

## **Comment on behalf of the City of Roslyn**

Issue: What is the proper timing relationship between the final decree and the contract resulting from the Memorandum of Understanding between the U.S. Department of the Interior Bureau of Reclamation and the State of Washington Department of Ecology for Water Exchange in the Yakima Basin?

Proposal: The Final Decree Working Group should propose to Commissioner Ottem that the final decree not be approved and entered until after the water exchange program contract resulting from the MOU is final and beyond the time for filing any appeal.

Comment: The MOU between Reclamation and Ecology is expected to be issued in the near future. The MOU will not constitute the final resolution of the issues it seeks to address. Instead, it will be a voluntary framework for the agencies to use to negotiate, draft, and approve a contract to implement a water exchange program. This process must comply with state and federal requirements, which may include SEPA, NEPA, ESA consultation, in addition to the agencies' internal procedures. Then, presumably, there will be a presentation to the Court and subsequent actions as the Court may direct. The complete list of steps and schedule requirements remains to be developed. However, considerable time will be necessary to bring a water exchange program contract to final status.

If the final decree is approved and entered before this milestone, then the Court must resolve the remaining issues from the City of Roslyn's Motion to Revise Order Limiting Post-1905 Diversions During Periods of Water Shortage. The Chronological Index recently circulated includes the 2004 Order Limiting Post-1905 Diversions During Periods of Water Shortage and the Court's Memorandum Decision regarding Roslyn's motion. However, the Court has not yet entered an order to implement that Memorandum Decision. That matter has been continued to allow Reclamation and Ecology time to develop the MOU.

The parties were unable to agree as to the form and content of a proposed order to implement the Memorandum Decision regarding Roslyn's motion. Further litigation of the issues involved appears likely, absent a water exchange program contract. The time, expense, and burden on the Court of such litigation can be avoided by agreeing to schedule the Final Decree after the water exchange program contract becomes final.

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