

Endangered Species Act (ESA) Restrictions on Water Use

In addition to all restrictions and provisions in this contract, the following further restrictions applies:

Where a point of diversion is located on a stream reach bearing ESA-listed fish, and where that diversion cannot be mitigated from a water source above the point of diversion, (e.g., where there is no storage above point of diversion), the total diversion from that stream reach, including that diversion and all other diversions on that reach under this contract, shall not exceed 1% of the total flow of that reach existing as of the date of this contract, as measured in the "protocol" described in Exhibit_____ :

Exhibit _____

Protocols for compliance with contract provision – ESA

1. The contract benefits will be conveyed by Ecology through the issuance of individual water right permits.
2. Ecology will perform a field investigation as part of its review of each application for a water right permit.
3. Ecology will consult with WDFW to identify the critical low-flow period in the various sub-basins where water right permits are requested.
4. Ecology will estimate stream discharge during the critical low-flow period as part of the field investigation for each application. Ecology will collect stream flow data at the point of diversion from the source of supply and, where the source itself is not an ESA listed fish bearing stream, at the location downstream within the range of the ESA listed species of concern. Stream discharge estimates may also be determined based on consideration of local climate variation, consultation with local water experts, and stream discharge models if necessary.
5. Ecology will evaluate each application for its existing and/or prospective uses and will determine based on best available information the consumptive and nonconsumptive fractions of the total amount diverted or withdrawn.
6. Ecology will, in its report of examination, evaluate the impact of the individual diversion or withdrawal relative to the limitation specified in the contract for the flow impact at the point of diversion and its relationship to streams bearing ESA listed species. Similarly, Ecology will, in its report of examination, evaluate the cumulative impacts of all such permits tied to the contract at downstream locations common to multiple diversions and withdrawals within a sub-basin above a stream bearing ESA listed species.
7. Ecology will determine if the individual or cumulative diversions or withdrawals exceed the cumulative sub-basin diversion limitation specified in the contract. Ecology will deny permits for those applications that would exceed either the point of diversion limitation or the sub-basin diversion limitation contained in the contract.
8. Ecology will include monitoring and reporting requirements in its permits, including a provision to reopen the permits and modify the monitoring and reporting requirements if necessary.
9. Ecology will periodically review and assess the performance of the monitoring and reporting requirements in the permits. Ecology will report the results of the review and assessment to Reclamation periodically. The assessment will include a comparison of the metered water use, and the consumptive fraction of metered use, relative to the contract requirement for the maximum impact to stream flow.