ecology does not have precise spatial or temporal data on the volume of water available for out-of-stream use, how much is being used, the volume of paper rights, the amount of water potentially conserved, and the amount of water that will accrue in the river because of conservation. Despite these critical unknowns, Ecology proposes to issue new water rights based on speculative conservation projects. All conservation projects used for new water rights must be measured after the date that ESSHB 2860 passed, July 1, 2006. Starting from July 1, 2006, Ecology needs at least one year of flow data to serve as a baseline from which to judge the amount of water conserved. Without the comparative baseline,

Ecology cannot assess the amount of water conserved. Ecology must also consider all inchoate rights. In addition, Ecology should independently review all proposed conservation estimates and determine how much water accrues in the Columbia River. Only after Ecology measures quantifiable accrual of conserved water in the river can Ecology issue new water rights. Further, all VRAs and all new water rights should be conditioned upon the success of the conservation projects.

The DPEIS does not explain the process by which Ecology will decide when conserved water is available. Worse, the DPEIS fails to analyze the potential for the Management Program to fail because the conservation projects did not work or because the complex assessment of water availability was incorrect. Overallocation is a very real possibility in the Management Program. As such, the DPEIS must analyze the impacts of overallocation. What impacts occur when river flow drops below the minimum necessary under Washington law or the ESA for salmon? If flow drops below the minimum, what happens to new uninterruptible rights issued by Ecology? What is the impact on the farmers, municipalities, industry, and fish? What alternative methods could Ecology employ to avoid overallocation?

V. Water Quality

Dams and irrigation projects degrade water in nearly every way imaginable. The DPEIS fails to assess adequately that impact of the Program on water quality. Each facet of the Program – water transfer, water storage, and increasing water rights – will degrade water quality in the Columbia River and tributaries. New dams and reservoirs, both on and off channels, are extremely effective at raising water temperature and reducing the dissolved oxygen levels. High temperatures and low dissolved oxygen are leading causes of the demise of salmon. It is surprising then that Ecology would contemplate additional dams and reservoirs in the name of fish conservation.

In addition to dams, irrigation projects degrade water quality. It is widely accepted that storage projects have greatly degraded water quality. See DPEIS at 3-23 – 3-26. A 2006 USGS study found high nutrient loading, elevated concentrations of pesticides, organochlorine compounds, and other pollutants in both sediment and fish in the Columbia Plateau/Yakima River Basin. Dams and irrigation impoundments also inhibit mixing, introduce elevated concentrations of dissolved gases, trap contaminated sediment, raise temperature and lower dissolved oxygen. DPEIS at 3-24 – 3-25.

The DPEIS provides a long but generalized list of a storage facility's long-term impacts on water quality. DPEIS at 4-8. The DPEIS, however, fails to assess how these impacts will affect the population and long-term survival of salmonid populations and other aquatic life. In addition, the DPEIS fails to analyze the effect of the pollution on human uses, such as domestic, recreation, and drinking water use. Neither the water quality section nor the fish and wildlife section adequately addresses the impact of dams on salmon populations, including threatened and endangered fish.

The DPEIS also fails to consider how the dams and water withdrawals will affect the status of the Columbia River's listing as water quality limited on the 303(d) list. Ecology listed the Columbia River as water quality limited for temperature, dissolved oxygen, fecal

coliform, and several toxic pollutants. As such, the State cannot allow the addition of any of these pollutants into the already degraded system. Irrigation water will add heat, fecal coliform and toxic pollutants, and will contain nutrients and chemicals that will decrease dissolved oxygen. The DPEIS fails to analyze the Management Program's effect of adding heat, fecal coliform, and possibly toxic pollutants, and reducing the dissolved oxygen, on the Columbia River's status as water quality limited. In addition, Ecology's issuance of new water rights will violate the Clean Water Act §303(d) because removal of water creates warmer water that is more concentrated in pollutants. Ecology's plan to heat water in reservoirs will only exacerbate the problem. Further, the DPEIS fails to inform the public of the Ecology's duty to prohibit further degradation of 303(d)-listed streams.

VI. Alternatives

Section 2.2 discusses the "Alternatives for Program Implementation." Consistent with the unorthodox nature of this DPEIS, this section doesn't present alternatives to proposed actions, but rather presents different ways that Ecology may interpret the ambiguous sections of the statute. This interpretation should occur in rulemaking. The inclusion of these policy decisions in an DPEIS is not appropriate. CRK encourages Ecology to engage in an administrative rulemaking process with open public input to interpret the statute.

Even if these policy decisions are appropriate in a DPEIS, the DPEIS does not discuss the environmental impacts of each interpretation, as required by SEPA. Section 2.2 simply presents potential interpretations without any analysis of the impacts. An Environmental Impact Statement that does not analyze the impacts is of little use to the public. Despite these objections, CRK will provide comments on the interpretations in Section 2.2, in part because CRK is afraid that this SEPA process may wrongly substitute for rulemaking and that CRK will not have the opportunity to comment on these important interpretations.

2.2.1. Selecting Storage Projects

Ecology should neither aggressively pursue storage projects nor review storage projects proposed by applicants at this stage. Ecology should determine how much additional water is in the public interest. Ecology should then conduct a SEPA analysis on proposed projects and complete an EIS for any proposed storage project that may significantly affect the environment.

2.2.2. Calculating Net Water Savings from Conservation

The second option in 2.2.2 is too general to provide a specific response. This DPEIS should evaluate the environmental impacts of the alternatives, not present vague potential policy decisions. In general, CRK supports developing a methodology that goes beyond just consumptive use and irrigation efficiency.

2.2.3. Funding Criteria for Conservation Projects

Ecology must use the net water savings from the funded conservation projects to benefit instream flows and water quality only. This is the only logical allocation of the 1/3 of the "new" water that is dedicated to instream rights. Ecology cannot read the statute to say that 2/3 of the water is allocated for out-of-stream use plus the 1/3 of the water that is allocated for instream use can be used to mitigate additional out-of-stream use. This strained

24-19 interpretation would in practice allocate all of the "new" water to out-of-stream use or mitigation.

2.2.5. Conditioning Water Rights on Instream Flows

24-20 Ecology should continue to condition the changes of water rights on adopted instream flows. Ecology should not waive the instream flow water right.

2.2.6. Initiating VRAs

24-21 Ecology should not initiate VRAs. Ecology should review the applications for VRAs and only grant enter into VRAs after at least a year of collecting baseline data on each particular proposed VRA to determine how much water the VRA actually conserves and how much water accrues in the river. Ecology should not issue any water rights or agree to issue water rights until the conservation is proven on the ground.

2.2.7. Processing VRAs

24-22 Ecology should continue to process the applications according to the Hillis Rule. The VRAs, whatever Ecology defines as a VRA, should not be given preference to move in front of other water users.

2.2.8. Defining "No Negative Impact"

24-23 Ecology should limit withdrawals based on conservation to the same pool, but only downstream of the point of net water savings, and not downstream of the pool. Any conserved water that is allowed out of the stream should be used locally in the same pool. A withdrawal anywhere but the same pool does not realistically remove conserved water.

2.2.10. Coordinating VRA Mitigation and Processing New Water Rights

24-24 Ecology should deny the application for a VRA water right if mitigation water is not available. Ecology must make clear rules that successful mitigation is necessary prior to application.

2.2.12. Funding Projects Associated with a VRA

24-25 Ecology should not spend conservation project money for mitigation associated with VRAs. VRAs are likely to profit greatly from the subsidized water that Ecology provides. The conservation money for mitigation is better spent on increasing instream rights by verifying the effectiveness of conservation projects.

2.3. No Action Alternative

24-26 The DPEIS's "No Action Alternative" is deficient because it fails to assess the environmental impact of this alternative, as required by SEPA. As such, the DPEIS does not provide the public with a comparison of the alternative's impacts. The PEIS should further explain the environmental harms and benefits of not implementing the Management Program, including the benefits of not constructing additional dams, not releasing warm, polluted water into the rivers, and not issuing more water rights on an overallocated river.

VII. New dams are unacceptable.

24-27 We oppose new dams and large water storage projects on the Columbia River. As an organization who witnessed the State's assurances that the statute and resulting Management

24-27 Program would benefit fish, we are surprised that the final outcome was essentially a dam-building bill complete with a \$16,000,000 budget and a \$68,000,000 expected cost. It is unlikely that the public would support this bill had they known the true intention and the end result. It is disingenuous to claim that this Management Program will help salmon. Ecology should encourage the Legislature to reconsider the bill.

24-28 The Columbia River has an active storage capacity in excess of 46 million AF, which is equivalent to one-third of the mean annual flow of the Columbia River at The Dalles. This tremendous storage capacity has turned a wild and free-flowing Columbia River into a series of slow-moving pools, which have contributed to the decimation of salmonid populations. Ecology's proposal to allow the construction of new dams and withdrawal of additional water is misguided. Even if more water is made available for instream flows by storing water, the stored water will be highly polluted with increased temperature and nutrients, and decreased dissolved oxygen, organic loads, and woody debris. Warming stagnant water in a reservoir and dumping back into the river will not help fish. The statute directs Ecology to evaluate

24-29 alternative means of supplying water prior to the construction of new dams.

24-30 In any discussion of new dams, the DPEIS must include a thorough discussion on the cumulative impact on threatened and endangered salmonids in the Columbia River Basin. The DPEIS analysis is deficient. Further, the DPEIS fails to adequately analyze the effect of

24-31 destroying thousands of acres of wildlife habitat due to inundation by the reservoir and the resultant expansion of agricultural land on to high desert habitat.

24-32 The DPEIS should thoroughly examine all alternatives instead of proceeding with the assumption that dams are necessary and will be constructed. Ecology must conduct a SEPA analysis for each individual project because the DPEIS does not contain project-specific information. Ecology should make clear in the PEIS that it will conduct a project-specific SEPA analysis. The analysis must examine the need for storing waters, whether the storage is in the public interest, and all direct, indirect, and cumulative effects of building a new dam. Ecology should be open and transparent about its decisions to evaluate the need for storage projects. Simply because the Legislature directed Ecology to consider storage projects, does not mean that new dams are a prudent or even feasible prospect on the Columbia River tributaries. Further, the statute did not instruct Ecology on the amount of water appropriate for storage and conservation.

VIII. The DPEIS fails to analyze the cumulative effects of VRAs

24-33 RCW 90.90.030 authorizes Ecology to enter into VRAs to: provide new water for out-of-stream purposes; streamline the application process; and protect instream flows during July and August. The VRAs will have multiple cumulative effects that are harmful to salmonids and instream flow, and harmful to irrigators who are not part of a VRA. The DPEIS fails to analyze these effects.

First, the DPEIS does not provide adequate information on how the VRAs will operate. It is impossible to analyze the cumulative impacts with such incomplete information. The DPEIS does not explain: What does it take to become a VRA? How will VRAs affect other water users? How will Ecology monitor and measure the conservation projects? Who manages the VRAs? What are the consequences for violating the agreement?

24-33 Ecology must provide detailed information in the PEIS regarding the important effects of VRAs on the river, the fish, and the other farmers. In addition, much of the confusion and unclarity regarding VRAs is better addressed in rulemaking, not a DPEIS. We encourage Ecology to begin an open and transparent rulemaking process that includes interested parties beyond just the irrigators. After rulemaking, any proposed VRA should undergo SEPA analysis.

24-34 Second, VRAs only need to protect instream flows in July and August. There is no scientific basis for not protecting flow during the rest of the year. The DPEIS fails to analyze the impact of the unlimited reduction of flow on fish and other aquatic organisms outside of July and August.

24-35 Third, the DPEIS does not adequately analyze the cumulative effects of inter-basin and inter-pool water transfers pursuant to the VRAs. Both of these transfers could alter the long-term flow regimes throughout the Columbia Basin. This is especially true if the transfers are based on conservation of water in different pools or different basins. The idea of allowing additional water rights from 200 miles downstream because a farmer in northern Washington conserved water is absurd. The DPEIS fails to analyze the multiple scenarios of flow disruption and contamination that would result from the interaction of VRA transfers. Further, the DPEIS fails to analyze the potential for interbasin transfer of pollution or organisms, such as invasive species.

24-36 Fourth, the DPEIS does not analyze the cumulative effect of the VRAs evading consultation with Washington Department of Fish and Wildlife regarding water rights applications. The VRAs should not get special rules that shut out the expert agency. Further, the DPEIS fails to analyze the impact on the VRAs ability to shut out the public by limiting the comment period to 60 days, an impossibly short time to consult on complicated water rights. The DPEIS must explain the effects of this time-frame, including the effect on fish, the concerned public, and other water users who are not in a VRA. Does system give a disadvantage to farmers who are not in VRAs?

IX. The DPEIS fails to identify the purpose and the effects of the Supplemental Feed Route.

24-37 The DPEIS fails to identify to the public that the purpose of the Supplemental Feed Route is to extend the Columbia Basin Project (CBP) eastward to irrigate new farmland. This purpose should be clearly explained in the PEIS. The DPEIS failed to include a discussion of the cumulative impacts of expanding then subsidizing water-intensive agriculture on fish, wildlife, water quality, and sustainable agriculture that uses less water.

24-38 The Supplemental Feed Route will harm Crab Creek by utilizing the creek as an irrigation ditch to transport irrigation water. The irrigation water will degrade water quality in Crab Creek and disrupt the flow regime. Further, adding additional irrigation water to Potholes Reservoir will degrade the reservoir's water quality. The DPEIS fails to adequately analyze the impact due to degraded water quality in Crab Creek or the Potholes Reservoir.

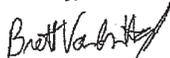
24-39 Further, the purpose of the cursory discussion of the Supplemental Feed Route in the DPEIS is confusing because Ecology does not include project-level specifics. Why is the

24-39 discussion part of the DPEIS? Does Ecology intend to conduct a SEPA analysis for this project?

X. Conclusion

24-40 Thank you for considering these comments. The overall impression we get is that Ecology is rushing through the Management Program without careful thought of the environmental impacts. We understand the statutory timelines, but an unrealistic statute does not trump Ecology's mandate to protect Washington's environment, follow state substantive and procedural law, and encourage public participation. Ecology's mission is to "protect, preserve, and enhance Washington's environment, and promote the wise management of our air, land and water." The ambiguous treatment in the DPEIS of new dam building, binding agreements for new water rights, and the destruction of thousands of acres of important habitat demonstrates that Ecology is not engaging in "wise management" nor being open with the public.

Sincerely,



Brett VandenHeuvel
on behalf of:

Brent Foster
Columbia Riverkeeper
724 Oak Street
Hood River, OR 97301

Susan Evans
Citizens for a Clean Columbia
Wenatchee, WA

Comment Letter No. 24 – Columbia Riverkeeper

- 24-1. Comment noted.
- 24-2. The Management Program was evaluated at a programmatic level. Please see the Master Responses regarding a Programmatic EIS and Section S.4 in the Final EIS for information on future project specific review.
- 24-3. Information clarifying future environmental review has been added to Section S.4 of the EIS.
- 24-4. See the responses to Comments 24-2 and 24-3.
- 24-5. See the revised Section 2.1.2.4 regarding Ecology's program to improve instream flows.
- 24-6. See the response to Comment 21-3.
- 24-7. See the response to Comment 23-9.
- 24-8. See the response to Comment 21-3.
- 24-9. The purpose of the water inventory and demand forecast and the new water information system authorized by the Columbia River Water Management Act is to help provide Ecology with additional information for processing water rights. See the response to Comment 2-19 regarding monitoring the success of VRAs. Issuance of a VRA does not alter the 4-part test required for issuance of a new water right permit.
- 24-10. See the response to Comment 2-19.
- 24-11. Water quality impacts are discussed in Sections 4.1.1.3, 4.1.2.3, 5.1.1.3, and 5.2.1.3. Additional information on water quality impacts of storage facilities will be provided during project level review.
- 24-12. Comment noted. See the response to Comment 24-11.
- 24-13. As stated in your comment, the EIS includes a discussion of water quality impacts of storage facilities in Section 4.1.1.3. Potential impacts of water quality of fish are noted in Section 4.1.1.6. Because this is a Programmatic EIS, a general discussion of water quality impacts on salmonid survival is included. These potential impacts will be described in more detail during project level review.
- 24-14. Specific impacts on the status of the Columbia River's listing on the 303(d) list cannot be determined at the programmatic level. This would be determined during project level review of specific projects. Ecology acknowledges that compliance with all applicable state water quality regulations is an important goal of the Management Program, and potential projects will be assessed regarding their potential compliance with applicable regulations. Ecology acknowledges that further degradation of 303(d) listed streams would not be consistent with applicable regulations, and project-specific mitigation would be required to address these potential impacts. A brief discussion of how the TDG and temperature TMDLs for the Columbia River Basin would provide the framework for ensuring that the cumulative impacts

from individual projects would not negatively affect the status of the Columbia River's listing on the 303(d) list was added to Section 4.3 of the Final EIS.

- 24-15. RCW 90.90 did not provide explicit rulemaking authority to implement the Management Program. In two instances, Ecology has chosen a preferred alternative that may require rulemaking because the policy choice relates to statewide management of the Water Resources Program. See sections 6.2.2 and 6.2.7. Ecology is using the Programmatic EIS to determine the potential impacts of implementing the program. In addition, Ecology established the Columbia River Policy Advisory Group to help identify policy issues associated with implementing the Management Program, provide Ecology with a range of perspectives on policy choices and priorities, and assist Ecology in setting criteria for funding of storage and conservation projects. The Policy Advisory Group represents a broad spectrum of interested parties and has provided Ecology with input on the Policy Alternatives in Chapter 6 of the Final EIS.
- 24-16. Chapter 2 is a description of the project components. Additional discussion of the policy alternatives is included in Chapter 6. See also the response to Comment 22-8.
- 24-17. See the response to Comment 12-1.
- 24-18. See the response to Comment 9-8.
- 24-19. See the response to Comment 9-9.
- 24-20. See the response to Comment 9-11.
- 24-21. See the response to Comment 9-12.
- 24-22. See the response to Comment 9-13.
- 24-23. See the response to Comment 9-14.
- 24-24. See the response to Comment 9-15.
- 24-25. See the response to Comment 9-18.
- 24-26. Chapter 2 is a description of project components and alternatives. The impacts of the alternatives are described in Chapters 4, 5, and 6. The impacts of the No Action Alternative are compared to the action alternatives in those chapters.
- 24-27. Comment noted.
- 24-28. Comment noted.
- 24-29. Ecology will evaluate alternative means of supplying water, along with the other provisions of RCW 90.90.010(2) prior to expending funds on the construction of new storage facilities.
- 24-30. Additional information has been added to the Cumulative Impacts discussion, Section 4.3.

- 24-31. See the response to Comment 9-3.
- 24-32. See the responses to Comments 24-2 and 24-3.
- 24-33. See the response to Comment 2-27 and Comment 22-21.
- 24-34. See the Master Response regarding July/August mitigation.
- 24-35. Ecology cannot speculate as to what specific VRA proposals might emerge in the future, nor the specific tributaries, pools, and geographic areas within the Columbia Basin of Washington State that might be affected. The Final EIS acknowledges that flow disruptions, water quality impacts, and introduction of invasive species may occur associated with implementation of the Management Plan. Subsequent project level environmental review will address these issues in more detail. With regard to review of the environmental impacts associated with the current CSRIA VRA, Ecology intends to conduct phased SEPA review of that proposal per provisions of WAC 197-11-060 of the SEPA Rules. The specific approach is outlined in Section 2.6.
- 24-36. The legislation authorizing VRAs does not eliminate review of water rights applications by the Washington Department of Fish and Wildlife. The 60-day agency review period was established by the legislation to expedite processing of VRAs. Ecology will prepare Implementation Plans for VRAs, which will undergo SEPA review.
- 24-37. The Supplemental Feed Route is not being constructed to extend the Columbia Basin Project. As stated in Section 2.5.2, the purpose of the Supplemental Feed Route is to improve the capacity of the feed routes to supply water to Potholes Reservoir. No additional water will be delivered to Potholes Reservoir. The Supplemental Feed Route would also increase the flexibility of the East Low Canal to supply the 30,000 acre-feet of replacement water to the Odessa Subarea (Section 2.5.1).
- As a separate project Reclamation is evaluating options for supplying additional water to the Odessa Subarea (Section 2.1.2.1). As stated in the Management Program EIS, Reclamation and Ecology will prepare a NEPA/SEPA EIS to evaluate the impacts of extending water to the Odessa Subarea.
- 24-38. As stated in Section 1.1 of the EIS, the impacts of the Supplemental Feed Route will be examined in Reclamation's NEPA environmental review of the project, which is expected to be complete in July 2007. The comment incorrectly states that additional irrigation water will be added to Potholes Reservoir. See the response Comment 24-37.
- 24-39. See the response to Comment 24-38 regarding the NEPA analysis of the project. Also as stated in Section 2.5 of the EIS, the Supplemental Feed Route will likely require an additional SEPA threshold analysis. Ecology will determine if this is required after completion of the NEPA review.
- 24-40. Comment noted.



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483 W. First Ave., Suite 240
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November 17, 2006

Derek I. Sandison, Regional Director
Central Regional Office
Washington State Department of Ecology
15 West Yakima Avenue, Suite 200
Yakima, WA 98902

RE: Comments on the Draft Programmatic Environmental Impact Statement for the Columbia River Water Management Program

Dear Mr. Sandison

The Lands Council (TLC) is a non-profit member organization that works to safeguard and revitalize our Inland Northwest forests, water, and wildlife through advocacy, education, effective action, and community engagement. The members, staff and board of TLC appreciate the opportunity to comment on the Draft Programmatic Environmental Impact Statement for the Columbia River Water Management Program.

It is the understanding of The Lands Council that the Columbia River Water Management Program is currently under development to assist in implementation of the Columbia River Water Management Act. This Act, also known as ESSHB 2860, directed the Washington State Department of Ecology to "aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses." We understand that the development of new water supplies would include construction of small and large reservoirs, aquifer storage and recovery (ASR) projects, conservation efforts and other projects that are yet to be determined. It is also our understanding that these new water supplies would ultimately go toward issuance of pending water rights, salmon recovery, conversion of interruptible water rights to uninterruptible water rights, community/industrial/economic development and instream uses. Of these new water supplies, 1/3 would be allocated to instream use while 2/3 would be made available to out-of-stream uses.

The Lands Council has several concerns and questions regarding the various proposals within the PDEIS, as well as how those proposals will ultimately affect the environment and natural resources of Washington State.



Overall Concerns

1. The most recent Biological Opinion suggests higher flows for salmon between April and August. Currently these flows are not being met at Priest Rapids and McNary Dams. Biological Opinion flows are also not being met during parts of the year below Bonneville dam. During low flow years, flows past these dams drop farther below the Biological Opinion Flows. With endangered salmon at constant risk of low water flows, how was the 1/3 to 2/3 rule developed? Would it not be more appropriate to provide additional water to boost salmon flows during low flow periods?
2. How was it determined that April through August were the only months that need additional flows? With the lifecycle of salmon using the river system at different times of the year, why are these months the one time of year focused on within the PDEIS?
3. There are other months when the Biological Opinion flows are not met at Bonneville, McNary and Priest Rapids dams, especially during low water flow years. Will conversion of interruptible water rights to uninterruptible water rights allow for withdrawals during these low flow periods? Would there still be a means of interrupting these water rights to add flows to help protect salmon?
4. The idea of "New Water" is very misleading to people from the general public when reading this PDEIS. After talking with several members of The Lands Council and the general public, it became clear that this wording is confusing. People generally thought that "New Water" meant that there was water coming from a distinctly different source, other than the Columbia River, but that the water was being used in the Columbia. One person even commented "are they flying in icebergs as a new source of water or pumping it over from another river system?" It should be spelled out in the PDEIS that this "New Water" is actually the same water, but that it could be stored and released at different times of the year.

Dam Building

This section is being written under the assumption that the Hawk Creek site will be chosen for the development of a large off-stem storage project. Ecology and the Bureau of Reclamation have stated that they hope to provide water to the Columbia Basin Project through the development of a large storage project. Since the Hawk Creek site is the only site currently under consideration above Grand Coulee Dam, the diversion point for the Columbia Basin Project, it was assumed that this would be the likely candidate for the dam and reservoir construction. This location would also provide the greatest flexibility in management and utilization of the new water supply.

1. Construction of a dam at this location would inundate numerous cultural sites that are of importance to both the Spokane and Colville Tribes. How would these losses be justified and mitigated? Will the tribes allow for the loss of these sites without proper compensation?
2. This site could be affected by the yearly draw down of Lake Roosevelt. During this time, the surface of Lake Roosevelt is several miles from the proposed site and close to 100 feet lower than during full pool. Pumping to the reservoir during

- 25-6
- these times would require extensive alterations to the channel floor or construction of long access penstocks. How would these factors be addressed?
3. During release of water from the reservoir, would water flow freely over the current waterfall below the dam site or would it flow back through the water supply penstock? Would these actions cause scouring on the waterfall and redistribution of sediments? Would reverse flow through a penstock provide a means of harnessing lost hydroelectric power? If water were released when the elevation of Lake Roosevelt is lower than full pool, would there be an effect on Lake Roosevelt sediments?
 4. In the constructed reservoir, would water be drawn down or reservoir refill occur during waterfowl nesting seasons? If so, how would waterfowl be affected (abandoned nest sites, flooded nest sites, loss of habitat)? Would it be possible to operate the reservoir to reduce or eliminate these impacts?

Canal Construction

- 25-7
1. The PDEIS looks at possible construction of the East High Canal, a project that is currently in deferred status in the US congress. Looking at initial plans, this canal would cross large expanses of basaltic bedrock. The construction costs of this canal system would be in the billions of dollars. How will this project be funded and how will taxpayers benefit?
 2. Initial drawings of the East High Canal system show that it would cross large areas of intact shrub-steppe habitat. This habitat is currently in decline in Washington State, with less than 40% of the historical area left. How will canal construction further fragment this habitat? Will there be measures in place to protect this habitat from further degradation should agricultural conversion occur near the canal?

Habitat Loss

- 25-8
1. Prior to community development and agricultural conversion in the Columbia Basin, it is estimated that there were 10.4 million acres of shrub-steppe habitat. In 1996, a study showed that only 4.6 million acres remained: a loss of almost 60 percent. Since then, there has certainly been an additional loss of this fragile habitat that is crucial to several endangered species. With additional water supplied to agriculture and communities, will more of this habitat be lost and how much?
 2. Current sites proposed for large off-stem storage projects would result in the loss of thousands of acres of habitat. These losses include prime waterfowl nesting wetlands, habitat used by various threatened and endangered species and other habitats that are used throughout the year for other species not currently listed. How will endangered/threatened species conflicts be resolved? Would habitat loss associated with dam construction cause other species to enter a protected status?
- 25-9

Economics

- 25-10
1. Construction of the large storage dam and canals would cost several billion dollars with minimal returns on this investment. Currently, irrigators within the Columbia Basin Project receive irrigation water at extremely low prices. The

25-10

- PDEIS actually shows a net loss of funds for many crops that would receive the irrigation water. Can this expense currently be justified? How would these projects be funded? It would be nice to see a cost/benefit analysis of the projects and the expected returns to farmers, communities and industry.
2. The construction projects within the PDEIS appear to primarily benefit large agricultural businesses. How would average citizens benefit from these projects? Would average citizens be required to help fund these projects through increased taxes or state bonds?

At this time, The Lands Council cannot support the construction of large dams and canals to provide "New Water" to fulfill water right requests or for conversion of interruptible water rights to uninterruptible water rights. We would, however, like to see strict conservation programs put in place to help reduce the amount of water that is currently being wasted through inefficient irrigation practices (flood irrigation and unlined/uncovered irrigation canals), city irrigation plans and for wasteful industrial developments.

25-11

We would also like to see a return to dryland farming. Agriculture should work with the environment, not against it. With less than 10 inches of rainfall per year within the Columbia Basin, farmers should return to farming practices that do not require significant application of irrigation water to provide a beneficial crop return. Under current irrigation practices, the effective precipitation is over 40 inches per year. Many farmers that do not receive irrigation water are able to produce crops without requiring additional irrigation. A return to these crops that do not require large quantities of extra water would be highly beneficial to water conservation efforts

We believe that through strict conservation practices in communities, on farms and by industry, enough water would be saved to provide a large portion of the water that is currently being sought. This savings in water would allow for smaller projects to be considered that would not cause large-scale environmental degradation.

Thank you for the opportunity to comment on the Draft Programmatic Environmental Impact Statement for the Columbia River Water Management Program. Furthermore, The Lands Council also supports the comments made by the Columbia Institute for Water Policy and The Sierra Club. We look forward to your responses on all of these comments.

Sincerely,



Brian Walker
Watershed Program Director

Comment Letter No. 25 – The Lands Council

- 25-1. Comment noted.
- 25-2. See the Master Response regarding July/August mitigation.
- 25-3. See the Master Response regarding the mitigation period.
- 25-4. See the Master Response regarding the mitigation period.
- 25-5. The purpose of the legislation is to develop “new water supplies.” While it is not possible to create new water, it is possible to develop new supplies of water through storage and conservation projects. The new water supplies can change the purpose of use of water and the timing and location of the delivery of water. The legislation did not consider bringing water in from another area to supply the Columbia River basin.
- 25-6. As stated in Section 2.1.2.1, Ecology and Reclamation are cooperating on a study to determine the feasibility of constructing large, off-channel reservoirs. Hawk Creek is one of the sites being evaluated in the Pre-Appraisal Report. The Pre-Appraisal Report will be released later in 2007. Section 2.1.2.1 also states that additional environmental review will be conducted on any of the proposed reservoir sites.
- 25-7. The Programmatic EIS does not include construction of the East High Canal. As stated in Section 2.1.2.1, Reclamation and Ecology are conducting a study of supplying additional Columbia Basin Project water to the Odessa Subarea. As stated in the EIS, additional appraisal level studies will be conducted and a NEPA/SEPA EIS on the project will be initiated in fall 2007.
- 25-8. See the response to Comment 1-84.
- 25-9. As stated in Section 2.1.2.1, the specific impacts of site selected for off-channel storage would be evaluated in future NEPA and SEPA reviews.
- 25-10. Additional environmental and economic studies will be conducted prior to the construction of any large storage dam or canal project. The studies would include cost: benefit analyses to determine if the costs could be justified. Funding sources for large-scale projects would likely come from legislative appropriations at either the state or federal level. Appropriation of the funds would be debated in the legislative arena.
- 25-11. Comment noted.



Upper Columbia River Group

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November 20, 2006

Derek Sandison
Department of Ecology CRO
15 W. Yakima Ave., Suite 200
Yakima, WA 98902-3452

RE: Programmatic EIS

Dear Mr. Sandison,

Please accept these comments on the Columbia River Water Management Program's draft Programmatic Environmental Impact Statement, submitted on behalf of Sierra Club's Upper Columbia River Group.

A quote from Blaine Harden's book, "A River Lost - the Life and Death of the Columbia", seem appropriate to open these comments.

Testifying before the state legislature in 1984, [WSU economist Norm] Whittlesey ... calculated that each one thousand-acre farm added to the [Columbia Basin] Project would cost the Northwest about \$200,000 a year in higher utility bills. That was the cost of replacing the electricity lost when farmers took water from the river. ...

As for construction cost, Whittlesey calculated that any expansion of the Project would cost \$5,000 an acre, with farmers paying just \$115.

The professor further concluded that expanding the Project would increase the country's surplus of grain, take water away from migrating salmon, and penalize the vast majority of Northwest farmers, who lived outside the Project and yet would have to pay higher taxes and electricity bills to support a scheme that only benefited their competitors.

Whittlesey's 1984 economic analysis effectively put a stake in the heart of expansion of the Columbia Basin Project. Twenty years later the economics are even more unworkable. But in 2006, Governor Gregoire gave her highest legislative priority to passing the dam bill. Parts of the Columbia Water Management Program are designed to increase the farms served by the Columbia Basin Project while elsewhere the Program will create new publicly-funded subsidies for agriculture. None of this makes economic sense for taxpayers and ratepayers who foot the bill.

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The Washington Legislature delivered by giving the governor what she wanted, without adequate consideration of the economic, environmental and social consequences of authorizing a new bureaucracy within the Department of Ecology with a mission to develop water supply.

As noted on the Dept of Ecology's website,

This State Environmental Policy Act (SEPA) Draft Environmental Impact Statement (EIS) has been prepared to assist the Department of Ecology (Ecology), other participating agencies and entities, and the public in evaluating conceptual approaches to the development of a Columbia River Water Management Program. The Management Program is being developed to implement the Columbia River Water Management Act (Chapter 90.90 RCW), passed by the state legislature in February 2006.

The purpose of the legislation is to develop new water supplies "to meet the economic and community development needs of people and the instream flow needs of fish." The legislation directs Ecology to "aggressively pursue" the development of water supplies. The purpose of this programmatic Draft EIS is to describe the potential impacts that could be associated with the components of the Management Program. The major components evaluated in this document are storage, conservation, Voluntary Regional Agreements, and policy alternatives for implementing requirements of the legislation. The Draft EIS also evaluates potential impacts associated with three actions identified for early implementation-drawdowns of Lake Roosevelt, a supplemental feed route to supply Potholes Reservoir, and the proposed Columbia-Snake River Irrigators Association Voluntary Regional Agreement.

Now the public is confronted with a programmatic environmental impact statement that fails to get to the heart of the issues. My experience with programmatic EISs has found that they are plans to do more planning -- where key analysis and decisions are deferred to another day and document, and when that day and document arrive the information and analysis is not there. The result: the agency and public officials set up a shell game with eastern Washington's rivers and habitats where the public is forever chasing the pea -- while the environmental damage takes place. The programmatic EIS is a red flag for a flawed political process.

The following are the salient points regarding the PEIS:

(1) No More Dams for the Columbia Basin

Dams destroy shrub-steppe, ephemeral streams, and wetlands. These lands support a diversity of species, including endangered wildlife, that should be protected. These last pockets of Columbia Plateau habitat are valuable and should be protected from development.

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26-4 Hawk Creek, Lower Crab Creek, Foster Creek & Sand Hollow Creek. The state is now targeting these watersheds. If you have knowledge and information about the wildlife, habitat, aesthetic and other values of these areas, this would be a good time to share it with the Department of Ecology.

26-5 Dams will not help fish. The premise that new dams and reservoirs will help fish by releasing one-third of the "new" water into the Columbia River – is false. Solar-heated, sediment-laden, slackwater from reservoirs cooking in the heat of the Columbia Plateau summers will harm fish, not help them.

26-6 Water is not available. Most of the water of the Columbia River is already allocated to irrigation, hydropower, and target flows for fisheries, year-round. While the Washington legislature has imprudently legislated otherwise, that does not make it true. The PEIS is deficient for failing to acknowledge and discuss necessary mitigation for months other than July and August.

26-7 The PEIS does not create a coherent "big picture." Alleged demand for water supply is being driven from several locales, including irrigators in the Columbia-Snake River region, Yakima basin and Odessa Subarea. Even assuming a modest additional amount of water can be taken from the Columbia River, there is only so much to go around. How does the state propose to choose between irrigators in different parts of the Columbia basin? This PEIS fails to address this fundamental question.

26-8 In reality, there is no demand for water. The state's Water Supply Inventory (issued almost simultaneously with the Draft PEIS) indicates that there will be little demand for new irrigated cropland in the coming decades. If this is the case, why is Washington throwing millions of dollars at studies and proposals for new dams and storage reservoirs? To the extent there is local demand for water, local irrigators should pay for it through water markets and transfers, pricing and other economic tools. The state should not subsidize water for agriculture.

(2) Sustainability is a key issue for our agricultural communities.

26-9 Sustainable agriculture. The state should use its funding and resources to promote sustainable agriculture. Sustainable agriculture means environmentally friendly farming methods that allow the production of crops and/or livestock while preserving and improving the ecosystem, including maintaining soil fertility and water quality and quantity, preserving biodiversity, and otherwise protecting natural resources.

New dams are the antithesis of sustainable agriculture. Period.

New dams are subsidies for corporate agriculture. The Columbia Basin Project is already one of the most heavily subsidized irrigation projects in the country. Washington has neither the resources nor the need to extend this subsidy to corporate farms. The state should get out of the dam-building business before it becomes invested in projects that damage the environment.

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(3) The Programmatic EIS fails to consider cumulative effects

26-10 Cumulative effects are changes to the environment that are caused by an action in combination with past, present and future actions, human and otherwise. The PEIS does not consider the impacts of new dam building and new irrigation projects added on top of the extensive dam, reservoir and water supply infrastructure that already exists on the Columbia Plateau.

26-11 The discussion of a new Potholes feed route fails to identify the purpose of the action: to extend the Columbia Basin Project eastward. The state is assessing whether the Bureau of Reclamation should send more water from Grand Coulee to Potholes Reservoir. However, the PEIS does not acknowledge that the feed route is intended to extend the Columbia Basin irrigation project eastward. This is "piece-mealing" – exactly what environmental impact statements are supposed to avoid.

26-12 The discussion of Potholes feed route fails to identify impacts to Crab Creek. Under the proposal, Crab Creek's natural streambed would be used as an irrigation ditch. The discussion of the impacts of this action is completely inadequate.

26-13 The discussion of "Lake Roosevelt drawdown" fails to identify impacts to the Columbia River. The state asserts that taking more water out of Lake Roosevelt (behind Grand Coulee Dam) will have virtually no impacts. There is no discussion of the overall impacts of the existing dam, reservoir and irrigation project and the extent to which this proposal would add to them.

26-14 Why is the state conducting project-level analysis of the Potholes feedroute? If the state intends to defer to the Bureau of Reclamation for future environmental analysis, what is the point of the perfunctory analysis in the PEIS?

26-15 The information in the PEIS is so generalized as to be useless. Discussion of impacts regarding dams, reservoirs, and conservation projects is without site-specific detail and of no use to determine actual impacts and mitigation associated with such activities.

(4) Voluntary Regional Agreement is a Bad Idea

26-16 The PEIS assesses a proposal to give new water rights to the Columbia-Snake River Irrigators Association using an untested new mitigation process called Voluntary Regional Agreements (VRA).

Proposed VRA would subsidize corporate agriculture. The PEIS gives examples of how the VRA would work, including proposing a 45-year interest-free loan to irrigators to pay for dam construction. The VRA is a Very Bad Idea and should be rejected.

26-17 Proposed VRA would require Columbia River mitigation only during July & August. For unknown reasons, the Washington legislature enacted a law asserting that water withdrawals are a problem for the Columbia River only during July and August. This "law" is problematic because it false. Water withdrawals from the Columbia River create adverse impacts almost

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26-17 year-round. But the PEIS would only require new VRA-based water rights to mitigate during July & August. This is incorrect and must be corrected.

(5) PEIS & Policy Choices

26-18 Rather than engage in formal public policy analysis, the Department of Ecology is using the PEIS to assess various policy choices involving water management. This dubious approach to decision making could lead to expenditure of hundreds of millions of dollars without formal rulemaking or policy analysis. The state should re-assess its method, but in the meantime, the following comments on the PEIS are needed.

26-19 Washington should not "aggressively pursue" new dams. The PEIS suggests that the Columbia River Water Management Program requires the state to build new dams. As noted above, dam-building will create significant environmental impacts. The state needs to hear otherwise.

26-20 Public investments should lead to public benefits. When Washington spends tens of millions of public dollars on water conservation projects, saved water should be applied to improve streamflows, water quality, and other public benefits.

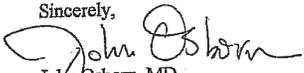
26-21 No interbasin transfers of water. The PEIS proposes to allow water savings in the watersheds to be used by mainstem irrigators. This policy option should be rejected. To the extent that water conservation can be achieved in the watersheds, the benefits should remain in those watersheds.

26-22 Do not issue new, uninterruptible water rights. The National Academy of Sciences studied Washington's Columbia River water management program and made several explicit recommendations. One of them is that the state should not issue water rights that cannot be interrupted when flows in the Columbia River drop to the point of harming fish. Nonetheless, the PEIS is considering exactly how to do that. The state needs to JUST SAY NO to new water rights.

26-23 No special treatment for VRAs. Mainstem Columbia River irrigators want to use the VRA process to cut to the front of the line, to obtain state subsidies, and to use water conservation obtained in watershed upstream of the Columbia mainstream. These proposed policies should be rejected.

Your attention to these comments is appreciated.

Sincerely,


John Osborn, MD
Conservation Chair
Upper Columbia River Group, Sierra Club

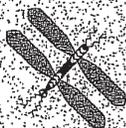
cc: Gov. Gregoire, Sen. Brown, Rep. Ormsby

Comment Letter No. 26 – Sierra Club Upper Columbia River Group

- 26-1. Comment noted.
- 26-2. See the Master Response regarding a Programmatic EIS.
- 26-3. Comment noted.
- 26-4. Comment noted. See the Master Response regarding Future Studies for Off Channel Reservoir Proposals.
- 26-5. Temperature impacts to fish are discussed in several sections of the EIS including Sections 3.4.2, 3.7.1 and 4.1.1.3. Information has been added to Section 4.1.1.6 indicating that reservoir releases to supplement flows will be managed to avoid releasing warm, sediment-laden water.
- 26-6. See the Master Response regarding July/August mitigation.
- 26-7. In developing its preferred alternatives for implementation of the Management Program, Ecology recognized the need to develop a “smart” approach to meeting the legislative mandate of “aggressively” pursuing development of new water supplies to benefit instream and out-of-stream use. Section 2.3.1 recognizes that an effective water supply strategy must link water supply development to water supply needs. The starting point for establishing water supply needs was the initial water supply and demand forecast report that was submitted to the state legislature in November 2006. The supply and demand forecast will be refined over time. The water supply inventory, also submitted to the state legislature in November 2006, established the initial portfolio of water supply projects to match with areas of documented needs. The inventory will also be subsequently refined. Ecology’s intent is to develop a water supply portfolio that is sufficiently large to meet all legitimate needs, and not result in one geographic area or type of water use receiving priority over others.
- 26-8. See the response to Comment 23-9 regarding incorporation of the Water Supply Inventory into the Final EIS.
- 26-9. See the response to Comment 3-9.
- 26-10. See the response to Comment 23-2.
- 26-11. See the response to Comment 24-37. See the Master Response regarding a Programmatic EIS.
- 26-12. See the response to Comment 24-38.
- 26-13. Ecology has determined that additional environmental review is required for the Lake Roosevelt drawdowns and will issue a Supplemental EIS on the drawdown. The Supplemental EIS will include additional information on impacts to the Columbia River.

- 26-14. The general discussion of the potential impacts associated with the Supplemental Feed Route is included in the Programmatic EIS for Ecology's use in the future SEPA threshold determination. The information in this EIS, along with the information from Reclamation's NEPA review, will be used to determine if additional SEPA review will be required for the SEPA action of issuing permits on the project.
- 26-15. Comment noted. See the Master Response regarding a Programmatic EIS.
- 26-16. Comment noted.
- 26-17. See the Master Response regarding July/August mitigation. The mitigation standard in RCW 90.90.030 is unambiguous and was established by the legislation. However, it does not alter the 4-part test required for issuance of a new water right permit.
- 26-18. Ecology considers the SEPA EIS process as an important venue for vetting policy alternatives and for assisting in the identification of preferred policy alternatives. That process does not foreclose, and actually facilitates, future formal policy making and rule making. Ecology has revised the Policy Alternatives presented in the EIS in consultation with the Columbia River Policy Advisory Group and others. In addition, Ecology is considering entering rule-making on certain provisions of the Policy Alternatives.
- 26-19. See the response to Comment 12-1.
- 26-20. Comment noted. See the response to Comment 9-9.
- 26-21. See the response to Comment 9-10.
- 26-22. All permits that would be issued must be conditioned based upon either 1) the consultation process in WAC 173-563-020(4), or 2) the VRA consultation process and mitigation. If a permit were issued without any minimum flow conditions, it would occur through adequate mitigation and appropriate incorporation of consultation comments.
- 26-23. See the response to Comment 21-15.

Center for
Water Advocacy
Water Law and Policy Services



November 8, 2006

Dan Haller
Washington Department of Ecology
Central Regional Office
15 W. Yakima Ave., Suite 200
Yakima, WA 98902-3452



**Re: Initial Report on Columbia River Water Supply Inventory & Long-Term
Water Supply and Demand Forecast, and the related draft EIS**

Mr. Haller:

Thank you for giving us the opportunity to comment on the Initial Report on Columbia River Water Supply Inventory & Long-Term Water Supply and Demand Forecast, and the related draft EIS (Report). The Center for Water Advocacy (CWA) is a non-profit public interest entity dedicated to protecting water resources in the Western United States. CWA conducts legal and scientific research, analysis, policy and litigation in its efforts to protect and restore water quantity, water quality and water rights for the health of the watershed ecosystem, preservation of cultural identity and the benefit of the public.

CWA hereby adopts and incorporates by reference into these comments the comments filed by the Center for Environmental Law and Policy dated November 1, 2006. Please contact me if you have any questions regarding our comments.

Sincerely,

Harold Shepherd
President

P.O. Box 583
Clifton, CO 81520

Phone: 541-377-0960
Email: waterlaw@uci.net

Comment Letter No. 27 – Center for Water Advocacy

27-1. Comment noted.



Citizens for a Clean Columbia Wenatchee

434 Orondo Ave. Wenatchee, WA 98801
509.662.7632 www.cleancolumbia.org

November 5, 2006

Members

Susan Evans, Convener Washington Department of Ecology
Columbia River Water Management Program

Denise Baach

Tim Hill
Joyce Redfield-Wilder

Pam Camp

Maty Hedman

Dear People:

In response to the proposals outlined in the Draft EIS for management proposals for Columbia River water, we have the following comments:

1. This aggressive process is taking place way too rapidly. We have the consequences of the dams, of Hanford, of fish ladders and canneries, of Teck Cominco Mining Smelter, et.al., to show that engineered changes that seem initially like a great idea can occur rapidly on the Columbia, and leave us with huge problems. This process needs to slow way down. Who actually will benefit from this? This needs to be spelled out and the limits of this management plan defined. Where does taking water for reservoirs end?

2. This process is not taking a whole Columbia River planning and awareness approach. The entire and huge Columbia River ecosystem needs to be the basis for very long range planning. With Canada renegotiating the Columbia River Treaty beginning in 2014, we have much reason to have Canadians, tribal and not, at the table. What if Canada decides to store and divert for their use Columbia River water? What if every stream and creek decides to have a storage facility including the tributaries in Montana, Idaho, and Oregon? A much larger, longer and more careful collaborative approach needs to take place as a foundation to prevent future water wars, and to establish a precedent for collaborative, and whole river stewardship.

2.

28-3 3. There are many factors besides fish and Washington State water rights that need to be considered. This process oversimplifies our role as stewards of the river now and in the future. For instance how warm will the waters be that are put back in the river from reservoirs or from conservation efforts? These are complex factors that can not be sufficiently safeguarded by a thirty-day citizen comment period for each proposed reservoir.

28-4 4. The conservation component and water banking suggestions seem at first review a move in the right direction. We support a conservation and water banking option ONLY until more time can be taken for careful measure of whole river ecosystem environmental impacts, and the inclusion of representatives from the entire river. We are opposed to taking more water from Lake Roosevelt next Spring, or any other early actions.

28-5 5. We request the Department of Ecology focus more on pollution prevention and cleanup of the Columbia, the liquid natural gas ports threatening the Columbia River Estuary, the rapid development taking place without regard for the shorelines all along the river and the resulting loss of habitat and ongoing degradation of water quality. It's time to stop taking from the Columbia River and start taking care of the river. The Columbia River is our life blood, and our sacred commons.

Sincerely,

Citizens for a Clean Columbia - Wenatchee
Susan Evans

Comment Letter No. 28 – Citizens for a Clean Columbia (Wenatchee)

- 28-1. Comment noted. This Programmatic EIS is the first step in evaluating the impacts of components of the Columbia River Water Management Program. Additional environmental review will occur for the major components of the program. See the Master Response for Future Studies for Off Channel Reservoir Proposals for and Section S.4 of the Final EIS.
- 28-2. As part of the Management Program, Ecology is coordinating with Canada and adjacent states on issues related to the Columbia River.
- 28-3. The future environmental review for specific projects will include evaluation of a wide range of factors, including impacts on water temperature. The thirty-day comment period that you refer to only applies to Voluntary Regional Agreements (VRAs). Any reservoir proposed would undergo technical, economic, and environmental review as required by NEPA and SEPA, as applicable, which normally takes several years and allows numerous opportunities for public comment.
- 28-4. Comment noted. As stated in Section 2.4, the Legislature considered conservation only and water marketing measures, but did not include them in the Management Program. Conservation is included as a substantial component of the Management Program. Ecology may pursue water marketing measures separately from the Management Program.
- 28-5. Comment noted.

November 20, 2006

To: Washington State Department of Ecology

From: Washington State B.A.S.S. Federation
 Lou Nevsimal, Banks Lake Project Manager
 P.O. Box 6
 Wilbur, WA. 99185
 (509) 647-5527

Subj: Draft Programmatic E.I.S.

Following review of the draft E.I.S. the Washington State Bass Federation has the following concerns and comments.

29-1 Although this program will affect Banks Lake, Billy Clapp Lake, Moses Lake and Potholes and Scootany reservoirs, no effort has been made to identify impacts to the warmwater ecosystems contained therein. You did however consider impacts on Carp in the Kettle River. Are warmwater sportsmen in this state to assume that even Carp are more important than Bass, Walleye and Panfish? That's the impression that this draft supports.

29-2 As found on page 5-5 what does "removal of existing habitat under the reservoirs really mean"? Dredging, Draining, Channelizing, what?

29-3 As found on page 2-9, Operating Banks Lake 2' above 1570' or randomly below 1565'. These actions are beyond the limits set by the B.O.R. for its' normal operations. Will those limits be abandoned, modified or ignored? Ops at 1572' will flood shoreline resorts, require modification of mooring / launching facilities and could destroy shoreline terrestrial vegetation through inundation.

Ops below 1565' will hinder mooring / launch facilities, change stratification patterns, force juvenile fish from cover and may reduce O2 / photoplankton / zooplankton regimes. Wetland areas will suffer and higher flow rates will increase entrapment losses. Will actions be taken to offset or mitigate these effects? Will E.I.S. be required for those ops?

29-4 As found on page 2-9, cycling more water through Potholes reservoir during the summer months will require higher summer water levels. This will cause the loss of willow stands inundated by the change. In only 3 years following Ops changes at Banks Lake (1984), over 90% of offshore willow groves were dead. Within 3 more years most woody debris was gone. Those areas loss were responsible for much of the Sunfish spawning / rearing cover as well as waterfowl / shorebird nesting. No mention of this is in the draft. No specifics on O2 / photoplankton , zooplankton or entrainment issues. Why not?

29-5 The W.S.B.F has and does still support a fisheries supportive drawdown regime. If Banks Lake was to be lowered to 1565' each year from July to March, riparian willows would be reestablished in the critical panfish spawning and waterfowl nesting areas. W.S.B.F. will commit resources to assist in that recovery effort.

29-6 Consistent, predictable drawdowns can be adapted to by recreation suppliers and would have little if any negative effect. Further benefits can be found in the Banks Lake Enhancement Program Master Plan. (W.S.B.F. 1996).

Comment Letter No. 29 – Washington State Bass Federation

- 29-1. Information on cold and warm water fisheries in Banks Lake has been added to the Final EIS. Information on the fisheries of Billy Clapp Lake, Moses Lake, and Potholes Reservoir was included in the DEIS and evaluated for the Supplemental Feed Routes in Section 5.2.1.6. The Management Program is not expected to affect Scootany Reservoir.
- 29-2. The habitat would be removed by flooding the area for a reservoir.
- 29-3. Comment noted. Additional information and analysis on the impacts from additional drawdown will be provided in the Supplemental EIS that Ecology will be preparing on the Lake Roosevelt drawdown.
- 29-4. The Final EIS includes an assessment of Banks Lake and potential effects of the Management Program. Additional environmental review will also be provided in Ecology's Supplemental EIS on Lake Roosevelt drawdowns and Reclamation's Environmental Assessment on the Supplemental Feed Route.
- 29-5. The future operating levels of Banks Lake have not been determined at this time. Impacts on spawning and waterfowl nesting areas will be evaluated in the Supplemental EIS that Ecology will prepare.
- 29-6. Comment noted.