



November 20, 2006

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

Dear Mr. Sandison:

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

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

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

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

development needs of people and the instream flow needs of fish.” RCW 90.90.005(1) (emphasis added).

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

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

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

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

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

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

Columbia River Mainstem Water Resources Information System

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

Socioeconomic Analysis

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

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

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

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

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

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

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

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

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

Responses to Policy Issues Raised in Chapter 6

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

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

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

6.2.1. *Calculating net water savings from conservation*

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

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

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

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

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

6.2.2 Funding criteria for conservation projects

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

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

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

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

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

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

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

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

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

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

6.2.3 *Defining acquisition and transfer*

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

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

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

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

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

6.2.4 *Conditioning water rights on instream flows*

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

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

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

6.2.5 *Initiating voluntary regional agreements*

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

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

6.2.6 *Processing voluntary regional agreements*

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

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

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

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

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

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

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

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

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

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

6.2.9 *Coordinating VRA mitigation and processing new water rights*⁶

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

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

6.2.10 *Coordinating VRA and non-VRA processing*

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

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

6.2.11 *Funding projects associated with a VRA*

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

6.2.12 *Inclusion of exempt wells in water use inventory*

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

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

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

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

Conclusion

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

Thank you for your consideration.

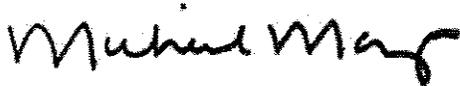
Sincerely,



Robert J. Masonis
Senior Director, American Rivers NW Region


FOR

Lisa Pelly
Executive Director, WRC



Michael Mayer
Legal Director, WEC

Cc: Gerry O'Keefe
Dan Silver