

WTWG Minutes from September 18, 2006

Bob Barwin, Dave Brown, Stuart Crane, Jim Davis, Paul Dempsey, Melissa Downs, Urban Eberhart, Bill Ferry, Chuck Garner, Ken Hasbrouck, Carron Helberg, Dave Kaumheimer, Jonathan Kohr, Chris Lynch, Larry Martin, Joe Mentor, Jim Milton, Ginny Stern, Brad Wellenbrock, Lee White.

Chuck Garner called the meeting to order at 1:00 PM. The minutes from the previous meeting were reviewed, with only one minor change provided by Urban Eberhart. At the last meeting, Jeff Slothower said he would provide the group a copy of the water management plan for Col Solare. Carron Helberg will contact JS to secure a copy for the group.

CG commented that since there are no previous proposals to discuss, the group reviewed the first new proposal 2006-24 for Schnebly. Melissa Downs explained she reviewed this proposal and it is a change in point of diversion (POD) downstream, no other diverters, it is a change in place of use (POU), and it is on Coleman Creek. October 5, 2006 is the review deadline for Ecology and it is a permanent transfer. CG asked if this proposal was a thumbs up and the group, with no comments, agreed to recommended this transfer.

The group continued with the next new proposal 2006-25 for Masterson. This proposal is on the Teanaway River and previously it was a change in POD, but is now following with a different POU. The group gave thumbs up recommendation on this proposal.

CG guided the group to the last agenda item to the discussion of the draft MOU. The emails to Bob Barwin and Bill Ferry comprised of comments from Tom Ring of the YN, Tom Cowan for Roza ID, and Adam Gravely for the City of Roslyn. Bob Barwin felt that the discussion should start with going over the comments and then go from there. Joe Mentor wanted an explanation - what this is supposed to do, and the three classes that are available: authorizations that people have; the new users; and have water with no right to use.

BB stated that this agreement is intended to provide a means to address new or existing uses that are post 1905 due to their location if their use were not curtailed, would result in an impairment of operations by Reclamation and other users. BB continued with background information that broke down the three types of users as:

- 1) Existing post 1905 users that are out of priority water users,
- 2) New Users, and
- 3) Users that have water and no right to use it.

The periodic review, the meeting with Tom Ring and the general premise is writing to the tributaries above Parker, as below will not directly affect them. BB wanted to start with Tom Ring's comments. BB will work on the tributary language to address TR's comments. BB sees no showstoppers and feels the language can be worked out. Main stem rights acquired add to the cost. He has received nothing back from Fish & Wildlife

or YN on the 1/3 cut, but has shared it. BB said TR's comments clarified some areas. Joe Mentor commented that this MOU is water use that may cause impacts on the existing post 1905ers and needs to be addressed.

BB continued with TR's comments on paragraph two on page 2 that starts with "Prorating has occurred ...", and after talking, both decided to eliminate it. BB asked the group if there are any comments on the paragraph further down on the City of Roslyn. BF felt it was historically ok, but should be moved up further in the MOU since it is dated.

The next section (Purpose, Objective, and Scope) in the first paragraph, BB said TR added language here, and the group had no comments. On the second and third paragraphs, BF felt that TR's comments were a bit vague and suggested taking some of it out.

The next section (Process) there is no changes except for a couple of words in item number 1 & 6. When Dar and I started this, the State would exchange a contract with Reclamation's water rights. If the water rights were not transferred to Reclamation, the water rights would be assigned to Reclamation but identified as water in the trust program. We will rewrite the process steps to include this, the title would not move but the use would. BF said he was waiting to hear comments on the need for US ownership and to see the necessity for Reclamation to own these water rights. BB will get back to BF soon on this. RVG asked if the assumption that the transfer of water rights is permanent. What is the difference between assigned vs. owned?

BB continued with Adam Gravley's comment that the need is only in the years of prorating, but in other years, they want to market the water and not surrender it. RVG added that once on storage control, it gives them the right in the non-drought years. BB added that he is not sure there is a market; Adam is the one who sees a benefit. JS asked how the exchange and assignment is affecting the status quo, fish life, or the stream. How is the impairment analysis done? BB replied, the analysis will be done at the time of the request and I can see it done more than once, for example, if it comes in and then leaves. BF added that the review of the water transfer would receive no less than any other review. Joe Mentor said there seems to be some confusion. Even though the CU is addressed, there may still be operational and storage issues. BF added it is a mitigation piece in this process. BB continued to say we know what the drought need is, but since a water user would want to sell, it would get further review. If that market is there, the process has the checks and balances already. RVG asked once the water is transferred in, how can it come back out? BB replied the review has to involve all the needs of the other. Clarity is with the contract person as to how it is used. There may be a tax benefit. They are looking to a market beyond Ecology. We were not trying to tackle things beyond what is addressed now. BB said we would not convey water in an area that has an environmental concern; this does provide protection to the 1905ers.

In the first paragraph of page 4, BF mentioned it appears like a SOAC veto? JS feels it is not an expansion of what already exists, but that the water right does not impair treaty

rights or fish (existing rights). We could work out the wording. Larry Martin said that SOAC has no authority to define "impairment". BB continued with the next section (Water Exchange Management) with the last paragraph of section two, adding that the wording can be worked out here also. BB felt that section three had nothing problematic in it. Joe Mentor commented about a water budget neutral transfer or if it provides a substantial CU, under the Hillis Rule, it would allow a priority. BB asked if there is another Hillis criterion. Dave Brown went back to section 2, felt there should be criteria and that "or other party" is vague. BB said we needed to sort out the process. RVG with the available unused space in storage, what does it have to do with SOAC? BB said we will make storage by storage releases, it is surplus and will accumulate. I will not call for water that is stored vs. what is used by the domestics, etc. BB felt TR was not talking about storage space; you have to use storage space until you fill. In November, if you are in flood control, Chris Lynch added, it is full. All water that is coming out of the reservoir is floodwater. Stuart Crane added in a low water carryover year, how would you be able to release the stored water. Stephanie Utter asked is there any other obligation there. BB replied look at the rule curve, due to the snow pack, is a consideration for the flood control curve. RVG said if it is a good year, it could be all used. BB, but then it is a junior right that can be exercised, push out water to create room and for fish flows. He feels it works in the climates we work with so far. RVG asked what we could do with this language. BB to JS, we can figure a way to work this out. JS commented there needs to be a way to make the water available in the winter situations. The water should not go to the 1905 user if needed for fish and to keep water in storage for carryover. BF feels we are there. BB said section 3 narrows it to be one and it is intentionally narrow. JM asked in order to achieve this, either it is non-consumptive or it is consumptive with a substantial environmental benefit and water budget neutral, as are all water transfers. BF said Reclamation wants substantive environmental benefits, and he feels there would have to be a benefit, even if only water budget neutral. JM said Currier Creek, Roslyn, and others will still be outside the process and feels it is arbitrary. Yakima River Basin Water Enhancement Program (YRBWEP) pays for the water right. Here we tax it and require it to be strict. He feels it is arbitrary. BF replied this is what we are doing for the beginning run and we are not creating a water store. Not everyone will be able to participate. JM feels that we would be creating a problem. He is ok with this, but wants to find a more objective standard. Tom Cowan said the price could be whatever they want; it is a contract issue. JM added they do not have the authority to pick and choose who they offer a contract to. BB added this is related to the box. We can set a number through rule making or do it case by case, but either way it takes time. JM said if there is someone who wants to participate in the program, the operational impacts to the program does not leave the ability to provide for each, if the number is 1/3 or whatever. We have to think about it. JD said we need sellers or donors, what is the incentive and will they be charged? BB said the buyer (or benefactor) would be charged. Under the State, if they provided no help, there is a tax benefit at the very least, but there may be State help. JM added only if permanent. RVG added it takes care of the post 1905 users only, but now including new users too? Urban Eberhart said it seems like two different views, Ecology and Reclamation. BF said existing folks and Ecology, this chunk of water is for the smaller ones, then the Roslyn's, then it may no longer be any other water. If someone new in 5 or 10 years is looking for more water, this is not the

place. UE said he thought that is where we were going for the long term. LM added we would need to get Reclamation to look at it. BB said includes only the Yakima arm and the Naches arm. JM added same as a domestic use. BB said the reality is small flexibility, 95/5%, 50,000/2,500 AF. The right audience is relying on it and the scenarios, which needs to use it, but use the old way of transfers to do this.

BB continued with section 5 with TR's comments where he added "inconsistent with this MOU" is it necessary. On page 6, he asked JS is Yakama Nation part of the standard language, and JS replied yes, this language is from other agreements. JM continued on to section 2, is this a Federal action and consultation. BB said the SEPA Ecology does, permit actions are under Ecology, but it is a CEC. BF said NEPA will apply to the contract; each contract will go through NEPA. JM said instead of each contract going through it, why not do it up front for all. Why not have all the details worked out to do it now. Dave Kaumheimer said it is a second Federal action, each one is its own action. JM asked what will the time frame be, how many years. BB said the 1000 AF limit or whatever the trust water rights, it will be a bundle of water rights. JM said he would like a timetable.

BB continued with section 3, no changes and section 4 needs clarification. BF referred back to section 2, it should be shorter by taking out the last two sentences and in section 3, maybe take out "cost to the benefiting..." sentence. At least we need to look at it or delete it. Back on Page 5, in item 4 add "construction cost" with the O&M cost. TC asked what kind of contract would it be and would they pay. So then, it would be a water service contract, and how is that paid for, in all years or only in drought years. BB said he is not prepared for addressing it. DB added it is not a lot of money, but it is the principle. TC and DB said it should be every year. UE asked it is not contract water, right. BB said right, the source is the space in the reservoir. The accounting is to be simple but to show the junior users the usage and to show it is being administered fairly. TC said in the Roza comments, paragraph three should exclude "indoor". BF asked how you think this will go, do you see his clients as irrigated users. JM feels the process will take two years in the NEPA process and if it is not stuck somewhere. Use the river as a conveyance, using a BON is easier than an ESA consultation. BF asked if limited to domestic and municipal uses. JM said do not limit. BF asked is it for a golf course. JM said the focus is only on domestic use. BB added there is a constraint on water delivery, to live with it, for example a change in season. LM asked if they are going to irrigate it year round without mitigating it. JM said we need to focus on the problems specific to these situations, or the counties will have problems. It should not wait until 5 years from now, as domestic is different from the irrigation supply. BF said the MOU is to set up this program and the scope is broadly identified. We only need to do one MOU, but many contracts. JM said he wants to talk with Roza, and BF thought that would be helpful. BB to TC, the items on his list agrees with Joe, might limit people who would use this and not use exempt wells. Try to stay away from this, would like you to look at the 1/3 amount. LM said you are being compensated by contract construction charges and O&M, pay for storage and infrastructure. UE said there is not a monetary tie. JS said the Hillis Rule is the justification it is the tie-in. TC asked how you feel about the water going to exempt wells. JS said we need an incentive for this program and not to

impair anyone's rights. You show that you are acquiring water to benefit certain streams. They should be the same. Ginny Stern from the Department of Health asked where did the 1/3 come from. The question is what level and established by rule. The number is arbitrary. JM said thanks for the clarification. This is just an MOU. Then each one will be attractive one over another. BB said the purpose, can we reach a consensus of the fisheries. BF said the specifics would be in the contracts, good point. The substantial benefits are not in the tributaries. Exempt wells are less clear. If wells on the main stem are to be matched, may not be so big an issue. BB and BF will work together, TC & JM will talk, TR's changes are ok with Roza, and the SOAC part needs to be worked too. JM would like a timetable. BB said he needs 2-4 weeks to work with everyone. BF said that should be a good time frame and this MOU is a priority. The first contract will be up to 1000 AF and Bill McDonald will be able to sign it. Then the process will be writing the contract and working with DK on NEPA. DK said he is hoping it is a FONSI for the NEPA, and he is hoping to expedite the EA. BB said he is involved in the inventory of the cabin owners (report) and involved in a reverse auction in the next couple of months for our purposes.

Chuck Garner asked the group when they wanted to meet again, and the group set for October 16, 2006 (Monday) at 1:00 PM at the YFO Conference Room.

The meeting was adjourned at 3:00 PM.