



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for Environmental Law & Policy

June 17, 2008
 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 SEIS for Lake Roosevelt Incremental Storage Release
 "drawdown" Program

Dear Mr. Sandison:

Thank you for the opportunity to provide comments on the supplemental environmental impact statement for the Lake Roosevelt "drawdown" proposal. These comments are submitted on behalf of the Center for Environmental Law & Policy (CELP), the Sierra Club Upper Columbia River Group, Sierra Club Cascade Chapter, and the Columbia Water Conservation Alliance (CWCA).

CELP is a non-profit membership organization working to defend and develop ecologically and socially responsible water laws and policies. Sierra Club UCR and Cascade Chapter represent more than 30,000 members in Washington State and North Idaho who use and enjoy the Columbia River, including Lake Roosevelt. CWCA is an alliance of sporting, conservation and landowner groups in the Columbia River watershed who are dedicated sensible, sustainable and affordable water supply management.

CELP has been involved with the Columbia River Management Plan since its inception. CELP is a party to a continuing settlement agreement governing future allocations of river water to the Quad Cities of Kennewick, Richland, West Richland, and Pasco, which we believe will be affected by the Lake Roosevelt drawdown proposal.

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 shortages in the future. Policy decisions based on incomplete or erroneous information will place Washington's water security in further jeopardy and shift the burden of water shortages to future generations.

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 www.celp.org

I. GENERAL COMMENTS

1. Tribal Payments

19-2 As an initial matter, it is important to state that our organizations do not object to provisions for payments to the Colville Confederated Tribes and the Spokane Tribe to compensate for historic damage to tribal interests in the Columbia River.

2. Future Water Shortages

19-3 The state's plan for distribution of additional water from Lake Roosevelt inadequately describes problems relating to future water supply that will profoundly affect Lake Roosevelt management. First, the consequences of climate change are not yet fully known, but are projected to cause a substantial change in the Columbia River hydrograph. The headwaters of the Columbia River (i.e., the Columbia Ice Fields of British Columbia) are projected to undergo record loss of snowpack and glaciation. This will result in less water available in Lake Roosevelt during summer months. See Attachment 1.¹

19-4 Second, there is a significant likelihood that the Columbia River Treaty between the United States and Canada will be renegotiated in the relatively near future. It is understood that British Columbia residents are dissatisfied with current operation of the Canadian Columbia River reservoirs and may seek changes in river operations when the Treaty expires. This may result in less water available in Lake Roosevelt for allocation during summer months. The extent of the impacts associated with climate change and the Columbia River Treaty are unknown. Given these important unknowns, the allocation of new water rights from Lake Roosevelt would be irresponsible and likely to lead to future water supply crises, when water supply is inadequate to fulfill existing water rights, much less new ones. The various alternatives proposed in the SEIS will ultimately exacerbate Eastern Washington water supply shortages. The SEIS fails to adequately disclose these impacts or discuss alternatives or mitigation.

3. Cumulative Impacts

19-5 The SEIS is inadequate because of the Department of Ecology's failure to connect this project to the other pieces of the Columbia Water Management program, including a number of other dams and water infrastructure proposals that will destroy habitat in Eastern Washington.

4. Inability to Measure Specific Releases

19-6 The SEIS fails to discuss the inability of the United States Bureau of Reclamation to accurately measure the amount of water that will be released from Grand Coulee Dam pursuant to this proposal.

5. The SEIS fails to discuss all recreational impacts.

¹ Hamlet, Mote, Mantua, & Lettenmaier, "Effects of Climate Change on the Columbia River Basin's Water Resources," (Nov. 2005) (www.paleolands.org/pdf/ClmtChngColumbBasn.pdf)

19-7 The SEIS fails to fully identify recreational and associated economic impacts that will occur as the result of the lake being drawn down during the height of the recreational season. The SEIS also fails to propose adequate mitigation for these impacts.

6. CELP-Quad Cities Agreement.

19-8 CELP is party to a binding settlement agreement with the state of Washington and the Quad Cities (Kennewick, Pasco, Richland and West Richland) that requires mitigation for new water rights granted to the Cities, along with specific water conservation requirements. (Center for Environmental Law & Policy v. Department of Ecology, et al., PCHB No. 02-216, Stipulation, Settlement Agreement, and Order of Dismissal (8-19-03)). See Attachment 2. The SEIS is inadequate in its failure to analyze the relationship of the Lake Roosevelt drawdown proposal to the requirements of the settlement agreement, including the impacts on water conservation and future supply options associated with providing water subsidies to the Quad Cities. Analyze the potential for future litigation over this settlement agreement.

I. Specific Comments

Sections S.4, 1.6.6, 3.10.1.1, 4.2.1.9

19-9 Failure to discuss or consider impacts of the drawdown on exposure of Teck Cominco (TC) contamination of Lake Roosevelt sediments, water and air quality is a major omission in the SEIS document. It is not sufficient to simply put this discussion off for future analysis. There are substantial, adverse impacts associated with TC-based pollution of Lake Roosevelt that should be analyzed, discussed and mitigated. The conclusion that the drawdown will not result in additional exposure of reservoir bed and banks, followed by admission that the drawdown will in fact cause exposure at different times is not logical.

Sections 1.6 and 4.3

19-10 The Supplemental EIS (SEIS) for Lake Roosevelt Incremental Storage Releases fails to consider the comprehensive impacts of all of the programs/proposals aimed at expanding the Columbia Basin Project. The Columbia watershed is one of the most heavily dammed river basins in the world. Unremitting development of dams, reservoirs, and irrigation projects have destroyed untold riverine, terrestrial, wildlife, and cultural resources.² The incremental evaluation of various interconnected projects that are designed to take water out of the Columbia River violates both the letter and spirit of SEPA. The project discussed in the SEIS is related to:

- Potholes Supplemental Feedroute (federal Environmental Assessment and FONSI dated 8-07 and state Mitigated Determination of Non-Significance, dated 1-17-08),
- Odessa Subarea Special Study (appraisal investigation dated 9-29-06, as updated 10-07 and 11-07),
- Columbia Mainstem Off-Channel Study (appraisal evaluation dated May 2007),

² See World Commission on Dams, Ortolano, L, et al, Grand Coulee Dam and the Columbia Basin Project, USA (2000), www.dams.org.

- Yakima Storage Study (draft EIS dated January 2008),
- Walla Walla storage and pump exchange studies (U.S. ACE reconnaissance report dated 10-30-97, no information regarding state funding and role released to public),
- Shakers Bend storage project (Okanogan PUD FERC application dated 5-17-07, no information regarding state funding and role released to public)
- Odessa Subarea stratigraphic study (Columbia Groundwater Management Area, ongoing, no information regarding state funding and role released to public).
- Miscellaneous water storage projects, including but not limited to the Lincoln County Passive Hydration Project, Mill Creek Water Storage Project, Campbell Creek Reservoir project, WRIA 44/50 Surface Water Storage, now being funded by Department of Ecology.³

19-10

The above-described studies are incorporated into these scoping comments by reference. CELP will provide copies of each to you upon request.

The Programmatic Environmental Impact Statement to which the supplement EIS is supposed to tier does not provide adequate description or information about the above-referenced projects. The SEIS should be re-issued with adequate discussion of the relationship among programs and projects, how the state of Washington plans to allocate water among the various demands represented by the above-referenced projects, and the cumulative impacts of these projects on environmental, cultural and socio-economic resources of the Columbia Basin.

Sections 2.3 and 2.4.1.2

19-11 The description of the proposal fails to acknowledge that the "overriding considerations of the public interest" (OCPI) decision is an exception to protection of water resources that, by law, must be used sparingly. Annual use of OCPI would contradict the intent of the exception. In addition, the various proposals that would remove water from the Columbia River but not mitigate for it in time are likely to violate federal laws relating to endangered species and operational requirements for the U.S. Bureau of Reclamation.

Section 2.4 generally

19-12 The "policy" options section fails to discuss water pricing as an allocation mechanism. If water users are required to pay full price for water, including transaction costs (including for example the cost of developing this SEIS), cost of foregone hydropower, cost of water transportation infrastructure, and a fee for the privilege of using public resources (as for example occurs for mineral resources), allocation would take care of itself. This is serious omission in this discussion.

³ Department of Ecology, Columbia River Basin Water Management Grant Program, Draft Funding List for 2007 Competitive Grant Cycle (6-08) (www.ecy.wa.gov/programs/wr/cwp/cr_grantapps.html)

Section 2.4.1

19-13 Although we do not agree with the fundamental premise of the drawdown project, any proposal to allocate more water from Lake Roosevelt should be fully paid for by the water users, including transaction costs, foregone energy production and transportation costs.

Section 2.4.1.1

19-14 The one-mile boundary for identifying groundwater connected to the Columbia River is not supported in science.

Section 2.4.1.2

19-15 The proposed use of the Lake Roosevelt drawdown as a substitute for McNary Pool water does not satisfy the terms of the CELP v. Ecology settlement agreement.

Section 2.4.3

19-16 The SEIS fails to adequately address the consequences of issuing permits within a temporary program. This section, as well as the entire document, improperly presupposes that the water issued to interruptible and industrial/municipal users will be retrievable in the future. That is, upon changing conditions, the Department of Ecology (DOE) will have the ability to rescind water permits already issued to users. What the SEIS does not discuss is how water supplies will be made available to new out-of-stream users in the event that Lake Roosevelt storage quantities do decrease in the future (due to climate change, revocation or amendment of the Columbia River Treaty, as discussed in Section I(2) above and below). Water users will make investments in reliance on the water made available under this program. Although the SEIS discusses the need to address long-term options, the discussion is inadequate and fails to address the lack of incentive for Ecology to pursue and evaluate such options.

19-17 There are two anticipated situations that are likely to occur and that will impact the volume of water available within the watershed in the relatively near future. First, the revocation or renegotiation of the Columbia River Treaty, which governs management of various dams on the Columbia River in the United States and Canada, could result in delayed annual filling of Lake Roosevelt, possibly affecting the pool level of the reservoir. While there is discussion of this issue in Sections 3.6.3 and 4.2.1.5, this discussion does not accurately or adequately reflect the nature of the concerns in British Columbia and the potential for impacts on Lake Roosevelt water availability. The SEIS should acknowledge that Washington state, through this SEIS and permitting action, is attempting to leverage a negotiating position that will in fact effect the Columbia River Treaty.

19-18 Second, although we are not yet sure of the exact parameters of climate change in this basin, we do know that it will result in impacts to the watershed. Hydrologists and scientists generally agree that the ice fields at the head waters of the Columbia are shrinking and will continue to do so. They also expect the winter precipitation to fall more as rain than snow.⁴ Consequently, the "reserve" of water in the mountains that releases water throughout the spring, and upon which filling of Lake Roosevelt is dependent, will not be available, or will be substantially reduced, in the future. Instead, late winter and spring rainfall will immediately enter the tributaries of the Columbia, rushing down the watershed.

⁴ See footnote 1.

19-18 Ecology must be prepared to adapt the management of Lake Roosevelt, as well as other reservoirs in the watershed to effectively manage water supply. Existing water rights may be at risk of going unfulfilled. The permits the DOE will issue with the water obtained from the SEIS drawdown will be further at risk. It does not make logical sense to convey additional water to out of stream uses when these changes will occur in the foreseeable future. While there is some recognition of this problem in Sections 3.3.3 and 4.2.1 of the SEIS, the discussion and proposed mitigation is entirely inadequate.

Section 2.5

19-19 The SEIS 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 state is making an economic choice not to study water markets as a means to address water supply needs.

Section 3.7

19-20 The SEIS fails to quantify the benefit of the instream flow quantity (27,500 AFY) with respect to fish. Although the SEIS goes to great length to describe the fish and habitat conditions in Lake Roosevelt, the Columbia River downstream of Grand Coulee Dam, Banks Lake, and the Odessa Subarea, it fails to state the actual benefit that fish will receive from this influx of water. Similarly, the document fails to explain the legal right of the 27,500 AFY committed for instream flows. Specifically the document fails to explain the mechanism by which instream flows will be protected in the Columbia River, i.e., will this water flow all the way to the Pacific Ocean, or will the quantity of water dedicated to instream flows be diverted from the Columbia River at some point downstream for a different use?
19-21 Correspondingly, if it is the intention to allow the instream flow to flow through the entire river system, the SEIS contains no discussion of these flows will be regulated or protected.

Section 3.11.1 and 4.2.1.10

19-22 The SEIS acknowledges that there are continuing problems with dispersed recreation and crowding of existing recreational areas, but fails to identify, describe, or discussion mitigation for exacerbation of these conditions that will be caused by the drawdown. The adaptive management approach to mitigation is inadequate.

Conclusion

19-23 After a hundred years of water management policies that have over-appropriated most of Washington's rivers and destroyed many of their values, including native fish and wildlife habitat, recreation and scenic beauty, one would hope that Washington state had learned that continuing over-appropriation of water resources is not the answer. One would hope the state would:

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.hph?id=823>.

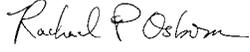
19-23

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

The Lake Roosevelt drawdown program indicates that is not to be the case.

Thank you for the opportunity to provide comments.

Yours very truly,



Rachael Paschal Osborn, Executive Director
Center for Environmental Law & Policy, and on behalf of:

Sierra Club Cascade Chapter
Sierra Club Upper Columbia River Group
Columbia Water Conservation Alliance



Comment Letter No. 19

Effects of Climate Change on the Columbia River Basin's Water Resources

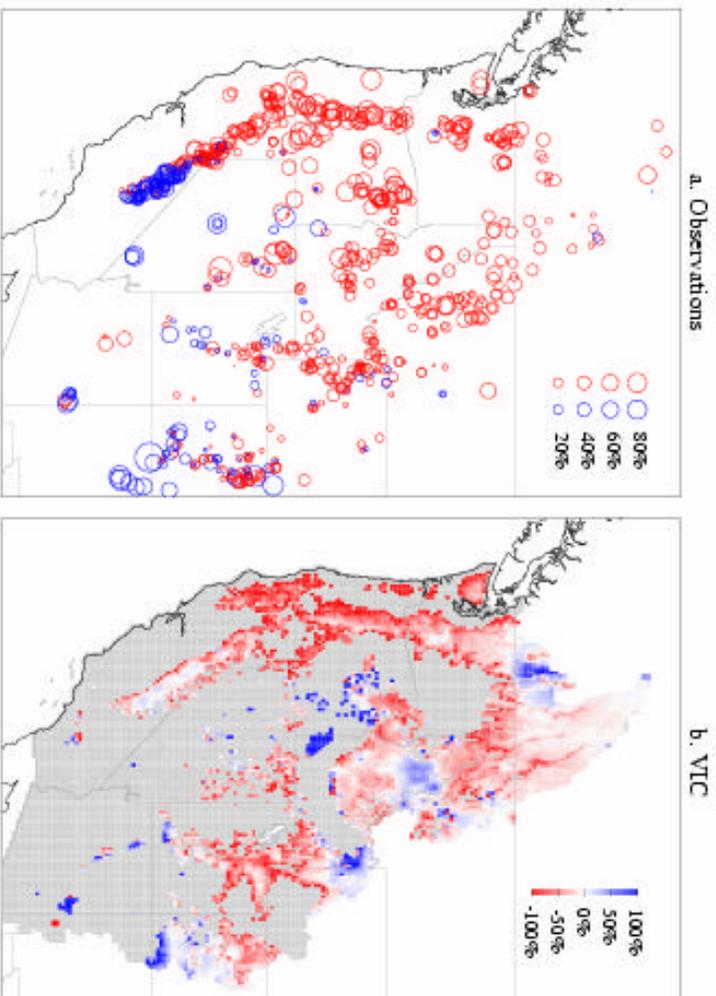
JISAO Center for Science in the Earth System
Climate Impacts Group
and Department of Civil and Environmental Engineering
University of Washington

Nov, 2005

Alan F. Hamlet
Philip W. Mote
Nathan Mantua
Dennis P. Lettenmaier

Trends in April 1 SWE 1950-1997

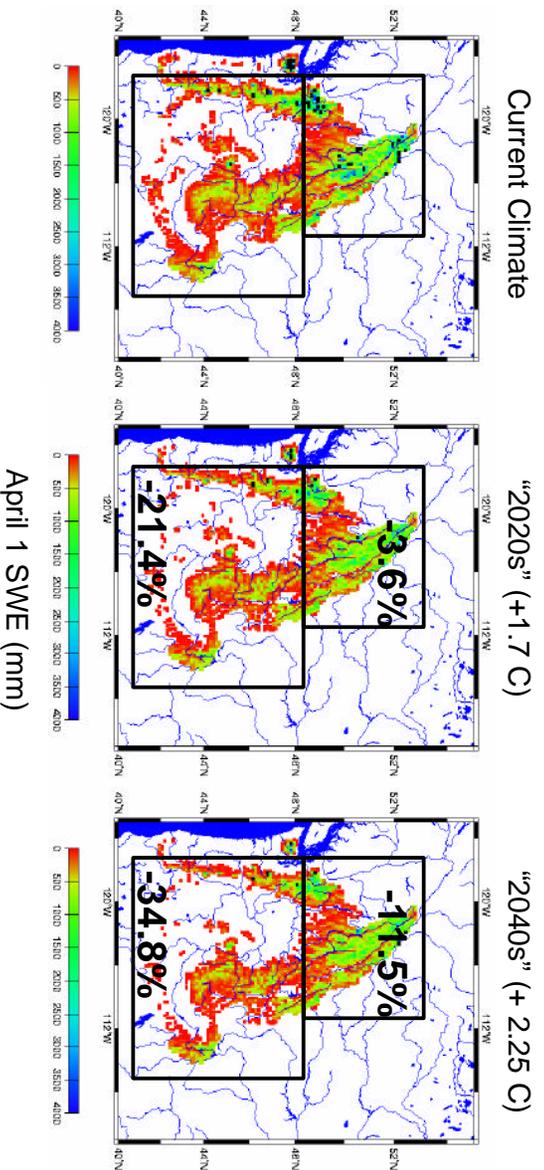
Comment Letter No. 19



Mote P.W., Hamlet A.F., Clark M.P., Lettenmaier D.P., 2005, Declining mountain snowpack in western North America, BAMS (in press)

Changes in Simulated April 1 Snowpack for the Canadian and U.S. portions of the Columbia River basin (% change relative to current climate)

Comment Letter No. 19



ORIGINAL

RECEIVED
AUG 11 2003
ENVIRONMENTAL
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AUG 20 2003
ATTORNEY GENERAL'S OFFICE
Ecology Division

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CENTER FOR ENVIRONMENTAL
LAW & POLICY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, and
CITIES OF RICHLAND,
KENNEWICK, PASCO and WEST
RICHLAND,

Respondents.

PCHB No. 02-216

STIPULATION, SETTLEMENT
AGREEMENT AND ORDER OF
DISMISSAL

The parties, Center For Environmental Law and Policy (CELP), the Washington State Department of Ecology (Ecology), and the Cities of Richland, Kennewick, Pasco and West Richland (collectively Quad-Cities), through their attorneys, Karen Allston and Shirley Nixon (for CELP), Assistant Attorneys General Barbara Markham and Sarah Bendersky (for Ecology), and Tom Pors (for the Quad-Cities) enter into the following:

STIPULATION

1. On November 19, 2002, Ecology issued a Report of Examination to the Quad-Cities approving with conditions application S4-30976 for a municipal, industrial, and commercial water right from the Columbia River.

2. On December 18, 2002, CELP appealed the Report of Examination to the Pollution Control Hearings Board.

3. To avoid the costs, time, and uncertainty associated with litigation, the parties have entered into the following SETTLEMENT AGREEMENT to fully and finally resolve CELP's appeal.

SETTLEMENT AGREEMENT

1. Within 30 days of dismissal of this case by the PCHB as contemplated by this SETTLEMENT AGREEMENT, Ecology will issue a water right permit to the Quad-Cities.¹ Except as modified by the terms of this SETTLEMENT AGREEMENT, the permit will be consistent with the terms contained in the November 19, 2002, Report of Examination. The permit will include the ROE conditions and Recommendations A through I, and the terms specified in paragraphs 2, 3, 6, 7, 8, and 11 of this SETTLEMENT AGREEMENT.

2. The permit issued to the Quad-Cities will expressly specify that any time Ecology approves the use of mitigation to offset diversion increments after the first increment (the first increment is defined as the first 10 cubic feet per second (cfs) of diverted water), Ecology shall issue an order that is subject to appeal to the Pollution Control Hearings Board or any successor body with jurisdiction to hear appeals from Ecology water right decisions.

3. The permit issued to the Quad-Cities will expressly set forth the additional conservation requirements set forth in Exhibit A to this Settlement Agreement. The permit will specify that these conservation requirements will be the minimum conservation requirements that the Quad-Cities shall meet during the entire life of the permit. If the Department of Health adopts more stringent rules relating to water conservation, the Quad-Cities will plan and implement their plans to meet or exceed the more stringent rules.

4. With respect to the Quad-Cities' diversion of the first increment (10 cfs) of water, the right to divert water will be interrupted when the specified flow conditions described in Condition E are not met, unless the following mitigation for consumptive use is in place. Table 5 in the November 19, 2002 Report of Examination identifies the two groups of

1 water rights Ecology currently intends to use as mitigation for the first increment of Quad-
 2 Cities' water use. The first group is listed in the first 6 columns of Table 5 under the heading
 3 "Department of Ecology Trust Water Rights" (hereafter referred to as "the Buckley trust water
 4 rights"). The second group is listed in the second half of the table and labeled as the
 5 Grandview Farm Water Rights (hereafter referred to as "the Simplot water"). To make the
 6 Buckley trust water rights eligible to be considered as mitigation for the Quad-Cities' water
 7 right, Ecology will change the purpose and place of use of the Buckley water rights so that the
 8 purpose of use includes "mitigation for municipal use" and so that the place of use includes
 9 "the McNary Pool of the Columbia River". To make the Simplot water eligible to be
 10 considered as mitigation for the Quad-Cities' water right, Ecology will complete the steps
 11 necessary to put the Simplot water into trust with the purpose of use designated as "mitigation
 12 for municipal use" and the place of use designated as "the McNary Pool of the Columbia
 13 River." If Ecology is unable to complete the acquisition of the Simplot water, Ecology must
 14 acquire and put into trust other water rights from the McNary Pool of an equivalent quantity as
 15 the Simplot water. The intent of this paragraph is that trust water rights used for mitigation
 16 shall be from the McNary Pool and of equivalent quantity and period of use as shown in Table
 17 5 of the ROE.

18 5. CELP believes that water already placed in trust should not subsequently serve
 19 as mitigation for later appropriations. CELP does not believe that the Buckley trust water
 20 rights constitute sufficient mitigation to offset the Quad-Cities' diversion of water from the
 21 Columbia River. In the interests of settlement, however, and so long as the trust water right
 22 certificates are amended as described in the preceding paragraph, above, CELP is accepting the
 23 use of these rights as mitigation for a portion of the first 10 cfs of the Quad-Cities' diversion.
 24 The Parties agree that they will not cite the use of this mitigation, or the fact of entry into this
 25 SETTLEMENT AGREEMENT, for legal or policy precedent for future mitigation efforts.
 26

1 6. To determine the amount of perpetual mitigation for the first increment of water
 2 use, Ecology has used an 80 percent consumptive use estimate. *I.e.*, Ecology has assumed that
 3 for the first 10 cfs of diverted water, there will be a consumptive use of 8 cfs. Concurrent with
 4 the times that the Quad Cities submit each successive Regional Water Forecast and
 5 Conservation Plan (RWFCP) Ecology will reevaluate this 80 percent consumptive use estimate
 6 based on then-current metering and other data showing actual water returned to the system, and
 7 will assure that the appropriate amount of water-for-water mitigation is in place. If
 8 consumptive use increases above 80%, in order to keep the diversion for the first 10 cfs not
 9 subject to interruption, Ecology will transfer into trust additional water rights from the McNary
 10 Pool to offset the additional consumptive use.

11 7. Any future proposed mitigation plans submitted by the Quad-Cities for review
 12 by Ecology shall be governed by the following terms:

13 a. Mitigation for appropriations beyond the first ten cfs will be according to the
 14 following "fifty percent or more/fifty percent or less" formula: fifty percent or more of
 15 water consumptively used by the Quad Cities during times when flows established in
 16 Condition E are not met will be mitigated by flow replacement using water upstream of
 17 the McNary Dam in the Columbia River system; the balance of the mitigation will be
 18 accounted for by fish habitat improvements that benefit Columbia River system fish
 19 at least to the same extent as would replacement water.

20 b. For any habitat project mitigation proposed by the Quad-Cities under this
 21 provision, the Quad-Cities will demonstrate based upon best available science and other
 22 applicable legal requirements that the proposed mitigation will benefit Columbia River
 23 system fish at least to the same extent as would replacement water.

24 c. In determining whether any habitat project mitigation proposed under this
 25 provision is acceptable, Ecology will consult with and give a high degree of deference
 26 to the Washington State Department of Fish and Wildlife, the Confederated Tribes and

1 Bands of the Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the
2 Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs
3 Reservation of Oregon.

4 d. *Reopener.* During the life of the Quad-Cities' permit, any party hereto may
5 request that the other parties accept a mitigation formula using a percentage different
6 than the fifty or more-fifty or less percentages specified in paragraph 7a. Any
7 agreement among the parties to revise these percentages shall be documented through a
8 written amendment to this agreement signed by all of the parties.

9 8. The permit issued to the Quad-Cities will expressly specify that 10 cfs of the
10 Quad-Cities' water right is allocated from the John Day/McNary Pools reservation for
11 municipal water use pursuant to WAC 173-531A-050. Ecology will reduce the amount of
12 water available from the municipal reservation established under WAC ch. 173-531A to reflect
13 this allocation to the Quad-Cities.

14 9. Thirty-one days after: (a) the permit is issued, provided there are no appeals, or
15 (b) after all appeals are finally terminated, Quad-Cities has the affirmative obligation to:

16 a. Withdraw all pending applications for new water rights except for certain
17 groundwater applications that are for supplemental rights for alternate places of
18 withdrawal. A list of all pending applications to be withdrawn pursuant to this section
19 is attached to this agreement as Exhibit B. The City of Richland shall request to
20 Ecology in writing that Applications G4-30990, G4-30981 and G4-30980 be issued as
21 supplemental to the annual quantity of the Quad-Cities' permit S4-30976. The City of
22 West Richland shall request to Ecology in writing that Applications G4-32304 and G4-
23 32395 be issued as supplemental to the annual quantity of the Quad-Cities' permit S4-
24 30976.
25
26

1 b. Abandon or voluntarily relinquish all water rights that the Quad-Cities are not
2 currently using. A list of all water rights (represented by claims, certificates, or
3 permits) to be abandoned or voluntarily relinquished pursuant to this section is attached
4 to this agreement as Exhibit C.

5 10. Ecology considers the top three paragraphs at the top of page 11 of the
6 November 19, 2002, Report of Examination stricken from the ROE. The permit will include
7 no reference to the top three paragraphs at the top of page 11 of the Report of Examination or
8 the content therein, and Ecology agrees that the language and content therein has no
9 precedential effect.

10 11. The non-interruptibility of water use beyond the first 10 cfs requires that the
11 Quad Cities submit a mitigation plan to Ecology for approval. Unless extraordinary
12 circumstances exist, when the Quad-Cities proposes a mitigation plan for future diversion
13 increments under their water right, the Quad-Cities will submit their plan at least one year
14 before the Quad-Cities needs a final decision from Ecology. Ecology will use this one year
15 period for public notice, consultation, and to accomplish any necessary water right trust
16 transfers. For purposes of this section "extraordinary circumstances" is defined only as factual
17 circumstances that establish the need for an Ecology response time of less than one year. In no
18 case will Ecology shorten its review and decision time so as to preclude Ecology from
19 fulfilling its public notice and consultation obligations.

20 12. Ecology will provide input and actively participate in the Department of
21 Health's statewide rulemaking efforts required by the Laws of 2003, E2SHB 1338, Section 7,
22 addressing (a) conservation requirements, (b) needs assessments and (c) needs projections for
23 water systems plans.

24 13. By April 30, 2004, Ecology will complete its development of a guidance
25 document describing how and when it will perform a "maximum net benefits analysis" in the
26 context of water resource rulemaking. In developing this guidance document Ecology will

1 seek input from CELP and other interested parties. At a minimum, Ecology agrees to meet
 2 with representatives from CELP every other month between September 2003 and April 2004 to
 3 review, discuss, and consider CELP proposals regarding the scope and content of this guidance
 4 document.

5 14. Ecology will not file a CR 102 containing draft rule language pertaining to the
 6 rulemaking for the Columbia River pursuant to the Columbia River Regional Initiative until
 7 after Ecology receives a final report and recommendations from the National Academy of
 8 Sciences (NAS) panel.

9 15. Subject to the limitations contained in this section, Ecology will not process any
 10 applications for new water rights permits from the Columbia River during the pendency of the
 11 Columbia River Regional Initiative process and before the date that rules related to that process
 12 become effective, or until January 1, 2005, whichever date is earlier. Ecology will abide by
 13 this suspension to the extent it is authorized to do so by law. Ecology will process applications
 14 during the suspension only: (a) if a court orders it to process an application, or (b) if an
 15 application is for a nonconsumptive use that would substantially enhance or protect the quality
 16 of the natural environment, or (c) if the agency must process an application to address a public
 17 health and safety emergency. The Quad-Cities agree not to sue or otherwise seek court orders
 18 compelling Ecology to process any pending application for a new water right from the
 19 Columbia River during the time frame set forth in this paragraph.

20 16. CELP agrees not to appeal, or assist anyone else in an appeal, of the permit
 21 issued pursuant to this SETTLEMENT AGREEMENT or any modification to the purpose or
 22 place of use of the Buckley trust rights, except that the permit issued may be appealed if its
 23 terms varies from the terms of this SETTLEMENT AGREEMENT. CELP and the Quad-
 24 Cities reserve the right to appeal any other future appealable orders of Ecology, including those
 25 described in paragraph 2 of this SETTLEMENT AGREEMENT.
 26

1 17. Based upon the terms of this SETTLEMENT AGREEMENT, the parties jointly
 2 request that the PCHB enter the following order dismissing this case with prejudice.

3 **CHRISTINE O. GREGOIRE**
 4 Attorneys for Department of Ecology

5 *Barbara A. Markham* Dated: 8/7/03
 6 BARBARA A. MARKHAM, WSBA #30234
 (360) 586-6749

7 *Sarah Bendersky* Dated: 8/7/03
 8 SARAH BENDERSKY, WSBA #30481
 (360) 586-6770

9 **CENTER FOR ENVIRONMENTAL**
 10 **LAW & POLICY**

11 *Karen Allston* Dated: 8/8/03
 12 KAREN ALLSTON, WSBA #25336
 13 (206) 223-8454

14 *Shirley Waters Nixon* Dated: 8/8/03
 15 SHIRLEY WATERS NIXON, WSBA #25756
 16 (360) ~~457771~~ (206) 223-2454

17 **CITY OF KENNEWICK**

18 *John S. Ziobro* Dated: 7-30-03
 19 JOHN S. ZIOBRO, WSBA #25991
 20 (509) 585-4272

21 **CITY OF WEST RICHLAND**

22 *Terry M. Tanner* Dated: 7-29-03
 23 TERRY M. TANNER, WSBA #21381
 24 TANNER & HUI
 25 (509) 943-0654
 26

1 CITY OF RICHLAND

2 Thomas O. Lampson
3 THOMAS O. LAMPSON, WSBA #13707
4 (509) 942-7385

Dated: 8/6/03

6 CITIES OF RICHLAND, KENNEWICK,
7 PASCO AND WEST RICHLAND

8 Thomas M. Pors
9 THOMAS M. PORS, WSBA #17718
10 LAW OFFICE OF THOMAS M PORS
11 (206) 340-4396

Dated: 8/6/03

11 CITY OF PASCO

12 Leland B. Kerr
13 LELAND B. KERR, WSBA #6059
14 PAINE, HAMBLÉN COFFIN
15 BROOKE & MILLER LLP
16 (509) 735-1542

Dated: 7/29/03

17 I. ORDER OF DISMISSAL

18 This matter having come before the Pollution Control Hearings Board upon the joint
19 motion of the parties and based upon the SETTLEMENT AGREEMENT, and the Board
20 having reviewed the SETTLEMENT AGREEMENT and the records and files herein, and
21 having determined that the parties have agreed to a full and complete settlement of this appeal,
22 now, therefore,

23 IT IS ORDERED that:

- 24 1. The appeal of *CELP v. Ecology and the Cities of Richland, Kennewick, Pasco*
25 *and West Richland*, PCHB No. 02-216 is dismissed with prejudice;
26

- 1 2. Each party is to bear its own costs and fees.

2 Dated this 19th day of August, 2003.

4 POLLUTION CONTROL HEARINGS BOARD

5
6 Robert V. Jensen
7 ROBERT V. JENSEN, Presiding
8 Kaleen Cottingham
9 KALEEN COTTINGHAM, Member
10 William H. Lynch
11 WILLIAM H. LYNCH, Member
12

13 Presented by:

14 CHRISTINE O. GREGOIRE
15 Attorneys for Department of Ecology

16 Barbara A. Markham
17 BARBARA A. MARKHAM
18 SARAH BENDERSKY
19 (360) 586-6749

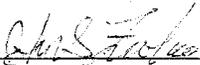
20 CENTER FOR ENVIRONMENTAL
21 LAW & POLICY

22 Karen Allston
23 KAREN ALLSTON, WSBA #25336
24 (206) 223-8454

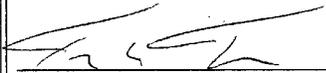
25 Shirley Waters Nixon
26 SHIRLEY WATERS NIXON, WSBA #25756
~~(360) 457-2211~~ (206) 223-2454

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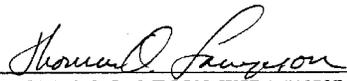
CITY OF KENNEWICK


 JOHN S. ZIOBRO, WSBA #25991
 (509) 585-4272

CITY OF WEST RICHLAND


 TERRY M. TANNER, WSBA #21381
 TANNER & HUI
 (509) 943-0654

CITY OF RICHLAND


 THOMAS O. LAMPSON, WSBA #13707
 (509) 942-7385

**CITIES OF RICHLAND, KENNEWICK,
 PASCO AND WEST RICHLAND**


 THOMAS M. PORS, WSBA #17718
 LAW OFFICE OF THOMAS M PORS
 (206) 340-4396

CITY OF PASCO


 LELAND B. KERR, WSBA #6059
 PAINE, HAMBLÉN COFFIN
 BROOKE & MILLER LLP
 (509) 735-1542

- H. To access water beyond the initial 10 cfs, the Quad Cities shall submit an updated RWFCP to the Department of Health and the Department of Ecology on a six-year schedule consistent with the schedule for review of water right quantities. The Quad Cities shall coordinate the preparation and completion of their individual water system plans and related supply, demand, and conservation programs. Prior to completion of the plans, the RWFCP will be completed jointly by the Quad Cities to compare demand to available supply and to evaluate the conservation achieved and the conservation projected resulting from implementation of the program described in section 6. The Quad Cities may submit the RWFCP for access to additional water, under the same process described in this condition, prior to any six-year interval if demand forecasts or other circumstances warrant earlier review. The full quantities of water recommended for a permit in this report may be appropriated in six-year increments associated with submittal of the RWFCP, and only when the applicable minimum instream flow is equaled or exceeded, or when the consumptive water use associated with appropriations under this permit is mitigated. Ecology will review the demand estimates, the water conservation elements of the plan, return flows estimates, and other relevant information contained in the plan that comprises the mitigation or flow replacement proposal. Following public comment, Ecology would approve, conditionally approve, or deny the proposed mitigation plan through an Order. If the Order denies the proposed mitigation or flow replacement proposal, then the appropriation for that 6-year increment would be subject to interruption when the flow objectives in this permit are not met, as described in Condition E.
1. The non-interruptibility of water use beyond the first 10 cfs requires that the Quad Cities submit a mitigation plan to Ecology for approval. Unless extraordinary circumstances exist, when the Quad Cities propose a mitigation plan for future diversion increments under their water right, the Quad Cities will submit their plan at least one year before the Quad Cities need a final decision from Ecology. Ecology will use this one year period for public notice, consultation, and to accomplish any necessary water right trust transfers. For purposes of this section "extraordinary circumstances" is defined only as factual circumstances that establish the need for an Ecology response time of less than one year. In no case will Ecology shorten its review and decision time so as to preclude Ecology from fulfilling its public notice and consultation obligations. The mitigation required for withdrawals of water in the succeeding six-year periods shall be proposed by the Quad Cities in their six-year RWFCPs for approval by the Department of Ecology.
 2. Upon issuance of an Order by Ecology approving in conformance with Recommendation E of this permit one or more trust water rights or approving another replacement water program or a mitigation program proposed by the permittee to offset the full projected consumptive use during periods when flow objectives are not met, the six-year appropriation will not be conditioned as interruptible.
 3. The maximum quantity of withdrawals of water requiring mitigation during the succeeding six-year periods will be presented in the RWFCPs and determined by subtracting estimated return flow from the maximum diversion amount. Return flow calculations shall be based on best available science and shall reflect seasonal conditions. During the course of that six-year period, actual quantities to be mitigated will depend on daily recording and monthly reporting of actual

water use under this permit, return flow estimates corresponding to the season of water use, and whether or not the then current flow objectives are achieved during that period.

4. Each RWFCP shall include a Conservation Program demonstrating how the best available and reasonable conservation technology will be implemented in the subsequent six-year period. The Conservation Program shall meet, as a minimum, current (as of date prepared) Department of Health requirements as well as the conservation conditions described below. In addition, the RWFCP with its Conservation Program shall be submitted to the Department of Ecology for review and approval consistent with the six-year schedule for reviewing water rights. The RWFCP shall propose and implement water conservation activities in the following areas: reducing leakage and unaccounted-for water from the municipal water supply system; and monitoring, accounting for (separately) and reducing commercial, industrial, residential (indoor) and landscape water use. The Conservation Program shall include a detailed profile of current water use characteristics for each conservation category defined above including their total annual demand, average demand, unit demand and peak demand. Compliance with the Conservation Program for each six year period shall be a condition of the permit.
5. The Quad Cities RWFCP shall comply with Department of Health rules (*Conservation Planning Requirements, Washington State Department of Health PUB 331-008, March 1994*) which currently require that these plans contain, as a minimum:
 - *Water Use Data Collection Requirements.* Systems must report the best currently available data on water use for the categories of use, which are identified by the department.
 - *Water Demand Forecast.* A complete forecast, including an estimate of reduction of water use from implementation of water conservation measures, must be developed.
 - *Conservation Program.* A Conservation Program must be developed and implemented. The Conservation Program elements must include: Conservation Objectives; Evaluation of Conservation Measures; and Identification of Selected Conservation Activities.

If the Department of Health adopts more stringent rules relating to water conservation, the Quads Cities will plan and implement their plans to meet or exceed the more stringent rules.

6. In addition to the general water conservation requirements described above, the following Conservation Program activities are required as conditions of this permit. The Quad Cities will initiate development of the following programs within one year after issuance of the permit and will adopt them for implementation within two years of the date of permit issuance.

For the purposes of the following conservation program elements, the term "implement" means obtaining and expending funding for capital facilities and operational staff, program assessment, and monitoring and reporting associated

with each program element in a manner and on a schedule to achieve, and once achieved to maintain, the stated goal or target.

i. Leak Detection Program

The Quad Cities shall implement a program to reduce leakage and unaccounted for water for each water supply system within the Quad Cities area. Leakage and unaccounted for water includes water loss due to leaking water mains and smaller distribution lines and inefficient fixtures, including inaccurate metering. Unaccounted for or unmetered water consumption also includes uses such as street sweeping, contractors, flushing hydrants, dust control, and erosion control by the Cities, County and private parties. The goal of the program is to reduce unaccounted for water to no more than 10% of the total diversion by 12/31/2010. The improvements to achieve the goal that are not concluded by 2010 must be identified and incorporated in the State approved Water System Plan for the city's capital improvement program with a completion date of no more than 2016.

ii. Large Meter Testing Program

The Quad Cities shall implement a program by December 31, 2005 to test all large meters (greater than 2-inches diameter, primarily used in commercial/industrial connections) and repair or replace all meters found to be defective. The testing and maintenance program will continue after the December 31, 2005 date on a schedule consistent with the manufacturers recommendations.

iii. Residential Meter Repair/Replacement Program

The Quad Cities shall implement a program by December 31, 2005 to test and repair or replace all residential water meters on a schedule consistent with manufacturers' recommendations. The testing and replacement program will continue after the December 31, 2005 date on an appropriate schedule to ensure that the users meters are reasonably accurate.

iv. Residential Retrofit Program

The Quad Cities shall implement a residential retrofit program by December 31, 2004 to provide the public with low-flow shower heads, toilet tank displacement bags, leak detection tablets and other residential water conservation measures. The initial program will be completed by December 31, 2008.

v. Source Metering Replacement and Improvement

The Quad Cities shall implement a source metering replacement and improvement program by December 31, 2005 to ensure that all water sources are accurately monitored.

vi. Develop a Water Audit Program for Large Water Users

The Quad Cities shall develop and implement a water audit program for large (commercial, industrial and institutional) water users. At least 50% of the large water users will be audited by December 31, 2007 and the remainder of the audits completed by 2010. The water audit program shall continue on an ongoing repeat schedule for those large customers where the audit suggests that reasonable additional water use reduction is possible.

vii. Develop a Joint Plan with Irrigation Districts to address Urban Area Irrigation Needs

The Quad Cities shall pursue development of a Joint Plan with Irrigation Districts whose service areas overlap with the Quad Cities service area. The Plan shall address irrigation water supplies for landscape use (e.g., which entity supplies landscape water and Quad Cities policies on serving those areas) and landscape water demands during water-short periods when Irrigation Districts may prorate their water users. This plan will be completed by December 31, 2009.

viii. Develop an Integrated Water Shortage and Drought Response Plan

The Quad Cities shall develop an integrated Water Shortage and Drought Response Plan for periods when water demands exceed allowed diversions. This plan will be completed by December 31, 2007.

ix. Develop a recommended School Education Program

The Quad Cities will work with the school districts within the UGA for the Quad Cities to define appropriate classroom materials and assist the school districts with implementation of the program. The plan will be outlined and a recommended program be adopted for initial implementation by the cities within two years from the issuance of the permit. The implementation in the schools will be on the schedule approved by the school districts.

x. Develop a General Public Education Program.

The Quad Cities will develop a public education program as committed to in the Regional Water Supply Plan that will include outreach to all customers emphasizing the efficient use of both indoor and outdoor watering, consumptive use records on water bills, the promotion of water efficient devices such as low flow shower heads, and regional publications explaining conservation programs. This program shall be developed by December 31, 2005 and implemented on an on-going basis.

Quad Cities Water Rights for Settlement Exhibit B - Pending Applications to be Withdrawn				
Water Right Number	Instantaneous Quantity (gpm)	Annual Quantity (Acre-Feet)	Source	Priority
<i>Applications to be Withdrawn</i>				
Pasco				
G3-29957	2,500	4,032	Wellfield	April 16, 1996
S3-29979	7,181	6,400	Columbia River	August 6, 1996
Richland				
G4-30262	250		Well	May 24, 1990
S4-30185	5,660	2,042	Columbia River	November 22, 1989

Quad Cities
Water Rights for Settlement

Exhibit C - Water Rights and Claims to be Voluntarily Relinquished

Water Right Number	Instantaneous Quantity (gpm)	Annual Quantity (Acre-Feet)	Source	Priority
<i>Kennewick</i>				
Water Right Claim No. 301518	44,800	6,000	Columbia River	July 1906
<i>Richland</i>				
Claim 063206	500	80	Well D-15	May-44
Certificate 5532	2,000	3,200	Well	March 21, 1960
Certificate 6134	1,200	1,920	Well	December 18, 1961

- 19-1. Comment noted.
- 19-2. Your comment regarding the tribal agreements is noted.
- 19-3. Climate change and its potential impact on Columbia River water supply, including impacts on snowpack, are described in Section 3.3, specifically Section 3.3.1.1 of the Supplemental EIS. Attachment 1 to your comment letter, a PowerPoint presentation on climate change in the Columbia River Basin, is included as part of this letter. The Mote et al. publication on which the PowerPoint presentation was based is cited in Section 3.3.3 of the Supplemental EIS. As noted in Section 3.3, the impact on runoff and surface water supplies in the Columbia River Basin is not known. As stated in the Supplemental EIS, Ecology will coordinate with Reclamation and other Columbia River managing agencies to adapt to changes in runoff and reservoir levels that result from climate changes.
- 19-4. Potential changes to the Columbia River Treaty are described in Sections 3.6.3, 4.2.1.5, 4.2.2.5, and 4.2.3.5. There is no certainty that the Treaty will be changed or how any changes would affect releases of water from Lake Roosevelt. As stated in the Supplemental EIS, any changes to reservoir operations resulting from future Treaty negotiations would require adaptive management of the reservoir, which would be included in the Treaty negotiations.
- 19-5. Other projects that could affect the Columbia River Basin are described in Section 1.6 of the Supplemental EIS and were also described in the Programmatic EIS (Ecology, 2007). Cumulative impacts of the Lake Roosevelt Incremental Storage Releases Project and other projects are described in Section 4.3 and were described in Sections 4.3 and 5.5 of the 2007 Programmatic EIS. Those sections acknowledge that the development of additional water projects in the Columbia River Basin could cause cumulative impacts that would exacerbate the impacts of existing facilities. Potential cumulative impacts include additional impediments to fish passage and increased migration times, increased total dissolved gas problems, water quality degradation, further reductions in shrub-steppe habitat and resulting impacts to wildlife, and could result in social opportunity costs. Because the Lake Roosevelt project involves changes to an existing reservoir within its existing authorization, impacts of the project are not expected to be significant and would not by itself cause significant cumulative impacts.

Many of the other projects proposed in the Columbia River Basin are speculative at this time and, therefore, specific potential impacts cannot be determined. As described in Section 1.6 of the Supplemental EIS, all of the proposed projects will undergo separate environmental review under NEPA and/or SEPA when or if the projects are carried forward. The future environmental reviews will identify impacts of the individual projects and cumulative impacts to the Columbia River Basin. Ecology will work with other managing agencies in the Columbia River Basin to identify potential cumulative impacts and develop an adaptive management strategy to minimize impacts of any further water project development. Ecology is committed, through the Columbia River Water Management Act (RCW 90.90.010(3)(a)), to basin-wide management approaches that do not result in increased cumulative impacts.

The Supplemental EIS has evaluated the impacts of the Lake Roosevelt Incremental Storage Releases Project at an appropriate level under SEPA. According to WAC 197-11-055(2)(a)(i), “the fact that proposals may require future agency approvals or agency review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probably environmental impacts.” The Supplemental EIS acknowledges that some components of the Proposal will require future agency proposals and that impacts of those specific actions will be evaluated separately.

- 19-6. Reclamation does and will continue to accurately measure the amount of water stored in and released from Grand Coulee Dam. Reclamation uses a combination of measuring devices to determine the amount of water stored and released.
- 19-7. The Draft Supplemental EIS acknowledged that the lake drawdowns could impact some recreational facilities during drought years. As noted in Section 4.2.1.10, Ecology is working with the National Park Service to further define those impacts and to identify methods to mitigate the impacts. Since the Draft Supplemental EIS was published, Ecology has received a report from NPS that further quantifies the impacts to recreational facilities and recommends specific mitigation for those measures. Information from that report has been incorporated into this Final Supplemental EIS (Section 4.2.1.10 and Appendix F). Ecology will continue to work with NPS to prioritize and implement specific mitigation measures.
- 19-8. Your Attachment 2, the Quad City Agreement, is attached to your comment letter. All parties to the settlement agreement, including Ecology, are bound by the terms of the settlement. Any option chosen by Ecology for incremental storage releases from Lake Roosevelt will not alter Ecology’s or the Quad Cities’ obligations under the settlement agreement. The discussion of the settlement agreement in Section 2.4.1.3 of the Supplemental EIS acknowledges Ecology’s obligations pursuant to the agreement. Analysis of the potential for future litigation over the settlement agreement is beyond the scope of the EIS. See also the response to Comment Number 11-1.
- 19-9. The potential impacts of the drawdown on the exposure of contaminated sediments are discussed in Section 4.2.1.9. The Supplemental EIS notes that the Lake Roosevelt Incremental Storage Releases Project will not lower lake levels below the shoreline area exposed by current operations, but the project will cause the lake to be approximately 1.1 to 1.8 feet lower than it is currently for short periods during the peak recreation season. If contaminated sediments are located in those areas, this could increase human exposure to those sediments. Because the exact location and extent of the contamination is unknown at this time, specific impacts cannot be determined, but are being evaluated as part of the ongoing Remedial Investigation and Feasibility Study conducted by EPA and Teck Cominco. The Supplemental EIS has been revised to clarify how Ecology will develop mitigation measures if the study determines that the Lake Roosevelt Incremental Storage Releases Project causes adverse impacts by re-entraining sediments (Section 4.2.1.9).
- 19-10. This Supplemental EIS is tiered to the Programmatic EIS because it provides additional discussion of impacts associated with the Lake Roosevelt Incremental Storage Releases Project based on new information about the amount and timing of the releases. This meets the requirements of WAC 197-11-060(5).

Section 1.6 of the Supplemental EIS describes the status of the major projects proposed in the Columbia River Basin. The description includes the separate environmental review that is being conducted on projects which are proposed, or will be conducted when or if a project is carried forward. Ecology is also funding, through the Columbia River Basin Water Supply Development Account, initial feasibility studies for a number of other projects, such as those you cite in your comment. The Supplemental EIS is not intended to describe the impacts of all water resources projects in the Columbia River Basin. Section 4.3 of the Supplemental EIS does describe the potential cumulative impacts of the Lake Roosevelt Incremental Storage Releases Project. See also the response to your Comment Number 19-5.

- 19-11. The description in Section 2.3 of how OCPI applies is accurate. It is intended to be used when Ecology considers water right applications, when the WAC 173-563 adopted flows are not met, and the “mitigation releases” are not scheduled to provide in-time offsets to the out-of-stream diversions. The OCPI determination is not intended to be routine or to be used as a general approach to create water supplies by waiving the instream flow requirements. See also the response to Comment Number 3-10 regarding the use of OCPI.
- 19-12. Comment noted. No method exists currently in state law for recovering the full cost of water. As noted in Section 2.4.1, Ecology intends to recover transactions costs where appropriate.
- 19-13. Your comment regarding the payment of costs associated with water use is noted.
- 19-14. The one-mile corridor was chosen as a surrogate for ground water rights that may be close enough to the Columbia and Snake Rivers for the mitigation water released from Lake Roosevelt to be effective. Additionally, because this is the area defined for the Columbia River Water Resources Information System required in RCW 90.90.050, Ecology has considerable knowledge of water rights and water use in that area. Ecology agrees that the “one-mile zone” for ground water adjacent to the Columbia River mainstem was not scientifically derived. It is a delineation made by the legislature when it enacted RCW 90.90.030(12)(a), the definition of the mainstem of the Columbia River, and it only applies to Voluntary Regional Agreements and the Columbia River Water Information System.
- 19-15. See the response to your Comment Number 19-8.
- 19-16. Your comment regarding a temporary program is noted. This subject is addressed in Section 2.4.3 of the Supplemental EIS. The water that will be provided through the Trust Water Rights Program for municipal supply and stream flows for fish in all years, and for interruptible water rights and additional water for fish in drought years, will be supplied from Reclamation’s storage water right. The water for municipal supply and stream flows for fish in non-drought years is necessarily temporary due to the limitation on the duration of contracts under federal law. The additional water in drought years is dependent upon a similar contract with Reclamation and reauthorization of the Federal Drought Relief Act, currently authorized until 2010. Both of the contracts will have options to renew. If the water supply for storage in Lake Roosevelt is reduced in the future, water rights from the lake would be regulated based on priority dates of each right. Based on the 2004 MOU, this supply will not end until Ecology develops an alternative long-term supply of water. The instream flow rights in the Trust Water Right Program will have the same priority date as Reclamation’s secondary use permit—1938.

The water rights for municipal and industrial uses and the standby-reserve permits will have a priority date based on the date the application is filed with Ecology. Water availability will be based upon the 1938 Trust Water Right from which the municipal and industrial and standby-reserve permits will be issued.

The incentive for Ecology to find long-term options to replace the water released from Lake Roosevelt is found in the 2004 MOU between the state, Reclamation and the three Columbia Basin irrigation districts. The MOU directs Ecology to find a long-term source of replacement water. The Water Resource Management Agreements between the State of Washington and the CCT and STI also commit Ecology to seeking a long-term water supply to reduce the incremental storage releases from Lake Roosevelt and prevent them from becoming permanent.

- 19-17. It is not expected that the Lake Roosevelt Incremental Storage Releases Project will affect any future renegotiation of the Columbia River Treaty. At this time it is not known if the Columbia River Treaty will be renegotiated or what provisions it will contain if it is renegotiated. The Lake Roosevelt Incremental Storage Releases Project is within Reclamation's existing storage right for water stored in Lake Roosevelt. This water right was established in 1938 and was included in the negotiations for the Columbia River Treaty which were completed in 1964. As noted in the Supplemental EIS, if the Columbia River Treaty with Canada is renegotiated in the future and the renegotiations affect Lake Roosevelt operations, Ecology and Reclamation will adapt to those changes.
- 19-18. See the response to your Comment Number 19-3 regarding climate change.
- 19-19. Ecology is not pursuing market solutions as part of the Lake Roosevelt Incremental Storage Releases Project because the parameters of that project were established in the Memorandum of Understanding between the state, Reclamation, and the three Columbia Basin irrigation districts. Ecology is pursuing market solutions in the Columbia River Basin as part of other projects, and has incorporated a market allocation strategy in its Preferred Alternative for allocating water to holders of interruptible water rights (Section 2.4.2.2).
- 19-20. As stated in Section 4.2.2.6, the increase in flows will be relatively minor. However, it is intended to help meet instream flow targets, and the timing of the flows is expected to benefit fish migration. Given the natural dynamics of biological populations and myriad potential effects at any point in the Columbia River system, it is not possible to quantify the actual benefits to fish species of the 27,500 acre-feet flow release. What can be said on a relative basis is that the additional flow release would provide more water to downstream reaches in the Columbia River mainstem during periods when the available water is currently limited with respect to meeting FCRPS Biological Opinion flows. This water should provide a corollary, cumulative benefit to fish. The relative differences of the various program alternatives have been compared in this regard.
- 19-21. The intent is for stream flows for fish to be protected to the mouth of the Columbia River. The rights would be protected based upon priority date. See the responses to Comment Numbers 3-11 and 19-16.
- 19-22. Comment noted. See the response to your Comment Number 19-7.
- 19-23. Comment noted.

P.O. Box 331
Moab, UT 84532
Phone: 541-377-0960
Fax: 435-259-0708
waterlaw@uci.net
www.wateradvocacy.org



June 30, 2008

Derek I. Sandison
Department of Ecology
15 West Yakima Ave. Suite 200
Yakima, WA 98902-3452
Emailed to dsan461@ecy.wa.gov

RE: Lake Roosevelt Comments

Dear Mr. Sandison,

20-1 On behalf of Visions For Our Future (VFOF), please accept these comments on the Draft Supplemental Environmental Impact Statement (SSEIS) for the Lake Roosevelt Incremental Storage Releases Project (Drawdowns) which was drafted by the Department of Ecology (Ecology) in accordance with the State Environmental Policy Act (SEPA). VFOF is an Indigenous Environmental Group, made up of members of the Confederated Tribes of the Colville Reservation located in North Central Washington state. VFOF recognizes their inherent rights to preserve and protect L.A.W.S. (land, air, water, and spirits) for our unborn future generations.

VFOF believes that Ecology must address specific issues regarding the analysis in the SSEIS and consider the SSEIS's impacts on aquatic resources, environmental justice, native fish habitat and the overall health of the Columbia River. In general we are concerned that the SSEIS fails to balance decisions to permit water withdrawals associated with the Drawdown with its obligation to protect and enhance the quality of the natural environment.

I. The SSEIS ignores the impact of the Drawdowns on Instream Flows

20-2 According to SSEIS, the Drawdowns are a component of the Columbia River Water Management Program (CWRMP) which is intended to improve water management in the Columbia River Basin. Specifically, the purpose of the Drawdown is to "release additional water from Lake Roosevelt to improve municipal and industrial water supply, provide water to replace some ground water use in the Odessa Subarea, enhance stream flows in the Columbia River to benefit fish, and provide water to interruptible water rights holders in drought years." SSEIS at S-1.

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June 30, 2008
P. 2

20-2 This SSEIS, however, fails to recognize that protecting instream flows is one of the main purposes of the CRWMP which provides that "One-third of active storage shall be available to augment instream flows and shall be managed by the department of ecology." RCW 90.90.020(1)(ii). During non-drought years, an additional 25,000 acre-feet would be released from Lake Roosevelt for a municipal/industrial water supply and 30,000 acre-feet would be released for replacement of some ground water supplies in the Odessa Subarea, and, during drought years, 33,000 acre-feet of water for Columbia River mainstem interruptible water right holders, would be released from Lake Roosevelt in addition to the non-drought diversion of 55,500 acre-feet. *Id.* Yet, while 17,000 additional acre-feet for flow augmentation to benefit fish downstream, would be released from Ground Coulee Dam, during drought years and 25,700 acre-feet for stream flow enhancement to benefit fish downstream of Ground Coulee Dam, during non-drought years, *Id.*, there is no certainty that this water will directly offset irrigation water diversion authorized by the drawdown or the CWRMP.

20-3 In fact, instead of immediately prohibiting irrigation diversions and release of water that would impact aquatic resources, the CWRMP, illegally defers the decision of how to mitigate for the water diversions including the Drawdown to state agencies. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the department of fish and wildlife and fisheries comanagers, to maximize benefits to salmon and steelhead populations." RCW 90.90.020(1)(ii).

20-3 Indeed, the fact that even the 68,000 acre feet of water identified in the SSEIS will go towards mitigation is illustrated by the SSEIS's determination no "mitigation measures are proposed for surface water impacts because the drawdowns would be within the normal operating levels of Lake Roosevelt." SSEIS at 4-9. Instream flows, however, are critical for migrating salmon and steelhead populations and vital for long-term watershed health.

20-3 Moreover, the existing instream flow targets set out to protect salmon and steelhead are often not met under the current system, yet the demand will only increase in the future. As a result, the Drawdown only serves out-of-stream uses without adequate consideration of instream flows.

20-4 That the Drawdown is focused primarily on the economical considerations of irrigation interests is illustrated by the listing of negatives of not implementing the Drawdown including:

- Ground water levels in the Odessa Subarea would continue to decrease at approximately the same rate that they do today.
- There would be less water available for pending municipal/industrial users, and no water would be available for interruptible water rights during drought years.
- Farmers in the Odessa Subarea would continue to experience rising costs of pumping ground water, which would diminish the feasibility of irrigation. Some irrigators may shift to crops that require less water or cease operations. This could result in a loss of sales, jobs, and income in the area.

20-4

Moreover, even though the SSEIS indicates that without the preferred alternative, “[n]o additional water would be available to supplement stream flows to benefit fish in the mainstem of the Columbia River”, *Id.*, nothing in the SSEIS indicates how Ecology plans to measure a reduction of instream flows as a result of the Drawdown or specifically, how such flows will be restored.

II. The Drawdowns Violates the Normal Processing for Issuance of water right Applications.

Based on the fact, that there is no legislative mandate that requires Ecology to pursue Drawdowns, these are nothing more than an effort to avoid cutting off water supplies to the Odessa water right holders, the Columbia Snake River Irrigation Association (CSRIA) and other irrigation interests no matter what the costs. That, Drawdowns are simply a mechanism that allows such irrigation interests to go outside of the standard water right permitting application process in order to receive “special” rights to water is illustrated by the SSEIS itself which provides that “Reclamation has water rights for 6.4 million acre-feet of live storage in the reservoir and water rights to release approximately 3 million acre-feet for downstream consumptive beneficial use. Any additional releases from the reservoir will be authorized under secondary use permits issued by Ecology.” *Id.* at 4-23-24.

20-5

As a result, without even requiring the beneficiaries to go through the normal permitting process new water rights, the Drawdown simply creates new water rights for the Odessa subarea due to diminishing supplies of ground water and for the interruptible water interests who are, otherwise, not authorized to take critical flows needed by ESA listed species during drought years. Worse, the Drawdown conflicts with current laws for protecting instream flows and salmonid species by eliminating existing protections of such resources and replacing these with the promise that Ecology will undertake “mitigation measures,” that are not clearly defined within the SSEIS. Similarly, the SSEIS does not sufficiently explain water flow and quality mitigation efforts, or the methods or means to measure whether or not the conservation efforts will actually work.

In fact, in regards to the Impacts to fish, the SSEIS states “[b]ecause no negative impacts to fish are anticipated in the Columbia River downstream of Grand Coulee Dam, no mitigation is proposed.” *Id.* at 4-65. the SSEIS reaches this conclusion, however, without providing what process Ecology will use to determine whether a new water permit results in no negative impact and whether new permits are conditioned on mitigation water being present instream. In addition to failing to explain the methods and measurements, the SSEIS does not fully disclose all impacts to instream flows as a result of the Drawdowns.

Further, the SSEIS fails to define what is intended by the term “no negative impacts.” Without establishing this as a goal and an adequate definition, Ecology cannot ensure the standard is met under the Drawdown. Moreover, the SSEIS fails to establish minimum standards and guidelines for determining “no negative impact” before Ecology proceeds with the Drawdown.

Finally, in relation to water quality, the SSEIS provides that “No mitigation measures are necessary because no impacts are anticipated.” *Id.* at 4-9. This is regardless of the fact that “Water temperatures within and downstream of Lake Roosevelt are affected by the balance of inflows and outflows and the total surface area of the lake. Total dissolved as (TDG) levels below Lake Roosevelt are affected by the volume of water released from Grand Coulee Dam.” *Id.*

Specifically, “Additional drawdown would reduce the total depth or thickness of the water column” and “[i]mpacts, if any, would be related to a slight shift in the timing and duration of a given water column thickness.” *Id.* It is commonly accepted that the critical factor in impacts to the Columbia River salmon fishery is temperature which will raise as a result of the Drawdowns and negatively impact the salmon fishery. In fact, the SSEIS, itself admits that the maximum additional drawdown...will occur during the summer when lake level is highest.” *Id.* This will negatively impact rainbow trout, kokanee salmon and other fisheries salmon which will be using the Columbia River for migration during the summer months.

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Instead, the existing state water application is more specific about the location of use and timing of impacts, providing more transparency for the public to assess whether the use is within the public interest. Because the SSEIS, however, does not address the individual permits issued under the Drawdown, it does not address the specific timing or location of impacts.

In addition, the Drawdown fails to address important details such as, places of use and amount of water that is returned to the river. Without the details of these permits, therefore, the SSEIS cannot fully comment or measure the impacts of the Drawdowns. The SSEIS, itself, acknowledges the failure to follow existing procedures for the issuance of water right permits in this case by noting that one “potential for impacts on other water rights is in drought years when Reclamation has agreed to release additional water for interruptible water right holders and to augment stream flow.” *Id.* at 4-24.

In addition, the fact that the Drawdowns will create special rights for a certain class of irrigation interests and will likely conflict with existing water rights is illustrated by the SSEIS’s recognition that mitigation “would be required if the additional releases would adversely affect water right holders who divert from Lake Roosevelt.” *Id.* In fact, if senior water rights are impacted by the Drawdowns, the SSEIS violates existing state procedures for protecting such water rights water rights by delegating the authority to Ecology to determine what action will be taken. In relation to Drawdowns, “[m]itigation would be required if the additional releases would adversely affect water right holders who divert from Lake Roosevelt. Any required mitigation would be determined by Ecology as the water right applications are processed.” *Id.*

III. The Consideration of the Drawdown is improper within the SSEIS

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(A) THERE IS NO MEANS FOR MEASURING A DRAWDOWN’S INSTREAM FLOW IMPACTS, MAKING THE DATA UNACCEPTABLY INCOMPLETE UNDER SEPA

1) The SSEIS provides no set means for measuring a Drawdown’s impacts to

instream flows making the “no negative impact” pre-requisite for approval of a specific plan impossible to determine. Regardless of this lack of analysis, in regards to the Impacts to fish, the SSEIS states “[b]ecause no negative impacts to fish are anticipated in the Columbia River downstream of Grand Coulee Dam, no mitigation is proposed.” *Id.* at 4-65. The SSEIS fails, therefore, to demonstrate how the “no negative impact” standard will be met by Drawdowns in general because it does not propose a meaningful means for measuring water conserved through mitigation measures.

In addition, based on the fact that there is no existing policy on how or where to measure whether a withdrawal of water pursuant to the Drawdowns would result in a net reduction in stream flow, a specific proposal for Drawdown cannot evaluate the primary prerequisite for approval of the Drawdowns that it (1) have “no negative impact” on instream flows and (2) not impair or diminish other water rights or ESA habitat plans.

Under SEPA WAC 197-11-080, this gap in data is unacceptably incomplete for consideration of a specific proposal such as the Drawdowns. 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). Ecology, however, has not proven that the costs would be exorbitant to find out how the impacts of the Drawdowns will be measured to know if they have an impact on stream flows. Neither does the SSEIS illustrate that the means of obtaining such information are speculative or unknown.

In fact, the evidence on this issue suggests the opposite. Ecology does know how to obtain such information, but if it has the capability to obtain the information needed to determine how and where to measure instream flow for Drawdowns, the agency must do so before removing storage from the system. WAC 197-11-080(3)(b) provides 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.” 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 Drawdown - it will most likely not be able to achieve its own objective of “no negative impact.” The agency cannot know whether the entire concept of Drawdowns actually meets its requirements without first having a functioning measuring mechanism in place to meet the conditions for approval.

(B) PROCEEDING WITH THE EVALUATION OF A SPECIFIC PLAN FOR A DRAWDOWN UNDER THIS SSEIS IS IN VIOLATION OF STATE WATER LAW.

Proceeding without the necessary information on how to measure the impact on instream flows from Drawdowns in general yet agreeing to evaluate a specific plan for a Drawdown is in violation of WAC 197-11-402(10). Proceeding with the Drawdowns with the planning process without having a set policy for how to measure whether these actions would result in a net reduction of instream flow would violate WAC 197-11-402(10). This section of the regulation provides the general requirements of an SEIS and requires that “SEIS’s shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made.”

Ecology, however, has no means of measuring the effect of Drawdowns on instream flow, therefore it cannot assess the environmental impact on either instream flows, habitat for ESA species, or senior water rights. By proceeding with the specific plan outlined in the early action Drawdowns 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, suggests that Ecology has already decided to implement Drawdowns in any manner it chooses at the time, and that the inadequate “lip service” treatment given in the SSEIS will simply be used as an excuse to justify any future deal or decision that Ecology chooses to make on a given Drawdown – 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 Drawdowns. Proceeding without this information is a violation of both WAC 197-11-080 and WAC 197-11-402.

(C) WAC 197-11-055, WHEN READ IN ITS ENTIRETY, SUPPORTS THE ARGUMENT THAT THE CONSIDERATION OF THE DRAWDOWN IS INAPPROPRIATE WITHIN THIS SSEIS.

Under WAC 197-11-055 (2):

The lead agency shall prepare its threshold determination and environmental impact statement (SEIS), 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).

The inappropriateness of considering the early action Drawdowns is a concern about timing in the review of proposals. WAC 197-11-055 (2), therefore, requires 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 Drawdowns on instream flows, these regulatory sections are not satisfied. Proceeding with a specific proposal for the Drawdowns when the general pre-requisites for an individual Drawdown’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.

IV. The Consideration within the Columbia River Water Management Plan SEIS of the CSRIA Early Action Drawdown is an Improper Application of the SEPA Phasing Requirement Under WAS 197-11-060(5)

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By providing that “[m]itigation would be required if the additional releases would adversely affect water right holders who divert from Lake Roosevelt. Any required mitigation would be determined by Ecology as the water right applications are processed”. SSEIS at 4-24, the SSEIS apparently presents itself as a phased review. SEPA WAC 197-11-060(5) mandates under subpart (e) that “[w]hen a lead agency knows it is using phased review, it shall so state in its environmental document.”

20-7 A phased review, however, 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 SEIS assessing its broad impacts. When a project is then proposed that is consistent with the approved nonproject action, the SEIS 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 SEIS.” (emphasis added).

By proposing the specific early actions in this SSEIS, Ecology is not following the order for consideration of a phased review SEIS. 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. Here the SSEIS is considering both the broad and specific proposals in the SEIS simultaneously in violation of SEPA’s phased review regulations.

V. The SSEIS 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.

20-8 The SEIS fails to examine whether there is any conceivable storage management regime that could result in benefits to instream aquatic values. Given that the SEIS 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 preferred alternative. Ecology should not pursue projects 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 of the Drawdowns and not the public through the payment of taxes.

VI. The SSEIP Fails to Provide Funding criteria for Conservation Projects.

20-9 The SSEIS fails to provide the development criteria for funding conservation projects as mitigation for the Drawdowns. Funding projects to benefit instream flows and water quality would meet 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.

20-9 In addition, Ecology should spend NO conservation or storage money to assist in providing mitigation water for Drawdowns that intend to cover out of stream water uses. The proponents of Drawdowns 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-SSEIS dual beneficiary of the supposedly balanced CRWMP.

VII. The SSEIS Fails to Define Acquisition and Transfer

20-10 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.

VIII. The SSEIS Fails to Condition Water Rights on Instream Flows

20-11 The analysis and alternatives provided in the SSEIS in relation to conditioning the Drawdowns or issuance of the new water rights authorized are flawed, and point out the greater deficiencies throughout the SSEIS. 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 SSEIS 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.

IX. The Drawdown will Violate the Endangered Species Act

The SSEIS provides that the drawdown:

is not expected to negatively affect water rights, the Biological Opinion... Ecology would determine appropriate mitigation measures when processing water rights. The Proposal will not reduce flows during the Biological Opinion ‘salmon flow objective period.’

20-12 Id. at S-3.

The SSEIS, further, provides that:

This section...evaluates the influence of the anticipated drawdown on: (1) exposure of shallow lakeshore (littoral) habitats; (2) access of adfluvial stocks of fish to tributary waters of the lake; (3) hatchery enhancement programs in the lake via changes in reservoir residence time and fish

entrainment; and (4) aquatic habitats in the Spokane River/Chamokane Creek area of the lake.

Id. at 4-25.

This statement sums up a major flaw of the entire SSEIS: 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” standard, and the environmental impacts of diverting water from instream flows in order to fill off-channel storage reservoirs.

That the Drawdown will have impacts on rainbow trout, kokanee salmon and other fisheries salmon during this critical migration period is illustrated by the fact that:

The annual volume of water released under each of the scenarios is fixed. Spreading the timing of the releases across a number of months under the alternatives decreases the relative level of drawdown, but extends the period of exposure. The worst-case drawdown of 1 foot under non-drought conditions (96 percent of the time) is anticipated to occur annually at the end of August under Alternative 1A. Drawdowns during the balance of the months for non-drought years range between 0.0 and 0.9 feet depending upon the alternative. Worst-case drawdown under drought conditions (Alternative 1D) is 1.5 feet during the end of August.

Id.

The only significant reference to the impacts on the salmon fishery in the SEIS, however, is that:

RPA Action 4 in the 2007 Biological Assessment addresses Storage Project Operations, including Grand Coulee operations. Operations include releasing flows from the reservoir to support salmon flow objectives during July and August as described in Section 3.6. The drawdown expected with the incremental releases from the reservoir ranges from 1,276.91 to 1,279.63 msl. With these releases, the reservoir would be drafted below the target in the Biological Assessment—1,278 feet msl in dry years and 1,280 feet msl in normal water years.

Id. at 4-24.

Neither the SSEIS nor the CRWMP, however, contain instream flow protection provisions that are necessary to protect needed flows for the Columbia River fishery. The NAS/NRC Report – MANAGING THE COLUMBIA RIVER, INSTREAM FLOWS, WATER WITHDRAWALS, AND SALMON SURVIVAL - commissioned by Washington State and published by the NAS in March, 2004, for example, warns river managers that eliminating the instream flow

requirement under state law could place the Columbia’s River’s already taxed fishery resources in further jeopardy. The NAS report represents sound science and policy advice, and should serve as the foundation for state actions. Among other reasons, the report’s credibility will carry great weight in the event of court challenges over future water allocations. See, for example, the law review article entitled “*The Supreme Court of Science*” *Speaks on Water Rights: The National Academy of Sciences Columbia River Report and its Water Policy Implications*”, author Reed Benson, Lewis & Clark Law School Journal of Environmental Law, Volume 35, p. 85 (2005).

20-12 Finally, that the Drawdown is in violation of the ESA is illustrated by the Ninth Circuit Court of Appeals recent decision to uphold Judge Redding’s decision that the National Marine Fisheries Service’s (NMFS) management of the four Columbia River Dams is illegal. In that case, the Court of appeals provided that NMFS may not use a hypothetical “reference operation” in its jeopardy analysis to exclude from the proposed action’s impacts the effects of related operations NMFS deems “nondiscretionary.” The ESA does not permit agencies to ignore potential jeopardy risks by labeling parts of an action “nondiscretionary.” Because NMF’s approach was a novel one, completely at odds with NMF’s prior scientific approaches, it merited little deference. *National Wildlife Federation v. National Marine Fisheries Service*, No. 06-35011, D.C. Nos. CV-01-00640-JAR; 05-00023-JAR (April 9, 2007).

XII. Mitigation Agreement With Colville Tribe

The SSEIS provides that “[i]n December 2007, the state announced agreements with the [Confederated Tribes of the Colville Reservation] CCT...in support of the incremental storage releases from Lake Roosevelt. The state agreed to provide annual payments to the tribes to mitigate the damage to fish and wildlife, recreation and cultural activities resulting from the release of water from Lake Roosevelt...” SSEIS at 1-3.

20-13 In addition, the SSEIS states “No negative impacts to fish are expected in Banks Lake. The agreements between the State of Washington and the ...CCT ... provide mitigation for any potential impacts to fish and aquatic resources in Lake Roosevelt.” *Id.* at S-4. Yet, the CCT Agreement (Agreement) appears to be little more than a promise by the tribe to support Drawdown in exchange for monetary payment. This is illustrated by the fact that, in addition to providing for funding, ostensibly, for mitigation, the state must provide annual payments “for economic development investments to benefit the local economy.” *Id.* at 1-3. This will be accomplished by the allocation of funds annually from the Columbia River Basin Water Supply Development Account to the CCT....

Illustrative of the primary problem with the Drawdowns and the CWRMP, while the Agreement, insures that irrigation interests will receive the water they demand with its associated impacts on aquatic habitat, it does nothing more than provide for further study of the impacts to the fishery in the Columbia River. The SSEIS, itself admits that the Agreement merely calls for:

a study to evaluate lowering Lake Roosevelt to 1,278 feet msl only in the lowest 20 percent of water years and to 1,280 feet msl in all other water years. The Draft MOA also calls for an investigation of Dry Water Year

Operations other than summer drafting. Section A.1.e(ii)(4) of the Draft MOA acknowledges the stream flow enhancement component of the Lake Roosevelt Incremental Storage Releases Project and calls for an investigation to evaluate the proposed release of water in April through June (rather than July and August) in the driest 20 percent of years to benefit Upper Columbia River outmigrants.

SSEIS at 4-24.

The lack of any meaningful mitigation, in the Agreement, to offset the immediate impacts of water diverted as a result of the Drawdowns is illustrated by the SSEIS's so called "Mitigation" section in relation to the Agreement which provides only that there "will need to be on-going discussions and communication between the State of Washington, the Action Agencies, and the Tribes so that actions under all agreements and plans that relate to the operation of Lake Roosevelt are coordinated." *Id.*

In fact, as illustrated by the attached letter from Yvonne Swann (Appendix A) who is a member of VFOF, the CCT Agreement is not supported by VFOF due to the negative impacts on the salmon fishery in exchange for monetary payments to the Tribe and because the membership of CCT was not informed about the contents of the agreement or that the Tribe intended to enter into it. The SSEIS reliance on the CCT Agreement, therefore, violates the United Nations Declaration on the Rights of Indigenous Peoples which repeatedly affirms the Right to Free, Prior and Informed Consent for Indigenous Peoples in a variety of contexts. "These include redress, restitution, settlement and dispute resolution affecting lands and resources, as well as in development activities, judicial and legislative processes which may impact them..." New York, April 21 to May 2, 2008, Joint Intervention Submitted by the International Indian Treaty Council Agenda Item 8, Ongoing Priorities, Themes and Follow-up (b) 2nd International Decade of the World's Indigenous Peoples.

XIII. The SEIS does not Adequately address the Potential for the Draw Down to Exacerbate the Effects of Climate Change on Water Supply

According to the SEIS, "No additional water would be available to supplement stream flows to benefit fish in the mainstem of the Columbia River. SSEIS at S-3. In addition, in regards to short term impacts, the SEIS provides that the "Proposal is not expected to increase emissions that would affect climate change since there would be no construction involved and there would be no increase in transportation emissions." SSEIS at 4-3. In addition, in relation to long-term/operational impacts, the SSEIS provides that the "impacts of climate change could affect water management at Lake Roosevelt by altering the amount and timing of water available in the reservoir." *Id.* at 4-4.

The SSEIS, however, entirely ignores the impacts to water resources of relying on ever increasing storage releases rather than conservation and applicable water law to offset the effects of Climate change. Instead of not issuing or limiting water right permits when flows are affected as required in existing state water laws, for example, the Drawdown continues the dependence of irrigation interests on ever diminishing sources of water by authorizing interruptable water users

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to circumventing the Endangered Species Act (ESA) during critical years needed for salmon, instream flow laws and allowing the Odessa subarea water users to transfer water rights from one source to another simply because the existing sources has been depleted. In addition, while the Drawdowns, may temporarily provide sufficient water for both irrigation interests and instream flows, these actions merely prolong the inevitable lack of water availability that water users will face as climate change worsens and perpetuates the illegal use of limited water resources by irrigation interests. This will eventually result in severe impacts to aquatic habitat when the effects of climate change result in even less available water in the near future.

Moreover, the only mitigation for the impacts to Climate Change provided in the SSEIS includes the statement that:

Changes in water availability in the Columbia River Basin will require the managing agencies to adaptively manage the river to respond to changing conditions. If conditions change, Ecology will coordinate with Reclamation and other Columbia River managing agencies to adapt to climate changes. Possible mitigation actions include changes to Reclamation service contracts and an adaptive management plan for recreation impacts.

Id.

By putting in practice the circumvention of existing water supply and instream flow protection laws, however, the Drawdowns significantly diminishes Ecology's ability to "adapt" to changes in climate by removing any that may impact the newly created "rights" of irrigators to water. As a result, any "adaption" to climate change by Ecology will result in the protection of water supply for irrigation or the creation of yet more "rights" of irrigators to water at the expense of instream flows.

Further, as with other water systems, the Drawdowns should be designed to meet current demand under the worst historical hydrology with an additional arbitrary "safety factor" to provide for unprecedented conditions. It is likely that most water users will, at least initially, respond to global warming induced supply and demand changes by adapting rather than by taking pre-emptive action. The SSEIS, however, fails to discuss Integrated Water Resource Management – a process consisting of explicit consideration of all supply-side and demand-side issues, involvement of all stakeholders, and continual monitoring and review which is often regarded as the best way to manage resources and seems well suited to climate change issues. Brad Udall, Global Warming, The Hydrological Cycle, and Water Management, The Water Report, Issue #28, 21 (June 16, 2006).

Several municipalities in the West, including Boulder, Denver, Seattle and Portland have completed or are undergoing planning studies relating, at least in part, to climate change. California recently completed its normal five year planning effort and the new document, Bulletin 160, considers climate change in a qualitative way.

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The SSEIS, however, fails to follow the example of these municipalities in planning for the future by using climate models to evaluate outcomes. This is regardless of the fact that numerous scientifically model-based climate change studies for Western river basins are available and such models may be properly applied to the Drawdowns by: 1) understanding model limitations; 2) being aware how different models respond; and 3) understanding emissions scenarios.

Similarly, the SSEIS fails to include the most defensible scientific studies which have been conducted with multiple models and selected emission scenarios. In its Third Assessment Report, for example, the Intergovernmental Panel on Climate Change (IPCC) devised 40 different future scenarios. These scenarios come out of four main groups, economic growth, and technological progress. The IPCC created the scenarios because they believed it was impossible to predict the most likely future and instead they wanted to have a range of possible futures. The IPCC says,

It is recommended that a range of SRES scenarios with a variety of assumptions regarding driving forces be used in any analysis. The different scenarios result in greenhouse gas concentrations that vary by a factor of two, and the resulting energy imbalances also vary by about two. These differences have large impacts on predicted warming, precipitation changes and all other hydrological cycle impacts.

Id.

Finally, the SSEIS fails to adequately address water use related to the Drawdowns, that will result in a large amount of energy use as illustrated by recent studies funded by the U.S. Department of Energy and the California Energy Commission. Energy to lift and pressurize water is in fact just the opposite of hydropower and because of the high heat capacity of water, substantial energy must be used to heat water. Projects which operate in a similar capacity to the Drawdowns, including the California State Water Project, the Metropolitan Water District's Colorado River Aqueduct and the Arizona Central Project all use massive amounts of electricity to pump water literally thousands of vertical feet. The California Energy Commission estimates that water use in California accounts for 20% of all electricity use in the state and also uses substantial amounts of petroleum. *Id.*

XIV. Cumulative Impacts

The SSEIS does not address the impact of multiple permits issued using the Drawdowns. As mentioned earlier, the SSEIS is not specific regarding the number of permits (or volume of water within those permits) that Ecology will issue under the Drawdowns. How is it possible to consider the impact on the river—including whether or not it is meeting the “no negative impact” standard—without knowing this information beforehand? Without this, the SSEIS does not adequately consider the cumulative impacts of permits under the Drawdowns, not to mention the impact of the Drawdowns coupled with the many water withdrawal permits currently pending with Ecology.

In addition, the SSEIS fails to consider the cumulative impacts of this Drawdown (along with other pending permits) on the survival of salmon and other native species within the Columbia Basin. The survival of this species is directly dependent on adequate river flows. Even though the SSEIS requires “no negative impact” during critical periods of the summer, we would like to remind Ecology that its duty to protect native salmon runs equally with goal of issuing new water rights permits.

CONCLUSION & RECOMMENDATIONS

The SSEIS fails to recognize that protecting instream flows is one of the main purposes of the CRWMP and creates special rights to a guaranteed sources of water that are outside of the normal permitting process that will violate existing senior water rights and impact instream flows. In addition, the SSEIS circumvents instream and habitat protection standards written into current state water law that will combine with the Drawdowns' effect on water temperature standards which are heavily dependent on flows necessary to maintain low temperatures needed by salmonids and other species. The resulting impacts to the fishery will violate the Endangered Species Act and state water law and will exacerbate the effects of climate change on the fishery by perpetuating a system that emphasizes the delivery of water to irrigation interests at the expense of instream flows and water quality even as water resources become more and more scarce.

Further, 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 action on the Drawdowns until definitions of crucial terms are agreed-upon, weak or missing portions of the SSEIS can be filled-out, inaccuracies corrected, and sufficient data can be gathered to form a proper foundation for implementing the Columbia River law.

In addition, we urge Ecology to adequately consider the impacts of the Drawdown on aquatic resources and the purpose of protecting instream flows in the Columbia River. Moreover, we ask you to fully define “no negative impact,” as well as minimum standards and guidelines for measuring “no negative impact” prior to proceeding with these Drawdowns. Finally, we ask you to balance water withdrawals associated with these Drawdowns with your obligation to protect and enhance the quality of the natural environment.

Thank you for your consideration.

Sincerely,

s/Harold Shepherd
Harold Shepherd, Staff Attorney

APPENDIX A

My aforementioned introduction gives me the right to be heard in the matter of protecting the non-renewable resource—water:

As a Sinixt -through inheritance, the Creator made me one of the Caretakers of the land originally assigned to my relatives and I take the responsibility as such very seriously. My traditional teachings make me a relative of my natural environment and I have no choice but to carry out my inherent duty to ensure cleanliness, preservation, and balance thereof. I am related to the air, plant life, and the animal people and water is to whom each of us owe our allegiance because it is the lifeblood of our mother, the Earth, and a common need for our existence. This life is not for me to partake in consuming or depleting natural resources because they belong, not to me, but to the future generations of my relatives as long as the Creator determines;

As a Sinixt/Colville -I cannot passively ignore the 100 years of contamination to the Columbia River by the overly consuming corporation called Teck Cominco in British Columbia. I am appalled that recent carelessness on the corporation's part further caused pollutant spills into the water. The water must be restored to its natural state and, in my opinion this restoration can begin only if Teck Cominco is shut down. Rather than shutting it down, too much governmental attention and money toward assessment of the actual 100-year damage has been, and is still being, spent. I cannot understand why the state and tribes want to irrigate farms with this water at this time when it might spread the contamination to the world through their products;

-I cannot passively accept the fact that at the onset of this investigation the CCT representatives were denied the sovereign right to a seat at the negotiations table when corporate and governmental officials discussed this 100-year history of pollution to the Columbia River. What were they hiding from the Colville tribal members and why did CCT representatives allow the doors to be closed to them? If I was informed of this at the time, I would have pointed out as a Colville tribal member that the Columbia River water begins in my territory to the north at Upper Arrow Lake in British Columbia, and it flows southward into the U.S. along the eastern and southern borders of our Colville Reservation. As it were, I did not have a voice;

-I cannot ignore the fact that less than 100 years ago the Grand Coulee Dam was built into the Columbia River by U.S. authority and grossly impeded the natural habitat and customary run of salmon, the original mainstay of my people. I believe this contributed to the deterioration of the health of the Colville tribal members;

-Teck Cominco polluted the river, yet to my knowledge no studies on its impact toward the health of our members have been made; however, I just received a publication called the Lake Roosevelt Community Health Centers (San Poil and Inchelium). One paragraph states "Eat more fish. Fish is a good source of protein and other nutrients. It also contains omega-3 fatty acids, which may help reduce the risk of heart disease and stroke".

-Ironically, the backwaters created by the Dam are now targeted for more depletion by this proposed state-tribal partnership;

-I cannot passively accept the hasty decision by the Colville Business Council (CBC) to agree to the Grand Coulee Dam Claims Settlement over 10 years ago because I did not have the right to give input or full informed consent to the final agreement. I do not feel the Colville tribal members were fully compensated for loss of our salmon;

I was not fully informed by the CBC prior to its decision to enter into partnership with the State to sell Columbia River water to boost the economy of corporate agricultural entities neighboring the exterior boundaries of my Reservation. The purpose of the CBC "shall be to promote and protect the interests of the Colville Indians..." (Article I, CCT Constitution and By-Laws) and I cannot see how entering into this partnership is protecting my interests. Our forests draw water to stabilize the environment of our Reservation. I cannot see how this proposed change in our water system will guarantee the right of our forests;

This "partnership", an erosion of our sovereignty, is in violation of CBC's sworn duty "to protect and preserve the Tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture; to administer charity, to protect the health, security, and general welfare of the Confederated Tribes..." [Article V, CCT Constitution and By-Laws (a)] and I see no guarantee of protection to the health of the people, the salmon, other wildlife, or our natural resources. The powers of the CBC are limited and restricted to our Constitution. The above-mentioned unilateral CBC decision ignored our Constitution. This is a breach of CBC's Oath of Office and, in my opinion, neglect of duty;

The Department of the Interior/Bureau of Indian Affairs has fiduciary responsibility to oversee activities on the Colville Reservation to ensure that our inherent rights are protected yet lack of its intervention in this instance leaves me with no voice or protection. Therefore, I am appealing to others to, hopefully, understand my concerns;

My immediate request regarding the proposed Columbia River Agreement is No Action until such time that the Colville tribal members become fully informed.

Comment Letter No. 20 – Center for Water Advocacy – Harold Shepherd

- 20-1. Comment noted.
- 20-2. See the response to Comment Number 9-1 regarding the one-third/two-thirds allocation.
- 20-3. The section of the Columbia River Water Management Act that you cite, RCW 90.90.020(1)(ii), applies to new storage facilities that could be developed with funding from the Columbia River Basin Water Supply Development Account. The section does not apply to the Lake Roosevelt Incremental Storage Releases Project, which is not a new storage facility. The provision in RCW 90.90.020(1)(ii) that the timing of releases of water from new storage facilities will be determined by Ecology in cooperation with WDFW and other fisheries managers is intended to provide the maximum benefits to fish populations.

It is unclear how you concluded that 68,000 acre-feet of water will go toward mitigation. None of the incremental flow releases are mitigation, but are part of the project. In all years, 27,500 acre-feet of the water releases will go specifically to augment stream flows with an additional 17,000 acre-feet released for stream flows during drought years.

The Columbia River Water Management Act establishes two goals for the Management Program—developing new water supplies “in order to meet the economic and community development needs and to meet instream flow needs of fish” (RCW 90.90.005(1)). The Lake Roosevelt Incremental Storage Releases Project includes flow releases to meet both goals. Implementing the Management Program is not in itself expected to significantly reduce or eliminate existing threats to ESA-listed species, but modest improvements in conditions could occur. This project includes flow releases that are designated for instream flow augmentation. Ecology has coordinated with WDFW and other resource managers to develop options for the timing of the flow releases that will most benefit fish migration. The Preferred Alternative is an adaptive management approach that will include continued coordination with resource managers. The adaptive management strategy is intended to provide maximum benefits to fish.

- 20-4. See the response to your Comment Number 20-3 regarding the purpose of the Columbia River Basin Water Management Program. See Sections 4.2.2.3, 4.2.2.5, and 4.2.2.6 regarding the impact of the Proposal on flows in the Columbia River. See also the response to Comment Number 3-8.
- 20-5. See the response to your Comment Number 20-3 regarding the purpose of the Columbia River Basin Water Management Program. The Lake Roosevelt Incremental Storage Releases Project is implemented under the authority of the Columbia River Water Management Act (RCW 90.90) and the Memorandum of Understanding between the State of Washington, the Bureau of Reclamation, and the three Columbia Basin irrigation Districts (Appendix A of the Supplemental EIS).

State law requires that Ecology issue a water right permit only if:

- 1) it finds there is water available,
- 2) it will be used for a beneficial use,
- 3) the new use will not adversely impact existing water rights, and
- 4) the new use will not be detrimental to the public welfare.

Any permit issued by Ecology under the Columbia River Water Management Program, including permits related to releases from Lake Roosevelt, must meet this statutory four-part test. In addition, the statute provides for the opportunity to protest a water right application and appeal Ecology's decision (RCW 90.03.250 to 90.03.340).

- 20-6. Your comment regarding the effects of the incremental storage releases on instream flow is noted. The effect of the Proposal on downstream flows is described in Section 4.2.2.3, 4.2.2.5, and 4.2.2.6. The Proposal is not expected to negatively impact downstream flows. The impact of the Proposal on salmon flows established under the Biological opinions has been evaluated as part of the development of the Biological Opinions. Both the 2008 Biological Opinion, Table 1, and the 2007 Federal Columbia River Power System Biological Assessment, Table B.2.1-1, conclude that if the Lake Roosevelt drawdown is implemented, it will not reduce flows during the salmon flow objective period (April-August). See the response to Comment Number 4-12.

Ecology will use a combination of direct measurement and demand-side controls to measure the impact of the project on instream flows. First, Reclamation will monitor the releases of water from Lake Roosevelt through lake level elevations. Specific lake elevations (e.g., at the end of August) will be met to ensure releases occurred. Although the incremental releases are small compared to the overall releases, over time, the change in release behavior will be more evident through comparison of historic lake elevations before and after 2009. Second, depending on the adaptive management strategy releases for a given year, the releases may be observed in specific gages downstream. Because the flow releases are small relative to the overall volume of water in the river, in some years the amount of flow releases may fall within the gage accuracy tolerances at some gages. However, it is expected that the flows can be detected in some years. Because the Lake Roosevelt Incremental Storage Releases Project is one of several projects that Ecology is using to benefit water supply in the Columbia River Basin, there will be additional sources of water to benefit instream flows. Those flows will be measured and managed cumulatively to meet the goals of the Columbia River Basin Water Management Act. Ecology will use the Columbia River webmap (http://www.ecy.wa.gov/programs/wr/cwp/cr_webmap.html) and its annual legislative reports to make this process transparent. Third, Ecology will employ demand side controls such as water measurement, aerial photography review and water masters to ensure that the water that is released stays in the river. Ecology plans to measure 90 percent of the water use in the Columbia River and report this data on its Columbia River webmap (see the response to Comment Number 4-11). Ecology will investigate aerial photography and satellite imagery to determine if water users are maintaining their authorized diversion limits. Ecology will use water masters to provide technical assistance to water users not in compliance with water right diversion limits, followed by enforcement to ensure water that is released under this project stays in the river for intended uses.

See the response to your Comment Number 20-7 regarding timing of the environmental review.

- 20-7. Ecology is following SEPA regulations regarding phased review (WAC 197-11-060). The Lake Roosevelt Incremental Storage Releases were evaluated at a programmatic level in the Final Programmatic EIS for the Columbia River Water Management Program

(Ecology, 2007). At the time the Programmatic EIS was issued, the storage releases were proposed as an early action under the Management Program. Since the Programmatic EIS was finalized, Ecology and Reclamation have worked together to refine the alternatives for the amount and timing of the storage releases. Those alternatives are evaluated in this EIS which supplements the Programmatic EIS. This Supplemental EIS evaluates the impacts associated with releasing additional flows from Lake Roosevelt. See the response to your Comment Number 20-5 regarding state processing of water rights.

- 20-8. The Lake Roosevelt Incremental Storage Releases Project is one of several projects that Ecology is pursuing under the authority of the Columbia River Water Management Program. Other projects will be undertaken in the future that will evaluate whether new water supplies can be obtained from storage. The proposed project would use water that is already stored behind Grand Coulee Dam to meet the multiple purposes of improved water supply for municipal/industrial uses, agriculture, and improved stream flows for fish.
- 20-9. See the response to your Comment Number 20-3 regarding the purpose of the Columbia River Water Management Program. The Lake Roosevelt Incremental Storage Releases Project meets the Management Program's requirement to provide water for both out-of-stream and instream uses. See Section 2.1.2.2 of the Programmatic EIS (Ecology, 2007) regarding implementation of conservation programs under the Columbia River Water Management Program.
- 20-10. Your comments regarding acquisition and transfer are noted. See the response to your Comment Number 20-5 regarding the process for issuing water rights. See the response to Comment Number 19-6 regarding the temporary program.
- 20-11. See the response to Comment Number 3-10 regarding OCPI.
- 20-12. Your comment regarding the drawdown of the reservoir below targets in the Biological Assessment is noted. See the response to Comment Number 4-12. The targets are the subject of review (Table 1, 2008 Biological Opinion). Further, RPA Action 14 in the 2008 Biological Opinion states that "flexibility will be exercised in a dry water year" with respect to the reservoir draft limits in RPA Action 4. See Section 4.2.1.5 of the Supplemental EIS.

Impacts to listed species are described in Sections 4.2.1.6, 4.2.1.7, 4.2.2.6, 4.2.2.7, 4.2.3.6, and 4.2.3.7. Background information on listed species and general impacts were described in the Programmatic EIS (Ecology, 2007).

- 20-13. Your comments regarding the agreement between the State of Washington and the CCT are noted. The letter from Yvonne Swann is attached to your comment letter.
- 20-14. See the response to Comment Number 19-3 regarding climate change. Ecology has made every attempt to incorporate relevant current research on climate change into its evaluation and will continue to do so as new studies are completed.
- 20-15. See the response to your Comment Number 20-7 regarding phased review and the evaluation of impacts of specific water rights. Although Ecology does not know at this time where specific water rights will be issued, it does know the total amount of the water that will be issued for out-of-stream uses. Withdrawals from the Columbia River will be limited to the amount of water specified in the MOU between the state, Reclamation, and the three Columbia Basin irrigation districts. The information on the amount of water that would be released was adequate to document the potential impacts to the Columbia River.

Specific impacts from each water right issued will be evaluated under Ecology's normal process for issuing water rights. See the response to your Comment Number 20-5. Cumulative impacts are described in Section 4.3. See the response to Comment Number 19-5.

- 20-16. Your comments regarding the Lake Roosevelt Incremental Storage Releases Project are noted. As noted in the response to your Comment Number 20-3, improving instream flows is one of the purposes of the Management Program along with providing water for out-of-stream uses. As stated in the response to your Comment Number 20-5, the impacts of issuing specific water rights under the project will be evaluated under the state's normal water rights process, and no impacts will be permitted to senior water rights. As stated in Section 4.2.2.3, no impacts to Columbia River water temperature are anticipated. See the response to your Comment Number 20-12 regarding the Endangered Species Act.

Ecology believes that this Supplemental EIS adequately evaluates the potential impacts of the Lake Roosevelt Incremental Storages Releases Project. Ecology has used the guidance in WAC 197-11-794 to determine if the Proposal would cause any significant impacts. An Impact is significant if there is "a reasonable likelihood of more than a moderate adverse impact on environmental quality." The only significant adverse impacts identified in the Supplemental EIS are to some recreational facilities on Lake Roosevelt and Ecology is working with NPS to mitigate those impacts.

June 30, 2008

File No.: 1-773180-000

Derek I. Sandison
 Central Regional Director
 State of Washington, Department of Ecology
 15 West Yakima Avenue, Suite 200
 Yakima, WA 98902-3452

VIA ELECTRONIC MAIL

Subject: Lake Roosevelt Comments – Draft Supplemental Environmental Impact Statement (SEIS)

Dear Mr. Sandison:

21-1 I would like to take this opportunity to thank the Washington State Department of Ecology (Ecology) for allowing interested parties to review and comment on the above referenced Draft SEIS. On behalf of Teck Cominco American Incorporated (TCAI), please find listed below a limited number of comments and suggestions intended to clarify misconceptions or incorrect statements presently within the draft SEIS. For your convenience and to aid in your review, page numbers and respective report sections and subsections have been identified.

21-2

- Page S-4; “Environmental Health”; 1st sentence - “*The Proposal would slightly increase the exposure of contaminated sediments during peak recreation periods*”. Please note that although written as being definitive (i.e., *would*) this statement is not supported by facts and is speculative at best. As the draft SEIS correctly identifies on pages 3-51 and 3-52, the U.S. Environmental Protection Agency (EPA) identified that 12 of the 15 beaches sampled in 2005 “...were below detection limits for all contaminants, and were designated as safe for use. Three sites (Black Sand, Northport, and Dalles) had arsenic and/or lead concentrations slightly above screening levels; these beaches were designated as safe for seasonal recreation (EPA, 2006).” It is important to note that with the exception of the Dalles Orchard (Dalles) which lies at the northern fringes of the Lake Roosevelt National Recreation Area (LRNRA); the aforementioned beaches (Northport and Black Sand) are not located within LRNRA boundaries. As such, they are not typically affected by reservoir water management operations. In other words, exposure of sediments at Northport and Black Sand beaches are not

Teck Cominco American Incorporated

501 North Riverpoint Boulevard, Suite 300, Spokane, WA 99202
 PO Box 3087, Spokane, WA 99220 • telephone: (509) 747-6111 • fax: (509) 922-8767

21-2 influenced by water management activities but rather, are linked to upstream flows and would therefore not likely be affected by the Proposal. Based on the data collected to date and as identified within the draft SEIS, contaminant concentrations for beaches located within the LRNRA “...were below detection limits for all contaminants, and were designated as safe for use...” Therefore, it appears premature and inappropriate to state that the Proposal would increase exposure to potentially contaminated sediments. It is recognized that additional beach sediment data is likely required to perform a comprehensive risk assessment (human health and ecological) for the upper Columbia River which includes Lake Roosevelt; and as such, for the purposes of the SEIS it would be more appropriate and correct to substitute “*would slightly*” with “could potentially”.

21-3

- Page S-5; “Areas of Significant Controversy and Uncertainty”; 1st sentence – “*Potential impacts associated with the Teck Cominco contamination of Lake Roosevelt is an area of uncertainty*”. It is completely inappropriate and irresponsible to infer that contamination within Lake Roosevelt is due solely to Teck Cominco. As the draft SEIS correctly identifies on pages 1-13 and 3-51, there have been and continue to be a number of potential sources of contamination to Lake Roosevelt (e.g., pulp and paper industries, mining and smelting operations, municipalities, and agriculture). Although Teck Cominco has voluntarily agreed to investigate the nature and extent of contamination and perform risks assessments in conjunction with the EPA, under no circumstance is it appropriate to infer ownership of contamination within Lake Roosevelt. Therefore, it is recommended that the aforementioned sentence be replaced to read “Potential impacts associated with contamination of Lake Roosevelt is an area of uncertainty”.

21-4

- Page 1-13; Section 1.6.6 “Lake Roosevelt Remedial Investigation and Feasibility Study” – Presently this section states “*The source of the contaminants is upstream smelting and pulp operations*.” As previously mentioned and acknowledged within the draft SEIS, there are a number of historic and/or existing potential contaminant sources to Lake Roosevelt located upstream and adjacent to the reservoir. As a result, it would be more appropriate and correct to simply state that “the source of the contaminants includes, but is not limited, to upstream smelting and pulp operations.”

Within the next sentence of this section it states that “*The primary source is a smelter currently owned by Teck Cominco located...Canadian border*.” Without providing the necessary and appropriate supporting information it is unclear how Ecology has identified the Trail smelter as the “*primary source*” of contamination. Any discussion or inference to source allocation is premature and speculative; and should be removed from the document. Furthermore, the SEIS should focus on science and how the Proposal will affect or potentially affect existing and future

21-4 | conditions. As a result, the SEIS's focus and discussion relative to the Remedial Investigation/Feasibility Study should be on the assessment of contamination (type, concentrations ranges and relative location), not potential responsible parties.

21-5 | Furthermore within this paragraph Ecology states that "...discharges were prohibited in 1995", referring to the discharge of granulated fumed slag. This statement is simply not true. Discharge of granulated fumed slag was not prohibited but rather, Teck Cominco and the Provincial government cooperatively worked together to discontinue discharge of granulated fumed slag into the Columbia River in 1995. As a result, the text should be edited to read "...discharges were discontinued in 1995".

21-6 | Within the last sentence of this paragraph it states that "...there is evidence that the contaminants are having long-term effects on organisms." We are unaware of this "evidence" and unfortunately Ecology has not provided a reference to substantiate such a definitive statement. On the contrary, based on work completed by Ecology during the 1980's it was concluded that "surveys in Lake Roosevelt did not find evidence that the current levels of metals in this system pose a serious threat to the aquatic life or human health" (Johnson et al., 1989¹). It is important to note that the above-referenced survey was completed during that period of time when discharges of granulated fumed slag from the Trail facility were active. As a result, it remains unclear how Ecology can infer evidence when previously published information from Ecology does not support, but rather, contradicts this evidence.

21-7 | • Page 3-50; Sub-section 3.10.1.1 "Hazardous and Toxic Materials" – the use of the word "toxic" is inappropriate and should be deleted. We are not aware that any toxic materials have been identified within the reservoir. Any contamination within the reservoir is more appropriately labeled as a hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

21-8 | • Page 3-51; header "Metal Contamination"; 2nd paragraph – "Downstream accumulations of water-granulated fumed slag were not identified, but are possible based on historical quantities discharged into the Columbia River. Downstream sources are most likely related to effluent discharges, fine-grained water-granulated fumed slag, or weathering of more coarse-grained slag particles." It remains unclear to this reviewer how, based on "historical quantities", Ecology can without any supporting information and/or calculations suggest that downstream accumulations of granulated slag are possible; while acknowledging that sampling activities completed to date have not identified any

¹ Johnson, A.; D. Norton; and B. Yake. 1989. *An Assessment of Metals Contamination in Lake Roosevelt*. Washington State Department of Ecology Report No. 89-c26. June.

21-8 | such accumulations. It is recommended that speculative comments be removed from the SEIS and focus on actual data.

21-9 | Furthermore, Ecology appropriately acknowledges that there are a number of historic and/or active pollutant sources to Lake Roosevelt and yet, goes on to infer that the resulting contamination is solely due to Teck Cominco. This is contradictory, speculative, and does not aid in assessing the Proposal. As previously noted, with the exception of discussing the nature and extent of contamination as it may exist within Lake Roosevelt, and how the Proposal may affect this aspect of the project, it is unclear to this reviewer why the draft SEIS chooses to introduce speculative comments that clearly do not inform the Proposal and any associated decisions. As a result, we strongly encourage Ecology to remove such speculative comments and rely on the existing information to inform its decision and Proposal.

21-10 | • Page 4-39; Section 4.2.1.9 "Environmental Health"; header "Contaminated Sediments" – The draft SEIS identifies that there is a concern that dry sediments could become airborne, "carrying toxic metals and organic compounds". We would like to draw your attention to work completed by the U.S. Geological Survey (USGS) which measured trace element concentrations in dust samples at several locations along Lake Roosevelt. This work initiated in early 2000 and conducted over several years was designed to assess the occurrence, concentrations, distribution, and seasonal variability of select trace elements on airborne dust particles. Based on this work, the USGS concluded that trace element air concentrations "were below established chronic inhalation risk levels", and that particulate matter concentrations up to 10 microns (PM₁₀) "did not exceed EPA short- or long-term standards" (results presented at the 5th Symposium on the Hydrogeology of Washington State, April 2005). Therefore, although Ecology has correctly identified a potential exposure pathway, the draft SEIS fails to report all the information such that readers can make an appropriate assessment as it may relate to the Proposal.

21-11 | We would like to thank you in advance for your time and consideration on the above listed comments. Should you have any questions or require any additional information at this time, please do not hesitate to contact the undersigned.

21-11 | Sincerely,
| **Teek Cominco American Incorporated**



Marko E. Adzic
Manager, Environmental Engineering

cc. Senator Bob Morton, Olympia, WA
Representative Joel Kretz, Olympia, WA
Representative Bob Sump, Olympia, WA
David W. Godlewski – TCAI, Spokane, WA
Andy Dunau – Lake Roosevelt Forum, Spokane, WA

Comment Letter No. 21 – Teck Cominco – Marko Adzic

21-1. Comment noted.

21-2. Ecology concurs that some of the shoreline recreational areas upstream of Grand Coulee Dam, nearer the international border, are not directly influenced by dam operations and reservoir levels. Some backwater effects from the dam are recognized, however, and produce small but measurable changes in river stage up to and beyond the U.S.-Canadian border (see for example, the International Joint Commission website <http://www.ijc.org/php/publications/pdf/ID1600.pdf>). Of the numerous public-use areas within Lake Roosevelt under reservoir influence the following clarifications are provided:

- Metals contaminant concentrations established by the Environmental Protection Agency (EPA) Phase 1 study were not below detection limits as stated. Most of the major metal contaminants were detected at concentrations exceeding their respective method reporting limit.
- The 2007 Washington Department of Health (DOH) Health Consultation (Washington DOH, 2007a) was for recreation use of short duration only. Other exposure scenarios (e.g., seasonal and year-round recreational visitors, contact intensive and non-contact intensive worker, traditional and modern subsistence, and residential) were not addressed by this initial health consultation. These additional scenarios will be evaluated as part of EPA's proposed human health risk assessment (HHRA) that will be completed in conjunction with the Upper Columbia River (UCR) Remedial Investigation/Feasibility Study (RI/FS). Information from the HHRA will be required to make any definitive conclusions regarding potential risk.
- The 2005 EPA Phase I sediment sampling included several high-use beach areas from throughout Lake Roosevelt. This sampling effort, however, was not sufficiently comprehensive to support the development of definitive statements regarding potential risk to human health or ecological receptors. Other recreational sites and beaches of interest have been identified and recommended for additional sampling and study to further assess potential risk. Teck Cominco rightly acknowledges the need to collect additional beach sediment data in support of the HHRA.
- Depending on year-to-year management practices, the proposal will expose, to varying degrees, additional shoreline around the perimeter of the Lake Roosevelt National Recreation Area during the peak-use recreational season. As a result, the potential for slightly greater exposure to contaminated sediments by users does exist.

The text on page S-4 of the Supplemental EIS has been revised to state: "The Proposal would slightly increase the potential for exposure of contaminated sediments during peak recreation periods."

21-3. Considerable documentation exists to support the conclusion that the smelter facility in

Trail, British Columbia has been the primary source—volumetrically and from a loading perspective—of legacy metals pollution to the Upper Columbia River. The June 2006 settlement agreement between EPA, Teck Cominco Metals Ltd, and Teck Cominco American Incorporated expresses the United States’ position regarding past and ongoing discharges by stating: “The United States contends that discharges from the Trail Smelter...have contributed to releases of hazardous substances, as defined in CERCLA.” Legacy metals pollution from the Trail smelter facility is a central focus of the current EPA-directed Remedial Investigation and Feasibility Study from both a site characterization and risk assessment perspective. Secondary sources of metals pollution, other hazardous substances, and localized impacts caused by redistribution and/or remobilization of inorganic and organic contaminants exist or may exist as well. The Remedial Investigation and Feasibility Study will need to consider whether and to what extent secondary sources may affect remedial action decisions. Quantification of human health and ecological risks from existing and historical contamination to the Upper Columbia River is ongoing.

The following text has been added to the Areas of Significant Controversy section of the Supplemental EIS to reflect these points: “Data collection and monitoring is ongoing to better assess and quantify potential adverse impacts to human health and the environment from known sources of contamination; this includes, but is not limited to, contaminants discharged to the Upper Columbia River from the Teck Cominco Trail smelter facility. The Trail smelter facility is considered the primary source of metals contamination, and potentially other hazardous substances, to the Upper Columbia River.”

- 21-4. Existing records (e.g., Canadian National Pollutant Release Inventory (NPRI), British Columbia Ministry of Environment discharge permit information) demonstrate that historical discharges of metal contaminants to the Columbia River from the Trail smelter facility have been substantial. For example, the Colville Confederated Tribes conducted an evaluation of discharge data from the Trail smelter facility for the years 1994 through 1997 (CCT, 2004). This analysis showed that the smelter discharged more arsenic (a known carcinogen), cadmium, and lead than all U.S. sources reporting to EPA’s toxic release inventory to all waters of the United States in all years, except 1996. Additional documentation of historical discharges is available from Environment Canada’s NPRI website:

http://www.ec.gc.ca/pdb/querysite/facility_history_e.cfm?opt_npri_id=0000003802&opt_report_year=2006.

This same distinction also may pertain to certain other non-metallic inorganic and certain types of organic chemicals. Recent Phase 1 Remedial Investigation studies of the Upper Columbia River (EPA, 2006a) and studies by the USGS (Bortleson et al., 2001; Paulson, 2006) also have concluded that the Trail facility is the primary source of metal contamination to the Upper Columbia River. The pulp mill facility near Castlegar, British Columbia (currently doing business as Zellstoff Celgar Ltd) historically was recognized as a primary source of organochlorine compounds (i.e., dioxins and dibenzofurans) which were detected in Columbia River surface water and aquatic organisms. Additional study and data review conducted as part of the ongoing Remedial Investigation and Feasibility Study will help to further refine and resolve any outstanding

questions regarding the magnitude of legacy pollution that was discharged to the Columbia River by smelter and pulp operations located in, and upstream of, Trail, British Columbia. The Remedial Investigation and Feasibility Study also will reduce uncertainty on the nature and extent of contamination and how the Lake Roosevelt Incremental Flow Releases Project could affect remobilization, transport or receptor exposure in areas where contaminants may be present.

The statement in the Supplemental EIS does not intend to single out a responsible party under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Washington State Model Toxics Control Act (MTCA). Some context to the pollution is necessary and appropriate to the Supplemental EIS. See also the response to your Comment Number 21-3.

Section 1.6.6 of the Supplemental EIS has been revised to include the following language to clarify these points: “Smelting operations in Trail, British Columbia are recognized as the primary source of legacy metals contamination to the Upper Columbia River. This metal contamination is considered relevant to the Lake Roosevelt Incremental Storage Project; other secondary point sources of legacy metals pollution of lesser magnitude also may remain, but have yet to be fully documented and characterized. Pulp mill operations near Castlegar, British Columbia, while recognized as a primary source of organochlorine compounds to the Upper Columbia River, may be less relevant to the Proposal.”

21-5. The text has been revised as recommended.

21-6. Numerous detailed contaminant assessment studies and monitoring activities have been conducted in Lake Roosevelt, the Upper Columbia River in the United States, and the Lower Columbia River of British Columbia since the late 1980s. These more recent and ongoing studies and monitoring efforts by a number of state, federal, tribal and provincial agencies have advanced the overall understanding and assessment of potential adverse impacts to human health and the environment due to contaminants in the Columbia River and Lake Roosevelt. Important advancements have occurred in the fields of aquatic toxicology, chemical fate and transport, contaminant bioavailability and analytical measurement techniques over the past 20 years. These advancements have provided important new knowledge and conclusions regarding the potential for acute or sub-lethal impacts to aquatic receptors in Lake Roosevelt.

Several studies have identified the potential for lethal and/or sub-lethal effects from contaminants in Lake Roosevelt sediment. The 1992 USGS study of Lake Roosevelt included laboratory sediment bioassays (Bortelson et al., 2001). Lethal and sub-lethal effects were observed in laboratory toxicity tests with two aquatic organisms exposed to bed sediments collected from near the international boundary and from some sites in Lake Roosevelt. Besser et al. (2007) characterized chronic sediment toxicity, metal bioaccumulation, and metal concentrations in sediment and pore water from eight study sites in Lake Roosevelt. Their study determined that chronic toxic effects on amphipods (*Hyalella azteca*; reduced survival) and midge larvae (*Chironomus dilutus*; reduced growth) in whole-sediment exposures were generally consistent with predictions of metal toxicity based on empirical and equilibrium partitioning-based sediment quality

guidelines. Bioassay tests also were conducted by the EPA during the Phase I Remedial Investigation sediment investigation of the Upper Columbia River (EPA, 2007). These tests indicated that sediment from selected Upper Columbia River locations had the potential to produce adverse effects to aquatic organisms (reduced growth, increased mortality, reduced fecundity).

Similarly, fish advisories both in British Columbia and in Washington State attest to the fact that contaminants have been and currently are present in the Columbia River system. These contaminants become concentrated in fish tissue at levels that warrant concern for human consumption. Referencing a single study from the late 1980s is not a basis for excluding the findings and conclusions from more recent, updated, and arguably more comprehensive studies and monitoring efforts conducted since then. Several lines of evidence, including sediment contaminant levels, bioassay results, and fish tissue data all support the conclusion that contaminants in the river system have the potential to adversely impact aquatic organisms and human health. Given this existing evidence, Ecology has noted that an important focus area of the current Remedial Investigation will be to assess not if contaminants have affected aquatic organisms, but instead how severe and wide-spread the impacts are under current conditions. In consideration of these points, no changes have been made to the Supplemental EIS.

- 21-7. As noted in response to your Comment Number 21-6, lethal and sub-lethal toxic effects have been documented via bioassay testing using Lake Roosevelt sediments. The following excerpt (www.answers.com) helps to distinguish between hazardous substances and toxic pollutants:

Regulation of hazardous and toxic materials is marked by its nomenclature. **Hazardous substances** are defined by federal law as “solid wastes” that “cause, or significantly contribute to an increase in mortality or illness” or “pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed” (42 U.S.C.A. § 6903). **Toxic pollutants**, a subset of hazardous substances, include pollutants that “after discharge and upon exposure, ingestion or inhalation ... [by] any organism” will “cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, ... or physical deformations in such organisms or their offspring” (33 U.S.C.A. §1362).

Because toxic pollutants are a subset of hazardous materials, a pollutant may be hazardous without being toxic, but not vice versa. The EPA has published a list of pollutants it deems toxic, including arsenic, asbestos, benzene, cyanide, DDT, lead, mercury, nickel, and silver. Pollutants not included on this list ... may still be considered hazardous if they pose a substantial threat to human health or the environment.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.A. § 9622, is [a] major piece of federal legislation governing hazardous and toxic materials. Congress established CERCLA in 1980 to deal with thousands of inactive and abandoned hazardous waste sites in the United States. CERCLA directs the EPA to identify sites at which hazardous or toxic substances

may have been released, and ascertain the parties potentially responsible for cleaning up these sites.

In view of this definition, Ecology believes the current sub-section title in the Supplemental EIS is appropriate for the existing content.

- 21-8. According to various sources, considerable quantities of granular slag have been discharged to the Columbia River over the past 70 to 80 years. Teck Cominco has estimated that as much as 13 million tons of slag were discharged to the Columbia River through 1995. Slag was identified in the U.S. portion of the Columbia River as early as the 1930s, based on documents generated in conjunction with the 1937 Trail Smelter Case (Griffin and Potter, 1936). A 1991 Cominco document states that “[t]he slurry of granulated slag is discharged to the Columbia River, a practice that has been employed since the inception of slag fuming back in 1930” (Cominco, 1991). Grand Coulee Dam became operational in the early 1940s. Therefore, slag mobilization and transport under free-flowing, pre-dam conditions occurred for nearly a decade. During this period, slag likely was transported downstream of Marcus Flats and accumulated both in the thalweg (coarser grained fraction) and former floodplain areas (finer grained fraction).

Considerable quantities of granular slag were identified in core samples from the Marcus Flats area during EPA’s 2005 Phase I sediment investigation (EPA, 2006a). It is not known if the bulk of this material was transported prior to, or following, dam construction. Fine particles of slag (silt to clay-sized) likely contribute, in part, to the elevated concentrations of metal contaminants detected in sediment samples collected downstream from Marcus Flats. Cominco (1991) states that “[t]estwork has confirmed that there is a small fines component in the slag discharge which does not settle readily and can be transported by relatively slow moving currents.” The Cominco report goes on to state that the small fines component of the granular slag accounts for about 1 percent of the total mass of discharged slag and “exhibits a lower chemical stability (as compared to coarser granular slag).” Bortelson et al. (1994) conclude that the fine slag fraction (i.e., silt and clay size) would be capable of transport over long distances as suspended sediment in the Columbia River. Chemical weathering, hydration and exfoliation of slag particles also have been reported (Cox et al., 2005). Ecology expects that the current Remedial Investigation and Feasibility Study will further define the degree to which slag material in the river/reservoir environment is susceptible to physical abrasion or chemical weathering. In consideration of these points, the Supplemental EIS has not been changed.

- 21-9. Comment Numbers 21-3, 21-8 and 21-9 center on the issue of whether the drawdowns associated with the Lake Roosevelt Incremental Storage Releases Project may potentially affect existing patterns of contamination that are well documented in Lake Roosevelt and the Upper Columbia River. While, for purposes of fairness and general completeness, Ecology has noted the presence of other historic and/or active pollutant sources, it is well established that the Trail facility has been a significant contributor of regulated pollutants to the river for decades—including both slag and aqueous effluent discharges. Documented contaminant mass loading to the Columbia River from the Trail facility is significantly greater than any other historic or active sources that have been identified between Trail, British Columbia, and Grand Coulee Dam, as noted in the response to

your Comment 21-8. This fact is important to the Proposal in regard to the overall understanding of possible impacts to the current nature and extent of contaminants in Lake Roosevelt and the Upper Columbia River. The Supplemental EIS cannot omit the significance of these pollutant loads in its overall discussion of *Hazardous and Toxic Materials*. The documented source of contaminants, along with the proposed remediation, is an important consideration in the evaluation of potential impacts in the Supplemental EIS.

- 21-10. Ecology recognizes the unpublished findings from the USGS air quality monitoring work. The monitoring provided an initial assessment of possible health concerns associated with inhalation of trace elements found in dry shoreline and river bed sediments from portions of Lake Roosevelt. We acknowledge the conclusions presented by the USGS researchers stating that no exceedances of EPA short- or long-term air quality standards were recorded during the study. The Washington Department of Health (2007a) also has discussed health concerns of “fugitive dust.” A series of somewhat unique climatic and river reservoir level conditions must coincide to allow dry sediments from Lake Roosevelt beaches and side banks to become airborne at concentrations that may exceed recognized inhalation risk levels. The limited USGS monitoring window may not have captured the unique climatic and drawdown conditions that would be necessary to produce an air quality impact event of sufficient magnitude, duration and severity to constitute a reasonable maximum exposure scenario. Ecology expects that this health concern will be further assessed as part of the current Remedial Investigation and Feasibility Study to better assist public health officials and cleanup decisions.
- 21-11. Comment noted.

June 27, 2008

Derek I. Sandison
Central Regional Director
State of Washington
Department of Ecology
15 West Yakima Avenue
Yakima, WA 98902-3452

Dear Mr. Sandison:

22-1 Thank you for taking the time on June 16th at Coulee Dam to introduce us to the process you are completing with the Supplemental Environmental Impact Statement (SEIS) concerning the state's intention to extract water from Lake Roosevelt annually during the month of August.

22-2 We wish to submit information on the adverse effect upon the Seven Bays Marina on Lake Roosevelt of an annual extraction of one to two feet of water during the month of August. But first, please accept two suggestions for your consideration in the preparation of this SEIS:

- 22-3 1. Between Map Folio Figures 11 and 12, your staff has omitted the three bays inside the log boom at the Seven Bays Marina.
- 2. As one of four commercial marina operators/owners on Lake Roosevelt, we received no communication of any kind on this proposed draw down of the lake from any county, state, or federal authorities. This marina has only a four month operational period; August is our busiest month; this has the potential to ruin more than one third of our annual business season. The sheer luck of having a customer mention your June 16th Coulee Dam meeting is how we heard of your proposal. Following that, an official from Lake Roosevelt National Recreation Area asked us for a letter stating any concerns that we might have for our business with regards to the removal of one to two feet of water from the lake level (no time frame mentioned). It is very important that your organization understand that a one to two foot of lower water has minimal effect upon the Seven Bays Marina EXCEPT for the period of August 20 to September 20. We did not know WHEN your proposed drawdown of the lake would occur until we attended your public open house at Coulee Dam. We are requesting a response as to why we were not included among the 250 other people/organizations on your Chapter 6.0 Distribution List.

ADVERSE EFFECTS UPON THE SEVEN BAYS MARINA
Caused by an Annual August Drawdown
of Lake Roosevelt/Columbia River

22-4 1. See attached National Park Service June 2002 Aerial Photo. Three of our docks (A Dock, B Dock, and G Dock) will have to be disconnected from the shore, turned 90 degrees to the bank and floated toward the lake, rendering them unavailable for customer usage. Losing the A Dock will mean that the marina will have no free visitor temporary moorage (store/restaurant customers), no short term moorage, and no overnight or weekly moorage for short term visitors after the middle of August. B Dock and G Dock are rented seasonally from June 1 to September 30; this will lose those customers for six of their sixteen week moorage, and many of them will go elsewhere if they can not rent the entire season.

22-5 2. Until we can make year to year comparisons, it will be hard to estimate the extent of the detrimental effect upon our store and restaurant losing the above permanent customers and especially the temporary visitors. A very large percentage of our store and restaurant sales are to short term visitors to the marina, and we will have no place for them to park their boats once A Dock is disconnected from the shore.

22-6 3. C Dock is our greatest concern. See attached Seven Bays Marina Diagram. This is our new Houseboat Dock that replaced the old C and D Docks shown in the NPS Aerial Photo. In a normal year late-August drawdown to 1280 feet MSL, this bay is just big enough to back out the 60 foot long houseboats one length to clear the other houseboats, then pivot and drive out through the log boom. A further draw down below 1280' has a *dramatic* effect on shortening the distance from this dock to the south shoreline, making it impossible to operate our houseboat fleet from that dock. August is, of course, our busiest houseboat month. Here is the important fact of this letter: the houseboat operation carries the economic load for the entire rest of the marina; without the houseboats, the marina is economically unfeasible. If we lose six weeks of our houseboat season, the marina will fail. To prevent losing the last third of our houseboat season, the marina will have to be reconfigured with a different dock system.

22-7 Three years ago, the National Park Service came to us and asked us to rebuild and rejuvenate the Seven Bays Marina. NPS is required to provide our company with "a reasonable expectation to operate the marina at a profit." This August drawdown puts a major limitation on our business plan and draws into question our ability to continue to operate at a profit. You could take two feet of water out of this marina anytime you desire EXCEPT for the last half of August; could you not take the water in June or July when the lake is more full?

Regards,

Laurel Parker, Owner

Lyle Parker, Owner



RECEIVED

JUL 01 2008

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

1250 Marina Drive
Seven Bays, WA 99122
P: 509-725-7BAYS (7229)
7baysmarina@centurytel.net

MAPS
TO
ACCOMPANY
7 BAYS MARINA
SUBMISSION

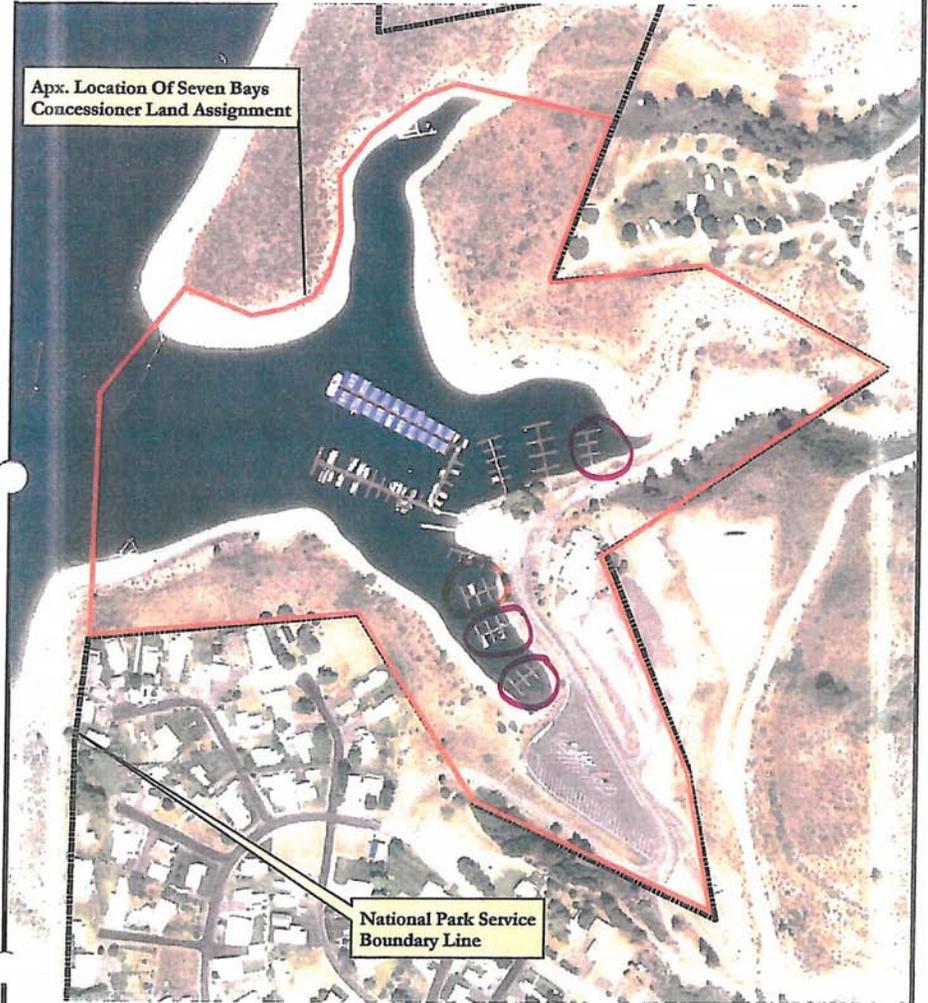
Lake Roosevelt NRA

National Park Service
U.S. Department of the Interior



Seven Bays

Apx. Location Of Seven Bays
Concessioner Land Assignment



National Park Service
Boundary Line

0 87.5 175 350 525 700 Feet



June 2005
Aerial Photo Date: June, 2002
Photo Projec : UTM Meter NAD 83, Zone 11

Comment Letter No. 22 – Seven Bays Marina – Laurel and Lyle Parker

- 22-1. Comment noted.
- 22-2. The Map Folio included in the Supplemental EIS illustrates selected embayments to evaluate potential impacts to fish and aquatic species. The embayments evaluated were selected by WDFW. The Map Folio is not intended to show all bays and embayments on Lake Roosevelt.
- 22-3. Your comments regarding the effect of the incremental storage releases on your marina are noted. Potential impacts to the marina are acknowledged in Section 4.2.1.10 of the Supplemental EIS.

Ecology attempts to identify interested parties when it provides notification of public meetings and projects, but it is not always possible to identify every individual. In addition to providing notices to the parties listed in Chapter 6, Ecology published notices in local and regional newspapers and issued press releases regarding the availability of the Draft Supplemental EIS and the public open houses. Your name has been added to Ecology's mailing list and you will receive future notices about the project.

- 22-4. The aerial photograph that you provided is included as part of your letter. Your comments regarding impacts to your docks are noted. This information will be included in the evaluation that NPS and Ecology are undertaking to determine impacts to specific docks and marinas, and to determine appropriate mitigation measures. Since the Draft Supplemental EIS was issued, Ecology has received a report prepared for NPS on site-specific impacts of drawdowns of Lake Roosevelt. This information identifies specific impacts to your marina and has been included in Section 4.2.1.10 and Appendix G of the Final Supplemental EIS.
- 22-5. Comment noted. As part of the evaluation being done by NPS and Ecology, specific mitigation measures for impacts will be identified.
- 22-6. The diagram of the marina is attached as part of your letter. Your comments regarding C Dock are noted and will be considered as part of the evaluation of impacts to specific facilities.
- 22-7. As described in Chapter 2 of the Supplemental EIS, flow releases from Lake Roosevelt will occur from April to September. The drawdown of the lake will be the greatest in July and August because of the cumulative effect of releases throughout the summer. Releases need to occur in July and August to meet the purpose of the project which is to provide water for municipal, industrial and agricultural users, and improve stream flows for fish.

From: Mary Lines [<mailto:m.lines@comcast.net>]
Sent: Wednesday, June 25, 2008 9:01 AM
To: Sandison, Derek (ECY)
Subject: Lake Roosevelt drawdown

The Department of Ecology is proposing to allocate new water rights from

Lake Roosevelt. This proposal contravenes the 2005 study and recommendations from the National Academies of Science. The proposal will not, despite state pronouncements, provide any significant benefit to Columbia River fish. The increment of water provided for instream flows is so small that it cannot be measured at Grand Coulee Dam (where it allegedly will be released).

Columbia River management at Lake Roosevelt and Grand Coulee Dam will change in coming years due to climate change and expiration of the Columbia River Treaty. (British Columbia residents are not happy with operation of the Canadian reservoirs on the Columbia River!)

23-1 Washington State should strive for flexibility. But the state is achieving just the opposite by locking into a give-away of new water rights. This approach will only exacerbate eastern Washington water supply problems in the future. What is needed is aggressive, mandatory water conservation, appropriate water pricing (including elimination of water and energy subsidies), and a re-focusing on sustainable agriculture in eastern Washington.

As part of the plan, the state is now allocating \$5 million per year to the Spokane and Colville Tribes. These payments should come with no strings attached as compensation for the terrible damage done to the Tribes when Grand Coulee floodgates closed in 1940 -- destroying Upper Columbia salmon runs, flooding tribal communities and cultural resources, and drowning Kettle Falls - the Celilo of the Upper Columbia River. Washington State payments to the Tribes should be based on the equities - not continuing damage to eastern Washington waters and wildlife.

I am opposed to this.

Mary Lines

8305 N Valerie

Spokane, WA 99208

Comment Letter No. 23 – Mary Lines

23-1. Your comment in opposition to the project is noted.

-----Original Message-----

From: jaberspo@icehouse.net [<mailto:jaberspo@icehouse.net>]

Sent: Thursday, June 26, 2008 12:53 PM

To: Sandison, Derek (ECY)

Subject: Lake Roosevelt Drawdown

Mr. Sandison

24-1 I would like to see changes in the allocation of water rights, if any, in the direction of fewer, not more.. Expanding water rights can only cause more and more future water problems - it is a short-sighted approach.

Please advocate to policies which stress mandatory water conservation, and elimination of water and energy subsidies, and encourage (and study methods which support) sustainable agriculture in eastern Washington.

Sincerely,

Jan Treecraft

Comment Letter No. 24 – Jan Treecraft

24-1. Comment noted.

-----Original Message-----

From: Ken and Jocelyn Weeks [<mailto:kjweeks@embarqmail.com>]

Sent: Wednesday, June 25, 2008 12:06 PM

To: Sandison, Derek (ECY)

Subject: allocating new water rights to Lake Roosevelt

25-1 | Greetings, In a word, a bad idea (will three words...) please
| follow the rational assessment of the national Academy of
| Sciences...this proposal does nothing for fish, does nothing to coax
| Eastern Washington argi-business to begin moving toward sustainable
| water us...and continues the dubious tradition of public subsidies
| for our water.
| Sincerely Ken Weeks

Comment Letter No. 25 – Ken Weeks

25-1. Your comment in opposition to the project is noted.

Washington State Dept. Of Ecology
Water Resource Division

RECEIVED
JUN 28 2008
DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Dear Sirs,

26-1 We believe the planned drawdown of Lake Roosevelt and Columbia River to irrigate the Odessa Highland is too expensive and ill timed. The farms in that area were dry land farmed before they put in deep well irrigation and should be again.

With Global warming and the expected loss of water in the Columbia River drainage, this project is poorly timed at best.

Sincerely,
Chris Esvelt
3174 Esvelt Rd.
Rice, Washington
99167

Christopher D Esvelt
Patty Esvelt 6/22/08

Comment Letter No. 26 – Christopher and Patty Esvelt

26-1. Your comment in opposition to the project is noted.

Sat May 24 2008
 DEPT OF Ecology
 Received
 MAY 28 2008
 CENTRAL REGION OFFICE

Dept of Ecology

I am writing to comment on the release of an additional 82,500 acre feet of water per year from Lake Roosevelt. In reality, it is a drop in a bucket.

The average flow at Grand Coulee is 219,726 acre feet per day. It only takes 9 hrs. to flow 82,500 acre feet.

Lake Roosevelt has an active capacity of 5,232,000 acre feet. The average yearly flow at Grand Coulee is 80,200,000 acre feet. The proposed additional withdrawal is 1/10 of 1% of the average yearly flow at Grand Coulee.

Lake Roosevelt is refilled on average 15 times each year. It was designed to fluctuate up to 80 feet and has been drawn down 40 feet. One foot of water is hardly anything to talk about.

In 1943 Congress authorized the Columbia Basin Project to water 1,029,000 acres. There is no reason the water to irrigate the East High area of the project can't be taken from the river.

The average flow of the Columbia

river at the Falls is 146,000,000 acre feet and 187,000,000 acre feet at the mouth. Compare that to the Sacramento's 8,760,000 acre feet per year or the Colorado's 16,000,000 acre feet per year.

Surely we could use up to 10% of the tremendous flow of the Columbia for irrigation instead of running it back into the ocean.

Sincerely,
 Peter J. Grant

Comment Letter No. 27 – Rene Grant

27-1. Your comment in support of the project is noted.



Comment Form

Columbia River Water Management Program

June 2008

Comment for Lake Roosevelt Supplemental Releases SEIS

Sw or Maslam

28-1

I would like to state my desire to keep as much of the lake roosevelt water allotment available for the stevens county watershed. This include all usages, private and commercial.

Thanks

Reg Ravenport, PE

Name: Reg Ravenport, PE Phone: 509-684-5359 Email regdave@net

Address: 1433 Evans Cutoff Rd. Evans, WA, 99126

Comment Letter No. 28 – Reg Davenport

28-1. Comment noted.



Comment Form

Columbia River Water Management Program

June 2008

Comment for Lake Roosevelt Supplemental Releases SEIS

29-1

1st a letter notice to the public would have been appreciated. Having something like this at a time when most of the people are working is inappropriate. But Do You REALLY CARE.

29-2

2nd Before taking water from the reservoir, Is like a bank. before you take the water out it should be deposited first.

3rd You have taken our ^{Ecology} human rights away in many ways.

4th You ^{people} need to start thinking + acting with Common Sense.

Name: DA Hart Phone: _____ Email _____
Address: 690 8321

Comment Letter No. 29 – M. Hart

- 29-1. Ecology welcomes public input on the Lake Roosevelt Incremental Storage Releases Project and has attempted to provide timely information on the process and meetings. See additional information on meeting notification in the response to Comment Number 22-3. Ecology has chosen the open house format for public meetings in order to allow a broad range of people with different schedules to attend. The meetings at Coulee Dam and Colville began at 4 p.m. and ended at 7 p.m. People were welcome to arrive at any time during that period.
- 29-2. Comment noted.



Comment Form

Columbia River Water Management Program

June 2008

Comment for Lake Roosevelt Supplemental Releases SEIS

30-1

It makes absolutely no sense to allocate water for downstream use when local farmers, businesses + homes must have sufficient water to survive. Declining quality + quantity of water is an international problem. If the Columbia River + Lake Roosevelt continue to be drawn down the aquifers will also suffer. With the resultant lowering of the water table, only the very wealthy ~~are~~ will be able to afford deeper + deeper wells for agricultural, industrial + personal use.

30-2

This open house is not available to those who work full time + was also held with almost no advance notice. This very grave issue certainly demands public input + public hearings not an "open house".

Name: Susanne Waid Phone: 509-738-3113 Email: susannewaid@centurytel.net
 Address: 1184 C West Old Kettle Rd. Kettle Falls, Wa 99141

Comment Letter No. 30 – Susanne Waid

- 30-1. As described in Section 4.2.1.4 of the Supplemental EIS, the flow releases and drawdown of Lake Roosevelt are not expected to impact ground water levels.
- 30-2. See the responses to Comment Numbers 22-3 and 29-1 regarding the public meetings.



Comment Form

Columbia River Water Management Program

June 2008

Comment for Lake Roosevelt Supplemental Releases SEIS

31-1

Leave our water alone!
Our present water rights should NOT
be affected.

Our resources are being ~~stolen~~ ^{stolen} from
us.

Name:

Don Korb

Phone:

509-4053

Email

Address:

883 Basin Rd
Colville, WA

Jane Haecher

3e

Comment Letter No. 31 – Don and June Hoecher

31-1. Your comment in opposition to the project is noted.



Comment Form

Columbia River Water Management Program

June 2008

Comment for Lake Roosevelt Supplemental Releases SEIS

32-1

Makes sure in this process of drawing down Columbia River water, that our water needs up here in the Northern Counties of Wa, are taken care of so we're not left with out.

Several years back we had lots of water (snow packs run of made floods down the Colville valley area, but ones with lots more rain fall etc this spring there has been no extra water running down our valley floors

Name: Laura Johnson

Phone: 509-684-3893 Email

Address: 539 Orion Hill Rd
Colville, Wa

Comment Letter No. 32 – Lorna Johnson

32-1. Comment noted.



Comment Form

Columbia River Water Management Program

June 2008

Comment for Lake Roosevelt Supplemental Releases SEIS

33-1 Lake Roosevelt is the drainage for a large share of the
 N. Pacific therefore control of that lake creates the ability to
 demand control of all sources of water flowing into
 it. That would include residential water. It may
 be that the individuals in the large cities don't realize
 how much water they use. If you and I together
 City resident take a chance morning and night where does
 that water discharge to? Rural use goes immediately back
 into the aquifer either through the soil or government
 approved septic systems. Sewer systems are created,
 paid for and maintained by the individual giving them the
 right to their water without further regulation.
 33-2 The meeting to-day was designed to educate the public with
 no public input at the meeting!

Name: H. W. & L. Johnson Phone: (509) 694-4072 Email: N. B.
 Address: 677 Haller Brook Road
Colville, WA 99114

Comment Letter No. 33 – Stephenson (indecipherable first name)

33-1. Your comments about water quality are noted.

33-2. See the responses to Comment Numbers 22-3 and 29-1 regarding the public meetings.

Comment Form

Columbia River Water Management Program

June 2008

Comment for Lake Roosevelt Supplemental Releases SEIS

A ^{increased} ~~monitorium~~ on use of the river water be called in the Northwest and conservation methods should be instituted.

Development of wetlands should be prohibited and wetland owners fairly compensated.

34-1 Restoration of creek sides of creeks feeding the Columbia should be done by a modern day civilian corp of young people who need hard work in the outdoors.

Hawk Creek should not be used as a storage option

in water use decisions.

Mail To:

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

Before June 30, 2008

Comment Letter No. 34 – Unsigned comment form

34-1. Comment noted.



Comment Form

Columbia River Water Management Program **June 2008**

Comment for Lake Roosevelt Supplemental Releases SEIS

35-1

USING INFORMATION ABOUT THIS TYPE OF ACTIVITY FROM DIFFERENT RIVERS THROUGHOUT THE USA, I WOULD HAVE TO SAY THAT SENDING OUR COLUMBIA RIVER WATER ELSEWHERE FOR USAGE IS ABSOLUTELY COUNTER-PRODUCTIVE.

POSTING THE ISSUE OF POSSIBLY ^{HAVING} "TOO MUCH USAGE" IN THE HEAD WATER AREA, WHILE SIMULTANEOUSLY STATING WE NEED TO DIRECT MORE WATER TO ODESSA IS LIKE SAYING; "THE PEOPLE ARE STARVING, SO LET'S TAKE EVEN MORE OF THEIR FOOD SUPPLY AND GIVE IT TO SOMEBODY ELSE!"

THE PLATTE RIVER IN WYOMING DID THIS, AND NOW ALL THE WYOMING FARMERS HAVE NO WATER. THE IDEA OF PROVIDING ALOT OF WATER TO ANOTHER REGION THAT DOESN'T TYPICALLY HAVE THAT IS NOT NATURAL. WHAT IS NATURAL, IS THAT HEAD WATER AREAS TEND TO PROVIDE ITS AREA WITH SUFFICIENT WATER AND IT SHOULD STAY THAT WAY.

Name: RENE HOLADAY Phone: 509-935-8375 Email: mtromantic@a
 Address: earthlink.net

Comment Letter No. 35 – Rene Holaday

35-1. Comment noted.



United States Department of the Interior

NATIONAL PARK SERVICE
LAKE ROOSEVELT NATIONAL RECREATION AREA
1008 CREST DRIVE
COULEE DAM, WA 99116-1259

IN REPLY REFER TO:
L76

June 26, 2008

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

Dear Mr. Sandison:

The National Park Service (NPS) at Lake Roosevelt National Recreation Area (LRNRA) would like to thank you for the opportunity to comment on the *Lake Roosevelt Incremental Storage Release Project Draft Supplemental EIS* (SEIS) 2008.

RECEIVED
JUL 10 2008
DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

36-1 The NPS is pleased that Ecology has incorporated many of our earlier recommendations into this document. For example, acknowledging NPS management authority for approximately 60% of the Upper Columbia River and its tributary watersheds contained within Lake Roosevelt. In addition, throughout the document, Ecology has evaluated the impacts to recreational opportunities from the additional release of water from Lake Roosevelt during a critical recreational period.

While the Draft SEIS provides good information about the key environmental issues, there are some topic areas that are of particular concern to the NPS.

Impacts to Recreational Facilities:

36-2 The NPS will continue to work with Ecology to determine the specific impacts the additional release will have on recreational facilities and identify potential mitigations to resolve these impacts.

Inadequate assessment of effects on Cultural Resources:

36-3 The NPS has identified 89 archeological/historic sites located within the boundaries of the National Recreation Area that will be exposed as a result of the additional release. The NPS will make available at a later date more detailed mitigation measures to protect valuable resources.

Again, we would like to thank you for the opportunity to comment on the Supplemental EIS and we look forward to working with you in the future. Please contact me if you have any questions.

Sincerely,

Ray Aschell

for Debbie Bird
Superintendent

cc:
Bureau of Reclamation
Bureau of Indian Affairs
Colville Confederated tribes
Spokane Tribe of Indians

Comments on Lake Roosevelt Incremental Storage Release Project Draft Supplemental EIS 2008.

Prepared by: Jerald Weaver

General Comments:

In September 27, 2007 DOE committed to working with NPS to evaluate impacts to park resources. Impacts to recreation including launch facilities, swim beaches, docks, and exposure of cultural resources were discussed. In particular:

- Potential impacts to recreation from an 18 inch drawdown
 - Dewatering of boat ramps
 - Impacts to swim beaches and swim areas
 - Impacts to dock facilities
 - Impacts to log-booms
- Potential exposure of an additional 400 acres during high visitor-use season
- Exposure of sensitive cultural resource sites

DOE has evaluated the potential impacts of incremental storage release project in the current *Lake Roosevelt Incremental Storage Release Project Draft Supplemental EIS 2008*.

Specific Comments:

4.2.1.8 Cultural Resources

Mitigation

The State of Washington has entered into agreements with the CCT and the STI to mitigate effects of the storage releases including effects to cultural resources (Washington State and CCT, 2007; Washington State and STI, 2008). These agreements provide for full mitigation of potential effects to cultural resources within each tribe's Lake Roosevelt management area therefore no additional mitigation measures are proposed.

An additional 89 sites are located on National Park Service managed lands. Personnel are needed to mitigate potential negative effects to cultural resources on the land outside of tribal jurisdiction.

3.10.1.2 Public Health and Safety, Sanitation,

"...restroom facilities are sparse due to cuts in funding and decreased manpower to maintain facilities." NPS has provided restroom facilities based current management zone. Funding and manpower are a small factor. Currently the NPS is educating recreation users on outdoor ethics (Leave No Trace).

Chapter 1, Paragraph 3.11.1.2 – The NPS manages 3 (not 4) concessionaire operated marinas at Kettle Falls, Keller Ferry and Seven Bays (none at Crescent Bay)

Table 3-3 Developed Recreation Area on Lake Roosevelt. – Minimum launch elevation for the Lincoln Mill boat launch is 1245 feet.

- 36-8 The Two Rivers launch ramp is operated by the Spokane Tribe of Indians, not NPS.
- Porcupine Bay does not have a marina
- Kettle Falls does have a marina

Seven Bays:

The additional drawdown of water in August will adversely effect the operation of three docks at Seven Bays.

"A Dock" and "G Dock" are our most shallow water locations. "A Dock" contains all of our transient or temporary short term moorage and holds twelve (12) slips. Transient moorage is \$20/day for potential lost revenue of \$7,440 during the month.

36-9 "G Dock" contains eight (8) 26 foot slips and four (4) slips, all of which are rented to seasonal customers. The loss of the revenue for these slips would be \$2625 for the month of August.

More significantly, the space between our houseboat dock and the south shoreline already becomes quite tight to operate these boats by mid-August. Lowering the lake one-foot may not seem like a big deal until you witness how greatly it shrinks that arm of the marina inlet. Further reduction of our operations to the launch ramp which is operationally is very undesirable both to us and the visitors.

It is difficult to forecast the negative impact on our marina store and restaurant due to the lost traffic from visitors/customers who would no longer be able to use the parts of the marina that have become non-functional.

Comment Letter No. 36 – National Park Service – Debbie Bird

- 36-1. Comment noted.
- 36-2. Comment noted. Ecology will continue to work with NPS to identify specific impacts to recreational facilities and appropriate mitigation for those impacts.
- 36-3. Ecology will work with NPS to identify appropriate mitigation measures for impacts to archaeological/historic sites.
- 36-4. Comment noted.
- 36-5. Language has been added to Section 4.2.1.8 regarding cultural resources on NPS managed lands.
- 36-6. Section 3.10.1.2 of the Final Supplemental EIS has been revised to reflect your correction.
- 36-7. The number and location of concessionaire-operated marinas has been corrected in Section 3.11.1.2 of the Final Supplemental EIS.
- 36-8. Table 3-3 has been revised in the Final Supplemental EIS to reflect these changes.
- 36-9. Comments noted. See the response to Comment Letter No. 22 from Seven Bays Marina.

EAST COLUMBIA BASIN IRRIGATION DISTRICT

Comment Letter No. 37

55 North 8th
P.O. Box E

OTHELLO, WASHINGTON 99344

Phone 509 488 9671
Fax 509 488 6433

July 16, 2008

RECEIVED
JUL 17 2008
DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Mr. Derek I. Sandison
Washington State Department of Ecology
12 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452

RE: Washington State Department of Ecology (Ecology). Draft Supplemental Environmental Impact Statement (EIS), Lake Roosevelt Incremental Storage Releases Program, Washington

Dear Mr. Sandison:

Thank you for the opportunity to review the subject document. We apologize for the delay in submitting our comments, but hope you will consider them in preparing the final EIS.

We are supportive of the effort to utilize a portion of the water stored behind Grand Coulee Dam and will continue to work with the State on the Columbia River Management Program.

In addition, we would like you to recognize our continued support to make 30,000 acre-feet of water available to the Odessa Subarea as stated in the Memorandum of Understanding concerning the State of Washington's Columbia River Initiative, December 2004 (MOU). The potential storage releases, which are analyzed in the draft EIS, were addressed in that MOU. Since entering into the MOU, we have conducted an additional assessment of the proposed storage release for the Odessa Subarea. Depending upon where the water may be needed or most beneficially used to assist the Odessa it would be helpful if additional flexibility were available to address delivery options.

Based on earlier assumptions and analysis we thought that existing infrastructure could be used to deliver the 30,000 acre-feet. However, to deliver any of the water south of I-90, where many of the Odessa groundwater users are located and some of the greatest declines in well water levels have occurred, some minor modifications of the East Low Canal would be necessary. A recent application process for water service contracts in February 2006 indicates a high demand for Project water to the Odessa Subarea south of I-90. Addressing this demand for groundwater replacement would involve connecting the second barrel of the Weber Siphon, currently in place under I-90 to the East Low Canal at both ends. Completion of the Weber Siphon complex, without any enlargement of the East Low Canal, would allow another 75-150 cfs of water to be delivered south of I-90. 50% to 80% of that additional capacity would be available for groundwater replacement in the Odessa Subarea where the East Low Canal now operates at peak capacity during mid-summer.

Capacity constraints of the East Low Canal below I-90 require routine interruption of deliveries to agricultural, municipal and industrial water service contracts, making additional deliveries for ground water replacement highly interruptible. Without the ability to deliver south

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of the Weber Siphon all 30,000 acre-feet would need to be delivered north of I-90, which would cause significant problems with our management of the East Low Canal. When considering that a large majority of previous water service contracts issued by the District have been above I-90 and result in a large inflow of water during a power failure, additional return flow contracts above I-90 would exacerbate the existing problems in the canal above Weber siphon and place the East Low Canal in jeopardy. Also, as a result of the issuance of these previous contracts, much of the land reasonably available for service from the ELC has been issued a water service contract. Larger pumping facilities will be needed to serve lands beyond the 3-mile radius currently served by contracts north of I-90. A significant amount of land lying adjacent to the East Low Canal south of I-90 is eligible for groundwater replacement. Our Board believes that a distribution of the acreage available from the 30KAF above and below the "bottleneck" at the Weber siphons will be more beneficial to the Odessa Subarea Ground Water decline, provide more East Low Canal security and follow the demand requests. Without the ability to deliver at least some of the 30,000 acre-feet south of I-90 the benefits from the proposal would not be maximized.

If you have any questions regarding our comments, please give me a call.

Sincerely,

Craig N. Simpson
Secretary-Manager

CNS:ll

cc: Richard Lemargie
Directors
Bill Gray, USBR

37-1

37-2

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37-1. Comment noted.

37-2. Information has been added to the Final Supplemental EIS to include possible construction of the second barrel of the Weber Siphon on the East Low Canal and other improvements to the canal.