

## **Lake Roosevelt Policy Issues: Opportunity for PAG Input**

**April 4, 2011**

As Office of Columbia River (OCR) has investigated approximately 200 pending applications requesting supplies from the 25,000 ac-ft of “M&I water” under the Lake Roosevelt Incremental Storage Release Project, a number of policy issues have arisen on which OCR would appreciate PAG input. Please respond with your thoughts on the following. We will discuss these issues again at our meeting on May 25, 2011, but written comments in advance are appreciated. If you have any questions on the information below, please contact Dan Haller at (509) 454-4255 or at [dhal461@ecy.wa.gov](mailto:dhal461@ecy.wa.gov).

1. In OCR’s Supplemental EIS for the Lake Roosevelt Project, we selected a broad grouping of groundwater applications that could potentially be mitigated by the storage releases. As OCR has continued to investigate the applications, it has become apparent that some of these applications are too far from the river, or are in geologic formations that produce impacts that cannot be timely mitigated by the storage releases. To-date, we have secured voluntary withdrawals from applicants in these cases, or issued orders denying their qualification for the Lake Roosevelt mitigation water, but retained their application on file with the same priority date for future processing. Two such decisions were appealed and we are working with the applicants to determine whether a preliminary permit could be issued to give them an opportunity to collect sufficient data to determine whether OCR’s assessment is correct. In the future, we plan to provide an opportunity for a preliminary permit before issuing an appealable order. Do you agree with OCR’s policy position on this issue?
  
2. Many applications were filed for multiple purposes, some of which qualify as municipal and industrial purpose and some do not (e.g. agricultural irrigation, stockwatering). Where multi-purpose applications exist, we would give the applicant the option of either opting out of the mitigation water entirely (but keeping their application on file) or splitting their application into two, with the qualifying purposes moving forward for processing now and the remaining purposes staying on file for future processing. Do you agree with OCR’s policy position on this issue?
  
3. Consider three existing cities requesting water under the program. City #1 is over their existing rights. City #2 has only enough surplus water rights for the next couple years of growth. City #3 has enough existing water rights for the next 20 years. In general, OCR must process water right applications competing for water from the same source in the order they were received. Under the beneficial use and public interest tests, the amount of water awarded to the applicant must be reasonable and non-speculative. When considering applications as above, OCR would prioritize its efforts to award a quantity of water that:
  - a. Eliminates any water right deficit, and
  - b. provides for approximately 6 years of projected growth.
  - c. If an application requests a larger quantity, then OCR would work with the applicant to split the application into two, with the unfulfilled balance retaining its priority and place in line for a subsequent water supply project.

Do you agree with OCR’s policy position on this issue?

4. Some applications on file represent new developments on raw ground that may take years-to-decades to fully develop. Where long-term development schedules are needed to fully develop a project, OCR's goal is to work with applicants to phase their projects so that the first phase can be completed with the Lake Roosevelt mitigation. The application would be split so that remaining phases can be retained with their priority date and be processed as additional supply projects come on-line. Do you agree with OCR's policy position on this issue?
5. OCR chose early in the process to define the 25,000 ac-ft in terms of "municipal" as defined in state law. However, the Bureau of Reclamation's definition of municipal provides water to domestic uses not qualifying as municipal under state law. As OCR finds applicants requesting less than 15 houses for example, we have been retaining them on file for future processing, but they don't qualify at this time for Lake Roosevelt mitigation. OCR is considering a more inclusive policy choice where we would process those applications with a domestic purpose of use, which would give more emphasis to their senior priority date, but would create less water for cities and other municipal uses in line (by approximately 300 ac-ft). Do you agree with OCR's proposed policy position on this issue (include both municipal and domestics)?
6. RCW 90.03.015(4) defines municipal use in several ways. One of the more confusing is the definition "providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year". OCR generally interprets this to mean that the full range of residential water uses are provided (e.g. cooking, cleaning, bathing, drinking), but it is not a primary residence. This would include applicants for vacation homes and temporary farm working housing, but typically not campgrounds, restaurants, factories and schools. OCR is approaching such applications on a case-by-case basis. Where an application is in the "gray area", OCR is inclined to process the application with the caveat that if it is determined in the future to not meet the municipal definition, it would receive a domestic purpose instead. In that instance, a different mitigation source than Lake Roosevelt may need to be assigned in the future (unless OCR decides per #5 to process domestic water with Lake Roosevelt). Do you agree with OCR's current policy position?
7. Currently OCR has offered applicants to remain in line if they do not accept Lake Roosevelt mitigation, even if they clearly qualify to be processed. OCR believes that in some cases applicants may not be ready to proceed given the long period of time since we last contacted them (e.g. 10 to 20 years in some cases). . Do you agree with OCR's policy position?
8. Some applicants are requesting amendments to their applications. In some instances, the changes proposed are fairly trivial (e.g. well location), whereas in others the changes proposed are substantive (e.g., purpose of use). Still others are requesting place of use changes, some of which are close by (across the road) to very far away (miles). In general, based on constraints in case law, trivial changes can be made to an applicant without jeopardizing priority date, whereas substantive changes reset the priority date to the date of the amendment. Subject to case-by-case review, OCR is inclined to disallow purpose amendments, allow most source amendments, and allow most place of use amendments where the intent of the project is preserved. Do you agree with OCR's policy position?