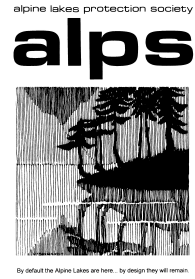




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TESTIMONY OF THE SIERRA CLUB AND
ALPINE LAKES PROTECTION SOCIETY

before the
Senate Committee on Ways and Means
Olympia, WA

February 21, 2013
On SSB 5367

Mr. Chairman and members of the Committee, thank you for the opportunity for the Sierra Club and the Alpine Lakes Protection Society (ALPS) to provide testimony on SB 5367. This bill concerns the controversial Yakima River Basin Integrated Plan. There are cost effective elements of the Yakima Plan such as habitat conservation and enhancement, agricultural and municipal and domestic water conservation, and water banking that the Sierra Club and ALPS could support, and other elements such as fish passage, if feasible, aquifer storage, the Kachess inactive storage, and Keechelus to Kachess Conveyance that may be supported after additional and thorough economic and environmental review.

Overall, however, the Sierra Club and ALPS are opposed to passage of this version of SSB 5367, because the Yakima Plan does not comply with Federal and state laws, and supports the construction of new irrigation dams that have not been shown to be economical. For example, in 2008, the Bureau of Reclamation (Bureau) completed a benefit/cost analysis of one of these proposed dams, the Wymer project, which showed that this proposed project, costing well over a billion dollars, would return only 31 cents for every dollar spent and would flood private land. In addition, the Wymer dam plans show a pipeline that could lead to the construction of another costly dam in Burbank Creek (and a possible third dam in Selah Creek).

As U.S. Rep. Doc Hastings wrote in his January 11th Weekly Message: “the government has a serious spending problem. Congress must accept real spending cuts and reforms to government programs in order to ensure they are available for future generations.”

<http://hastings.house.gov/news/documentsingle.aspx?DocumentID=316755>

The Yakima River Basin Integrated Plan adopted by the Department of Ecology (Ecology) and the Bureau, and developed by a Yakima Workgroup, has procedural and substantive flaws.

In an August 2012 op-ed in the Ellensburg (WA) Daily Record, Charlie de la Chappelle, vice-chair of the Yakima Basin Storage Alliance in Yakima (YBSA is a Yakima Workgroup member) and Marlin

Rechterman, vice president of the Kittitas Audubon Society, detailed the procedural failures in the Bureau and Ecology Yakima process:

- * limited Workgroup membership;
- * closure of the Workgroup implementation subcommittee meetings to the public and other Workgroup members, such as the YBSA;
- * preparation of a \$20 million “Early Action Implementation Request” prior to release of the Draft Programmatic Environmental Impact Statement (DPEIS);
- * lack of a range of alternatives in the DPEIS;
- * Bureau’s and Ecology’s denials of a request from 11 local, state, and national organizations for a DPEIS comment-period extension;
- * after the close of comments on the DPEIS, the inclusion in the Final Programmatic EIS (FPEIS) of the new proposal for NRAs within the Okanogan-Wenatchee National Forest, based on a Workgroup plan for more than 40,000 acres dedicated to off-road vehicle (ORV) use; and
- * failure to respond to 15 local, state and national organizations’ March 2012 comment letter on the FPEIS.

In addition, the Bureau and Ecology received more than 1,500 comments on the DPEIS from citizens around the country objecting to the Yakima integrated plan. See:

http://www.washington.sierraclub.org/uppercol/ucr/yakima/media/Entries/2012/8/9_Guest_column_Yakima_plan_flawed_from_the_start.html

Since the mid-1970s, millions of Washington taxpayer dollars spent on proposed new dams studies. The Department of Ecology, in particular, is moving from an agency charged with preventing land, air and water pollution to spending millions on dam studies such as the Black Rock project east of Yakima, <http://columbia-institute.org/blackrock/backrock/Home.html>

the Crab Creek dam, west of Othello, <http://www.waterplanet.ws/crabcreek/ccrhome/Home.html> and the Hawk Creek dam, northwest of Davenport. http://columbia-institute.org/hawkcreek/images/locator_map.html

Ecology is now asking the Legislature to spend more Capital Budget funds on plans for two specific dam proposals, a new Bumping Lake dam within the Okanogan-Wenatchee National Forest, and a Wymer Dam between Ellensburg and Yakima. The Green Scissors Campaign, a national coalition that includes the National Taxpayer Union, identified both the proposed Bumping and Wymer dams in its 2012 report as wasteful government projects that should not be funded in the Federal Budget. See: <http://greenscissors.com/wp-content/uploads/2012/06/GS2012-v7E.pdf>

Before handing over more taxpayer dollars to the Department of Ecology to waste on dam studies, the Committee should audit Ecology and ask some hard questions:

- Q. How much has Ecology spent on new dam studies in the Columbia River Basin since 2006?
- Q. Does Ecology intend to spend any of the Columbia River Basin water supply development account on pump-storage/wind power related studies to provide water from the Columbia River to the Yakima River?
- Q. What is Ecology’s policy regarding interbasin transfer of water from the Columbia River to the Yakima River?

We have provided more detailed comments below on specific sections of SSB 5367. In summary, the request bill from Ecology should not be passed in its current form. Thank you.

ATTACHMENT

The following are detailed comments on specific sections of SSB 5367.

7 **Sec. 1.** RCW 90.38.005 and 1989 c 429 s 1 are each amended to read
8 as follows:

9 (1) The legislature finds that:

10 (a) Under present physical conditions in the Yakima river basin
11 there is an insufficient supply of ground and surface water to satisfy
12 the present needs of the basin, and that the general health, welfare,
13 and safety of the people of the Yakima river basin depend upon the
14 conservation, management, development, and optimum use of all the
15 basin's water resources;

***Sec. 1(1)(a) should be amended as follows.**

(1) The legislature finds that:

(a) Under present physical conditions in the Yakima river basin
surface water has been over-appropriated, while water conservation and water banking opportunities remain to be implemented. ~~there is an insufficient supply of ground and surface water to satisfy the present needs of the basin, and that the general health, welfare, and safety of the people of the Yakima river basin depend upon the conservation, management, development, and optimum use of all the basin's water resources;~~

Comment: The Legislature should recognize that the Yakima river basin are overallocated and that there are significant water conservation and water banking opportunities.

16 (b) ((Pursuant to P.L. 96-162,)) The future competition for water
17 among municipal, domestic, industrial, agricultural, and instream water
18 interests in the Yakima river basin will be intensified by continued
19 population growth, and by changes in climate and precipitation
1 anticipated to reduce the basin's snow pack and thereby reduce the
2 total water supply available to existing water users, instream flows,
3 and carryover storage;

*** Sec. 1(1)(b) should be amended as follows.**

(b) The future competition for water among municipal, domestic, industrial, agricultural, and instream water interests in the Yakima river basin may ~~will~~ be intensified by continued population growth, and by changes in climate and precipitation anticipated to reduce the basin's snow pack and thereby reduce the total water supply available to existing water users, instream flows, and carryover storage;

Comment: Climate change predictions for the Pacific Northwest vary in scope. Both the new Bumping Lake dam and Wymer dam can be considered insurance dams. In 2012, there was an above average Cascade snowpack and there would have been no need to supplement irrigation demands from these dams had they been built.

4 (c) To address the challenges described in this subsection,
5 congress has enacted several bills to promote Yakima river basin water
6 enhancement, each of which was urged for enactment by this state, the
7 United States ((is now conducting)) has completed a study of ways to
8 provide needed waters through improvements of the federal water project
9 presently existing in the Yakima river basin, and federal, tribal,
10 state, and local cooperators have developed an integrated water
11 resource management plan for improving water supply, habitat, and

12 stream flow conditions in the Yakima river basin;

*** Sec. 1(1)(c) should be deleted.**

4 (c) ~~To address the challenges described in this subsection,~~
5 ~~congress has enacted several bills to promote Yakima river basin water~~
6 ~~enhancement, each of which was urged for enactment by this state, the~~
7 ~~United States ((is now conducting)) has completed a study of ways to~~
8 ~~provide needed waters through improvements of the federal water project~~
9 ~~presently existing in the Yakima river basin, and federal, tribal,~~
10 ~~state, and local cooperators have developed an integrated water~~
11 ~~resource management plan for improving water supply, habitat, and~~
12 ~~stream flow conditions in the Yakima river basin;~~

Comment: The United States has not completed the study on the Yakima Basin. Significant site specific environmental review is required and many elements of the Yakima Plan remain conceptual.

20 (((c))) (e) The interests of the state will be served by developing
21 programs, in cooperation with the United States and the various water
22 users in the basin, that increase the overall ability to manage basin
23 waters in order to better satisfy both present and future needs for
24 water in the Yakima river basin; and

*** Sec. 1(1)(e) should be amended as follows:**

(((c))) (e) The interests of the state will be served by developing programs, ~~in cooperation with the United States and~~
~~the various water users in the basin,~~ that promote water conservation and water banking to increase the overall
ability to manage basin waters in order to better reduce ~~satisfy~~ both present and future demands for ~~needs for~~
water in the Yakima river basin; and

Comment: There is a need to reduce demands, not “needs” in the Yakima river basin. Instream flows also need to be increased and are not normally considered a water “user.”

32 (2) It is the purpose of this chapter, consistent with these
33 findings, to:
34 (a) Improve the ability of the state to work with the United States
35 and various water users of the Yakima river basin in a program designed
36 to satisfy both existing rights, and other presently unmet as well as
37 future needs of the basin; and

*** Section 1(2)(a) should be amended as follows:**

(2) It is the purpose of this chapter, consistent with these findings, to:
(a) Improve the ability of the state to work with the United States and various water interests ~~users~~ of the Yakima river basin in a program designed to more equitably balance water demands in the basin; and ~~—satisfy both existing rights, and other presently unmet as well as future needs of the basin; and~~

Comment: Not all water interests are water “users.” There is a difference between water “needs” and water “demands.” A demand for water is not the same as a need for water.

1 (b) Establish legislative intent to promote timely and effective
2 implementation of the integrated plan in the Yakima river basin, and to
3 promote the aggressive pursuit of water supply solutions that provide
4 concurrent benefits to both instream and out-of-stream uses in the
5 Yakima river basin as rapidly as possible.

*** Section 1(2)(b) should be amended as follows:**

(b) Establish legislative intent to promote timely and effective implementation of cost-effect measures ~~the integrated plan~~ in the Yakima river basin, and to promote the aggressive pursuit of cost-effective water supply solutions that provide concurrent benefits to both instream and out-of-stream uses in the Yakima river basin as rapidly as possible.

Comment: Measures that are not cost-effect should not be implemented.

8 **Sec. 2.** RCW 90.38.010 and 1989 c 429 s 2 are each amended to read
9 as follows:

10 ((Unless the context clearly requires otherwise,)) The definitions
11 in this section apply throughout this chapter unless the context
12 clearly requires otherwise.

14 (2) "Integrated plan" means the Yakima river basin integrated water
15 resource management plan developed through a consensus-based approach
16 by a diverse work group of representatives of the Yakama Nation,
17 federal, state, county, and city governments, environmental
18 organizations, and irrigation districts and for which the final
19 programmatic environmental impact statement was made available for
20 review through public notice published in the federal register (77 FR
21 12076 (2012)).

*** Section 2(2) should be amended as follows:**

(2) "Integrated plan" means the Yakima river basin integrated water resource management plan developed ~~through a consensus-based approach~~ by a limited diverse work group of representatives of the Yakama Nation, federal, state, county, and city governments, one environmental organizations, and irrigation districts and for which the final programmatic environmental impact statement was made available for review through public notice published in the federal register (77 FR 21 12076 (2012)).

Comment: The work group was extremely limited in scope, did not comply with the Federal Advisory Committee Act, and had only a single environmental organization representative, not organizations.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.38 RCW
12 to read as follows:

13 The department is authorized to implement the integrated water
14 resource management plan in the Yakima river basin, through a
15 coordinated effort of affected federal, state, and local agencies and
16 resources, to develop water supply solutions that provide concurrent
17 benefits to both instream and out-of-stream uses, and to address a
18 variety of water resource and ecosystem problems affecting fish
19 passage, habitat functions, and agricultural, municipal, and domestic
20 water supply in the Yakima river basin, consistent with the integrated
21 plan.

*** Section 3 should be amended as follows:**

NEW SECTION. **Sec. 3.** A new section is added to chapter 90.38 RCW to read as follows:

The department is authorized to implement the integrated water resource management plan in the Yakima river basin, through a coordinated effort of affected federal, state, and local agencies and resources, to develop cost-effective water supply solutions that provide concurrent benefits to both instream and out-of-stream uses, and to address a variety of water resource and ecosystem problems affecting fish passage, habitat functions, and agricultural, municipal, and domestic water supply in the Yakima river basin, consistent with the integrated plan.

Comment: In the past the Department of Ecology and the Bureau have proposed and studied projects that are not cost effective. In 2008, the Bureau evaluated two versions of a new Wymer dam project between Ellensburg and Yakima and a proposed Black Rock dam project east of Yakima:

- Black Rock Alternative – The benefit-cost ratio is 0.13. [Black Rock Dam involves a diversion and partial exchange of Columbia River water for Yakima Project water currently diverted by the Roza and Sunnyside Divisions (Roza and Sunnyside) of the Yakima Project for irrigation. Roza and Sunnyside have been identified as potential willing water. Columbia River water pumped from Priest Rapids Lake would be stored in a Black Rock reservoir to be constructed in the Black Rock Valley.]

- Wymer Dam and Reservoir Alternative – The benefit-cost ratio is 0.31.

- Wymer Dam Plus Yakima River Pump Exchange Alternative – The benefit-cost ratio is 0.07.” BuRec Final Report/EIS, pages 2-43, 2-127.

http://www.washington.sierraclub.org/uppercol/ucr/yakima/water_overview.html

22 (1) Authorized department actions include, but are not limited to:

...

25 (b) Assessing, planning, and developing projects under the Yakima
26 river basin integrated water resource management plan, or for any other
27 action designed to provide access to new water supplies within the
28 Yakima river basin, consistent with the integrated plan and including
29 but not limited to: Enhanced water conservation and efficiency
30 measures, water reallocation markets, in-basin surface and groundwater
31 storage facilities, fish passage at existing in-basin reservoirs,
32 structural and operational modifications to existing facilities,
33 habitat protection and restoration, and general watershed enhancements
34 as necessary to implement the objectives of this chapter and the
35 integrated plan; and

*** Section 3(1)(b) should be amended as follows:**

(b) Assessing, planning, and developing projects under the Yakima river basin integrated water resource management plan, or for any other action designed to provide access to new water supplies within the Yakima river basin, consistent with the integrated plan and including but not limited to: Enhanced water conservation and efficiency measures, water reallocation markets, in-basin ~~surface and~~ groundwater storage facilities, fish passage at existing in-basin reservoirs, structural and operational modifications to existing facilities, habitat protection and restoration, and general watershed enhancements as necessary to implement the objectives of this chapter and the integrated plan; and

Comment: New storage dams remain extremely controversial elements of the Yakima Plan. The proposed Bumping Lake dam would flood National Forest roadless area, ancient forests, and critical areas for endangered Northern Spotted Owls and bull trout. The proposed Wymer project would flood private land and critical areas for sage grouse. Because of these adverse environmental impacts, as noted above, the BuRec and Ecology received more than 1,500 comments on the DPEIS from citizens around the country objecting to the Yakima integrated plan primarily in opposition to new dams. See:

http://www.washington.sierraclub.org/uppercol/ucr/yakima/media/Entries/2012/8/9_Guest_column_Yakima_plan_flawed_from_the_start.html

In addition, the Yakima Plan adopted a controversial proposal to require to new National Recreation Areas within the Okanogan-Wenatchee National Forest that dedicated 41,000 acres of public land to off-road vehicle use by motorcycles, 4x4s, ATVs, and snowmobiles. The Legislature should insist that habitat protection be a benchmark of any and use changes in the Yakima River Basin.

4 (2) Consistent with the integrated plan, the goals and objectives
5 of department actions authorized under this chapter include, but are
6 not limited to:

13 (b) Improved water availability and reliability, and improved
14 efficiency of water delivery and use, to enhance basin water supplies
15 for agricultural irrigation, municipal, commercial, industrial,
16 domestic, and environmental water uses;

*** Section 3(2)(b) should be amended as follows:**

(2) Consistent with the integrated plan, the goals and objectives of department actions authorized under this chapter include, but are not limited to:

(b) Improved water availability and reliability, and improved efficiency of water delivery and use, to enhance basin water supplies for agricultural irrigation, municipal, commercial, industrial, domestic, and environmental water uses, including instream flows;

Comment: Instream flows should be specified.

17 (c) Establishment of more efficient water markets and more
18 effective operational and structural changes to manage variability of
19 water supplies and to prepare for the uncertainties of climate change,
20 including but not limited to the facilitation of water banking, water
21 right transfers, dry year options, the voluntary sale and lease of
22 land, water, or water rights from any entity or individual willing to
23 limit or forego water use on a temporary or permanent basis, and any
24 other innovative water allocation tools used to maximize the utility of
25 existing Yakima river basin water supplies, as long as the
26 establishment and use of these tools is consistent with the integrated
27 plan.

*** Section 3(2)(c) should be amended as follows:**

Ecology shall set a goal of 50,000 acre-feet of water transfers during any drought year declared by the Legislature through 2016 and a goal of 100,000 acre-feet of water transfers during drought year declared by the Legislature after 2017.

Comment: While this section outlines elements of a water bank or water transfer system. There is no assurance that any water transfers would ever be accomplished. The Legislature should add benchmarks for achieving the above water transfers goals.

*** Section 3(3) should be deleted.**

~~28 (3) Water supplies secured through the development of new storage
29 facilities or expansion of existing storage facilities made possible~~

30 with funding from the Yakima integrated plan implementation account,
31 the Yakima integrated plan implementation taxable bond account, and the
32 Yakima integrated plan implementation revenue recovery account must be
33 allocated for out-of-stream uses and to augment instream flows
34 consistent with the Yakima river basin integrated water resource
35 management plan. Water to be made available to benefit out-of-stream
36 uses under this subsection, but not yet appropriated, must be
37 temporarily available to augment instream flows to the extent that it
1 does not impair existing water rights and is consistent with the
2 integrated plan.

Comment: As noted above, new dams remain extremely controversial, especially when water conservation and water banking has yet to be fully funded or implemented. The basin's junior irrigation districts now claim that they can get by with 70 percent of their allotment in drought years. This same reduction should apply to senior irrigation districts as well, which would help reduce the "demand" for new costly storage dams.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.38 RCW
4 to read as follows:

5 (1) The Yakima integrated plan implementation account is created in
6 the state treasury. All receipts from direct appropriations from the
7 legislature, moneys directed to the account pursuant to this chapter,
8 or moneys directed to the account from any other sources must be
9 deposited in the account. The account is intended to fund projects
10 using tax exempt bonds. Moneys in the account may be spent only after
11 appropriation. Expenditures from the account may be used only as
12 provided in this section. Interest earned by deposits in the account
13 will be retained in the account.

14 (2) Expenditures from the account created in this section may be
15 used to assess, plan, and develop projects under the Yakima river basin
16 integrated water resource management plan or for any other actions
17 designed to provide access to new water supplies within the Yakima
18 river basin for both instream and out-of-stream uses, consistent with
19 the integrated plan and the authorities, goals, and objectives set
20 forth in section 3 of this act.

*** Section 4(2) should be amended as follows:**

NEW SECTION. **Sec. 4.** A new section is added to chapter 90.38 RCW
to read as follows:

(1) The Yakima integrated plan implementation account is created in the state treasury. All receipts from direct appropriations from the legislature, moneys directed to the account pursuant to this chapter, or moneys directed to the account from any other sources must be deposited in the account. The account is intended to fund projects using tax exempt bonds. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as provided in this section. Interest earned by deposits in the account will be retained in the account.

(2) Expenditures from the account created in this section may be used to assess, plan, and develop projects under the Yakima river basin integrated water resource management plan or for any other actions designed to provide access to new water supplies within the Yakima river basin for both instream and out-of-stream uses, consistent with the integrated plan and the authorities, goals, and objectives set forth in section 3 of this act. Funds may not be expended from the account for the planning of any new storage facility for which the Bureau of Reclamation has determined does not have a Benefit/Cost ratio over 1:1.

Comment: The Legislature should not authorize funding for future planning for dams, such as Wymer, where the Bureau of Reclamation has already determined that the B/C ratio is only 0.31.

21 (3)(a) Funds may not be expended from the account for the
22 construction of a new storage facility until the department evaluates
23 the following:
24 (i) Water uses to be served by the facility;
25 (ii) The quantity of water necessary to meet the needs of those
26 uses;
27 (iii) The benefits and costs to the state of serving those uses,
28 including short-term and long-term economic, cultural, and
29 environmental effects; and
30 (iv) Alternative means of supplying water to meet those uses,
31 including the costs of those alternatives and an analysis of the extent
32 to which the long-term water supply needs are able to be met using
33 those alternatives.

...
1 (c) Before finalizing its evaluation under the provisions of this
2 subsection, the department shall make the preliminary evaluation
3 available to the public. Public comment may be made to the department
4 within thirty days of the date the preliminary evaluation is made
5 public.

*** Section 4(3)(a) and (c) should be amended as follows:**

(3)(a) Funds may not be expended from the account for the construction of a new storage facility until the department evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet the needs of those uses;
- (iii) The benefits and costs to the state of serving those uses, including short-term and long-term economic, cultural, and environmental effects; and
- (iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which the long-term water supply needs are able to be met using those alternatives.

(v) Funds may not be expended from the account for the planning of any new storage facility for which the Bureau of Reclamation has determined does not have a Benefit/Cost ratio over 1:1.

...

(c) Before finalizing its evaluation under the provisions of this subsection, the department shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public. The department shall respond in writing to all substantive comments.

Comment: While we are generally in support of this section, the Legislature should not authorize funding for future planning for dams, such as Wymer, where the Bureau of Reclamation has already determined that the B/C ratio is only 0.31. While we support public comment, the Department of Ecology must be required to respond to substantive comments.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.38 RCW
8 to read as follows:
9 (1) By December 1, 2015, and by December 1st of every odd-numbered

10 year thereafter, and in compliance with RCW 43.01.036, the department,
11 in consultation with the United States bureau of reclamation, the
12 Yakama Nation, Yakima river basin local governments, and key basin
13 stakeholders, shall provide a Yakima river basin integrated water
14 resource management plan implementation status report to the
15 legislature and to the governor that includes: A description of
16 measures that have been funded and implemented in the Yakima river
17 basin and their effectiveness in meeting the objectives of this act, a
18 project funding list that represents the state's percentage cost share
19 to implement the integrated plan measures for the current biennium and
20 cost estimates for subsequent biennia, a description of progress toward
21 concurrent realization of the integrated plan's fish passage, watershed
22 enhancement, and water supply goals, and an annual summary of all
23 associated costs to develop and implement projects within the framework
24 of the integrated water resource management plan for the Yakima river
25 basin.
26 (2) This section expires December 31, 2045.

*** Section 9(1) should be amended as follows:**

NEW SECTION. **Sec. 9.** A new section is added to chapter 90.38 RCW
to read as follows:

(1) By December 1, 2015, and by December 1st of every odd-numbered year thereafter, and in compliance with RCW 43.01.036, the department, in consultation with the United States bureau of reclamation, the Yakama Nation, Yakima river basin local governments, and the public ~~key basin stakeholders~~, shall provide a Yakima river basin integrated water resource management plan implementation status report to the legislature and to the governor that includes: A description of measures that have been funded and implemented in the Yakima river basin and their effectiveness in meeting the objectives of this act, a project funding list that represents the state's percentage cost share to implement the integrated plan measures for the current biennium and cost estimates for subsequent biennia, a description of progress toward concurrent realization of the integrated plan's fish passage, watershed enhancement, and water supply goals, and an annual summary of all associated costs to develop and implement projects within the framework of the integrated water resource management plan for the Yakima river basin, and the benefit/cost analysis for all structural water storage projects proposed. The Department will provide public notice and an opportunity to comment and shall respond to all substantive comments on such status reports.

(2) This section expires December 31, 2045.

Comment: Public comment does little good if Ecology is not required to respond to substantive comments.