

Endangered Species Act (ESA) Restrictions on Water Use

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

Where an application for a mitigated permit for water use containing a point of diversion (POD) located on a stream reach bearing ESA-listed fish, and where that POD cannot be mitigated from a water source above the POD, that application must satisfy the following condition to receive further consideration under this contract:

(a) Further consultation shall be required if the total diversion from the subject stream reach, including the application diversion and all other diversions on that reach, exceed 1% of the critical low flow of that reach. The critical low flow shall be measured pursuant to the "protocol" described in Exhibit B and measured after the execution date of this contract.

The above condition is set for the purpose of determining a threshold for ESA consultation, only. Applications satisfying the stated condition are subject to further evaluation, restriction, or denial pursuant to other provisions of this contract. Nothing herein shall prevent the applications from being subject to other legal requirements of applicable law or Treaty and procedure outside of the ESA. The stated condition of the 1 % flow described in (a) above shall not be construed as a permissible or allowable limit for water use for any other requirement other than determining the threshold for further ESA consultation.

As provided elsewhere in this contract this agreement is not binding on any parties other than the Department of Ecology and the United States Bureau of Reclamation.