The following are comments received during the public and agency scoping process for the Columbia River Management Program Environmental Impact Statement. The comment period was open from May 5, 2006 through June 5, 2006. During that period, comments were accepted via regular mail and email. In addition, both hand written comments and transcribed verbal comments were accepted at four public open houses held during the scoping period. The public open houses were held in Wenatchee, Colville, Moses Lake, and Kennewick.

The comments received are organized below follows:

A) Comments received via regular mail,

B) Comments received via email,

C) Hand written comments received at open houses, and

D) Comments transcribed at open houses.

Sandison, Derek

From: Cattle Producers of Washington [cattle_producers_of_wa@earthlink.net]
Sent: Saturday, May 20, 2006 8:32 PM
To: Sandison, Derek
Subject: CPoW's Comments concerning Scope of EIS for Columbia River Management Program
Attachments: clip_image001.png

Cattle Producers of Washington
P.O. Box 103
Soap Lake, WA 98851
Phone: (509) 771-1844
Fax: (509) 271-0066
Email: cattle_producers_of_wa@earthlink.net

May 19, 2006

Derek Sandison
Department of Ecology
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452
Email: dsan461@ecy.wa.gov

Re: **CPoW's comments concerning Proposed New Programmatic EIS for Columbia River Management Program**

Dear Derek Sandison:

I am writing on behalf of Cattle Producers of Washington (CPoW) to provide comments in response to the Department of Ecology's proposed scope of the Programmatic Environmental Impact Statement (EIS) for SEPA compliance of the state's new Columbia River Water Management Program.

CPoW is a non-profit association that represents hundreds of Washington State cattle producers on variety of legislative, regulatory and international trade issues. CPoW is dedicated to ensuring the continued profitability and viability of the Washington cattle industry. CPoW's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Its members are located almost every county in the state.

The beef industry in Washington contributes significantly to Washington State's economy. The value of receipts from the sale of cattle in 2004 was nearly $600 million. The value of production (total value of cattle on farms and ranches in 2004) was almost $500 million. [These numbers do not reflect the multiplier effect that businesses

supporting the beef industry contribute to the state's economy.]

In Washington State there are approximately 13,000 ranchers and cattlemen and 850 dairy farmers located in almost every county in the state. Approximately 5,000 Washington beef producers have fewer than 9 head of cattle.

Cattle and beef production comprises the single largest sector of U.S. agriculture and is the 4th largest commodity in Washington State, with an annual production (farmgate) value of approximately $500 million. Cattle are raised in all fifty states and roughly half of all U.S. farms have beef cattle as part of their operations. Given its size, the cattle and beef industry is of paramount importance to the rural economy of the state and the country.

The availability of irrigation water supplies is a critical issue for the Washington cattle industry. Restrictions concerning the use and availability of water have adversely impacted cattle producers in many areas of Washington State. If the state does not immediately begin to implement the new Columbia River Water Management Legislation in a way that will create a better economic environment relating to the certainty of irrigation water supplies in Washington State, the result will be the continued uncertainty concerning the availability of water which will undermine confidence in the cattle/beef industry economy in Washington State.

As many of CPoW's members learned at the May 18th public meeting in Colville, the Department of Ecology is proposing to proceed with a new Programmatic EIS to address SEPA compliance for actions and activities under the new Columbia River water management legislation (ESSHB 2860). As a result, CPoW has the following comments and concerns regarding the state's approach relating to the Programmatic EIS to achieve SEPA compliance:

The Department of Ecology recently issued a draft Programmatic EIS (in December 2004) on the Columbia River Mainstem Water Management Program and that document should serve as the foundation for the existing SEPA compliance process. Rather than issue an entirely new Draft EIS, the state should instead issue a Supplemental EIS to the December 2004 EIS and focus the supplemental document on what are clearly "programmatic omissions or impacts" relative to the content of ESSHB 2860. The December 2004 Programmatic EIS adequately addresses and provides full disclosure for the primary programmatic impact such as new water withdrawals from the Columbia River system. A carefully, concisely scoped Supplemental EIS should be followed with an agency Record of Decision completing the SEPA review process in a timely manner.

CPoW believes that the proposed new Programmatic EIS is unnecessary and should not be applied to specific actions/projects that already receive SEPA compliance review. Specific, large-scale projects identified within the scoping documents will require a full project EIS anyway. Therefore, attempting to apply adequate SEPA compliance coverage via a Programmatic EIS will be an unnecessary application and take away resources/time from preparation of the needed project EIS's. Moreover, any cumulative impacts stemming from the joint projects can be addressed within specific project EIS's, following conventional practices for EIS preparation. Conversely, activities such as issuing new water rights from the mainstem Columbia-Snake River system, including related mitigation actions, or implementing conservation measures, already receive SEPA compliance through an environmental (SEPA) checklist review, where almost all permit and conservation measure actions receive a determination of non-significance (DNS).

Furthermore, as it is explicitly acknowledged within ESSHB 2860 that full mitigation is required for the issuance of new water rights under the Columbia River management program, <u>it is not appropriate for Ecology to assume that the issuance of new water rights will "have a significant adverse impact on the environment" (as stated in Ecology's request for comments).</u>

Finally, it is unclear why some "administrative" actions are even being considered for SEPA compliance and EIS

review. For example: why does Ecology need to do an EIS review concerning how conservation measures will be evaluated, how water use is measured, how the trust water rights program is managed, how WADOE will decide to sign a voluntary regional agreement and several other items identified within the scoping document? These types of administrative/assessment actions are already allowed for and administered under RCW and WAC, so they should not require additional SEPA compliance review.

The Washington State Department of Ecology should not delay the implementation of key features within ESSHB 2860 during any programmatic EIS process. As a result, **CPoW recommends that critical actions under ESSHB 2860 be implemented, with or without a programmatic EIS process, so that new Columbia-Snake River system water rights are issued in 2007**. Furthermore, **CPoW specifically recommends that the ESSHB 2860 consultation process be immediately commenced for the Voluntary Regional Agreement and any concerns raised by the consulting agencies, tribes, and public can be addressed thereafter by WADOE as part of its Record of Decision for accepting the VRA** (and including within any supplemental EIS or as part of the overall public involvement process for the implementation of the Columbia River Water Management Program).

In conclusion, CPoW believes that WADOE needs to move ahead expeditiously with focusing on achieving near-term, measurable success in implementing the VRA portion of ESSHB 2860 and issue additional or new water rights by July of 2007.

Thank you for the opportunity to provide comments.

Sincerely,

Lee Engelhardt

Chair / President
Cattle Producers of Washington

WASHINGTON STATE HORTICULTURAL ASSOCIATION

100 YEARS

"Representing Orchardists & Shippers Since 1904"

May 15, 2006

Derek Sandison
Department of Ecology
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452

Re: **WSHA's Comments concerning Proposed New Programmatic EIS for Columbia River Management Program**

Dear Derek Sandison:

I am writing on behalf of the Washington State Horticultural Association (WSHA) to provide comments in response to the Department of Ecology's request for comments on the its Proposed Scope of the Programmatic Environmental Impact Statement (EIS) for SEPA compliance of the state's new Columbia River Water Management Program.

The WSHA is a trade association dedicated to the advancement of the tree fruit industry in Washington State. The WSHA has nearly 3,000 tree fruit grower members throughout Washington State and is the largest tree fruit association in the state. Apples are the number one crop grown in the state, with an annual farmgate value of approximately $1 billion. Washington State accounts for over 50% of all apples, pears and cherries exported from the U.S., totaling nearly $450 million in exports from the Ports of Seattle, Portland, and Tacoma in 2005 alone. A recent study of the economic impacts of the Washington State tree fruit industry show that the industry contributes over $5 billion annually to the Washington economy. This translates into over 100,000 jobs.

The availability of adequate supplies of irrigation water is a major issue for the Washington tree fruit industry. Restrictions concerning the use and availability of water have adversely impacted tree fruit growers in many areas of Washington State. If the state does not immediately begin to implement the new Columbia River Water Management Legislation in a way that will create a better economic environment relating to the certainty of irrigation water supplies in Washington State, the result will be the continued uncertainty concerning the availability of water which will undermine confidence in the tree fruit economy in Washington State.

As you are aware, the Department of Ecology is proposing to proceed with a new Programmatic EIS to address SEPA compliance for actions and activities under the new Columbia River water management legislation (ESSHB 2860). As a result, the WSHA has the following comments and concerns regarding the state's approach relating to the Programmatic EIS to achieve SEPA compliance:

The Department of Ecology has already issued a draft Programmatic EIS (in December 2004) on the Columbia River Mainstem Water Management Program and that document should serve as the foundation for the existing SEPA compliance process. Rather than issue an entirely new Draft EIS, the state should instead issue a Supplemental EIS to the December 2004 EIS and focus the supplemental document on what are clearly programmatic omissions or impacts relative to the content of ESSHB 2860. The December 2004 Programmatic EIS adequately addresses and provides full disclosure for the primary programmatic impact such as new water withdrawals from the Columbia River system. A carefully, concisely scoped Supplemental EIS should be followed with an agency Record of Decision completing the SEPA review process in a timely manner.

The WSHA believes that the proposed new Programmatic EIS is unnecessary and should not be applied to specific actions/projects that already receive SEPA compliance review. Specific, large-scale projects identified within the scoping documents will require a full project EIS anyway. Therefore, attempting to apply adequate SEPA compliance coverage via a Programmatic EIS will be an unnecessary application and take away resources/time from preparation of the needed project EIS's. Moreover, any cumulative impacts stemming from the joint projects can be addressed within specific project EIS's, following conventional practices for EIS preparation. Conversely, activities such as issuing new water rights from the mainstem Columbia-Snake River system, including related mitigation actions, or implementing conservation measures, already receive SEPA compliance through an environmental (SEPA) checklist review, where almost all permit and conservation measure actions receive a determination of non-significance (DNS). Furthermore, as it is explicitly acknowledged within ESSHB 2860 that full mitigation is required for the issuance of new water rights under the Columbia River management program, it is inappropriate for Ecology to assume that the issuance of new water rights will "have a significant adverse impact on the environment" (as stated in Ecology's request for comments).

Finally, it is unclear why some "administrative" actions are even being considered for SEPA compliance and EIS review. For example: why does Ecology need to do an EIS review concerning how conservation measures will be evaluated, how water use is measured, how the trust water rights program is managed, how WADOE will decide to sign a voluntary regional agreement and several other items identified within the scoping document? These types of administrative/assessment actions are already allowed for and administered under RCW and WAC, so they should not require additional SEPA compliance review.

The Washington State Department of Ecology should not delay the implementation of key features within ESSHB 2860 during any programmatic EIS process. As a result, the WSHA recommends that critical actions under ESSHB 2860 be implemented, with or without a programmatic EIS process, so that new Columbia-Snake River system water rights are issued in 2007. Furthermore, the WSHA specifically recommends that the ESSHB 2860 consultation process be immediately commenced for the Voluntary Regional Agreement and any concerns raised by the consulting agencies, tribes, and public can be addressed thereafter by WADOE as part of its Record of Decision for accepting the VRA (and including within any supplemental EIS or as part of the overall public involvement process for the implementation of the Columbia River Water Management Program).

In conclusion, the WSHA believes that WADOE does not need to conduct a duplicative Programmatic EIS (to the one that was already done in 2004). Instead, the agency needs to take the more efficient and streamlined approach of updating the December 2004 Programmatic EIS, so it can move ahead expeditiously with focusing on achieving near-term, measurable success in implementing the VRA portion of ESSHB 2860 and issue additional or new water rights by 2007. In addition, the WSHA urges WADOE to fast-track the storage portion of ESSHB 2860 and aggressively move ahead with appropriate studies and reviews that are results-oriented so that construction can be pursued in the next few years on one or two major storage options which will help provide long-term adequate water storage for Central Washington.

Thank you for the opportunity to provide comments.

Sincerely,

James M Hazen

James M. Hazen
Executive Director
Washington State Horticultural Association
509-665-9641
PO Box 136, Wenatchee, 98807

CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

June 2, 2006

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

Re: Comments on Scope of EIS for Columbia River Basin Water Management Program

Dear Mr. Sandison:

The Center for Environmental Law & Policy (CELP) is a non-profit membership organization that works to defend and develop ecologically and socially responsible water laws and policies. CELP speaks for the overall public interest in the public's water; its mission is to leave a legacy of clean, flowing water for Washington. CELP's 10-year history of advocacy for the Columbia River has included petitioning (in the year 2000) for a moratorium on further withdrawals until higher, more protective instream flow rules could be developed. In 2002, CELP also appealed the issuance of a large water right to the Quad Cities of Pasco, Richland, Kennewick and West Richland. This litigation culminated in a 2003 settlement agreement that allowed the cities to receive – with certain mitigation conditions - a new water right for 178 cfs/96,619 acre/feet/year - to be developed through 2051. (Documents attached.) Therefore, CELP has a unique and ongoing interest in all matters related to the health and management of the Columbia River. In furtherance of this interest, CELP maintains a wealth of data on water use and water rights in the basin, scientific data and reports detailing historical river levels and river flows, and legal and policy materials pertinent to Columbia River management issues. In short, CELP and its members are knowledgeable, interested, and significant stakeholders in the outcome of this EIS, and possess a desire to be meaningfully involved in the management program's implementation and processes.

Thank you for considering CELP's comments on the scope of the EIS for the Columbia River Basin Water Management program. We would welcome the opportunity to further discuss our views with you, and to submit additional comments and suggestions as the EIS process develops.

PRELIMINARY OBSERVATIONS AND COMMENTS:

A. CELP urges the Department of Ecology to revise the scope of this EIS to focus more closely upon the directives in ESSHB 2860 to develop new water supplies to protect, benefit and improve the instream flow needs of fish. The EIS scoping documents focus too narrowly upon an array of pre-conceived "solutions" to deliver water mainly to out of stream users. Missing from the documents is a comprehensive exploration of a range of alternatives to satisfy the dual legislative purpose of developing new water supplies for instream as well as out of stream needs.

B. The DS and "Attachment A – Issues to be addressed in EIS" too often inappropriately attempt to use the EIS process as a substitute for rule-making and policy-making. CELP urges

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Ecology to instead adopt rules to implement portions of ESSHB 2860, particularly with regard to Section 4 – Voluntary Regional Agreements.

C. It is inappropriate to address in a programmatic EIS specific project activities such as developing "the means to deliver Columbia Basin Project Water to lands in the Odessa Ground Water Management Subarea". This action requires a separate SEPA as well as NEPA analysis, and very likely consultation under ESA.

D. We question the appropriateness of this EIS evaluating "early activities" proposals such as those described on DS page 2 involving requests from the Bureau of Reclamation to divert additional water from Lake Roosevelt for various uses, and requests from the BOR to provide an alternate feed route to the Potholes Reservoir. Such project activities encompass federal actions that should be scrutinized by NEPA and are also subject to consultation under ESA. Any analysis of these activities in this EIS would be incomplete without the benefit of the results of environmental and ESA scrutiny required under federal law.

E. It is inappropriate, for several reasons, for this EIS to evaluate a specific proposal for a Voluntary Regional Agreement, as mentioned on page 2 of the DS.

1. If a VRA proposes to govern the allocation of more than 1 cfs of water for purposes other than irrigation, or more than 50 cfs for purposes of irrigation, it must undergo its own separate SEPA analysis.
2. A maximum net benefits analysis (see RCW 90.54.020(2) should also be conducted in connection with a VRA, and no such individualized analysis is a feature of a programmatic EIS.
3. It is premature for Ecology to enter into any VRA until it has established the baseline data and criteria necessary to satisfy the statutory requirement in ESSHB 2860 Section 4(2)(a) and (b) that there will be "no negative impact" on Columbia River mainstem instream flows in July and August, and no negative impact on Snake River instream flows from April through August. The law does not take effect until July 1, 2006. Hence, data upon which to measure "no negative impact" must be measured from July 1, 2006 onward, and will not be complete until at least June 30, 2007. (The programmatic EIS should, however, examine whether one year of data is sufficient to form the necessary baseline measuring stick for any VRA.)

GENERAL ISSUES:

I. **The EIS must examine the extent to which existing water infrastructure can be modified to ESSHB 2860 objectives.**

a. Conservation and reclaimed water programs already in existence should be evaluated prior to implementation of any additional storage projects, to determine whether and how much water is actually capable of being saved.
b. Any VRAs considered for approval must be conditioned on requiring best available technology of new water right recipients.
c. The EIS should examine the impacts of allocating to instream needs up to 100% of "new water" resulting from altering operations of existing storage facilities. (The formula for 2/3 to out of stream uses & 1/3 to instream uses applies only to new

storage facilities. See Section 3 (1)(a) and Section 1 regarding the intent to develop new water supplies to meet the instream flow needs of fish.)

II. **The EIS must examine how Ecology will relate storage and conservation projects on tributaries to the mainstem program.**

a. Tributary storage and conservation should be required to meet the same monitoring and management requirements as mainstem projects; should be included in the water use database.
b. Ecology must collect data on actual beneficial use as of July 1, 2006 on the mainstem and the tributaries and use that as the baseline for measuring the amount and success of any conservation projects on tributaries and mainstem
c. Ecology must evaluate methods to protect conserved water "instream" so that it will not be put to use by other downstream users and maintained in perpetuity to enhance instream flows.
d. Ecology must evaluate the useful life of conservation projects, and weigh alternatives for substituting other conservation methods when original infrastructure or methods are obsolete.

III. **The EIS must examine how the state management program will relate to the biological opinion under the FRCPS, and avoid a "jeopardy" determination under ESA**

a. The state must devise a method to work with federal agencies to ensure that its Columbia management program will not result in jeopardy to salmon.
b. The state must retain management flexibility to adjust its management program to comply with the upcoming revised BiOP for FRCPS.
c. Before any new water rights for out of stream consumptive uses can be issued, Ecology must determine both how much water is needed to protect fish and meet water quality standards, and how much water has already been allocated. Detriment to listed salmon or steelhead species or the destruction or adverse modification of critical habitat must be avoided.
d. The EIS should evaluate the alternative of conditioning Voluntary Regional Agreements or new water rights on the attainment of instream flow levels prescribed in the FCRPS BiOp.

IV. **The EIS must examine a range of mitigation issues.**

a. Ecology should consider engaging in rule-making to fully explore, define, and weigh the costs, benefits, and environmental impacts of various mitigation approaches.
b. Mitigation from water conservation measures must be measured from the date July 1, 2006 onward, and must reflect an actual and permanent reduction in water use. Conservation cannot be calculated from observing the face value of a permit or water right if the entire water right has never been or is not being consistently put to beneficial use.
c. To preserve the legislative intent to protect and improve instream values, mitigation should be deemed adequate only if it meets a "no net loss" standard.
d. Net water savings should be calculated by subtracting the amount of water necessary to accomplish a beneficial use after the conservation measure has been implemented from the amount of water put to actual use to accomplish the same purpose at the same location prior to the implementation of the conservation measures.

e. Mitigation water must be added to the river from the same pool as the diversion point for the new water right. Mitigation water cannot be assumed to pass downstream to the diversion point if it must pass through one or more dams.

COMMENTS RELATING TO ESSHB 2860 AND SCOPING DOCUMENTS:

Section 5: Development and Maintenance of a Columbia River water supply inventory and a long-term water supply and demand forecast to protect instream flow.

ESSHB 2860 Section 1 (1) evinces a dual legislative intent to meet the economic and community development needs of people and the instream flow needs of fish through water resource management in the Columbia River basin. ESSHB 2860 authorized Ecology to develop a Columbia River Basin Water Management Program ("Management Program") to achieve this dual legislative intent, and Ecology indicated its intent to do so in initiating preparation of a non-project EIS for Management Program development. Thus, the issues addressed in Ecology's non-project EIS for the Management Program must adhere to statutory directives and focus on achieving the twin goals of the legislature.

The options proposed in the scoping document "Attachment A" related to developing a Columbia River water supply inventory and a long-term water supply and demand forecast are insufficient for four reasons:

1) In Attachment A, Section 5(1), Ecology misinterprets the statutory directive found in ESSHB 2860 Section 5 (1) that Ecology "shall work with all interested parties" to develop the inventory and forecast. It fails to mention a number of interested parties such as the Center for Environmental Law and Policy ("CELP"), hydropower industry representatives, utility ratepayers, commercial and recreational river users, commercial and sport fishermen, academics, and federal dam operators. These parties must be included in any alternative inventory and forecast development methodology analyzed under the EIS, for these groups hold information essential to completing the lists that the inventory must include under ESSHB 2860 Section 5 (1) (a) and (b). Ecology's failure to include information from these groups would violate the terms of ESSHB 2860, and would not protect instream flow as new water supplies are developed.

2) In Scoping Attachment A, Section 5(1), Ecology does not require that all data used to develop the inventory and forecast be data collected after July 1, 2006, as ESSHB 2860 clearly requires. ESSHB Section 5 (1) directs that, effective July 1, 2006, Ecology shall work with all interested parties to support the development of "new" Columbia River water supplies and to "protect" instream flow. Ecology cannot reasonably develop "new" water supplies or "protect" instream flow without first gathering baseline water inventory data and baseline instream flow level data measured from the date ESSHB 2860 becomes effective. Any alternative inventory and forecast development methodology analyzed under the EIS must specify that the inventory and measurements must date prospectively from July 1, 2006. Ecology's failure to include such baseline data measured prospectively from July 1, 2006 would violate the terms of ESSHB 2860, and would not protect instream flow as new water supplies are developed

3) In Attachment A, Ecology fails to address alternatives for defining "conservation project" and "water conservation [the projects] have achieved", though a list of each of these items must be included in the Columbia River water supply inventory under ESSHB 2860 Section 5 (1) (a). Any alternative inventory development methodology analyzed in the EIS must define "conservation project" and "water conservation... achieved" as water actually returned

to the Columbia to maintain and enhance July 1, 2006 instream flow levels, in step with ESSHB 2860's goal to protect instream flow while supporting the development of new water supplies in the Columbia River.

4) In Scoping Attachment A, Ecology fails to address alternative levels of precaution it will use in acting on the long-term water supply and demand forecast to protect instream flow, as required by ESSHB 2860 Section 5 (1). These alternatives must account for the varying degrees of uncertainty inherent in water demand and supply predictive modeling, and address how these degrees of uncertainty inherent in the modeling results will be used to discount or inflate estimates required by ESSHB Section 5 (1) (b) of cost per acre-foot, benefit to fish and other instream needs, benefit to out-of-stream needs, and environmental and cultural impacts. Erroneous estimates will be disastrous for instream flow protection and the development of new water supplies in the Columbia River.

Section 6: Establishment and Maintenance of a Columbia River mainstem water resources information system to better understand current water use and instream flows in the Columbia River mainstem.

ESSHB requires Ecology to establish and maintain a Columbia River mainstem water resources information system ("Information System") to better understand current water use and current instream flows in the Columbia river mainstem. Thus, any alternative for Information System establishment and maintenance analyzed in the EIS must be based on information generated after July 1, 2006, the effective date of ESSHB 2860. Predicting impacts of new out of stream uses on flow data generated prior to July 1, 2006 defeats the intent of the statute. Because information must be collected after July 1, 2006, Ecology's narrow focus on "existing sources" of information in Attachment A, Section 6 (3) is inappropriate, for no sources of information collected after July 1, 2006 currently exist. The legislative intent is clearly to consider "other available sources" in addition to those named. Hence, the impacts on effective water resource planning of alternative Information System data gathering and update procedures and schedules, and alternative data quality assurance mechanisms, must be addressed in the EIS.

Alternatives for the Odessa subarea (OSA)

This portion of the PEIS demonstrates many of the deficiencies seen in the scoping documents. The DS and scoping documents ask only for comments on ways to deliver CBP water to lands in the OSA. However, ESSHB Section 3 (3) (a) does not foreclose other options to rescue OSA irrigators. Other alternatives should be explored and carefully reviewed, and accompanied by appropriate SEPA, NEPA, and ESA consultations. Pursuant to WAC 197-11-442(2), CELP urges Ecology to consider all reasonable alternatives to the delivery of Columbia River water to the Subarea.

Ecology has historically mismanaged the finite resource of ground water in the Subarea by first over-appropriating it, and then permitting greater and greater annual reductions in the aquifer instead of enforcing against waste, demanding conservation and regulating junior users. The annual groundwater withdraws in the Subarea increased substantially between 1995 and 2000. Because Ecology decided to study in the same EIS the programmatic action of delivering water to the Subarea and the project actions of building an alternative feed route to Potholes Reservoir and diverting 30KAF of water to the Subarea, it must examine reasonable alternatives to providing Columbia Basin Project water to the Subarea. When "project and nonproject actions are

intertwined" and both are included in the same EIS, "SEPA requires an examination of reasonable alternatives to the nonproject action." Citizens Alliance v. Auburn, 126 Wn.2d 356, 365 (1995). Ecology should "describe the proposal in terms of alternative means of accomplishing the stated objective." WAC 197-11-442(2). Alternatives should be emphasized. Id. Therefore, CELP asks that the EIS & Ecology analyze the following alternatives.

1. Every attempt must be made to utilize aggressive conservation and efficiency measures, within the Subarea, in order to preserve the aquifer to a degree where it can continue to be utilized without the need to divert enormous amounts of the Columbia River.
2. Ecology must consider the alternative of not delivering CBP project water to the Subarea and what avenues would be available to continue limited or different farming. This study should include a cost/benefit analysis that includes the benefit of more water for instream flow values and hydroelectricity production as well as lower infrastructure and long-term maintenance costs associated with canal construction.
3. Ecology must consider emphasizing dry land or low consumptive use crops in the Subarea as well as the buy-out of irrigated farms - particularly those farms that are voluntarily quitting the farming business. One farm in the Subarea has already approached Ecology with such a proposition. This farm comprises 12,000 acres and holds senior water rights to 30,000 acre-feet per year. Taking this farm out of production would decrease water need in the Subarea by approximately 30,000 to 36,000 acre-feet per year. Interestingly this is the current number of acre-feet the Bureau is hoping to send to the Odessa as defined in a Memorandum of Understanding with the BOR. It will be analyzed as a project level action in the PEIS.

The water conservation measures outlined above must be based upon actual conservation of water. This means the difference in actual beneficial use as of July 1, 2006 and subsequent actual use. Additionally, "net water savings" must be calculated in the same manner.

The conservation projects, both generally and those utilized to provide water to the Subarea, must be evaluated with the protection of instream flows as their baseline. Therefore, if the result of "actual" conservation is a negative impact on instream flows then it is not a viable conservation project.

Moreover, an unbiased, scientifically defensible study of the hydrogeology in the Subarea must be conducted in order to apply and use the best conservation and efficiency practices. Even temporarily conceding that CBP water is used, this study should still be completed prior to water delivery to maximize water efficiency and benefits at minimum costs. While this study is taking place Ecology should study a range of short-term solutions including, crop rotation, irrigating fewer acres, dry land farming, and subsidization of pumping and well-casing costs.

Lands to receive Columbia River water should be either those closest to the East Low Canal (ELC) or those irrigators who can prove highly efficient irrigation practices. This would limit additional infrastructure costs and provide an incentive to cut down on waste. Metrics should be created for measuring efficiency including "highly efficient irrigation practices" or type of crop, technology used, historical usage, etc. Lands away from the ELC should be encouraged to switch to dry land farming.

The EIS should weigh alternatives for evaluating conservation projects using various methods for defining consumptive use. Modeling should be done to create greater accuracy in return flow estimations, based on crops, conveyances, irrigation type, soil type, geology, etc. Furthermore, actual

amounts of water diverted should be calculated starting on July 1, 2006 using a meter and not based on historical estimates.

Finally, Ecology must examine the cumulative impacts of these projects as they relate to future development of the Second Half of the Columbia Basin Project. The CBP is authorized to irrigate an additional 358,000 acres, nearly all of which fall within the Subarea. A cumulative impact analysis is required when "the project under review will facilitate future action that will result in additional impacts." Tucker v. Columbia River Gorge Comm'n, 73 Wn. App. 74, 81-83 (1994). More importantly, this project is not "substantially independent of the subsequent...phases." Boehm v. City of Vancouver, 111 Wn. App. 711, 720 (2002). The completion of the Second Half, which compromises almost half of the Subarea, cannot go forward without the development of means to deliver Columbia Basin Project water to the Subarea. There is little doubt that the creation of an alternative feed route and diversion of Columbia Basin Project water to the Subarea is simply the first step in the completion of the planned Second Half of the CBP. These initial steps of creating more infrastructure and capacity are part of the larger design for completion of the project. Therefore, the cumulative impacts of full Second Half development must be analyzed in this PEIS.

Administering a program for voluntary regional agreements (VRAs):

The programmatic section of the EIS mandates examination of a proposal for the creation and administration of voluntary regional agreements. The project level section of the EIS mandates the examination of a specific voluntary regional agreement submitted to Ecology by the Columbia Snake River Irrigators Association (CSRIA). It is premature and inappropriate for this EIS to encompass the latter. It is evident that the programmatic level analysis of VRAs will seek to create terms, definitions, procedures, standards, and complete data in order to administer the program. Prior to the creation of the program no VRA should be proposed much less analyzed. In the absence of a formalized program, an analysis of the CSRIA VRA would be improper and violate SEPA rules prohibiting the application of a narrow review to a broader issue. Therefore, CELP asks that the EIS not evaluate the CSRIA VRA until after Ecology has properly created a program to administer VRA.

Furthermore, CELP believes that the implementation of VRAs is more properly subject to rulemaking under the Washington Administrative Procedures Act and should therefore be removed from the PEIS on this basis. However, if Ecology chooses not to proceed via a rulemaking process, CELP submits the following comments relating to the creation and administration of VRAs.

As stated above, since Ecology has intertwined nonproject and project level actions regarding VRAs, it must examine all alternatives to the nonproject action. This includes the "no action alternative" – meaning, continuing to process only individual water right applications pursuant to the existing water code. Ecology and this EIS should take a long look at the status quo and the protections for instream flows that the existing process provides.

Under existing water application and consideration processes (which were not disturbed by ESSHB 2860) an applicant can gain Columbia River water rights through consultation with the tribes and other agencies, after which individualized mitigation measures are devised and applied. An example of this successful process is the water right obtained in 2005 by Berg Farms (see permit, attached). The Bergs received a right to divert 52 cfs from the river, and WDFW, the tribes, NOAA Fisheries, and others were satisfied with the mitigation offered - which included the Bergs paying for irrigation efficiencies in a tributary, surrendering unused water rights, paying for fish passage enhancements, and pledging to use state-of-the-art irrigation efficiencies. This shows that the current system works, and it must be viewed as a benchmark against which to measure other alternatives such as VRAs.

Importantly, in order to assure "no negative impacts" the evaluation of the program must be based on its success in maintaining instream flows. It is premature for Ecology to enter into any VRA before September 2007. It must first establish the baseline data and criteria necessary to satisfy the requirement in ESSHB 2860 Section 4(2)(a) and (b) that there will be "no negative impact" on Columbia mainstem flows in July and August, and Snake River flows from April through August. Because the law does not take effect until July 1, 2006, baseline data upon which to measure "no negative impact" will be unavailable until at least July 2007. The programmatic EIS should evaluate whether one year of baseline flow data is sufficient to form the necessary measuring stick for any VRA.

The EIS should also evaluate the appropriate length and expiration dates for potential VRAs. CELP recommends that such agreements be executed for no longer than 2-year periods, with the option for two-year renewals. The effective dates of VRAs should not extend beyond June 30, 2012.

CELP strongly recommends that VRAs be well-grounded in basic contract law, which mandates contract terms which can be enforced and will bind all benefited parties. VRAs should not be open-ended as to the amount of water to be allocated, the locations of the eligible water applicants, or the identities of the eligible water applicants. Furthermore, the VRAs should be limited in geographic scope to river segments between existing dams; otherwise circumstances beyond the control of parties to the agreement (dam operators) could adversely affect the availability of water to protect instream resources.

All proposed VRAs should undergo individualized SEPA analyses, as well as a maximum net benefits analysis under RCE 90.54.020(2).

Supply and demand issues:

In order for Ecology to develop a water supply inventory and long-term supply and demand forecast it must first quantify and document current water use as opposed to rights still being held in inchoate status. All other projects relating to release of new water rights should be put on hold until an accurate picture of actual water use in the Basin is obtained. The EIS and Ecology must also ground-truth archived information about projected water demand as reflected in backlogged permit applications. CELP strongly suspects that water demand estimates for Columbia River water are and have been vastly overestimated, based upon data that no one has as yet bothered to verify as to the validity and nature of long-pending applications. When all appropriate data is gathered, various predictive models should then be analyzed for their usefulness in forecasting supply and demand numbers. When examining supply forecasts Ecology must consider climate change as well as the possibility of Canada not revoking the Columbia River treaty in 2024. These are both very real and imminent issues that could drastically reduce supply of Columbia River water in the not-too-distant future.

IN CLOSING.....

In summary, CELP is concerned with the programmatic environmental impact statement in general and most of the issues listed for study specifically. In CELP's opinion, the decision not to prepare an environmental checklist, while within the discretion of the agency, has deprived the public of a means to submit targeted and meaningful comments regarding the full range of alternatives and impacts of this legislation. The problems facing the survival of listed salmonid species and the need to curb the unrepentant desire for even greater water diversions from the Columbia River are not addressed in the scope of the PEIS as it currently exists. CELP's comments reflect the common sense approach to managing a limited resource; namely, prior to making any

long-term and irreversible decisions the basic questions of how much, where, when, and why must be answered. While sections of the PEIS propose to quantify a supply and demand forecast any result would naturally be handicapped by the lack of information on current water use (both legal and illegal, permitted and exempt). Before proceeding with drastic measures to provide new water rights Ecology should do everything it can to document current water rights and prepare a comprehensive water budget for the river. Proceeding blindly to implement this legislation will only result in greater harm to endangered species and an inequitable use of the public's funds and precious water resources. Ecology must proceed with precaution or the legacy it leaves for the future residents of Washington State will be one of unmitigated consumptive abuse of the Northwest's most dominant river.

Sincerely,

Shirley Waters Nixon, Acting Executive Director

Patrick Williams, Staff Attorney

Enclosures: Berg Farms Water Permit
Quad Cities Water permit
Settlement agreement in CELP vs. Ecology & Quad Cities

ORIGINAL

RECEIVED
AUG 11 2003
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Received
JUN 5 2006
CENTRAL REGION OFFICE

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CENTER FOR ENVIRONMENTAL LAW & POLICY, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, and CITIES OF RICHLAND, KENNEWICK, PASCO and WEST RICHLAND, Respondents.	PCHB No. 02-216 STIPULATION, SETTLEMENT AGREEMENT AND ORDER OF DISMISSAL

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

STIPULATION

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

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

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

SETTLEMENT AGREEMENT

1. Within 30 days of dismissal of this case by the PCHB as contemplated by this SETTLEMENT AGREEMENT, Ecology will issue a water right permit to the Quad-Cities.[1] Except as modified by the terms of this SETTLEMENT AGREEMENT, the permit will be consistent with the terms contained in the November 19, 2002, Report of Examination. The permit will include the ROE conditions and Recommendations A through I, and the terms specified in paragraphs 2,3,6.7, 8, and 11 of this SETTLEMENT AGREEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHRISTINE O. GREGOIRE
Attorneys for Department of Ecology

Dated: 8/7/03

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(360) 586-6749

Dated: 8/7/03

SARAH BENDERSKY, WSBA #30481
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CENTER FOR ENVIRONMENTAL LAW & POLICY

Dated: 8/8/03

KAREN ALLSTON, WSBA #25336
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Dated: 8/8/03

SHIRLEY WATERS NIXON, WSBA #25756
(360) ~~[illegible]~~ (206) 223-8454

CITY OF KENNEWICK

Dated: 7-30-03

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(509) 585-4272

CITY OF WEST RICHLAND

Dated: 7-28-03

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

CITY OF RICHLAND

Dated: 8/6/03

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

CITIES OF RICHLAND, KENNEWICK, PASCO AND WEST RICHLAND

Dated: 8/6/03

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LAW OFFICE OF THOMAS M PORS
(206) 340-4396

CITY OF PASCO

Dated: 7/29/03

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

I. ORDER OF DISMISSAL

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

IT IS ORDERED that:

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

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

Dated this 19th day of August, 2003.

POLLUTION CONTROL HEARINGS BOARD

ROBERT V. JENSEN, Presiding

KALEEN COTTINGHAM, Member

WILLIAM H. LYNCH, Member

Presented by:

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Attorneys for Department of Ecology

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H. To access water beyond the initial 10 cfs, the Quad Cities shall submit an updated RWFCP to the Department of Health and the Department of Ecology on a six-year schedule consistent with the schedule for review of water right quantities. The Quad Cities shall coordinate the preparation and completion of their individual water system plans and related supply, demand, and conservation programs. Prior to completion of the plans, the RWFCP will be completed jointly by the Quad Cities to compare demand to available supply and to evaluate the conservation achieved and the conservation projected resulting from implementation of the program described in section 6. The Quad Cities may submit the RWFCP for access to additional water, under the same process described in this condition, prior to any six-year interval if demand forecasts or other circumstances warrant earlier review. The full quantities of water recommended for a permit in this report may be appropriated in six-year increments associated with submittal of the RWFCP, and only when the applicable minimum instream flow is equaled or exceeded, or when the consumptive water use associated with appropriations under this permit is mitigated. Ecology will review the demand estimates, the water conservation elements of the plan, return flows estimates, and other relevant information contained in the plan that comprises the mitigation or flow replacement proposal. Following public comment, Ecology would approve, conditionally approve, or deny the proposed mitigation plan through an Order. If the Order denies the proposed mitigation or flow replacement proposal, then the appropriation for that 6-year increment would be subject to interruption when the flow objectives in this permit are not met, as described in Condition E-

1. The non-interruptibility of water use beyond the first 10 cfs requires that the Quad Cities submit a mitigation plan to Ecology for approval. Unless extraordinary circumstances exist, when the Quad Cities propose a a mitigation plan for future diversion increments under their water right, the Quad Cities will submit their plan at least one year before the Quad Cities need a final decision from Ecology. Ecology will use this one year period for public notice, consultation, and to accomplish any necessary water right trust transfers. For purposes of this section "extraordinary circumstances" is defined only as factual circumstances that establish the need for an Ecology response time of less than one year. In no case will Ecology shorten its review and decision time so as to preclude Ecology from fulfilling its public notice and consultation obligations. The mitigation required for withdrawals of water in the succeeding six-year periods shall be proposed by the Quad Cities in their six-year RWFCPs for approval by the Department of Ecology.

2. Upon issuance of an Order by Ecology approving in conformance with Recommendation E of this permit one or more trust water rights or approving another replacement water program or a mitigation program proposed by the permittee to offset the full projected consumptive use during periods when flow objectives are not met, the six-year appropriation will not be conditioned as interruptible.

3. The maximum quantity of withdrawals of water requiring mitigation during the succeeding six-year periods will be presented in the RWFCPs and determined by subtracting estimated return flow from the maximum diversion amount. Return flow calculations shall be based on best available science and shall reflect seasonal conditions. During the course of that six-year period, actual quantities to be mitigated will depend on daily recording and monthly reporting of actual

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

Each RWFCP shall include a Conservation Program demonstrating how the best available and reasonable conservation technology will be implemented in the subsequent six-year period. The Conservation Program shall meet, as a minimum, current (as of date prepared) Department of Health requirements as well as the conservation conditions described below. In addition, the RWFCP with its Conservation Program shall be submitted to the Department of Ecology for review and approval consistent with the six-year schedule for reviewing water rights. The RWFCP shall propose and implement water conservation activities in the following areas: reducing leakage and unaccounted for water from the municipal water supply system; and monitoring, accounting for (separately) and reducing commercial, industrial, residential (indoor) and landscape water use. The Conservation Program shall include a detailed profile of current water use characteristics for each conservation category defined above including their total annual demand, average demand, unit demand and peak demand. Compliance with the Conservation Program for each six year period shall be a condition of the permit.

The Quad Cities RWFCP shall comply with Department of Health rules *(.Conservation Planning Requirements, Washington State Department of Health PUB 331-008, March 1994)* which currently require that these plans contain, as a minimum:

> *Water Use Data Collection Requirements.* Systems must report the best currently available data on water use for the categories of use, which are identified by the department.
> *Water Demand Forecast.* A complete forecast, including an estimate ol reduction of water use from implementation of water conservation measures must be developed.
> *Conservation Program.* A Conservation Program must be developed anc implemented. The Conservation Program elements must include Conservation Objectives; Evaluation of Conservation Measures; anc Identification of Selected Conservation Activities.

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

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

For the purposes of the following conservation program elements, the ten "implement" means obtaining and expending funding for capital facilities an ooerational staff, program assessment, and monitoring and reporting associate

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

i. Leak Detection Program

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

ii. Large Meter Testing Program

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

iii. Residential Meter Repair/Replacement Program

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

iv. Residential Retrofit Program

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

v. Source Metering Replacement and Improvement

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

vi. **Develop a Water Audit Program for Large Water Users**

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

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

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

viii. **Develop an Integrated Water Shortage and Drought Response Plan**

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

ix. **Develop a recommended School Education Program**

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

x. **Develop a General Public Education Program.**

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

Quad Cities
Water Rights for Settlement
Exhibit B - Pending Applications to be Withdrawn

Water Right Number	Instantaneous Quantity (gpm)^	Annual Quantity (Acre-Feet)	Source	Priority
Applications to be Withdrawn				
Pasco				
G3-29957	2.500	4,032	Wellfield	April 16,1996
S3-29979	7,181	6,400	Columbia River	August 6,1996
Richland				
G4-30262	250		Well	May 24,1990
S4-30185	5,660	2,042	Columbia River	November 22, 1989

Quad Cities
Water Rights for Settlement
Exhibit C - Water Rights and Claims to be Voluntarily Relinquished

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Celp Copy

DEPT. OF ECOLOGY Received JUN 5 2006 CENTRAL REGION OFFICE

PERMIT

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	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
June 24, 1980	S4-34553	S4-34553P	

The applicant is hereby granted a permit to appropriate the following public waters of the State of Washington, subject to existing rights and to the limitations and provisions set herein.

NAME			
Berg Farms LLC			
ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
PO Box 127	Paterson	WA	99345

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Columbia River/John Day Pool

TRIBUTARY OF (IF SURFACE WATERS)
Pacific Ocean

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
52.55		12,659

QUANTITY, TYPE OF USE, PERIOD OF USE
52.55 cubic feet per second, 12,659 acre-feet per year for irrigation of 3200 acres from March 1 to October 31.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION–WITHDRAWAL
Approximately 2000 feet south and 250 feet east from the north quarter corner of Section 8.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.I.A.	COUNTY
SW¼NE¼	8	5	26 E	31	Benton

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

All of Sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 AND the N½ of Section 22 and the N½ of Section 23, ALL in T. 6 N., R. 25 E.W.M., and ALL of Sections 6, 7, and 18, ALL in T. 6 N., R. 26 E.W.M., Benton County, State of Washington, EXCEPT that portion of said Section 12 described as follows:

Commencing at the northeast corner of said Section 12; thence south along the east line thereof 3461.00 feet, more or less, to a point on the centerline of existing Benton County road (Lenzie Road); thence westerly along said centerline 680.00 feet to the true point of beginning; thence northerly and parallel with the east line of said Section 12 a distance of 625 feet; thence westerly and parallel with said Benton County road 1400.00 feet; thence southerly and parallel with said east line 1400.00 feet; thence easterly and parallel with said county road 1400.00 feet; thence northerly and parallel with said east line 775.00 feet to the true point of beginning. AND EXCEPT roads AND EXCEPT portion deeded to State of Washington for highway by Auditor's File No. 867323.

ALSO EXCEPTING that portion described as follows:

Beginning at the northeast corner of Section 12, T. 6 N., R. 25 E.W.M., thence south along the east line thereof a distance of 3461 feet more or less to a point on the centerline of the existing county road (Lenzie Road); thence westerly along said center line a distance of 1350 feet to the true point of beginning; thence northerly and parallel to the east line of said section a distance of 625 feet; thence easterly and parallel to said county road a distance of 370 feet; thence southerly and parallel to the said east line a distance of 625 feet to the center line of the county road; thence westerly to the true point of beginning, EXCEPT the existing county road right-of-way, approximately five acres, all in Benton County, Washington.

DESCRIPTION OF PROPOSED WORKS

Description of Irrigation System

A pumping station consisting of six turbine pumps is located at the point of diversion on the John Day Pool of the Columbia River, approximately ½-mile southeast of the town of Paterson, WA. The pumps are rated at 400, 600, 700, 800, 1000, and 1500 horsepower, for a total of 5000 horsepower. The 400 horsepower pump is variable to supply water at a constant pressure, and the pumps can be operated in various combinations. This enables the system to efficiently accommodate variations in demand while providing the most efficient use of power and water possible. The pumps are fed by a 42-inch diameter, 1400-foot siphon tube that extends into the Columbia River. The intake end of the siphon tube is screened with 1/64-inch mesh. The pumps discharge through various sized (12, 14, and 18-inch) pipes into header pipes that combine at a 'Y' and carry the water approximately 1.6 miles through a 42-inch underground pipe to a booster pump station. Five 200 horsepower booster pumps at the station assist in pushing the water the additional three to six miles to the place of use. There are 33 center pivot irrigation systems installed at the place of use. At full capacity the pump system would be capable of operating 26 circles simultaneously. The center pivot systems are computer operated and equipped with drop hoses and 7.5 gallons per minute low pressure nozzles. The Bergs employ infra-red aerial photography and a water management service, which provides soil moisture measurements, daily water use, and weather forecast data, to maximize the efficiency of the irrigation system. Best management practices and specialized implements are utilized to maximize infiltration of water into the soil and prevent runoff and erosion.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
Begun	October 31, 2006	October 31, 2007

PROVISIONS

The applicant may divert water under this authorization provided the following conditions are met:

Prior to issuance of this permit, Berg Farms will surrender to Ecology portions of Permit Nos. S4-25639 (G), (E), (D), and (B) P totaling 12,659 acre-ft/yr, 52.59 cfs, for the irrigation of 3200 acres, for which Berg Farms currently holds valid water right permit assignments.

The annual quantity herein allocated is a portion of the amount reserved by the adoption of the John Day/McNary Reservation. The priority date of this filing, as against other uses, is June 24, 1980.

(Provisions continued on Page 3)

This permit shall be subject to cancellation should the permittee fail to comply with the above development schedule and/or to give notice to the Department of Ecology on forms provided by that Department documenting such compliance.

Given under my hand the seal of this office at Yakima, Washington, this 23rd day of August 2005.

DEPARTMENT OF ECOLOGY STATE OF WASHINGTON

Department of Ecology

DATA REVIEW

OK: CSR

by _____

Robert F. Barwin, Section Manager

This authorization is subject to the following minimum flow provisions as specified in WAC 173-563-040 and WAC 173-563-050 and the following table. It is subject to regulation by the Department of Ecology for protection of instream resources whenever the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less, and when gaged flows are predicted by the BPA 30-Day Power Operation Plan to violate the following minimum flow provisions at:

Primary Control Station(s): John Day
River Mile(s): 215.6

Minimum Average Weekly Flows
Columbia River Projects
(1,000 cubic feet/second)

PRIMARY CONTROL STATION:	Chief Joseph*	Wells/ Rocky Reach*	Rock Island & Wanapum*	Priest Rapids	McNary	John Day	The Dalles
RIVER MILE:	(545.1)	(515.6) (473.7)	(453.4) (415.8)	(397.1)	(292.0)	(215.6)	(191.5)
Jan	30	30	30	70	60	60	60
Feb	30	30	30	70	60	60	60
Mar	30	30	30	70	60	60	60
Apr 1-15	50	50	60	70	100	100	120
Apr 16-25	60	60	60	70	150	150	160
Apr 26-30	90	100	110	110	200	200	200
May	100	115	130	130	220	220	220
Jun 1-15	80	110	110	110	200	200	200
Jun 16-30	60	80	80	80	120	120	120
Jul 1-15	60	80	80	80	120	120	120
Jul 16-31	90	100	110	110	140	140	140
Aug	85	90	95	95	120	120	120
Sep	40	40	40	40	60	85	90
Oct 1-15	30	35	40	40	60	85	90
Oct 16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60
Dec	30	30	30	70	60	60	60

*For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff and adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to 25 percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.

Use of water under this authorization can be expected to be curtailed at least once in every 20 years.

Water available under this authorization will not provide a firm supply throughout each irrigation season.

This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and gamefish screening criteria (pursuant to RCW 77.16.220, RCW 77.55.040 and RCW 77.55.070). Please contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Program, Phone: (360) 902-2534, or call (509) 575-2734 for the Yakima Construction Shop to obtain technical assistance for your project. Juvenile salmon screening criteria are attached to the Report of Examination if applicable to your diversion.

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year.

The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Claim/Certificate No., source name, annual quantity used including units of measurement, maximum rate of diversion including units of measurement, monthly meter readings including units of measurement, peak monthly flow including units of measurement, purpose of use, fish screen status, open channel flow or pressurized diversion, and period of use. In the future, Ecology may require additional parameters to be reported or more frequent reporting. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements." Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

A Proof inspection will be conducted prior to final certificate issuance. The certificate will reflect the extent the project is perfected within the limitations of the authorization. Aspects will include as appropriate the source hydraulically connected to surface water, system instantaneous capacity, beneficial use, annual quantity, and acreage.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PERMIT
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	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
September 23, 1991 *	S4-30976	S4-30976P	

* The first ten cubic feet per second of this water right has a priority date of June 24, 1980, pursuant to WAC 173-531A-050(3).

NAME
Cities of Richland, Kennewick, Pasco and West Richland (c/o Richland)

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
PO Box 190	Richland	WA	99352-0190

The applicant is, pursuant to the Report of Examination which has been accepted by the applicant, hereby granted a permit to appropriate the following public waters of the State of Washington, subject to existing rights and to the limitations and provisions set out herein.

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Columbia River

TRIBUTARY OF (IF SURFACE WATERS)
Pacific Ocean

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
178 [1]		96,619 [1]

QUANTITY, TYPE OF USE, PERIOD OF USE
Municipal, industrial, commercial. Year-round Period of Use.

[1] The projected maximum instantaneous and annual diversions from 2002-2008 are 10 cubic feet per second and 7227 acre-feet per year; additional quantities to meet projected demands beyond 2008 are to be determined by a six year review process as described in the Provisions of this permit. The maximum cubic feet per second and acre-feet per year quantities shown above are the maximums that can be used by 2051.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION–WITHDRAWAL
Approximate location: Multiple points within the Cities of Kennewick, Pasco, and Richland service areas, including all the existing municipal diversions and treatment facilities in Kennewick, Pasco and Richland (see table below).

Location of Points of Withdrawal/Diversion on the Columbia River

CITY	MAP ID NO.	WATER RIGHT/OTHER ID NO.	LOCATION
Richland	R-1	Energy NW	NENW Section 2, T. 11 N., R. 28 E.W.M.
	R-2	Battelle	SWNE Section 14, T. 10 N., R. 28 E.W.M.
	R-3	S4-29941P	SWNE Section 14, T. 10 N., R. 28 E.W.M.
	R-4	W.S.U.	SWSW Section 24, T. 10 N., R. 28 E.W.M.
	R-5	SWC 9004	SWSW Section 24, T. 10 N., R. 28 E.W.M.
	R-6	S4-26404C Water Treatment Plant	NWNW Section 36, T. 10 N., R. 28 E.W.M.
		S4-27121C	
		SWC 9005	
	R-7	14030C Columbia Point	SWNE Section 13, T. 9 N., R. 28 E.W.M.
		G4-29214P	
		G4-29799P	
	R-8	Badger Mountain Irrigation District	SWSE Section 23, T. 9 N., R. 28 E.W.M.
Pasco	P-1	Water Treatment Plant	SWNE Section 31, T. 9 N., R. 30 E.W.M.
	P-2	S3-28791P (Kidwell)	W½ Section 18, T. 9 N., R. 29 E.W.M.
Kennewick	K-1	S4-25479C (SW Filter Plant)	SWSW Section 31, T. 9 N., R. 30 E.W.M.
	K-2	3897-A (Ranney Wells)	Govt. Lots 1 and 2, Section 35, T 9 N, R 29 EWM
	K-3	Corps of Engineers-Columbia Park (Multiple Points)	Sections. 27, 28, 29, 34, 35, T. 9 N., R. 29 EWM

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE (E. OR W.) W.M.	W.R.I.A.	COUNTY
Refer to table above				37, 40, 31	Benton, Franklin

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

The water will be used within the area provided with urban water service by Kennewick, Pasco, Richland and West Richland, as identified in the six-year updates of the Quad Cities' Water System Plans, and as currently shown on Figure 1 (attached).

DESCRIPTION OF PROPOSED WORKS

The cities of Kennewick, Pasco and Richland will initially use their existing Columbia River water diversion and treatment facilities. Additional diversion/withdrawal facilities, including the potential construction of facilities capable of delivering water for storage and later withdrawal as part of an Aquifer Storage and Recovery (ASR) project and other pumps and pipes, will be added to the system incrementally as needed to respond to demand. Use of any new point of diversion will require the applicant to apply for and receive approval of a change of water right.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
October 1, 2003	October 1, 2050	October 1, 2051

PROVISIONS

Over the duration of this permit, diversion of water will not be permitted at any time the applicable flow objectives are not met UNLESS the consumptive portion of the diverted water is properly mitigated through such means as water transfers, replacements, habitat enhancements, or trust water right arrangements. The first ten cubic feet per second (cfs) of this water right are allocated from the John Day/McNary Pools reservation for municipal water use pursuant to WAC 173-531A-050.

The following conditions apply to this approval:

A. The Quad Cities shall provide municipal water to all municipal, industrial, and commercial users and uses within their urban service areas based on the Quad Cities' six-year updates of their Regional Water Forecast and Conservation Plan (RWFCP) described in Provision H.5.

B. This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and gamefish screening criteria (pursuant to RCW 75.20.040). Permit holders should contact the Department of Fish and Wildlife, 600 Capitol Way N., Olympia, WA 98501-1091, Attention: Habitat Management Division, Phone: (360) 753-3318 or call (509) 575-2734 for the Yakima Screen Shop to obtain specific gamefish (trout, bass, etc.) requirements for their projects.

C. An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded daily. The maximum monthly rate of diversion/withdrawal and the monthly total volume shall be submitted to Ecology by January 31st of each calendar year. Ecology is requiring submittal of monthly meter readings to collect seasonal information for water resource planning, management and compliance.

The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit/Certificate, source name, annual quantity used including units, maximum rate of diversion including units, monthly meter readings including units, peak monthly flow including units, Department of Health WFI water system number and source number(s), purpose of use, fish screen status, open channel flow or pressurized diversion and period of use. In the future, Ecology may require additional parameters to be reported or more frequent reporting. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements".

(Continued on page 3)

This permit shall be subject to cancellation should the permittee fail to comply with the above development schedule and/or to give notice to the Department of Ecology on forms provided by that Department documenting such compliance.

Given under my hand the seal of this office at Yakima, Washington,

this 15th *day of* SEPTEMBER *2003.*

Department of Ecology

by _____
Robert F. Barwin, Section Manager

DATA REVIEW
OK RD

Provisions Continued

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

D. Following each six-year period, Ecology will issue a certificate for the amount of water put to beneficial use during that period after an investigation has been conducted. Compliance with any Ecology Order issued as part of the water use associated with the six-year period is a requirement of the certificate for that six-year increment.

E. Unless a new instream flow rule for the mainstem Columbia River is promulgated and Ecology approves an application by the Quad Cities to substitute these flows as conditions to this water right, the following flow objectives will apply:

Water may be appropriated under this permit ONLY when the following minimum instream flow requirements are EQUALLED OR EXCEEDED, or when the consumptive water use associated with appropriations under this permit are fully mitigated:

1. Between April 10 and June 30, the minimum flow measured at McNary Dam will depend on the April-September runoff forecast at The Dalles Dam, such that:

   a. if the forecast is 80 million acre-feet (MAF) or less, the minimum flow is 220,000 cfs;

   b. if the forecast is greater than 80 MAF and less than 92 MAF, the minimum flow is 220,000+((40(forecast-80)/12) x 1000) cfs;

   c. if the forecast is greater than 92 MAF, the minimum flow is 260,000 cfs.

2. Between July 1 and August 31, the minimum flow measured at McNary Dam is 200,000 cfs.

3. From September 1 through October 31, the minimum flow measured at McNary Dam is 80,000 cfs.

4. Between November 1 and April 9, the minimum flow measured at Bonneville Dam will range from 125,000 to 160,000 cfs, with the specific flow objective to be set by the FCRPS Technical Management Team every two weeks during that period.

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

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

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

- In determining whether any habitat project mitigation proposed under this provision is acceptable, Ecology will consult with and give a high degree of deference to the Washington State Department of Fish and Wildlife, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

- Any time Ecology approves the use of mitigation to offset diversion increments after the first increment (the first increment is defined as the first 10 cfs of diverted water), Ecology shall issue an order that is subject to appeal to the Pollution Control Hearings Board or any successor body with jurisdiction to hear appeals from Ecology water right decisions.

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

F. If a new instream flow rule for the mainstem Columbia River is promulgated, the Quad Cities may apply to Ecology to have these new flows substituted as permit conditions for the above flows. The application must be in a form and manner that sufficiently explains the basis for the request and the effect of the request on public interest, existing rights and water availability. Upon approval by Ecology, the new flow objectives will replace the conditions described above. Until different instream flow objectives are established through formal rulemaking and Ecology approval of an application by Quad Cities to have these flows applied as new conditions to this water right, the flows set forth above shall remain in effect for the duration of this permit.

G. Based on the flow replacement mitigation agreed to be supplied by Ecology for the first six-year increment, the maximum water diversion allowed under this permit shall be 10 cfs. If additional water is required prior to 2008, the process to obtain it is the same as that described in Provisions E and H.

H. To access water beyond the initial 10 cfs, the Quad Cities shall submit an updated RWFCP to the Department of Health and the Department of Ecology on a six-year schedule consistent with the schedule for review of water right quantities. The Quad Cities shall coordinate the preparation and completion of their individual water system plans and related supply, demand, and conservation programs. Prior to completion of the plans, the RWFCP will be completed jointly by the Quad Cities to compare demand to available supply and to evaluate the conservation achieved and the conservation projected resulting from implementation of the program described in section 6. The Quad Cities may submit the RWFCP for access to additional water, under the same process described in this condition, prior to any six-year interval if demand forecasts or other circumstances warrant earlier review. The full quantities of water recommended for a permit in this report may be appropriated in six-year increments associated with submittal of the RWFCP, and only when the applicable minimum instream flow is equaled or exceeded, or when the consumptive water use associated with appropriations under this permit is mitigated. Ecology will review the demand estimates, the water conservation elements of the plan, return flows estimates, and other relevant information contained in the plan that comprises the mitigation or flow replacement proposal. Following public comment, Ecology would approve, conditionally approve, or deny the proposed mitigation plan through an Order. If the Order denies the proposed mitigation or flow replacement proposal, then the appropriation for that 6-year increment would be subject to interruption when the flow objectives in this permit are not met, as described in Provision E.

1. The non-interruptibility of water use beyond the first 10 cfs requires that the Quad Cities submit a mitigation plan to Ecology for approval. Unless extraordinary circumstances exist, when the Quad Cities propose a mitigation plan for future diversion increments under their water right, the Quad Cities will submit their plan at least one year before the Quad Cities need a final decision from Ecology. Ecology will use this one year period for public notice, consultation, and to accomplish any necessary water right trust transfers. For purposes of this section "extraordinary circumstances" is defined only as factual circumstances that establish the need for an Ecology response time of less than one year. In no case will Ecology shorten its review and decision time so as to preclude Ecology from fulfilling its public notice and consultation obligations. The mitigation required for withdrawals of water in the succeeding six-year periods shall be proposed by the Quad Cities in their six-year RWFCPs for approval by the Department of Ecology.

2. Upon issuance of an Order by Ecology approving, in conformance with Provision E of this permit, one or more trust water rights or approving another replacement water program or a mitigation program proposed by the permittee to offset the full projected consumptive use during periods when flow objectives are not met, the six-year appropriation will not be conditioned as interruptible.

3. The maximum quantity of withdrawals of water requiring mitigation during the succeeding six-year periods will be presented in the RWFCPs and determined by subtracting estimated return flow from the maximum diversion amount. Return flow calculations shall be based on best available science and shall reflect seasonal conditions. During the course of that six-year period, actual quantities to be mitigated will depend on daily recording and monthly reporting of actual water use under this permit, return flow estimates corresponding to the season of water use, and whether or not the then current flow objectives are achieved during that period.

4. Each RWFCP shall include a Conservation Program demonstrating how the best available and reasonable conservation technology will be implemented in the subsequent six-year period. The Conservation Program shall meet, as a minimum for the entire life of this permit, current (as of date prepared) Department of Health requirements as well as the conservation conditions described below. In addition, the RWFCP with its Conservation Program shall be submitted to the Department of Ecology for review and approval consistent with the six-year schedule for reviewing water rights. The RWFCP shall propose and implement water conservation activities in the following areas: reducing leakage and unaccounted for water from the municipal water supply system; and monitoring, accounting for (separately) and reducing commercial, industrial, residential (indoor) and landscape water use. The Conservation Program shall include a detailed profile of current water use characteristics for each conservation category defined above including their total annual demand, average demand, unit demand and peak demand. Compliance with the Conservation Program for each six year period shall be a condition of the permit.

5. The Quad Cities RWFCP shall comply with Department of Health rules (*Conservation Planning Requirements, Washington State Department of Health PUB 331-008, March 1994*) which currently require that these plans contain, as a minimum:

   - *Water Use Data Collection Requirements.* Systems must report the best currently available data on water use for the categories of use, which are identified by the department.

- *Water Demand Forecast.* A complete forecast, including an estimate of reduction of water use from implementation of water conservation measures, must be developed.
- *Conservation Program.* A Conservation Program must be developed and implemented. The Conservation Program elements must include: Conservation Objectives; Evaluation of Conservation Measures; and Identification of Selected Conservation Activities.

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

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

For the purposes of the following conservation program elements, the term "implement" means obtaining and expending funding for capital facilities and operational staff, program assessment, and monitoring and reporting associated with each program element in a manner and on a schedule to achieve, and once achieved to maintain, the stated goal or target.

i. Leak Detection Program

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

ii. Large Meter Testing Program

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

iii. Residential Meter Repair/Replacement Program

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

iv. Residential Retrofit Program

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

v. Source Metering Replacement and Improvement

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

vi. Develop a Water Audit Program for Large Water Users

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

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

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

viii. **Develop an Integrated Water Shortage and Drought Response Plan**

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

ix. **Develop a recommended School Education Program**

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

x. **Develop a General Public Education Program.**

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

I. This permit herein recommended is specifically subordinate to any future permits that may be issued under applications No. S4-29956, S4-30052, R4-30102, S4-30185, S4-30465, and S4-30584.

Sandison, Derek

From: CBGWMA [cbgwma@televar.com]
Sent: Thursday, June 22, 2006 4:18 PM
To: Dennis Bly; Deral Boleneus; Ted Hopkins; Franklin County Commissioners; LeRoy Allison; Rudy Plager; Deborah Moore; Roger Hartwig; Richard Stevens; Jeff Stevens; Bob Derkey; Bill Wagoner; Roger Bailie; Deric Schmierer; Sandison, Derek; O'Keefe, Gerry; Gregory, Guy J. (ECY); Stoffel, Keith L. (ECY)
Cc: Terry Tolan; Kevin Lindsey (E-mail); Paul Stoker; Scott Cave; Ron Hull; Mark Nielson; David Lundgren
Subject: Confirmation of Ecology Leadership Meeting on July 13, 2006

This is to confirm that Ecology leadership, led by Gerry O'Keefe and Derek Sandison along with other Ecology leaders, have agreed to meet with the Boards of County Commissioners of Adams, Franklin, Grant and Lincoln Counties (GWMA Lead Agency) and the GWMA Administrative Board members to discuss GWMA's work with water issues, hydro-stratigraphy and the Columbia River process. The date and location of the meeting has been set for Thursday, July 13, 2006 at 2:00 p.m. in the Othello City Hall, 500 Main Street, Othello, Washington. Please let us know if you will be able to attend this meeting.

An agenda is being prepared and will be forwarded to you prior to the meeting date. If you have any items you wish to have include on the agenda, please forward your suggestions to me by Friday, July 7, 2006.

Paul Stoker, Executive Director
Columbia Basin GWMA
449 E. Cedar Blvd.
Othello, WA 99344
509-488-3409
cbgwma@televar.com

Yakama Nation
Department of Natural Resources
Reply Attn: Phil Rigdon
PO Box 151
Toppenish, WA 98948

June 5, 2006

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

RE: Columbia River Water Management Plan

Dear Mr. Sandison,

The Yakama Nation submits these staff-level scoping comments on the PEIS for Washington State's proposed Columbia River Water Management Plan (CRWMP). These comments do not express the policy positions of the Yakama Tribal Council.

The Yakama Nation is a holder of the most senior water rights in the Columbia River Basin. These rights have been exercised since time immemorial, were reserved by Treaty long before Washington State existed, and are the supreme law of the land. These rights have a time-immemorial priority date and have been successfully defended against many failed attempts to destroy them, including, sadly, ill-advised repeated attacks by the State of Washington.

The Yakama Nation's water rights are not subject to the jurisdiction of the State of Washington, but are protected by federal law and Treaty. These rights are part of the greater body of federal obligations to which the State of Washington's rights are junior. As such, the State of Washington has no authority to alter or undermine those rights. We submit these comments as the advice of a neighboring sovereign to help Washington manage its share of the Columbia River resources that it shares with the Yakama Nation.

In submitting these comments, the Yakama Nation does not waive any rights and does not submit any of its rights to regulation, quantification, or control by the State of Washington. The Yakama Nation reserves all rights, remedies and venues available to it for the resolution of disputes arising from the CRWMP.

The recent state legislation was enacted by excluding the senior right holders and, as such appears to be not so much a management plan as a loosely connected patchwork of special interest loopholes. From the scoping notice, it appears that Ecology has compounded the inadequacies of the legislation by adding in selected enticements for

out-of-stream users while omitting measures to protect and enhance Columbia River Salmon that are within the scope of Ecology's legislative authority. The result is not really a management plan. A management plan would begin with a legitimate assessment of needs, which was not done. A true management plan would not require dedicating two units of water to agriculture for each unit dedicated to meet the needs of the instream economy. CRWMP appears to be not a management plan, but an allocation plan for certain state special interests conceived of in a data-free process and in isolation from the legitimate needs of other uses and users in the Columbia River Basin.

As is all too often the case, the DS inappropriately draws a dichotomy between the needs of fish and "the economic and community development needs of people". To Indian people, who developed the first communities in the northwest around an economy dependent on salmon, this dichotomy is nonsensical and offensive. Just as the State must refrain from trading off the Tribal economies for non-Indian economic development, Ecology and its consultants should refrain from the offending and factually incorrect language separating "water for fish" from "water for people". Salmon are not some nicety, but a vital cultural, dietary, and, yes, economic need and right of Indian People. There is also a non-Indian instream economy based on the Columbia River fishery, an economy that is in dire need of support, for which the State of Washington owns a share of the responsibility, and which is neglected in the evolving CRWMP policy in favor of expanding subsidized agriculture.

The CRWMP PEIS is a Programmatic EIS in search of a program. Due to the patchwork nature of CRWMP and the DS, it is impossible to scope. An EIS is not the appropriate tool for developing a coherent policy. SEPA is intended to provide full disclosure of impacts related to policies and actions that have already been developed and described.

The PEIS should consider the potential benefits of operating FDR Lake for the benefit of instream resources. The scope should be changed to include this. In spite of its current emphasis on using storage to solve problems, the State has expressed an unreasoning fear of using the largest storage feature on the river to solve downstream flow problems. Although the reservoir is routinely drawn down to protect ill-advised floodplain development downstream, the State has expressed opposition to using much smaller drawdowns to benefit instream resources. This bias greatly hampers the potential effectiveness of CRWMP.

Ecology and its consultants should also refrain from the sort of economic "analyses" designed to deprecate the value of salmon. If similar analyses were legitimately applied to agriculture, including deducting subsidies and foregone opportunities, subsidized low-value agriculture would prove "infeasible" across the region. The scope of the EIS must be defined to properly consider economic impacts on fish and the fish based economies.

Washington State should embrace the full range of conclusions of the National Academy of Sciences (NAS) report rather than narrowly select only those that support the desires of would-be new out-of-stream water users. A fair reading of that analysis suggests that Ecology should not be permitting additional out of stream use without a full

understanding of the unmet needs of the full range of existing out of stream and instream uses. The PEIS needs to explain how the problems elucidated in the NAS report can be solved.

Ecology should consider the independent economic analysis performed by Texas A&M.

The CRWMP PEIS appears to be an example of piecemealing by the Lead Agency. Ecology is responsible to protect against piecemealing. Ecology should not limit its review but should consider the impacts on the full range of impacts to the natural habitat. How did this list get assembled? Where was the public process? Which parts of the non-project EIS are projects?

The scoping is also deficient in that it attempts to include action items or assumes that the action items will occur. This is not consistent with SEPA. The scoping, and any EIS, must consider a full range of items including no action.

Issuance of state water rights for new out of stream uses under CRWMP should not be described in the EIS as "new water" unless the water is being made available by retired consumptive use or water imported from out of basin. It should be described as a commitment of natural resources, and the impacts should be described accordingly.

Those portions of CRWMP involving federal actions will require NEPA analysis and ESA consultation and compliance. The Nation reserves its right to make further comments in the future on Ecology's compliance with NEPA and other federal laws and treaties.
It is impossible to scope anything as vague as a "Voluntary Regional Agreement". It is not possible to comment on this and we reserve the right to take action on VRA's as the details are made public.

Ecology has an obligation to fully disclose all impacts including cumulative impacts of CRWMP and related water regulation. This may prove difficult given the disjointed nature of the proposed program.

The EIS needs to make it clear what CRWMP does <u>not</u> do. For example, what is the fate of groundwater applications more than a mile from the Columbia River. How will Ecology address applications that are not part of a VRA? How does participation in a VRA affect the requirements for reaching a decision on a water right application? Failure to consider these is not in compliance with SEPA and other state and federal laws.

In conclusion, the Yakama Nation asks that the scoping be rewritten and readvertised as outlined above. The scope is too narrow in that it does not consider the effects on the natural environment.

Sincerely,

Phil Rigdon, Deputy Director
Yakama Nation Department of Natural Resources
<prigdon@yakama.com>

Sandison, Derek

From: Mike Kaputa [Mike.Kaputa@CO.CHELAN.WA.US]
Sent: Monday, June 05, 2006 4:01 PM
To: Barwin, Robert F. (ECY); Tebb, G. Thomas
Cc: Sandison, Derek; Buell Hawkins; Keith Goehner; Ron Walter
Subject: RE: Columbia River Partnership

Bob—

Here are some comments on the Columbia River Partnership EIS scoping from Chelan County. We appreciate Ecology's efforts to hold public workshops on the proposal and look forward to being involved in future discussions and decision-making.

1. It is not clear how different interests will be involved in developing the CRP, particularly with respect to the various committees that need to be assembled to generate various work products.
2. We are concerned that the timeline for completion of several work products is quite ambitious and will not likely allow for the appropriate level of local involvement in the CRP
3. We would like some clarification on trans-WRIA transfers and how direct Columbia River withdrawals will be treated with respect to WRIA boundaries

Please let me know if we can provide any more clarification.

Mike

Mike Kaputa
Director, Chelan County Natural Resource Department
316 Washington Street, Suite 401
Wenatchee, WA 98801
Desk: (509) 667-6584
Cell: (509) 670-6935
Fax: (509) 667-6527
website: www.co.chelan.wa.us/nr

Sandison, Derek

From: Yakibiker@aol.com
Sent: Sunday, June 04, 2006 9:49 PM
To: Sandison, Derek
Subject: Columbia River Management Program - EIS Scoping Comments

Dear Mr. Sandison-

Thank you for the opportunity to comment on the scope of the Columbia River Basin Water Management Program Draft EIS. In a nutshell, my concerns focus on two topics or themes I hope to see addressed in the Draft EIS. First, the Department has a fantastic opportunity to redefine how it communicates with its customers by using Governor Gregoire's Plain Talk principles in writing this environmental document. Second, the economic realities of high-priced water storage projects beg for clear explanation, in order to fully inform both our decision makers and an inquisitive, skeptical public. More detailed discussion of these themes follows.

First, I would encourage the Department to embrace Governor Gregoire's "Plain Talk" Executive Order (05-03) in the overall format and content of the draft EIS. Please take this opportunity to set a new, higher standard in clear government communication. As a citizen, I expect my local and state government offices to communicate with me in a clear, concise manner. Use pictures, graphics and visualizations to tell the story; use plain, everyday language; and consider using a question-and-answer format. For examples, you may want to contact the Washington State Department of Transportation, as the WSDOT has produced several reader-friendly environmental documents that have been well-received by both the general public and regulatory agencies.

Second, while Attachment A discusses trade-offs, it doesn't provide detail regarding cost/benefit analyses and opportunity costs. When considering alternatives under SEPA, the public will benefit from a robust economic analysis of the costs of off-stream projects, vs. conservation projects, vs. no action. Specifically, within the DEIS, decision makers should be fully informed as to design costs, construction costs, and operations and maintenance costs for new storage and transmission (conveyance) facilities. This request is based on the following sections of the SEPA (RCW 43.21C.030(2)(a) and (2)(b):

> The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:
>
> (a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and **social sciences** and the environmental design arts in planning and in decision making which may have an impact on man's environment;
>
> (b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with **economic** and technical considerations;

Attachment A doesn't mention the opportunity costs of storage projects relative to conservation projects. This is troublesome, given that the enabling legislation, ESSHB 2860, seems to steer Ecology toward "the development of new water supplies that include storage and conservation…" The Department is, no doubt, under considerable political pressure to recommend construction of new storage facilities. If the draft EIS is intended to be written with a bias toward the dual debatable assumptions that "new water" exists and that additional storage is the answer, then this predetermination should be clearly stated within the document. Large volumes of water can be 'found' through conservation measures such

as canal lining or enclosure, and drip irrigation equipment.

Construction costs should be based on a realistic (i.e., peer-reviewed) discount rate given the anticipated year of construction. Apply opportunity costs over the life of storage and conservation projects by applying a realistic discount rate. Explain to the DEIS reader what the present and future value of each dollar buys us in terms of conservation or new storage. The economic realities of high-priced water storage projects beg for clear explanation to a questioning public.

I appreciate the effort the Department of Ecology has made to inform stakeholders by posting Attachment A, *Issues to be Addressed in EIS*, on the internet, to help reduce duplicative comments. Those topics cover many of the questions I had planned to ask in this letter. Thank you again for this opportunity to comment.

Larry Mattson
2810 Shelton Avenue
Yakima, WA 98902
509 577-1759

Sandison, Derek

From: Redmond, Jim [Jim.Redmond@simplot.com]
Sent: Friday, May 26, 2006 1:44 PM
To: Sandison, Derek
Subject: Columbia River Management Program

As a member of the board of trustees for the Columbia Basin Development League and very involved with the Water Initiative I am very interested and support any activities that can positively affect the Odessa Subarea. One area of interest that I support and should be considered is using municipal reclaimed water to enhance streamflows and groundwater irrigation supplies. I am under the impression that there is a possibility utilizing 50,000 acre-feet of reclaimed water from the City of Spokane which has the potential to be used in the eastern end (or further west with more funding) of the Odessa Subarea. This would be of huge value to the agriculture producers, food processors and the communities in the Columbia Basin which rely on the revenue created in the Odessa Subarea. Any such water would be useful to relieve some of the upgradient demand and useage in the Upper Crab Creek watershed allowing a more sustainable supply in the lower watershed. Thank you.

Jim Redmond
J.R. Simplot Co.
14124 Wheeler Rd.
Moses Lake, WA 98837

509-750-1532

Sandison, Derek

From: Holter, Russell (DAHP) [Russell.Holter@DAHP.WA.GOV]
Sent: Thursday, May 18, 2006 2:22 PM
To: Sandison, Derek
Subject: Columbia River Management Program

Derek,

As there could be significant impacts to above- and below-ground cultural resources the Department of Archaeology and Historic Preservation needs to be included in your consultation for this project. Specifically, we would like to know if you are planning to conduct a SEPA review? Is there a reason to review this action under Governor's Executive Order 05-05?

I look forward to hearing from you when you return from the field.

Russell Holter
Project Compliance Reviewer
Department of Archaeology and Historic Preservation
360-586-3533

CONFEDERATED TRIBES
OF THE UMATILLA
INDIAN RESERVATION

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DEPARTMENT OF JUSTICE

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June 5, 2006

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

RE: Scoping Comments on the EIS For the Columbia River Basin Water Management Program

Dear Mr. Sandison:

In hopes to better advise my client, I suggest that Ecology focus on addressing the following issues throughout the development of the Columbia River Basin Water Management Program:

1. The impacts of each programmatic activity impacts CTUIR Treaty Rights on the Columbia River and affected tributaries. This analysis should include an analysis of the rights and activities concerning tribal fishing rights under the landmark case *United States v. Oregon*;
2. The degree to which each programmatic action would comport with the CTUIR Columbia River Salmon Policies and the plans of the Columbia River Intertribal Fish Commission fish restoration plans described in *Wy-kan-suh-mi Wa-kish-wit* (enclosed);
3. The consistency of each programmatic activity ensures statutory minimum instream flows for each of the Columbia River dam pools;
4. How each programmatic activity will comport with the requirement to protect Columbia River ecosystems and species protected by the Endangered Species Act and conform to the 2006 Federal District Court of Oregon rulings in *Northwest Wildlife Federation v. National Marine Fisheries Service*;
5. How any new uses of water will satisfy the basic requirements for a new water right described in RCW 90.03, 90.44 and 90.54.
6. How each program will ensure its activities are based upon sufficient information to support a reasonable analysis of the impacts.
7. When the State expects to engage in rulemaking for this project;
8. Plans to provide adequate information to the CTUIR for consultation as required in *Yakama Nation v. Department of Ecology*.

I look forward to hearing from you.

Most Sincerely,
/s/

Naomi Stacy