Dear Mr. Sandison,

The Yakama Nation submits these staff-level scoping comments on the PEIS for Washington State’s proposed Columbia River Water Management Plan (CRWMP). These comments do not express the policy positions of the Yakama Tribal Council.

The Yakama Nation is a holder of the most senior water rights in the Columbia River Basin. These rights have been exercised since time immemorial, were reserved by Treaty long before Washington State existed, and are the supreme law of the land. These rights have a time-immemorial priority date and have been successfully defended against many failed attempts to destroy them, including, sadly, ill-advised repeated attacks by the State of Washington.

The Yakama Nation’s water rights are not subject to the jurisdiction of the State of Washington, but are protected by federal law and Treaty. These rights are part of the greater body of federal obligations to which the State of Washington’s rights are junior. As such, the State of Washington has no authority to alter or undermine those rights. We submit these comments as the advice of a neighboring sovereign to help Washington manage its share of the Columbia River resources that it shares with the Yakama Nation.

In submitting these comments, the Yakama Nation does not waive any rights and does not submit any of its rights to regulation, quantification, or control by the State of Washington. The Yakama Nation reserves all rights, remedies and venues available to it for the resolution of disputes arising from the CRWMP.

The recent state legislation was enacted by excluding the senior right holders and, as such appears to be not so much a management plan as a loosely connected patchwork of special interest loopholes. From the scoping notice, it appears that Ecology has compounded the inadequacies of the legislation by adding in selected enticements for out-of-stream users while omitting measures to protect and enhance Columbia River Salmon that are within the scope of Ecology’s legislative authority. The result is not really a management plan. A management plan would begin with a legitimate assessment of needs, which was not done. A true management plan would not require dedicating two units of water to agriculture for each unit dedicated to meet the needs of the instream...
economy. CRWMP appears to be not a management plan, but an allocation plan for certain state special interests conceived of in a data-free process and in isolation from the legitimate needs of other uses and users in the Columbia River Basin.

As is all too often the case, the DS inappropriately draws a dichotomy between the needs of fish and “the economic and community development needs of people”. To Indian people, who developed the first communities in the northwest around an economy dependent on salmon, this dichotomy is nonsensical and offensive. Just as the State must refrain from trading off the Tribal economies for non-Indian economic development, Ecology and its consultants should refrain from the offending and factually incorrect language separating “water for fish” from “water for people”. Salmon are not some nicety, but a vital cultural, dietary, and, yes, economic need and right of Indian People. There is also a non-Indian instream economy based on the Columbia River fishery, an economy that is in dire need of support, for which the State of Washington owns a share of the responsibility, and which is neglected in the evolving CRWMP policy in favor of expanding subsidized agriculture.

The CRWMP PEIS is a Programmatic EIS in search of a program. Due to the patchwork nature of CRWMP and the DS, it is impossible to scope. An EIS is not the appropriate tool for developing a coherent policy. SEPA is intended to provide full disclosure of impacts related to policies and actions that have already been developed and described.

The PEIS should consider the potential benefits of operating FDR Lake for the benefit of instream resources. The scope should be changed to include this. In spite of its current emphasis on using storage to solve problems, the State has expressed an unreasoning fear of using the largest storage feature on the river to solve downstream flow problems. Although the reservoir is routinely drawn down to protect ill-advised floodplain development downstream, the State has expressed opposition to using much smaller drawdowns to benefit instream resources. This bias greatly hampers the potential effectiveness of CRWMP.

Ecology and its consultants should also refrain from the sort of economic “analyses” designed to deprecate the value of salmon. If similar analyses were legitimately applied to agriculture, including deducting subsidies and foregone opportunities, subsidized low-value agriculture would prove “infeasible” across the region. The scope of the EIS must be defined to properly consider economic impacts on fish and the fish based economies.

Washington State should embrace the full range of conclusions of the National Academy of Sciences (NAS) report rather than narrowly select only those that support the desires of would-be new out-of-stream water users. A fair reading of that analysis suggests that Ecology should not be permitting additional out of stream use without a full understanding of the unmet needs of the full range of existing out of stream and instream uses. The PEIS needs to explain how the problems elucidated in the NAS report can be solved.

Ecology should consider the independent economic analysis performed by Texas A&M.

The CRWMP PEIS appears to be an example of piecemealing by the Lead Agency. Ecology is responsible to protect against piecemealing. Ecology should not limit its
review but should consider the impacts on the full range of impacts to the natural habitat. How did this list get assembled? Where was the public process? Which parts of the non-project EIS are projects?

The scoping is also deficient in that it attempts to include action items or assumes that the action items will occur. This is not consistent with SEPA. The scoping, and any EIS, must consider a full range of items including no action.

Issuance of state water rights for new out of stream uses under CRWMP should not be described in the EIS as “new water” unless the water is being made available by retired consumptive use or water imported from out of basin. It should be described as a commitment of natural resources, and the impacts should be described accordingly.

Those portions of CRWMP involving federal actions will require NEPA analysis and ESA consultation and compliance. The Nation reserves its right to make further comments in the future on Ecology’s compliance with NEPA and other federal laws and treaties.

It is impossible to scope anything as vague as a “Voluntary Regional Agreement”. It is not possible to comment on this and we reserve the right to take action on VRA’s as the details are made public.

Ecology has an obligation to fully disclose all impacts including cumulative impacts of CRWMP and related water regulation. This may prove difficult given the disjointed nature of the proposed program.

The EIS needs to make it clear what CRWMP does not do. For example, what is the fate of groundwater applications more than a mile from the Columbia River. How will Ecology address applications that are not part of a VRA? How does participation in a VRA affect the requirements for reaching a decision on a water right application? Failure to consider these is not in compliance with SEPA and other state and federal laws.

In conclusion, the Yakama Nation asks that the scoping be rewritten and readvertised as outlined above. The scope is too narrow in that it does not consider the effects on the natural environment.

Sincerely,
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