



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

September 25, 2008

CERTIFIED MAIL 7003 1680 0007 1588 2727

U.S. Bureau of Reclamation
U.S. Department of the Interior
1150 North Curtis Road Suite 100
Boise, ID 83706-1234

Re: Water Right Application Nos. S3-30486 and S3-30556

Dear Sir or Madam:

Enclosed are copies of the Department of Ecology's *Reports of Examination*. These reports constitute our decisions regarding the above-referenced applications.

Copies of these *Reports of Examination* have been sent to the protestant.

Your applications have been approved. Permits will be issued consistent with the enclosed *Reports of Examination* after the appeal period has expired, if no appeals have been filed.

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503



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2. To serve your appeal on the Department of Ecology

Mail appeal to:

Deliver your appeal in person to:

The Department of Ecology
Appeals & Application for Relief
Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

The Department of Ecology
Appeals & Application for Relief
Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Keith L. Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205

*For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature
Website: <http://www1.leg.wa.gov/CodeReviser>.*

If you have any questions, please contact me at 509 329-3464.

Sincerely,



Keith L. Stoffel
Section Manager
Water Resources Program

KLS:ka

Enclosures: *Report of Examination
Your Right To Be Heard*

cc: William D. Gray
WA Dept. of Fish and Wildlife
Rick Roeder
Rudy Peone
Gary Passmore

I certify that I mailed this letter or an identical copy thereof; postage prepaid, to the above addressee(s) this 25th day of September, 2008. Water Resources Program, Secretary Lead, Kay Allhiser KA.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

- Surface Water** (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- Ground Water** (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE May 16, 1938	APPLICATION NUMBER S3-30556	PERMIT NUMBER S3-30556	CERTIFICATE NUMBER
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NAME U.S. Bureau of Reclamation, U.S. Department of Interior			
ADDRESS (STREET) 1150 N. Curtis Road, Suite 100	(CITY) Boise	(STATE) Idaho	(ZIP CODE) 83706-1234

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Lake Roosevelt
TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND 305	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR 37,500
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QUANTITY, TYPE OF USE, PERIOD OF USE

305 cubic feet per second, 37,500 acre-feet per year for instream purposes in Lake Roosevelt and below Grand Coulee Dam along the mainstem of the Columbia River from river mile 745 at the Canadian border to the Pacific Ocean.

12,500 acre-feet of this water will remain in the Columbia River to benefit instream flows. 25,000 acre-feet of this water is intended to serve as replacement water to enable new state water rights to be issued in the future for out-of-stream municipal and industrial uses.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

1500 feet east and 200 feet south of the West ¼ corner of Section 1

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) Government Lots 3 and 4	SECTION 1	TOWNSHIP N. 28	RANGE, (E. OR W.) W.M. 30 E.W.M.	W.R.I.A. 42	COUNTY Grant
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RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

Beginning at river mile 745 at the Canadian Border to the mouth of the Columbia River at its confluence with the Pacific Ocean

No construction will be required to accommodate the incremental storage releases from Lake Roosevelt for the 37,500 acre-feet of water for instream purposes. The water can be released from the reservoir using existing infrastructure.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: September 1, 2009	COMPLETE PROJECT BY THIS DATE: September 1, 2011	WATER PUT TO FULL USE BY THIS DATE: September 1, 2012
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REPORT

Background and State Environmental Policy Act (SEPA) Review

The State of Washington, Reclamation and the Columbia Basin Project irrigation districts¹ have been evaluating incremental storage releases from Lake Roosevelt since they signed a Memorandum of Understanding (MOU) among the parties in December 2004² (Appendix A) as part of the Columbia River Initiative (CRI). The 2004 MOU was broad, encompassing many water supply issues including:

- The potential for Columbia River mainstem off-channel storage.
- Releases of water from Lake Roosevelt behind Grand Coulee Dam.
- Mainstem drought relief.
- Additional municipal and industrial (M&I) supplies.
- Replacement water for ground water users in the Odessa Subarea.
- Assessing modifications for Potholes Reservoir.
- Water to benefit stream flows for fish in the Columbia River.
- Evaluation of the potential for water supplies from Canadian storage reservoirs.

In January 2005, the State of Washington and the Confederated Tribes of the Colville Reservation (Colville Tribes) signed an Agreement in Principle³ (AIP) (Appendix B) under the CRI covering many of the same issues as the 2004 MOU, including releases of water from Lake Roosevelt. The AIP called for an MOU between the State and the Colville Tribes to be executed by September 2005.

In the summer of 2005, the CRI became the Columbia River Partnership (with a Columbia River Task Force) that continued negotiations on legislation to implement the 2004 MOU and the 2005 AIP. The State and the Colville Tribes signed an Addendum⁴ to the AIP (Appendix C) on November 9, 2005, to continue to work on the AIP, with a goal of drafting an MOU by September 30, 2006.

The 2006 Washington State Legislature passed the Columbia River Water Management Act, an act relating to water resource management in the Columbia River Basin (Engrossed Substitute House Bill 2860). The Act has been codified as Chapter 90.90 of the Revised Code of Washington (RCW). The Act directed the Washington State Department of Ecology (Ecology) to “aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses.” The Act also established the Columbia River Basin Water Supply Development Account and authorized its use to assess, plan, and develop new storage; improve or alter operation of existing storage facilities; implement conservation projects; or undertake any other actions designed to provide access to new water supplies within the Columbia River Basin. The Act requires Ecology to focus its water supply development efforts on:

- Alternatives to groundwater for agricultural irrigators in the Odessa Subarea.
- Sources of water supply for pending new water right applications.
- A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia River mainstem that are subject to instream flows or other mitigation conditions to protect stream flows.
- New municipal, domestic, industrial, and irrigation water needs within the Columbia River basin.

From May 5, 2006, through June 5, 2006, Ecology conducted scoping of a Draft Programmatic Environmental Impact Statement (PEIS) for the Columbia River Program. The purpose of the PEIS was to lay the foundation for the potential impacts that could be associated with the components of the Program. The main components evaluated were storage, conservation, Voluntary Regional Agreements (VRAs), instream resources, and policy alternatives for implementing requirements of the legislation. The PEIS also evaluated potential impacts associated with three actions identified for early implementation, including drawdown of Lake Roosevelt, a supplemental feed route to supply Potholes Reservoir, and the proposed Columbia-Snake River Irrigators Association VRA. While the PEIS evaluated a programmatic or non-project action, it was recognized that a number of the major elements proposed under the Program would trigger additional project level environmental review under SEPA.

¹ The three districts are the East Columbia Basin Irrigation District, the Quincy-Columbia Basin Irrigation District and the South Columbia Basin Irrigation District.

² http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/cri_mou121704.pdf.

³ <http://www.ecy.wa.gov/programs/wr/cwp/images/PDF/colvilletribeagreement.pdf>.

⁴ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/colville_water.pdf.

In 2006, Ecology began working with the Colville Tribes under the AIP to conduct some of the environmental studies necessary to evaluate the Lake Roosevelt Drawdown early action alternative. These studies included evaluation of impacts on fish habitat, irrigation pumping costs, recreational uses, ferry operations, cultural resources, and a bathymetry survey⁵ and the cost to mitigate for those impacts. The State and the Colville Tribes signed a Second Addendum⁶ to the AIP (Appendix D) on December 22, 2006, to continue to work on the AIP, with a goal of an MOU by September 30, 2007.

The Final PEIS was released on February 15, 2007⁷, which included the first environmental review of the Lake Roosevelt Incremental Storage Releases Project (Lake Roosevelt Drawdown). The Incremental Storage Releases Project involves releases of stored water from Lake Roosevelt to provide water for the replacement of ground water supplies in the Odessa Subarea, municipal and industrial supply, stream flow enhancement downstream of Grand Coulee Dam, and water for interruptible water right holders (see Description of the Lake Roosevelt Incremental Storage Releases Project section in this report for more details).

Following release of the PEIS, Ecology continued to evaluate impacts of the proposed Lake Roosevelt Incremental Storage Releases Project. Specifically, Ecology:

- Continued environment mitigation studies with the Colville Tribes under the AIP.
- Partnered with the Washington Department of Fish and Wildlife (WDFW) to study impacts of the releases on Kokanee salmon and White Sturgeon⁸.
- Evaluated impacts on existing public-use facilities that are part of the Lake Roosevelt National Recreation Area, managed by the National Park Service⁹.

These studies formed a foundation for a comprehensive environmental review of the project under a Supplemental EIS (SEIS). Scoping for the SEIS began in September 2007. A draft SEIS was released for public comment on May 15, 2008 and a Final SEIS¹⁰ was released on August 29, 2008.

Implementation of the preferred alternatives identified in the Final SEIS for the Lake Roosevelt Incremental Storage Releases Project required Reclamation to submit applications for two secondary use water rights. The applications were accepted by Ecology and assigned Surface Water Applications Nos. S3-30486 and S3-30556.

Ecology's decisions on these applications are issued as two separate Reports of Examination. The decisions are based in part on comprehensive environmental reviews conducted by the agency, the results of which are published as the Programmatic EIS for the Columbia River Program (PEIS) and the Supplemental EIS for the Lake Roosevelt Incremental Storage Releases Project (SEIS).

Two actions identified in the SEIS may trigger environmental review under the National Environmental Policy Act (NEPA). The first is execution of a water service contract between Reclamation and the State of Washington as part of the permitting strategy for the Incremental Storage Releases Project. The second is construction activities identified in the Description of Proposed Works of this report (see page 2). In each case, Reclamation will make a NEPA threshold determination before implementing the actions.

Cooperative Agreements With Interested Parties

Part of the process of developing the Columbia River Water Management Act included Ecology entering into cooperative agreements with federal and local partners. Many of those agreements relate specifically to the Lake Roosevelt Incremental Storage Releases Project, including:

- The 2004 MOU with Reclamation and the Columbia Basin Project Irrigation Districts that was the foundation for exploring the concept of the Lake Roosevelt Drawdown (Appendix A).
- The Agreement in Principle (AIP) with the Colville Tribes and its two subsequent amendments (Appendices B, C and D). The AIP was followed by the negotiation and signing of a Water Resources Management Agreement¹¹ between the State of Washington and the Colville Tribes on December 17, 2007 (Appendix E). The 2007 Agreement included financial payments to the Colville Tribes to offset cultural and environmental impacts, and to share a portion of the benefits derived from the Lake Roosevelt Incremental Storage Releases Project.
- The Water Resources Management Agreement¹² (Appendix F) negotiated with the Spokane Tribe of Indians (Tribe) on February 4, 2008. The 2008 Agreement included financial payments to the Tribe to offset cultural and environmental impacts, and to share a portion of the benefits derived from the Lake Roosevelt Incremental Storage Releases Project.

⁵ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/lkroos_colvilleimpact.pdf

⁶ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/Colville_AIP_2nd_addendum.pdf

⁷ The Final PEIS is available on Ecology's website at <http://www.ecy.wa.gov/programs/wr/cwp/eis.html>. Ecology has produced several addendums to the PEIS that are largely unrelated to this project, covering a comment letter inadvertently omitted from the PEIS, additional information from watershed plans on storage, trust water rights and the CSRIA VRA. These addendums are also available at the same web link.

⁸ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/lkroos_dfw.pdf

⁹ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/lkroos_ShorMgtRpt.pdf

¹⁰ http://www.ecy.wa.gov/programs/wr/cwp/cr_lkroos.html

¹¹ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/colville_agmt.pdf

¹² http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/spokane_agmnt.pdf

Columbia River Operations

The Columbia River has been developed into a highly regulated river system. A number of federal and state agencies and private utilities operate dams on the river for a variety of uses (see PEIS, 2007). In addition, there are international and tribal interests involved in managing the river. Several treaties, statutes, and management agreements guide river management and operations (Federal Columbia River Power System, 2001).

The major owners and/or operators of water developments in the Columbia River Basin and their primary roles are shown in Table 1-1. Other agencies that act in regulatory or advisory capacities are presented in Table 1-2.

Table 1-1. Columbia River Water Managers

Owner/Operator	Primary Role
U.S. Army Corps of Engineers	Federal project operator Power generation, flood control, navigation Operates Columbia River Treaty reservoirs
U.S. Bureau of Reclamation	Federal project operator Power generation, irrigation Columbia Basin Project
Irrigation Districts	Irrigation
Public and Private Utilities	Power generation and distribution
British Columbia Hydro and Power Authority	Flood control, power generation
Bonneville Power Administration	Power marketing, transmission facilities Funds fish and wildlife mitigation programs under the Northwest Power Planning and Conservation Act

Table 1-2. Agencies with Regulatory or Advisory Capacities

Agency	Primary Role
Federal Energy Regulatory Commission	Regulates interstate activities of electric and natural gas utilities and non-Federal hydropower producers
U.S. Department of State	Interacts with Canada on international treaty matters
National Marine Fisheries Service and U.S. Fish and Wildlife Service	Enforces Endangered Species Act and implements recovery plans
Environmental Protection Agency	Regulates water quality
State resource agencies	Water rights, land use, fish and wildlife management

Several native tribes have reservations and historic use areas in the Columbia River Basin. The native tribes have historic and treaty rights to take fish from the Columbia River and its tributaries, and have treaty rights to fish, hunt, and gather in usual and accustomed places. The federal government has a trust responsibility to provide services that protect and enhance the treaty rights of native people. The tribes implement fish and wildlife management programs in the Columbia River Basin and participate in river governance decisions.

Operation of the federal reservoirs is regulated by the authorizing legislation, which specifies the purpose of each reservoir. Federal flood control statutes also regulate uses of reservoirs authorized for flood control. Other laws and agreements that influence Columbia River Water Management are shown in Table 1-3.

Table 1-3. Laws and Agreements Influencing Columbia River Management

Law or Agreement	Effect on River Management
Endangered Species Act (ESA)	A Biological Opinion has been developed to recover listed salmon species, but is the subject of on-going legislation. The Biological Opinion includes increased and more carefully timed flows, increased spill and reservoir drawdown.
Columbia River Treaty	The treaty between the United States and Canada affects flood control and hydropower production.
Pacific Northwest Coordination Agreement	The Coordination Agreement establishes a coordinated planning process to implement the Columbia River Treaty. It coordinates Canadian storage operations with federal and non-federal project operations.
Columbia Storage Power Exchange and the Canadian Entitlement Allocation Agreements	The Agreements divide the power benefits from the Columbia River Treaty between the federal and non-federal power generators in the United States.
Non-Treaty Storage Agreement	The Agreement allocates the additional power generated at Mica Dam that is not part of the Columbia River Treaty.
Pacific Northwest Electric Power Planning and Conservation Act, 1980	The Northwest Power and Conservation Council, composed of representatives appointed by the governors of Montana, Idaho, Washington and Oregon, developed a Fish and Wildlife Program and a Regional Electric Power and Conservation Plan that changed how the Coordinated Columbia River System is operated.

To implement these varied management objectives, the river system is operated as the Coordinated Columbia River System. Implementation of many of the components of the Columbia River Water Management Act will require coordination with the various managing agencies to avoid conflicting with the Coordinated Columbia River System, including initiating cooperative agreements with federal and local partners. Three of those agreements relate specifically to the Lake Roosevelt Incremental Storage Releases Project—the Memorandum of Understanding (MOU) with Reclamation and the Columbia Basin Project Irrigation Districts, and the agreements with the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians.

The operation of Columbia River dams and reservoirs, including Lake Roosevelt, are governed by a complex system of international treaty, federal and state laws, and management agreements. The river and dams are managed as the Federal Columbia River Power System (FCRPS) and regulated by BPA, Reclamation, and the Corps. These agencies coordinate to develop and meet the rule curves for the various reservoir purposes. In addition, a number of other organizations have management responsibilities related to specific purposes. The FCRPS Federal Caucus consists of eight federal agencies that have natural resource responsibilities related to the ESA. In addition to BPA, Reclamation, and the Corps, the Federal Caucus includes NOAA Fisheries, USFWS, Environmental Protection Agency (EPA), Bureau of Land Management (BLM), and the U.S. Forest Service. The major responsibility of the Federal Caucus is to coordinate activities related to Biological Opinions (BiOp) for the hydropower system (Section 1.4.2 in the SEIS).

Reclamation and the Corps of Engineers currently operate the dam and reservoir for flood control, hydropower generation, irrigation, recreation, and fish and wildlife. The reservoir is operated in coordination with the U.S. Army Corps of Engineers (Corps) for flood control and the Bonneville Power Administration (BPA) for power production. Reclamation also coordinates with state and federal fish and wildlife agencies to release flows for fish in the Columbia River or to store water in the reservoir for resident fish.

Additional diversions from the Columbia River and changes in mainstem flow releases may require approvals in addition to those of Ecology, or modifications to existing river operation plans, laws, and agreements with other agencies or governments.

Description of the Lake Roosevelt Incremental Storage Releases Project

Lake Roosevelt is impounded behind Grand Coulee Dam and has an active storage capacity of 6.4 million acre-feet during normal reservoir operations. New incremental storage releases at Lake Roosevelt will involve changing current reservoir operations to provide for additional incremental releases. Both annual withdrawals and periodic drought-year¹³ withdrawals are proposed.

Current Operations

Reclamation currently operates the dam and reservoir for flood control, navigation, hydropower generation, irrigation, municipal and industrial use, recreation, and fish and wildlife. The reservoir is operated in coordination with the U.S. Army Corps of Engineers (Corps) for flood control and the Bonneville Power Administration (BPA) for power production. Reclamation also coordinates with state and federal fish and wildlife agencies to release flows for fish in the Columbia River and to store water in the reservoir for resident fish.

Lake Roosevelt receives large amounts of runoff from its tributaries with enough runoff to fill the reservoir approximately seven times in an average year.

At full pool, the surface elevation of Lake Roosevelt is 1,290 feet above mean sea level (msl) and has a capacity of 9 million acre-feet. The minimum pool level of Lake Roosevelt is 1,208 feet above msl. River elevations fluctuate by about 2.5 feet each day¹⁴. Figure 1 illustrates typical lake levels at Lake Roosevelt for three different years that represent a dry (2003), wet (1997) and average year (2002).

The reservoir is operated under a series of “rule curves” that regulate the amount of fill and drawdown for specific purposes. These rule curves are illustrated by the triangles on Figure 1. The most notable drawdown of the reservoir occurs in late winter and spring for flood control. Flows are released from the reservoir to allow room to store upstream runoff to prevent flooding downstream. In an average year, with normal precipitation, the reservoir is drawn down approximately 50 feet. In a high flow year, the reservoir is drawn down approximately 80 feet. The reservoir typically refills by July 1 to meet power, recreation and resident fisheries objectives. The reservoir is drawn down approximately 10 feet again in July and August to benefit fish downstream of Grand Coulee Dam. The reservoir is refilled to an elevation of approximately 1290 feet by the end of September to benefit fall Kokanee salmon in Lake Roosevelt.

¹³ A drought year is defined by Ecology in rule as any year when the March 1 National Weather Service forecast for April through September runoff at The Dalles Dam is less than 60 million acre-feet (WAC 173-563-056). A drought year has occurred on average once every 26 years (Slattery, 2002).

¹⁴ See the SEIS for a more comprehensive description of lake operations and river elevation requirements.

Proposed Operations

During non-drought years, water would be released from Lake Roosevelt resulting in a drawdown of approximately one foot by the end of August each year. During non-drought years, the Bureau would divert or release an additional 82,500 acre-feet (Figure 2) from the reservoir to provide the following:

- 25,000 acre-feet for municipal/industrial supply.
- 30,000 acre-feet of irrigation water for replacement of ground water supplies in the Odessa Subarea.
- 27,500 acre-feet for stream flow enhancement downstream of Grand Coulee Dam.

During drought years (the driest 4% of water years, which have occurred about once every 26 years) an additional 50,000 acre-feet of incremental releases would result in approximately 0.8 feet (about 10 inches) of additional drawdown of Lake Roosevelt. The releases would be distributed as follows:

- 33,000 acre-feet for Columbia River mainstem interruptible water right holders.
- 17,000 acre-feet for stream flow enhancement downstream of Grand Coulee Dam.

The SEIS describes preferred alternatives for releases of the incremental storage releases and how the water will be allocated among water users.

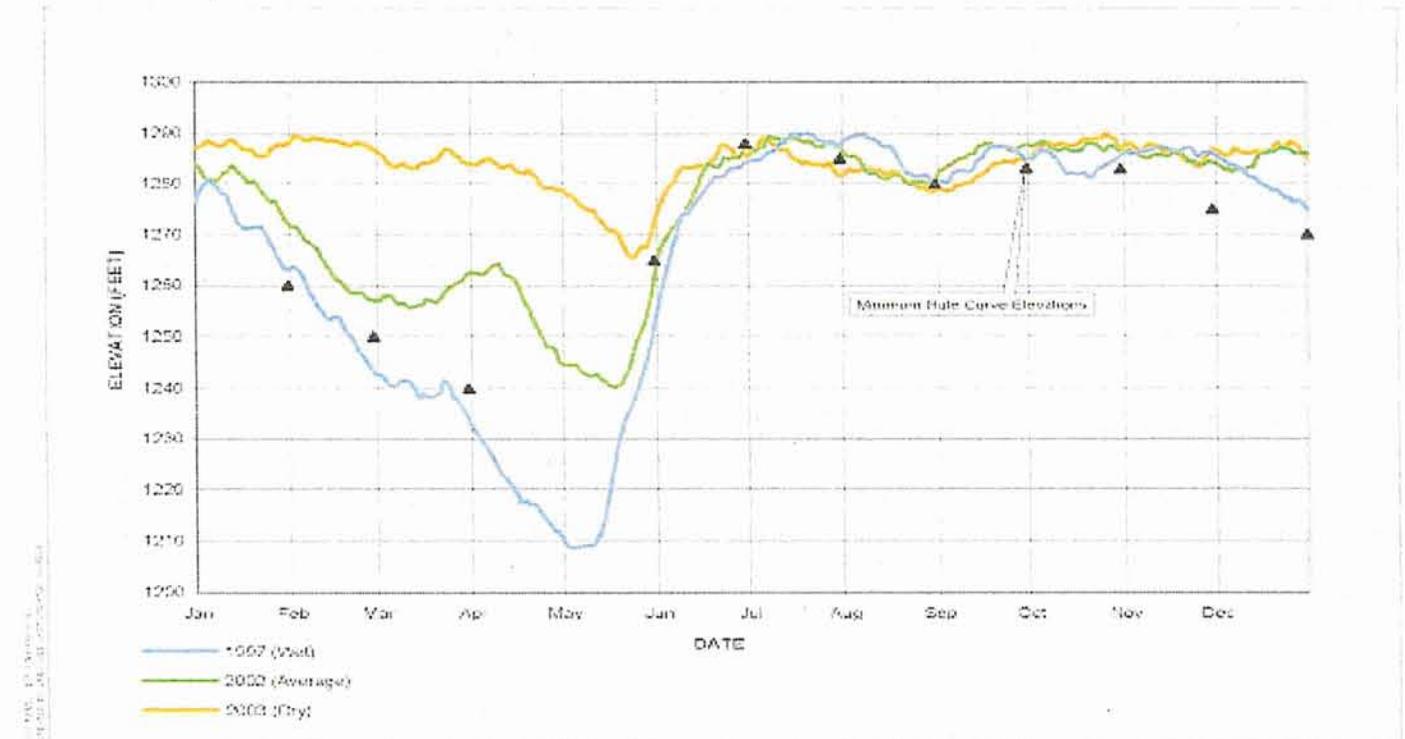


Figure 1: Lake Roosevelt Elevations During Wet, Average and Dry Years

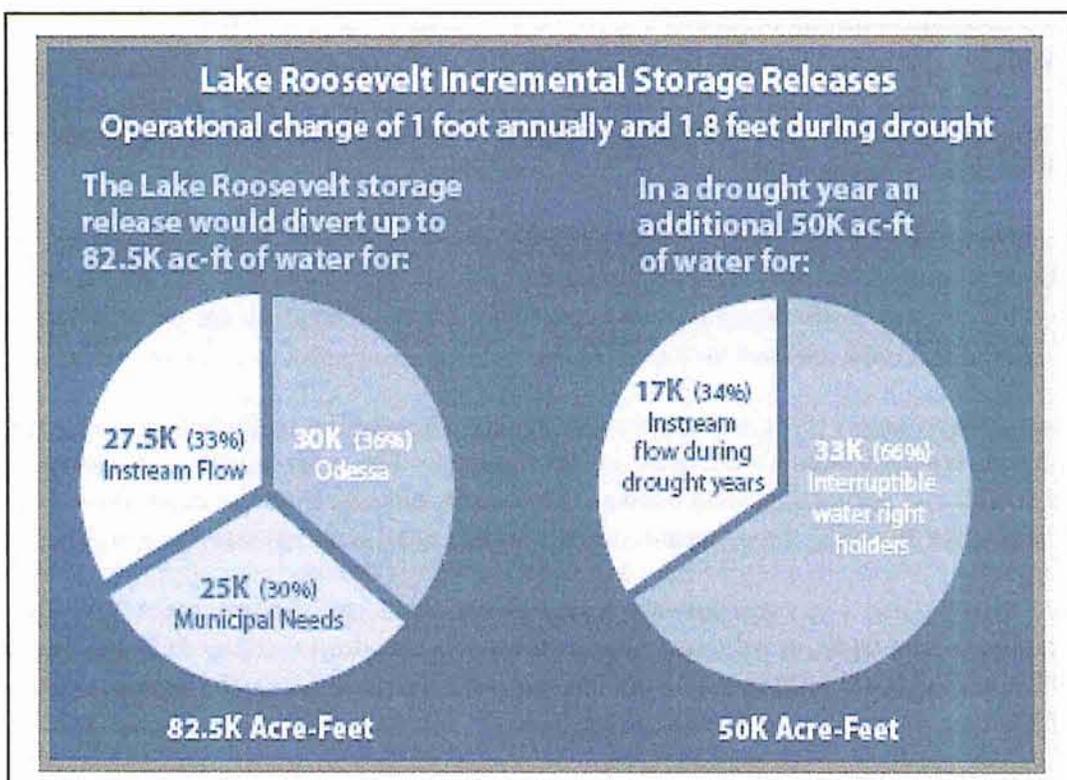


Figure 2: Proposed Lake Roosevelt Incremental Storage Releases

Water Right Applications

Overview

The 132,500 acre-feet associated with the Lake Roosevelt Incremental Storage Releases Project will be permitted through a coordinated permitting strategy described in the SEIS. In summary, the applications and agreements will include:

- An application (No. S3-30486) for the 30,000 acre-feet of water for irrigation in the Odessa Subarea and 15,000 acre-feet of water for instream purposes.
- An application (No. S3-30556) for 37,500 acre-feet of water for instream purposes, 25,000 acre-feet of which is intended to serve as replacement water to enable new state water rights to be issued in the future for out-of-stream municipal and industrial uses. The entire 37,500 acre-feet will be beneficially used for instream purposes, then enrolled in Ecology's Trust Water Program (RCW 90.42) through a water service contract with Reclamation. The trust water will be the basis for the issuance of new state water rights.
- An MOU between Ecology and Reclamation for the 33,000 acre-feet of standby-reserve drought water and associated 17,000 acre-feet of instream purposes under the Federal Drought Relief Act. The MOU will be the basis for water available for Ecology to issue water rights to water users holding rights that are interruptible as a result of the 1980 instream flow rule on the Columbia River (WAC 173-563).

Discussion of Surface Water Application No. S3-30556

Reclamation submitted an application to the Department of Ecology on May 22, 2008. The application was assigned number S3-30556. Reclamation submitted an amended application on May 30, 2008. Reclamation proposes to release up to 305 cubic feet per second, 37,500 acre-feet per year from storage under Reservoir Certificate No. 11793C, which has a priority date of May 16, 1938 (see next section). The purposes of use are identified as instream purposes, beginning at river mile 745 at the Canadian Border to the mouth of the Columbia River.

A notice of application for S3-30556 was duly published in accordance with RCW 90.03.280 in the following papers on the identified dates:

- Ritzville-Adams County Journal, Adams County, Washington published June 19 and 26, 2008;
- The Columbian, Clark County, Washington published June 20 and 27, 2008;
- Wenatchee World, Chelan County, Washington published June 20 and 27, 2008;
- Douglas County Empire Press, Douglas County, Washington published June 19 and 26, 2008;
- Tri-City Herald, Franklin & Benton Counties, Washington, published June 20 and 27, 2008;
- Republic News Miner, Ferry County, Washington; no affidavit of publication has been received;
- Columbia Basin Herald, Grant County, Washington published June 20 and 27, 2008;
- The Star of Grand Coulee, Grant County, Washington; published June 25 and July 2, 2008;
- Daily Record, Kittitas County, Washington; published June 20 and 27, 2008;
- Wilbur Register, Lincoln County, Washington published June 19 and 26, 2008;
- Methow Valley News, Okanogan County, Washington, published June 25 and July 2, 2008;
- Spokesman Review, Spokane County, Washington published June 18 and 25, 2008;
- Statesman-Examiner, Stevens County, Washington, published June 25 and July 2, 2008;
- Union-Bulletin, Walla Walla County, Washington, published June 20 and 27, 2008;
- Yakima Herald-Republic, Yakima County, Washington published June 19 and 26, 2008.

One protest was received from the Center for Environmental Law and Policy (CELP). That protest will be discussed later in the report.

Existing Water Rights for U.S. Bureau of Reclamation's Columbia Basin Project

Pursuant to RCW 90.40.030, the United States has withdrawn from further appropriation all unappropriated waters of the Columbia River for development of the Columbia Basin Project by a notice from the First Assistant Secretary of the Interior dated January 4, 1934, as amended on February 16, 1934, as modified by the notice of release of waters dated August 13, 1934, and a notice dated May 10, 1938, and supplemented by Certificates of Feasibility dated December 14, 1934 and April 20, 1939. The withdrawals have been extended by orders of the State Supervisor of Hydraulics and the State Supervisor, Division of Water Resources, Department of Conservation and Development dated March 15, 1938, December 14, 1940, April 20, 1942, December 14, 1943, February 11, 1947, December 13, 1949, April 20, 1952, February 10, 1960, December 24, 1969 and May 28, 1980, granting an extension through December 14, 1989.

An amendment to RCW 90.40.100 enacted in 1987 states: "Any water withdrawn from appropriation pursuant to RCW 90.40.030 associated with the Columbia Basin Project shall continue as withdrawn from appropriation,

without need for periodic renewal, until the project is declared completed or abandoned by the United States acting by and through the Secretary of the Interior or such other duly authorized officer of the United States.”

The portfolio of water rights for the Columbia Basin Project is highly diverse and complex, consisting of “reserves” of water, reservoir (storage) certificates, secondary use permits and certificates, and diversionary rights (see Section 3.6.1.2 in the PEIS). This section summarizes the existing rights associated with Reclamation’s Columbia Basin Project. This section is divided into two sub-sections. The first sub-section describes those reservoir and diversionary rights (consumptive and non-consumptive) that are associated with the May 16, 1938 reserve of water for the project under the federal withdrawal of water from further appropriation. The second sub-section describes those reservoir and diversionary rights (consumptive and non-consumptive) associated with post-1938 reserves for the Columbia Basin Project.

Water Rights Subject to the 1938 Withdrawal

Reservoir Storage Rights

Reservoir Certificate No. 11793, with a priority date of **May 16, 1938**, confirms a right to store 6,400,000 acre-feet annually in Lake Roosevelt. The authorized place of use is described as Lands within the boundaries of the Columbia Basin Project. This authorization covers the active storage capacity in the reservoir. This right is subject to the withdrawal notice dated **May 16, 1938**.

Diversionary and Consumptive Rights

Surface Water Certificate No. S3-01622C with a priority date of **May 16, 1938**, confirms a right of 13,450 cubic feet per second, 2,910,000 acre-feet per year for the irrigation of 590,000 acres, non-consumptive low-head hydroelectric power generation, municipal, industrial and recreational supply. The authorized point of diversion is from the Columbia River in Section 1, T. 28 N., R. 30 E.W.M. The authorized place of use is described as the Area served by the Columbia Basin Irrigation Project distribution system and associated facilities within Lincoln, Okanogan, Douglas, Grant, Adams and Franklin Counties.

Surface Water Permit No. S3-28586P with a priority date of **May 16, 1938**, authorizes a use of up to 1,140 cubic feet per second, 214,000 acre-feet per year; 204,000 acre-feet for the irrigation of 50,000 acres, non-consumptive hydroelectric power generation and recreational supply and not to exceed 10,000 acre-feet per year for municipal and industrial supply. The authorized point of diversion is from the Columbia River in Section 1, T. 28 N., R. 30 E.W.M. The authorized place of use is described as the Area served by the Columbia Basin Irrigation Project distribution system and associated facilities within Lincoln, Okanogan, Douglas, Grant, Adams and Franklin Counties.

Permit No. S3-28586P is provisioned so the total combined withdrawal under No. S3-01622C and No. S3-28586P shall not exceed 14,590 cubic feet per second and 3,113,973 acre-feet per year and no more than 640,000 acres shall be irrigated. The Report of Examination for No. S3-28586P also contains a provision that states should water authorized under No. S3-28586P be applied to lands with existing state issued water rights, those state issued rights would become reserve/standby rights. This authorization was not intended to be additive to those underlying state issued water rights. Upon Proof of Appropriation, specific legal descriptions of the place of use should be required in order to address underlying state issued water rights and the total diversionary uses associated with the permit should be reduced to actual quantities.

Document	Qi, cfs	Qa, acre-feet	Acres	Purpose
S3-01622C	13,450	2,910,000	590,000 _p	Irrigation, Municipal, Industrial Recreational and power
S3-28586P	1,140	214,000	50,000 _p	Irrigation, Municipal, Industrial Recreational and power
Total	14,590	3,124,000*	640,000	

*The total annual diversion is listed in the provision of Permit S3-28586 as 3,113,973 acre-feet per year and should be evaluated at the proof examination.

Hydro Power – Non Consumptive Rights

Surface Water Certificate No. 11543, with a priority date of **May 16, 1938** confirms a right of 75,000 cubic feet per second from the Columbia River for non-consumptive hydroelectric power generation. The authorized place of use and point of diversion is listed as Section 1, T. 28 N., R. 30 E.W.M., and Section 6, T. 28 N., R. 31 E.W.M. Grant and Okanogan Counties and intervening course of the Columbia River. This right is subject to the withdrawal notice dated **May 16, 1938**.

Water Rights Not subject to the 1938 Withdrawal

In addition to the water rights that are associated with the 1938 withdrawal, Reclamation holds the following water rights associated with the Columbia Basin Project but not associated with the 1938 withdrawal:

Reservoir Storage Rights

Reservoir Certificate No. 11794, with a priority date of **August 12, 1970**, confirms a right to store 3,162,000 acre-feet annually in Lake Roosevelt. The authorized place of use is described as Area inundated by Franklin D. Roosevelt Lake, lying within Grant, Ferry, Lincoln, Okanogan and Stevens Counties. This authorization covers the dead storage capacity in the reservoir.

Reservoir Certificate No. R3-00013C, with a priority date of **April 22, 1943**, confirms a right to store 200,000 acre-feet annually during November 1 to April 15 in the Potholes Reservoir for supplemental supply (non-additive) seasonal irrigation of 234,000 acres and for municipal, industrial, recreational, and non-consumptive low head hydro-electric power generation authorized under Surface Water Certificate No. S3-01622C and Surface Water Permit No. S3-28586P. The source is described as the unappropriated waters of Moses Lake, Rocky Ford Creek, and the Crab Creek drainage in the amount of 180,000 acre feet and 20,000 acre-feet from Lind Coulee. The authorized place of use is described as the area served by the Columbia Basin Project distribution system and associated facilities in Grant, Adams and Franklin Counties. The storage of water is described as used under Surface Water Certificate No. S3-00019C. This right is subject to the withdrawal notice dated April 22, 1943.

Diversionary and Consumptive Rights

Surface Water Certificate No. S3-00019C with a priority date of **April 22, 1943**, confirms a right of 212 cubic feet per second, 70,000 acre-feet per year from April 15 to October 31 each year for the partial irrigation of 160,000 acres. The authorized point of diversion is from Rocky Ford Creek in Section 12, T. 17 N., R. 28 E.W.M. This authorization is expressly issued as a supplemental supply to Certificate No. S3-01622C, the total withdrawal under this certificate shall not exceed 70,000 acre-feet per year, less any amount in excess of 3,130,000 acre-feet per year utilized under existing rights. The diversion from the Columbia River should be proportionally reduced to correspond with the amount of water stored and diverted under Certificate No. S3-00019C and No. R3-00013C. The authorized place of use includes portions of the Columbia Basin Project in Grant, Adams, and Franklin Counties. A more detailed description of the place of use is contained within the file. This right is subject to the withdrawal notice dated April 17, 1943.

Document	Qi, cfs	Qa, acre-feet	Acres	Purpose
S3-00019C	212 _s	70,000 _s	160,000 _s	Supplemental Irrigation (Non-additive to S3-01622)

Three additional water rights were issued for Block 2 and 3 of the Columbia Basin Project and adjacent lands described as follows:

Surface Water Certificate No. 9252 with a priority date of **December 24, 1941**, confirms a right of 40 cubic feet per second, 8,850 acre-feet per year for the irrigation of 1,319 acres. The authorized point of diversion is from the Columbia River, McNary Pool being within Section 30, T. 9 N., R. 31 E.W.M Walla Walla County. The authorized place of use is described as Irrigation Block 2 Columbia Basin Project within Sections 30 and 31, T. 9 N., R. 31 E.W.M., and Section 6, T. 8 N., R. 31 E.W.M; Section 1, T. 8 N., R. 30 E.W.M. and Section 30, T. 9 N., R. 30 E.W.M. This right is subject to the withdrawal notice dated December 18, 1941.

Surface Water Certificate No. 10703 with a priority date of **October 27, 1958** confirms a right of 80 cubic feet per second, 23,121 acre-feet per year for the irrigation of 3,303 acres. The authorized point of diversion is from the Columbia River, McNary Pool within Section 20, T. 8 N., R. 31 E.W.M Walla Walla County. The authorized place of use is described as Irrigation Block 3 Columbia Basin Project and the S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 5, NE $\frac{1}{4}$ of Section 8, W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9, W $\frac{1}{2}$ of Section 34, lying southerly of Irrigation Block 3. This right is subject to the withdrawal notice dated October 27, 1958.

Surface Water Certificate No. S3-25062 with a priority date of **October 27, 1958**, confirms a right of 8.5 cubic feet per second, 1,834 acre-feet per year for the irrigation of 350 acres. The authorized point of diversion is from the Columbia River, McNary Pool, within Section 20, T. 8 N., R. 31 E.W.M., Walla Walla County. The authorized place of use is described as portions of T. 8 N., R. 31 E.W.M. lying adjacent to Irrigation Block 3. A more specific legal description is contained within the file.

Hydro Power – Non Consumptive Rights

Surface Water Certificate No. S3-01606C, with a priority date of **October 16, 1969**, confirms a right of 21,700 cubic feet per second from the Columbia River for non-consumptive hydroelectric power generation. The authorized place of use and point of diversion is listed as Section 1, T. 28 N., R. 30 E.W.M., and Section 6, T. 28 N., R. 31 E.W.M. Grant and Okanogan Counties and intervening course of the Columbia River. This right is subject to the withdrawal notice dated October 16, 1969.

Surface Water Certificate No. S3-26258C, with a priority date of **October 16, 1969**, confirms a right of 184,000 cubic feet per second from the Columbia River for non-consumptive hydroelectric power generation. The authorized place of use and point of diversion is listed as the NE¼ of Section 1, T. 28 N., R. 30 E.W.M., and the NW¼ of Section 6, T. 28 N., R. 31 E.W.M. This right is subject to the withdrawal notice dated October 16, 1969.

Surface Water Certificate No. S3-26257C, with a priority date of **May 9, 1975**, confirms a right of 22,000 cubic feet per second from the Columbia River for non-consumptive hydroelectric power generation. The authorized place of use and point of diversion is listed as the NE¼ of Section 1, T. 28 N., R. 30 E.W.M., and the NW¼ of Section 6, T. 28 N., R. 31 E.W.M. This right is subject to the withdrawal notice dated May 9, 1975.

Surface Water Certificate No. S3-27615C, with a priority date of **October 14, 1969**, confirms a right of 7,400 cubic feet per second from the Columbia River for non-consumptive hydroelectric power generation. The authorized place of use and point of diversion is listed as the W½ of Section 1, T. 28 N., R. 30 E.W.M. This right authorized the diversion of waters into Banks Lake typically in December and January, to be released back into the Columbia River in February and March, depending on the weather, for power generation.

Certificate	CFS	P. Date	Purpose
11543	75,000	5-16-38	Power Generation
S3-01606	21,700	10-16-69	Power Generation
S3-26258	184,000	10-16-69	Power Generation
S3-26257	22,000	5-9-75	Power Generation
Total	302,700		Power Generation
S3-27615*	7,400	10-14-69	Power Generation
Total	310,100		

* This right authorized the diversion of waters into Banks Lake typically in December and January, to be released back into the Columbia River in February and March, depending on the weather, for power generation.

Analysis of Requirements for Surface Water Application No. S3-30556

Application No. S3-30556 is for a secondary permit associated with existing Reservoir Certificate No. 11793, which confirms a right to store 6,400,000 ac-ft of water. RCW 90.03.370 describes the statutory framework for issuing reservoir permits and secondary use permits. RCW 90.03.370(1)(a) states:

“ . . . the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall also file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of RCW 90.03.250 through 90.03.320.”

RCW 90.03.250 through 90.03.320 is the appropriation portion of the Surface Water Code that describes the statutory process for filing an application for a water right, Ecology’s requirements for investigation of the application, and responsibilities of the applicant to perfect the right as issued. In particular, RCW 90.03.290 provides that:

“When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine”:

- Whether the water is requested for beneficial use(s);
- Whether the water requested is available for appropriation;
- Whether the proposed use of water will impair existing rights; and
- Whether the proposal would be detrimental to the public welfare.

Beneficial Use Analysis

RCW 90.54.020 (1) states that uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial.

Reclamation proposes to use all 37,500 acre-feet of water under Application S3-30556 for instream purposes. After it is put to use, Reclamation plans to submit an application to transfer all of this water to the state trust water program. 12,500 acre-feet will remain in the Columbia River to benefit instream flows. 25,000 acre-feet of the trusted water is intended to serve as replacement water to enable new state water rights to be issued in the future for out-of-stream municipal and industrial uses.

The proposed release of stored water for instream purposes is considered to be a beneficial use. Therefore this application meets the first criterion of RCW 90.03.290 that the requested water be put to beneficial use.

Water Availability Analysis

Proposed Releases from Storage

Reclamation proposes to use all 37,500 acre-feet of water under Application No. S3-30556 for instream purposes. After it is put to use, Reclamation intends to submit an application to transfer all of this water to the state trust water program. 12,500 acre-feet of the trusted water will remain in the Columbia River to benefit instream flows. 25,000 acre-feet of the trusted water will serve as replacement for new state water rights to be issued in the future for municipal and industrial uses. The municipal and industrial water will be authorized by Ecology through the issuance of state water rights to qualified applicants in accordance with requirements of RCW 90.03.250 through 90.03.320.

Water released for instream purposes under Application S3-30556 could occur under various scenarios described in the adaptive management strategy (see SEIS, 2008) during April to September (April to June in dry years), but could not exceed the peak diversion rate of 305 cfs requested in the application. Release of all the water at the maximum authorized diversion rate would require a minimum of two months.

Water levels of Lake Roosevelt typically remain between 1278 feet and 1280 feet during mid-summer. Water released from storage would be replaced during the periods the reservoir is refilled, which typically occurs between April through June and in September. Water diverted or released subject to this application would be replaced during these periods.

The annual diversion of water from Lake Roosevelt authorized by the two secondary use permits, No. S3-30486 and No. S3-30556, would result in a maximum additional drawdown of the reservoir of approximately one foot each year. The full effect of the drawdown would be observed on August 31. The maximum drawdown would only last for a few days. For all release alternatives, the reservoir would refill rapidly after the end of August because Reclamation begins to refill the reservoir at that time to meet lake level requirements for Kokanee salmon. Ecology has selected Preferred Alternatives for the incremental storage releases based on analysis in the Draft Supplemental EIS; further discussions with Reclamation, WDFW, and other interested parties; and comments received on the Draft Supplemental EIS. The Preferred Alternatives, one for annual releases and one for additional releases during drought years, are variations of Alternatives 1C and 1E. These alternatives are intended to maximize the benefits for fish in the Columbia River. In the Draft Supplemental EIS, Alternatives 1C and 1E included specific flow releases for each month and each purpose. Ecology determined that setting specific flows in advance would not allow flexibility in managing the flows for fish under differing conditions. Therefore, the Preferred Alternatives in the Final SEIS only specify in which months varying flows would be released for the different purposes.

The specific amount of flow released each month would be determined by a panel of fisheries and water managers from Ecology, Reclamation, tribes, the Columbia River Intertribal Fish Commission (CRITFC), WDFW, NOAA Fisheries, and the U.S. Fish and Wildlife Service. The panel will determine specific releases each year based on the March 1 forecast for April through September runoff at The Dalles Dam, with the goal of scheduling releases to maximize fish benefits under the specific conditions in any year. The panel will also consider anticipated river conditions and the status of fish runs and outmigration. Ecology is negotiating an MOA with Reclamation to incorporate the adaptive management strategy for the Preferred Alternatives into river operations.

Availability of Water

An initial finding of water availability was made by Ecology when it issued Reservoir Certificate No. 11793. Certificate No. 11793 issued with a priority date of **May 16, 1938**, and confirms a right to store 6,400,000 acre-feet annually for irrigation and power generation. The authorized place of use is described as Lands within the boundaries of the Columbia Basin Project. Since Ecology issued Certificate No. 11793, Reclamation has stored 6,400,000 acre-feet for the purposes of the Columbia Basin Project. Water is available and stored each year with approximately half of this storage volume awaiting secondary use permits for out-of-stream uses associated with the reservation. By releasing water consistent with the adaptive management strategy outlined in the SEIS, water would be made available for the instream purposes requested by Application No. S3-30556.

The listing of "irrigation and power generation" as purposes of use under the Reclamation storage right documented by Certificate No. 11793 does not impose any limitations on the purposes of use or place of use that Reclamation may seek authorization for as secondary uses after the water is removed from storage in the reservoir. Under RCW 90.03.370, Certificate No. 11793 only authorizes storage, and not secondary uses. Thus, as potential secondary uses, Reclamation is not limited to the uses or places of use specified on that reservoir certificate. Reclamation is required under RCW 90.03.370 to apply to Ecology pursuant to RCW 90.03.250 through 90.03.320 for authorization for secondary uses of the stored water, as it has done here, and can request any purposes of use or place of use they choose.

The 2004 MOU between the State, Reclamation, and the Columbia Basin Project Irrigation Districts directs Ecology to find a long-term source of replacement water for the 132,500 acre-feet of storage releases. The MOU describes the intent of the parties to provide a meaningful immediate supply of water to benefit both instream and out-of-stream needs in the Columbia River Basin, and to work on other long-term storage and conservation alternatives.

Under Section 12 of the 2004 MOU, the parties agreed to pursue the delivery of 37,500 acre-feet of water from Lake Roosevelt to benefit instream flows. Reclamation has submitted Application No. S3-30556 to obtain a secondary use permit to release water from Lake Roosevelt, which it stores under its Reservoir Certificate No. 11793, priority date May 16, 1938. 12,500 acre-feet of this water will remain in the Columbia River to benefit instream flows. 25,000 acre-feet of this water is intended to serve as replacement water to enable new state water rights to be issued in the future for out-of-stream municipal and industrial uses.

There is no term or expiration under the MOU, but there are elements of the contracts with Reclamation that cannot be indefinite because of federal law requirements. The water service contract for the municipal and industrial water will be a long-term supply, with renewal options. The supply for interruptible water rights is subject to continued Congressional authorization of the Federal Drought Relief Act. These types of agreements are in place throughout the West, and Ecology views them as permanent sources of supply for the purposes of new water right permitting (Page 2-3-1, SEIS, 2008).

The intent under the 2004 MOU is that water will eventually be developed from new storage and conservation to replace the water being provided from Lake Roosevelt. Ecology plans to continue to evaluate long-term storage and conservation plans to add to its water supply development portfolio and at some point replace the water described herein. Should the MOU be terminated because Ecology has found replacement water, Ecology intends to provide such water in-kind, in-place, and in-time. If that is not possible, Ecology will conduct a separate environmental review prior to terminating the MOU.

In summary, Reclamation holds a perfected right for storage of water in Lake Roosevelt under Reservoir Certificate No. 11793, which authorizes 6,400,000 acre-feet of water to be stored. The analysis provided above demonstrates that water can be released from storage by Reclamation as proposed under this secondary permit application, and water is available for the proposed beneficial use. Therefore this application meets the second criterion of RCW 90.03.290 that the requested water must be available for appropriation.

Impairment Analysis for Existing Rights

Analysis of whether this application meets the requirement under RCW 90.03.290 that Reclamation's proposed use of water will not impair other existing water rights involves comparison of the current regime related to storage of water under Reservoir Certificate No. 11793 with what will occur if the proposed secondary uses are approved, and how the difference from the present status quo will affect other existing water rights. The analysis must consider impacts to existing water right holders and the State's adopted instream flow rule.

Impacts are not directly associated with the releases of water from the reservoir, because the releases will add water to the Columbia River. Impacts are associated with the indirect impacts associated with the replacement of the released water during refilling of the reservoir. The period of time for refilling is described in the Water Availability Analysis section of this report.

Water requested by Application No. S3-30556 is a portion of the 100,000 cfs originally withdrawn for the Columbia Basin Project pursuant to RCW 90.40 in 1934 with a subsequent notice of withdrawal having been filed on May 10, 1938. Through agreement¹⁵ between the United States Department of the Interior and the State of Washington, any water rights that may be perfected for the Columbia Basin Project under this withdrawal will have a priority date of May 16, 1938.

In considering impacts to existing water right holders and the instream flow rule, one must consider actual river operations, particularly in drought years when water availability issues are most acute. In the context of this application, there are four classes of water uses that must be considered:

- Water right holders with priority dates senior to May 16, 1938.
- Uninterruptible water right with priority dates junior to May 16, 1938.
- Interruptible water right with priority dates junior to May 16, 1938.
- The State's June 24, 1980 Instream Flow Rule.

Numerous private water right holders on the Columbia River have priority dates senior to May 16, 1938. In every year (wet, average, dry, drought), water is available to meet their uses. Diversion of water for irrigation in the Odessa Subarea and release of water for instream purposes associated with Application S3-30556 would not prevent those users from obtaining their full water right each year. Treaty-based fisheries rights for Native tribes also pre-date this authorization. As these rights are unadjudicated, and are thus unquantified, an impairment

¹⁵ Reflected in Memorandum to Bureau of Reclamation dated October 20, 1969.
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review of these rights is complex. A flow-based indicator of these unquantified rights is reflected in the 2008 BiOp and the State's adopted instream flow rule, which form bookends on the amount of water necessary for fish. Under the adaptive management strategy adopted in the SEIS and incorporated herein by reference, this authorization will move the Columbia River hydrograph to a more normative state, which is consistent with BiOp fisheries objectives. Water availability for fish will increase under this authorization because water will be released from storage.

Numerous water right holders on the Columbia River exist with priority dates between 1938 and 1980 (the date when interruptible water rights were first issued). As in the case of water right holders senior to 1938, water is available each year to fully meet these needs. As discussed above, beneficial uses requested by Application S3-30556 are subject to the 1938 withdrawal, and, thus, the proposed secondary use permit would have a priority date of May 16, 1938. Therefore, according to the State's priority system, the water under this application is entitled to be fully fulfilled before rights junior to it.

There are two groups of out-of-stream water right holders on the Columbia River who do not receive a full supply every year. The first are those that are interruptible to the 1980 instream flow rule, which has only occurred once every 26 years. The second is the Quad Cities Permit (S4-30976P), which is subject to the BiOp flows. However, because these rights are junior to the priority date of this application, they are not subject to an impairment analysis.

Instream flows established under WAC 173-563 (6/24/1980) are not met once every 26 years based on a flow forecast at The Dalles (60 million acre-feet). This rule is junior to the 1938 withdrawal and is therefore also not subject to an impairment analysis. Note that the flows in the 2008 Federal Columbia River Power System (FCRPS) BiOp are not a water right, but rather a public interest consideration that will be discussed in the next section.

In summary, the beneficial use proposed by this application will not impair any existing water rights because there will be no injury to water rights with priority dates senior to the May 16, 1938 priority date of Reservoir Certificate No. 11793. Therefore this application meets the third criterion of RCW 90.03.290.

Public Welfare Analysis

Analysis of whether this application meets the requirement under RCW 90.03.290 that Reclamation's proposed use of water will not be detrimental to the public welfare involves comparison of the current regime related to storage of water under Reservoir Certificate No. 11793 with what will occur if the proposed secondary uses are approved, and how the difference from the present status quo will affect the range of values that encompass the public interest.

The 1971 Water Resources Act, RCW 90.54, provides the most comprehensive list of legislative policies that guide the consideration of public interest in the allocation of water. These policies generally require a balancing of the state's natural resources and values with the state's economic well-being. Specifically, the policies require allocation of water in a manner that preserves instream resources, protects the quality of the water, provides adequate and safe supplies of water to serve public need, and makes water available to support the economic well-being of the state and its citizens. The public interest criteria provide for the greatest level of discretion afforded to Ecology in the permit process and invoke the general environmental and water management policies enacted by the Legislature.

The Watershed Management Act was passed by the state Legislature in 1998 to provide a collaborative framework for local citizens and local governments to join with tribes and state agencies to develop watershed management plans. RCW 90.82.010 states: "The development of such plans serves the state's vital interests by ensuring that the state's water resources are used wisely, by protecting existing water rights, by protecting instream flows for fish, and by providing for the economic well-being of the state's citizenry and communities." For some projects, Ecology can look to adopted watershed plans as an expression of the public interest.

The proposed Lake Roosevelt Incremental Storage Releases Project is unique in that releases have the potential to affect over two dozen Water Resource Inventory Areas (WRIAs) from Lake Roosevelt to the Pacific Ocean. These watershed planning efforts range from those that have completed plans and are in the implementation phase to those that have just begun the process. Many watersheds about the Columbia River, and their planning units may propose a framework for the use of its water. However, the regional management framework of the river (including its international treatise, federal dam operators, tribal interests and other factors) is difficult for a single local entity to affect. None of the adopted watershed plans include a specific endorsement or critique on this particular project. However, all the plans identify both instream values and out-of-stream uses as important interests in their areas.

Project Benefits

Public interests associated with this project can be found in the law related to the Columbia River Program itself. The following table provides statutory citations from RCW 90.90 and the portion of the Lake Roosevelt Incremental Storage Release Project that meets this public interest metric.

RCW	Statute (emphasis added)	Tie To Lake Roosevelt Project
90.90.005	<p>(1) The legislature finds that a key priority of water resource management in the Columbia river basin is the development of new water supplies that includes storage and conservation in order to meet the economic and community development needs of people and the instream flow needs of fish.</p> <p>(2) The legislature therefore declares that a Columbia river basin water supply development program is needed, and directs the Department of Ecology to aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses.</p>	<p>1/3rd of water for instream use</p> <p>2/3rds of water for out-of-stream use</p>
90.90.010	(2)(a) Expenditures from the Columbia river basin water supply development account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities , implement conservation projects, or any other actions designed to provide access to new water supplies within the Columbia River basin for both instream and out-of-stream uses.	<p>1/3rd of water for instream use</p> <p>2/3rds of water for out-of-stream use</p>
90.90.020	<p>(3) The Department of Ecology shall focus . . . on the following needs:</p> <p>(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;</p> <p>(b) Sources of water supply for pending water right applications;</p> <p>(c) A new uninterrupted supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and</p> <p>(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.</p>	<p>30,000 ac-ft Odessa</p> <p>25,000 ac-ft M&I</p> <p>33,000 ac-ft drought</p>
90.90.060	<p>(2) Consistent with this intent, the governor and the legislature are in agreement with the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians to support additional releases of water from Lake Roosevelt.</p> <p>(3) These new releases of Lake Roosevelt water of approximately eighty-two thousand five hundred acre feet of water, increasing to no more than one hundred thirty-two thousand five hundred acre feet of water in drought years, will bolster the state economy and will meet the following critical needs: New surface water supplies for farmers to replace the use of diminishing groundwater in the Odessa aquifer; new water supplies for municipalities with pending water right applications; enhanced certainty for agricultural water users with water rights that are interruptible during times of drought; and water to increase flows in the river when salmon need it most.</p>	132,500 ac-ft for instream and out-of-stream needs

A major public interest consideration is for the conservation and, as necessary, restoration of instream resources – namely salmon and steelhead, other aquatic and terrestrial species dependent on Columbia River flows, and their habitats. The “Statewide Strategy to Recover Salmon” was issued by the Washington State Joint Natural Resources Cabinet on September 21, 1999. It begins:

“Salmon, steelhead and trout have been, and continue to be, a critical part of Washington’s history, culture, economy and recreational enjoyment. They are a basic and important natural resource, a symbol of the natural beauty of the state. Salmon are also valued for subsistence, for nutritional health and for the spiritual well-being of tribal people.”

“Salmon have been vital to the sport and commercial fishing industry. Fishing provides jobs, supports businesses, and provides quality recreational experiences for a significant number of families from Washington, around the country and the world. For example, the U.S. Department of Commerce estimates that in 1996 sport fishing contributed more than \$704 million to Washington’s economy. The decline of salmon is affecting families, communities, the state and the northwest region as a whole. The loss of salmon also means the loss of revenue for tribal economies historically dependent on salmon.”

The 1999 Washington Legislature created and authorized the Salmon Recovery Funding Board (SRFB), now codified in RCW 77.85. The SRFB administers grants to provide funding of habitat protection and restoration projects and related programs and activities that produce sustainable and measurable benefits for fish and their habitat. The intent of the law (RCW 77.85.005) begins with the following:

“The Legislature finds that repeated attempts to improve salmonid fish runs throughout the state of Washington have failed to avert listings of salmon and steelhead runs as threatened or endangered under the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.). These listings threaten the sport, commercial, and tribal fishing industries as well as the economic well-being and vitality of vast areas of the state. It is the intent of the Legislature to begin activities required for the recovery of salmon stocks as soon as possible, although the Legislature understands that successful recovery efforts may not be realized for many years because of the life cycle of salmon and the complex array of natural and human-caused problems they face.”

“The Legislature finds that it is in the interest of the citizens of the state of Washington for the state to retain primary responsibility for managing the natural resources of the state, rather than abdicate those responsibilities to the federal government, and that the state may best accomplish this objective by integrating local and regional recovery activities into a state-wide plan that can make the most effective use of provisions of federal laws allowing for a state lead in salmon recovery. The Legislature also finds that a state-wide salmon recovery plan must be developed and implemented through an active public involvement process in order to ensure public participation in, and support for, salmon recovery. The Legislature also finds that there is a substantial link between the provisions of the federal Endangered Species Act and the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).”

These legislative findings and actions demonstrate that fish survival and recovery are public interests.

In the 2008 Biological Opinion¹⁶, NOAA Fisheries concluded the operation of the Federal Columbia River Power System (FCRPS) affects 13 species of salmon and steelhead listed for protection under the Endangered Species Act (ESA). Maintenance of the 2008 BiOp flows¹⁷ and actions to address other limiting factors, such as predation, habitat, hatchery effects, and harvest, are essential to preventing take of listed salmonids. The first strategy to improve juvenile and adult fish survival in the FCRPS is to operate the FCRPS to more closely approximate the shape of the natural hydrograph¹⁸. The following table summarizes the number of years water is available above the BiOp flows at Priest Rapids Dam based on 50 years of data from BPA’s Hyd-Sim model¹⁹.

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Years	44	35	35	30	27	26	29	4	48	50	17	41

The adaptive management strategy outlined in the SEIS calls for releases of water in April to June (or through August depending on year), with refill occurring in September. Shifting the release/refill incrementally in this manner consistent with the approach recommended in the BiOp would be in the public interest.

The public interest in demand shifting for both fisheries needs and impacts on out-of-stream users during droughts can also be evaluated by comparing the Columbia River instream flow rule to historic droughts in the basin. The following chart shows the 1980 instream flow (as bars²⁰) and hydrographs of historic droughts (as lines). Low flow years were often below the 1980 instream flows in April to August (although the 60 MAF flow trigger at The Dalles to enforce the flows only occurred in 2001). Low flows have never approached the instream flows for September. Incremental releases in April to August and refill in September increases water availability during drought years for both instream flows and out-of-stream users.

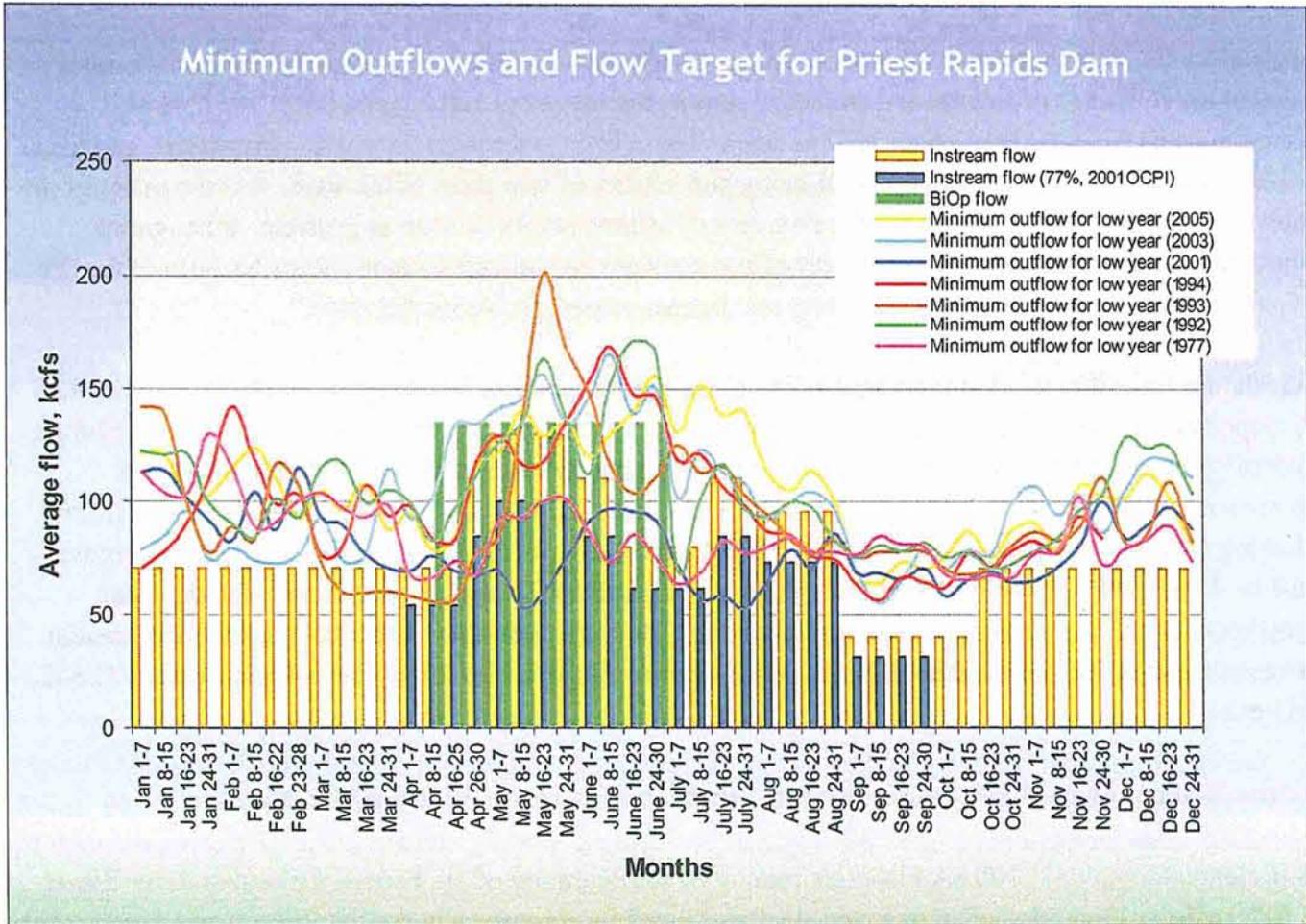
¹⁶ <http://www.nwr.noaa.gov/Salmon-Hydropower/Columbia-Snake-Basin/upload/Final-ExSum.pdf>

¹⁷ 2007 FCRPS B.A., Appendix B, Table B.2 1-2, Page B.2.1-11, http://www.salmonrecovery.gov/Biological_Opinions/FCRPS/BA-CA/FCRPS/Appendix.pdf

¹⁸ 2008 BiOp, Executive Summary, Page 9

¹⁹ Appraisal Assessment of the Black Rock Alternative, December 2004, Table 3-5

²⁰ Also shown is the level the 1980 instream flows were reduced to in 2001 as part of the critical flow adjustment in WAC 173-563-050 and the BiOp.



Another major public interest doctrine associated with the 1971 Water Resources Act requires policy decisions to balance natural resources and values with the state’s economic well being.

Providing additional supplies for municipal and industrial needs is also in the public interest. Population is expected to increase significantly in the counties adjacent to the Columbia River by 2030. The following table summarizes these increases. The 25,000 acre-feet provided for municipal and industrial purposes will meet a portion of these needs.

County	Population Increase by 2030
Stevens	26,716
Okanogan	11,948
Chelan	27,693
Grant	27,882
Benton	50,204
Klickitat	7,794

Climate change is becoming an increasingly important component of water demand and supply forecasting. While the cause of climate change is subject to debate, a number of scientific assessments have concluded that the Earth’s average temperature will increase during the twenty-first century (<http://www.ipcc.ch/>). Climate models used in these assessments predict that both temperature and precipitation will significantly increase in the Pacific Northwest over the next 50 years. The potential consequences to water resources in the Pacific Northwest associated with warmer temperatures, greater precipitation, and a shift in winter precipitation type from snow to rain leading to higher winter flows and lower summer flows (Hamlet et al., 2001). The adaptive management strategy for the proposed releases provides for additional flows in the summer which is the period at greatest risk due to climate change.

Project Impacts

Impacts to BiOp Flows

Predicted impacts of refilling would occur during periods of time subject to the recommended BiOp flows. These impacts are not considered to impair the BiOp flows. These releases do not conflict with mandatory commitments of water for the Endangered Species Act (ESA) listed salmon species. The releases are included in the baseline

storage project operation assessment for Grand Coulee Dam in the August 2007 *Biological Assessment*²¹ (Page 2-20) which was adopted by the 2008 FCRPS BiOp.

Impacts to Recreational Users

The lake is characterized by seasonal fluctuations in the lake level as described in the Programmatic EIS and the Supplemental EIS. This affects boat launches and other waterfront facilities because they must be designed to be operable under variable water level conditions. Under non-drought conditions, the lake level is generally high enough to meet the needs of all ramps in the Lake Roosevelt National Recreation Area (LRNRA). Under drought conditions when lake levels reach 1,278 feet, six of the 22 boat ramps within the LRNRA are inoperable during two of the highest recreational use months on the reservoir. This is approximately one-third of the ramps. Ramps susceptible to low lake levels in the high visitor use season include Hawk Creek, Marcus Island, Evans, Napoleon Bridge, and North Gorge. Launching is reported to shift to other ramps when these become inoperable.

The Spokane Tribe of Indians closes their developed boat launch at Two Rivers when lake levels render it inoperable. During wet and average years, this generally occurs from January through mid-June and again for a few days in August. During drought years, the launch is closed for approximately two weeks in August. In general, if lake levels are too low, visitors are allowed to use primitive launches at their own risk as no extensions are provided. Many visitors cross the bridge to use launches at Fort Spokane when the Two Rivers launch is closed.

The minimum operating elevations of the designated swimming areas vary by site topography. The National Park Service (NPS) is able to move swimming markers to adjust to lower lake levels, but does not adjust swimming platforms. Two of the swimming areas (Marcus Island and Kettle Falls) may not have water when lake levels are low (NPS, 2008d). During spring drawdown, the concessionaire must relocate houseboats to deeper water. Rental boat docks are not available at some locations for up to six weeks during this time.

Additional releases of water for the Lake Roosevelt Incremental Storage Releases Project would have additional impacts to these recreational uses by lowering pool elevations and increasing periods of time these recreational uses are impacted. The calculated impacts to these recreational uses are considered in the SEIS.

In summary, the economic benefits and benefits to fish and wildlife that would result from releasing water from storage as proposed for instream purposes outweigh any negative impacts of the proposed Lake Roosevelt Incremental Storage Releases Project. Accordingly, this proposal will not be contrary to the public interest. Therefore this application meets the fourth criterion of RCW 90.03.290 that the proposed releases of water from Lake Roosevelt would not be detrimental to the public welfare.

Protest and Concerns of Surface Water Application No. S3-30556

One protest to both secondary use permit applications submitted by Reclamation, Application Nos. S3-30486 and S3-30556, was received from the Center for Environmental Law and Policy (CELP) on July 24, 2008. The following is a summary of objections stated in CELP's protest letter:

- 1) The proposed uses are outside the intent of the original reservation of water by Reclamation.
- 2) The proposed water rights are based on a reservation of water that has been abandoned and relinquished by Reclamation.
- 3) Water is not available and not in the public interest because they conflict with mandatory commitments of water for the Endangered Species Act (ESA) listed salmon species.
- 4) Water is not available and the applications are not in the public interest due to climate change.
- 5) Water is not available and the applications are not in the public interest because of anticipated Columbia River Treaty amendments that may be substantially change operations at Grand Coulee Dam.
- 6) Making commitments to tertiary permits is unwise given availability questions and possible impairment.
- 7) Ecology exhibited chronic failure to consider cumulative impacts of the Columbia River Management Program in violation of SEPA.
- 8) The SEPA documents provide insufficient analysis of environmental impacts with the proposed water rights.
- 9) Water delivery for the Quad Cities will not satisfy and may violate the terms of the settlement agreement in *CELP v. Ecology and Quad Cities*.

²¹ http://www.salmonrecovery.gov/Biological_Opinions/FCRPS/BA-CA/FCRPS/BA_MAIN_TEXT_FINAL_08-20-07_Updated_08-27.pdf

- 10) Providing large economic, environmental, power generation and water resource subsidies to new water users is not in the public interest.
- 11) Reclamation failed to conduct NEPA analysis. SEPA cannot substitute for NEPA.
- 12) Ecology's reliance on "overriding considerations of the public interest" (OCPI) violates the spirit of the exception. The OCPI is an exemption to mandatory protection of water resources that, by law, must be used sparingly.
- 13) The MOA between Ecology and Reclamation provides an insufficient legal basis for the transfer.
- 14) Reclamation has failed to assess whether farms receiving the water are eligible and capable of paying for the water as required by federal Reclamation law.

Consideration of Protest and Concerns

1) RCW 90.40 does not require the federal government to provide a list of specific intended purposes for a withdrawal of water from further appropriation by other potential water users to enable development of a federal reclamation project in Washington. The original withdrawal notice filed by the Department of the Interior specifies that the "United States intends to make examinations and surveys for the utilization in the development of the proposed Columbia Basin project of the waters of the Columbia River and its tributaries".

The intent of the construction of Grand Coulee Dam and the Columbia Basin Project is described by the Act of Congress in the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1028, 1039-1040, Public Law 74-409). The Act describes the authorization of Grand Coulee Dam as "for the purpose of controlling floods, improving navigation, regulating the flow of the streams of the United States, providing for the storage and for the delivery of the stored water thereof and for other beneficial use". Additionally, Congressional documents describe the Columbia Basin Project as "... a multiple-purpose project having as its purposes control of floods, improvement of navigation, regulation of stream flow, provision for storage and for delivery of stored waters for the reclamation of lands, and other beneficial uses, and the generation of electric energy as a means of financially aiding and assisting in the carrying out of such purpose" (House Document 172, May 10, 1945). Additionally, in 1980 the U.S. District Court confirmed that fish and wildlife was also a project purpose pursuant to the Fish and Wildlife Coordination Act of August 12, 1958 (72 Stat. 563, Public Law 85-624).

Surface Water Application No. S3-30556 requests water diversion from Lake Roosevelt for further development of the Columbia Basin Project. The use of water for instream purposes is not outside of the federal government's intent for developing and carrying out the Columbia Basin Project.

Reservoir Certificate No. 11793, with a priority date of **May 16, 1938**, confirms a right to store 6,400,000 acre-feet annually for irrigation and power generation. The authorized place of use is described as Lands within the boundaries of the Columbia Basin Project. The listing of "irrigation and power generation" as purposes of use under Reclamation storage right documented by Certificate No. 11793 does not impose any limitations on the purposes of use or place of use that Reclamation may seek authorization for as secondary uses. Under RCW 90.03.370, Certificate No. 11793 only authorizes storage, and not secondary uses. Thus, as potential secondary uses, Reclamation is not limited to the uses or places specified on that certificate. Reclamation is required under RCW 90.03.370 to apply to Ecology pursuant to RCW 90.03.250 through 90.03.320 for authorization for secondary uses of the stored water, and can request any purposes of use or place of use they choose.

2) Pursuant to Section 90.40.030, Revised Code of Washington, the United States has withdrawn unappropriated waters of the Columbia River for the Columbia Basin Project by a notice from the First Assistant Secretary of the Interior dated January 4, 1934, as amended on February 16, 1934, as modified by the notice of release of waters dated August 13, 1934, and a notice dated May 10, 1938, and supplemented by Certificates of Feasibility dated December 14, 1934 and April 20, 1939. The withdrawals have been extended by orders of the State Supervisor of Hydraulics and the State Supervisor, Division of Water Resources, Department of Conservation and Development dated March 15, 1938, December 14, 1940, April 20, 1942, December 14, 1943, February 11, 1947, December 13, 1949, April 20, 1952, February 10, 1960, December 24, 1969 and May 28, 1980 granting an extension through December 14, 1989. RCW 90.40.100, enacted in 1987, states: "Any water withdrawn from appropriation pursuant to RCW 90.40.030 associated with the Columbia Basin Project shall continue as withdrawn from appropriation, without need for periodic renewal, until the project is declared completed or abandoned by the United States acting by and through the secretary of the interior or such other duly authorized officer of the United States." At this time Ecology has not received a formal letter declaring the project completed or abandoned by the United States acting by and through the Secretary of the Interior or such other duly authorized officer of the United States." Until such notice is received, RCW 90.40 maintains the United States' withdrawal of water in good standing.

3) The availability of water and public interest requirements under RCW 90.03.290 are discussed above. Water will be released from storage under Reservoir Certificate No. 11793. These releases do not conflict with mandatory commitments of water for the Endangered Species Act (ESA) listed salmon species. The releases are

included in the baseline storage project operation assessment for Grand Coulee Dam in the August 2007 *Biological Assessment*²² (Page 2-20) which was adopted by the 2008 FCRPS BiOp.

- 4) Issues of climate change were discussed in Section 3.3 of the PEIS 2007 and SEIS 2008 and are addressed in the Public Welfare Analysis section in this report. It is recognized that climate change may affect runoff patterns and annual flow operations. However, there is no evidence indicating that climate change will cause water not to be available for release from storage, or that climate change will cause the proposal to be detrimental to the public welfare in the future. In fact, the adaptive management strategy for the releases provide for increased summer flows which is the period most at risk due to climate change.
- 5) The water availability and public interest issues are addressed above. This proposal is consistent with the original 1938 reserve of water initiated through the Department of the Interior by Act of Congress. It is speculative to consider future changes to river operations based on changes that may occur to the Columbia River Treaty, which would also require an Act of Congress. It is appropriate to consider current Congressional intent over hypothetical future alterations.
- 6) Water is available from storage and its releases will not impair existing water rights (see relevant sections of this report). Commitments to tertiary permits to instream flows are appropriate following perfection of the release of water because they are consistent with the original 1938 reserve. Commitments to future municipal and industrial users will be the subject of future permitting decisions.
- 7) In accordance with the State Environmental Policy Act Rules (Chapter 197-11 WAC), Ecology has assessed the environmental impacts associated with implementation of the Columbia River Management Program (Management Program) using a "broad to narrow" approach. This phased approach is appropriately used 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."

On February 15, 2007, Ecology released a Programmatic Environmental Impact Statement (PEIS) that evaluated the principal components of the Management Program authorized under the Columbia River Water Management Act. These components include storage, conservation, Voluntary Regional Agreements, instream flow and several administrative support functions. The PEIS also considered cumulative impacts (page 4-58), and several early action alternatives, including drawdown of water from Lake Roosevelt (page 5-1).

On August 29, 2008, Ecology released the Final SEIS for the Lake Roosevelt Incremental Storage Releases Project. Section 4.3 of that document evaluates the potential for cumulative impacts of the project. 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 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 probable 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.

- 8) Ecology has appropriately studied and documented the environmental impacts of this proposal through a Programmatic EIS, several environmental studies (e.g. see Page 3-4 of the SEIS for studies with the Colville Tribe, WDFW and National Parks), which culminated in a SEIS. The SEIS underwent a scoping review and a draft review with public comment.
- 9) The SEIS preferred alternative for allocating the 25,000 acre-feet for municipal and industrial uses considers allocation based on priority needs. These include commitments made in settlement agreements and those that may qualify for priority processing under the Hillis Rule (WAC 173-152).

In 2003, Ecology, the Cities of Kennewick, Pasco, Richland and West Richland, and the Center for Environmental Law and Policy (CELP) entered into a settlement agreement following an appeal of Ecology's issuance of Permit

²² [http://www.salmonrecovery.gov/Biological Opinions/FCRPS/BA-CA/FCRPS/BA MAIN TEXT FINAL 08-20-07 Updated 08-27.pdf](http://www.salmonrecovery.gov/Biological%20Opinions/FCRPS/BA-CA/FCRPS/BA%20MAIN%20TEXT%20FINAL%2008-20-07%20Updated%2008-27.pdf)

No. S4-30976P to the Cities. The settlement agreement requires Ecology to provide mitigation of consumptive use impacts associated with the first 10 cfs of diversions under the permit when biological flow objectives are not met. Ecology has provided approximately 1,995 acre-feet of this obligation through acquisition of water rights and placement of those rights into the State Trust Water Program. The 25,000 acre-feet of municipal and industrial water from the Lake Roosevelt Incremental Storage Releases Project could provide the remaining mitigation water, estimated at 3,787 acre-feet.

Ecology's decision to use a portion of the 25,000 acre-feet of municipal and industrial water to mitigate for the Quad Cities permit would be authorized by a separate appealable trust water decision. Before such a decision could occur, Reclamation must perfect the permit requested by Surface Water Application No. S3-30556 by releasing water from Lake Roosevelt, Ecology must negotiate a water service contract with Reclamation to ensure releases continue in the future, Reclamation must apply to put the instream water into trust, Ecology must provide notice on how it will protect the trust water right in the future, and Ecology must issue an appealable trust water right decision. Consideration of conflicts with the settlement agreement is not appropriate in this permitting decision. Compliance with the terms of the settlement agreement would be addressed in the trust water decision, should it be made in the future.

10) Public interest statements regarding the allocation of water from storage for instream and out-of-stream uses can be found in RCW 90.90. These issues are addressed in the Public Welfare Analysis section in this report.

11) No additional environmental review is required for the Lake Roosevelt Incremental Storage Release Project. Reclamation will determine the necessary steps for NEPA compliance prior to issuance of water service contracts or initiating construction related to this proposal.

12) Ecology did not rely on "overriding considerations of the public interest" (OCPI) to make its recommendation for approval of the subject application.

13) The MOU involving the State, Reclamation, and the Columbia Basin Project Irrigation Districts, on its own, does not provide any legal basis for Ecology's approval of Reclamation's application for a secondary use permit (which is not an application for a water right "transfer" as CELP stated in its protest). The legal basis for approval of the application is that it meets the four-part test for water right permit applications under RCW 90.03.290, as discussed in this report.

14) The analysis is not required by Ecology. Matters relating to the issuance of contracts between the Reclamation, ECBID and the landowners that will receive the water from ECBID, are matters between those parties that are not relevant to Reclamation's application and Ecology's analysis of the application under RCW 90.03.290.

CONCLUSIONS

Ecology may only approve water right applications if there is water available, the water will be put to a beneficial use, it will not impair existing rights, and it will not be detrimental to the public interest (RCW 90.03.290).

Beneficial Use

The proposed release of stored water for instream purposes is considered to be a beneficial use. Therefore this application meets the first criterion of RCW 90.03.290 that the requested water be put to beneficial use.

Water Availability

Reclamation holds a perfected right for storage of water in Lake Roosevelt under Reservoir Certificate No. 11793, which authorizes 6,400,000 acre-feet of water to be stored. The analysis provided above demonstrates that water can be released from storage by Reclamation as proposed under this secondary permit application, and water is available for the proposed beneficial use. Therefore this application meets the second criterion of RCW 90.03.290 that the requested water must be available for appropriation.

Impairment

The beneficial use proposed by this application will not impair any existing water rights because there will be no injury to water rights with priority dates senior to the May 16, 1938 priority date of Reservoir Certificate No. 11793. Therefore this application meets the third criterion of RCW 90.03.290.

Public Interest

The economic benefits and benefits to fish and wildlife that would result from releasing water from storage as proposed for instream purposes outweigh any negative impacts of the Lake Roosevelt Incremental Storage Releases Project. Accordingly, this proposal will not be contrary to the public interest. Therefore this application

meets the fourth criterion of RCW 90.03.290 that the proposed releases of water from Lake Roosevelt would not be detrimental to the public welfare.

RECOMMENDATIONS

The applicant may release water from storage in Lake Roosevelt at an instantaneous rate up to 305 cfs and an annual quantity up to 37,500 acre-feet for instream purposes, of which 25,000 acre-feet is intended to serve as replacement water to enable new state water rights to be issued in the future for out-of-stream municipal and industrial uses.

Provisions

- Measuring devices approved by the Department of Ecology must be installed such that the total amount of water diverted from the Columbia River can be determined. At a minimum, weekly readings shall be recorded. By January 31st each year, the permittee shall send a copy of the data, on a form prescribed by Ecology, to the Central Regional Office. Information recorded shall indicate the meter type or type of measuring device, the date and time of measurement, water flow rate, volume of water (acre-feet), and the name of the person taking the meter reading.
- Reclamation must coordinate with Ecology to document that flow releases occurred consistent with the SEIS adaptive management strategy. This documentation must be submitted annually to coincide with water measurement data.
- The quantity of water released for instream purposes each month will be determined by a panel of fisheries and water managers from Ecology, Reclamation, tribes, the Columbia River Intertribal Fish Commission (CRITFC), WDFW, NOAA Fisheries, and the U.S. Fish and Wildlife Service. The panel will determine specific releases each year based on the March 1 forecast for April through September runoff at The Dalles Dam with the goal of scheduling releases to maximize fish benefits under the specific conditions in any year. The panel will also consider anticipated river conditions and the status of fish runs and outmigration. Ecology is negotiating an MOA with Reclamation to incorporate the adaptive management strategy for the Preferred Alternatives into river operations. This panel shall be in place and establish the release priorities prior to any releases of water.
- Any required formal approvals, river operation plan amendments or changes to agreements must be obtained prior to diversion or releases of water under this application.
- Diversion of water under this authorization is contingent on execution of a water service contract between Ecology and Reclamation.
- A Certificate of Water Right will be issued after water has been put to full beneficial use and a final investigation has been conducted.

REPORT PREPARED BY: Keith Stoffel for Kevin Brown Date: 9/25/08
Kevin Brown

FINDINGS OF FACT AND DECISION

Upon reviewing the above report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I find water is available for appropriation and the appropriation as recommended is a beneficial use and will not be detrimental to existing rights or the public welfare.

Therefore, I ORDER a permit be issued under Surface Water Application No. S3-30556, subject to existing rights and indicated provisions, to allow appropriation of public surface water for the amount and uses specified in the foregoing report.

Signed at Spokane, Washington, this 25th day of September, 2008.

Keith Stoffel

Keith L. Stoffel, Section Manager
Water Resources Program
Eastern Regional Office