

## Water Transfer Working Group Meeting Minutes Monday, July 1, 2019, @ 1:00 PM

### Attendees:

#### **In the room:**

Tom Tebb, Chad Stuart, Chuck Garner, Scott Revell, Chris Kossik, Jolee Ramos, Urban Eberhart, Larry Martin, Scott Turner, Stan Isley, Tom Ring, Jonathan Kohr, Stuart Crane, Seth Defoe, Gene Huffman, Jason McShane, John Crotty, Dean Dennis, Chuck Freeman, Lori Brady, Walt Larrick, Jeff Slothower, and Dave Brown

#### **On the phone:**

Peter Dykstra, Justin Harter, and Samantha Cox

### Approval of Minutes:

- June 3, 2019 – The group approved the draft meeting minutes posted on the website.

### Previous Business:

- None.

### New Business:

- 2019-30 – Bensch (G4-36039). Chris Kossik presented. The proposal is for one residential connection at 275 gpd used year round with 500 square feet of lawn and garden irrigation, mitigated by Reecer Creek WR LLC's right (CS4-02261sb7@2(B)). The exchange contract will be used to address out of season impacts (9/1 – 3/31). Pumping impacts are expected to hit Domerie Creek, the Cle Elum River, and the Yakima River. WDFW noted there are no documented ESA-listed species. WDFW also noted that Domerie Creek goes dry. Ecology noted the diversion is downstream from the City of Roslyn's diversion. Yakama Nation asked that Ecology include standard language noting the right may be subject to a future priority call. **Thumbs up.**
- 2019-31 – Daniels (G4-36040). Chris Kossik presented. The proposal is for one residential connection at 275 gpd used year round with 500 square feet of lawn and garden irrigation, mitigated by Reecer Creek WR LLC's right (CS4-02261sb7@2(B)). The exchange contract will be used to address out of season impacts (9/1 – 3/31). Pumping impacts are expected to hit Thornton Creek and the Yakima River. There are no fish impacts that WDFW is aware of. Yakama Nation asked that Ecology include standard language noting the right may be subject to a future priority call. **Thumbs up.**
- 2019-32 – Roza Irrigation District Conserved Water Projects (CS4-00802). Stan Isley presented this proposal together with 2019-33, both administrative water right change proposals under Washington State law for conserved water portions of water rights confirmed to the US Bureau of Reclamation (USBR or Reclamation). The proposal is to change the purpose of use from irrigation to instream flow for 5,523 ac-ft/yr of conserved water from the Roza Irrigation District (RID) to be managed in Ecology's Trust Water Rights Program (TWRP). The place of use will also change from the District's service area boundaries to the primary reach in the Yakima River system, which will

begin either: 1) at the Roza diversion dam at Yakima River Mile (RM) 127.9 as the default beginning; or 2) at the outlet of each of the five Federal reservoirs in the Yakima River Basin when the conserved water is stored and used as shaped pulse flows or other shaped releases from the five Federal reservoirs; and will end in both cases downstream at Swiss Corral Creek's discharge to the Yakima River at RM 34.3. There is no fallowed consumptive use, so there won't be a secondary reach. USBR is additionally requesting that the season of use be extended beyond the historic irrigation season (4/1 – 10/31) so that a shapeable/storable portion of the conserved water may be retained in the Federal reservoirs for use until the reservoirs fill and spill or until the start of storage control in the following year. This water right is 100% proratable. In the agreement negotiated by RID, the full 5,523 ac-ft/yr amount of conserved water will be managed in the TWRP in full water supply years and in years when the right is prorated down to 80%. From 79 to 71 percent, there is a sliding/reducing scale of water managed in the TWRP (see the project form for more detail). At 70% or below prorationing, RID's re-regulation reservoir will not generate any conserved water, and no water will be managed in the TWRP. According to the 2008 Memorandum of Understanding between Reclamation and Ecology regarding Water Marketing and Management of Trust Water Rights in the Yakima River Basin, USBR will retain ownership of the water right while it's in the Trust program and can withdraw its water from the Trust program with 60-days notice to Ecology. More information about the project history and group discussion follows below and can be found in the project form submitted by Stan Isley.

- 2019-33 – Sunnyside Division Board of Control Conserved Water Projects (CS4-01752@6 through CS4-01752@11, and CS4-01752@12 through CS4-01752@17 – 12 applications total). Stan Isley presented this proposal together with 2019-32. The proposal is to change the purpose of use of portions of six water rights confirmed to Reclamation on behalf of Sunnyside from irrigation to instream flow, to be managed in Ecology's Trust Water Rights Program. This proposal 2019-33 addresses a total of 41,371 ac-ft/yr of conserved water from applications CS4-01752@6 through @11, and an additional total of 9,712 ac-ft/yr of conserved water from applications CS4-01752@12 through @17, for a combined total of 51,083 ac-ft/yr of conserved water. The place of use will change from irrigable acres within the Sunnyside Division service area boundaries to the primary reach in the Yakima River system, which will begin either: 1) at the Sunnyside Diversion Dam at Yakima RM 103.8 as the default beginning; or 2) at the outlet of each of the five Federal reservoirs in the Yakima River Basin when the conserved water is stored and used as shaped pulse flows or other shaped releases from the five Federal reservoirs; and end in both cases downstream at the Kiona Wasteway discharge to the Yakima River (RM 23.8). USBR is additionally requesting that the season of use be extended beyond the historic irrigation season (4/1 – 10/31) so that a shapeable/storable portion of the conserved water may be retained in the Federal reservoirs for use until the reservoirs fill and spill or until the start of storage control in the following year. More information about the project history and group discussion follows below and can be found in the project form submitted by Stan Isley.

Stan Isley presented 2019-32 and 2019-33 together as part of the USBR's Yakima River Basin Water Enhancement Project (YRBWEP) ongoing efforts to fund water conservation and water use efficiency projects in the Yakima River basin and to acquire water for enhancement of irrigation water supply and instream target flows to benefit fish and habitat. He presented the history of water conservation efforts under YRBWEP, which included multiple agreements surrounding diversion reductions. These transfers are intended to update the affected water rights to reflect and authorize the instream flow use of the conserved water as defined in the diversion reduction agreements already in place. The agreements generally provide that 2/3 of the total conserved water will be added to instream flow and 1/3 will be used for irrigation augmentation. However, applications CS4-01752@12 through @17 represent Reclamation's direct water acquisition/purchase of the right to use the Sunnyside Phase I water conservation project's 1/3<sup>rd</sup> block of conserved water (9,712 ac-ft/yr) for instream flow use in most years. The group discussed the reasoning and ecological/biological benefits to the altered and extended season of use. Stan acknowledged there were questions surrounding the 1994 YRBWEP Act's Federal law protection to 3<sup>rd</sup> parties against irrigation water supply diminishment as a result of upstream YRBWEP-funded water projects. The group discussed the purpose of the conservation efforts and details of the federal law.

#### Questions raised:

1. Has any study been done yet to quantify the portion of the conserved water generated by the YRBWEP-funded Roza re-regulation reservoir that historically returned to the Yakima River above Prosser Dam? (Kennewick Irrigation District (KID))
  - a. Stan answered that no such study has yet been done, or estimate yet made, for the Roza re-regulation reservoir conserved water.
  - b. However, Stan Isley has made an attempt at estimating the proportion of the Sunnyside Division conserved water that historically returned to the Yakima River above Prosser Dam. Based on work done by Don Schramm, an estimated 77% of water historically diverted through the Sunnyside Division, including the Benton ID service area, historically returned to the Yakima River above the Prosser diversion dam.
2. KID noted that applications filed by USBR in 2012 that request the change of the 2/3 blocks of Sunnyside Division conserved water to instream flow use included language that provide protections for KID. A second set of applications filed by USBR in 2016 that request a similar change to instream flow and irrigation supply augmentation use for the Sunnyside Phase I project's 1/3 block of conserved water did not. KID is concerned about Reclamation's obligation that was explicitly acknowledged in the 2012 applications. KID specifically asked that the 2012 protective language be added into the 2016 applications.
  - a. There was no intention in the 2016 application language to make protections to 3<sup>rd</sup> parties less protective.

- b. Ecology will add its standard impairment language to its water right change decisions for all the applications.
  - c. The lack of protective language in the 2016 applications does not remove USBR responsibility under Federal law.
  - d. USBR will look at the language in the 2012 applications and determine whether to add it to the 2016 applications.
  - e. The group discussed the Chandler bypass reach.
3. KID requested information on the RID re-regulation reservoir engineering and the diversion reduction agreement.
  - a. Stan will provide those documents.
4. Does Ecology enforce federal provisions?
  - a. Would need legal guidance as to the appropriate procedure and venue, but Stan believes the Federal law complaint would go to a Federal District Court for analysis and possible injunctive relief. Ecology would not enforce federal law.
5. KID requested confirmation on NEPA compliance for the RID portion.
  - a. Stan will verify and provide that information.
6. Why is there the ratcheted scale for Roza and not for Sunnyside? (John Crotty)
  - a. It is part of the engineering analysis done by RID. The group discussed the formula as provided in the project form submitted by Stan Isley.
7. KID questioned why the season of use was adjusted to end at the start of storage control in the following year instead of the beginning of prorationing? What is the foundation of that decision?
  - a. The group discussed that the decision was based on availability of water and the benefit to biology and TWSA. The group also discussed historical use of the YRBWEP conserved water.

**KID voted thumbs down for this proposal. Other members of the group explained that the group accepted withheld votes or thumbs up. The remainder of the group gave their thumbs up.**

Other business: Drought Applications

- 2019-34 Den Hoed (G4-33230). Thumbs up.
- 2019- Zirkle Fruit (G4-33141-19). Thumbs up.