

## Roza Irrigation District

This is a continuation of the other comment from Roza Irrigation district.

## **Background**

Roza takes its aquatic herbicide treatment program very seriously. Our staff are trained, experienced and properly licensed, they follow the label rates when performing treatments. They keep accurate records which are timely submitted along with sampling and have been doing so for decades. We have strong relationships and good lines of communications with the staff at the State Department of Ecology to handle issues which arise during the course of the irrigation season.

We take the safety of our employees seriously as well as that of our water users who come into contact with treated water. We have far exceeded hold times for treatment return flows to the Yakima River for many years. We issue the required notices to the public, which include signage posted in the field. Roza maintains a list of growers/water users who have requested notification of treatments so that they can turn their water off in order to preserve their organic certifications.

The Roza Irrigation District also has a 40+ year track record of supporting fact driven, science-based, salmon/steelhead recovery measures to enhance sustainable habitat through robust water conservation, fish passage, canal screening, water quality improvements, predation reduction and streamflow supplementation. We have a strong working relationship with the Yakama Nation's tribal fisheries staff, and we have had a biologist on staff since the 1980s. Our biologist has been working on these issues for several decades. We have successfully obtained federal legislation to address these very issues in 1979, 1994 and 2019. Roza has spent tens of millions of dollars in grower funds to implement its water conservation and water quality programs over five decades.

This experience gives us serious concerns about the draft ISAWC general permit.

### **Special Condition 1**

The inclusion of emergent vegetation on the banks of the conveyance system is outside of the scope of the permit and should be deleted.

See also related comments in Section 6.

Does "dry canal" mean merely that diversions have ceased? Roza will shut down during drought conditions and may do treatments during the time that the canal is shut down. If there is residual water following canal draining will the "dry canal" provisions apply or does the clock reset? If there is a rain event during a shutdown do the dry canal provisions apply? How dry is dry in the context of this provision?

We have concerns about how the provisions in this section will be implemented.

### **Special Condition 2**

We have concerns about how the provisions in this section will be implemented.

### **Special Condition 3**

Inclusion of the human health-based criteria in the National Toxics rule is outside the scope of this permit and should be deleted. Roza is a strong proponent of food safety, worker safety and the safety of the natural environment. Including these requirements as presented is arbitrary.

WDFW has informed Roza that “WDFW does not have expertise in toxicity of various conditions and we do not regulate water quality”.

We have concerns about how this provisions in this section will be implemented.

#### **Special Condition 4**

Additional specificity is needed to describe what constitutes “low flow” or “high flow” conditions and how phased treatments could/would work.

Section 6.D.-use of acrolein, what are the expectations for “reasonable efforts to reduce the use of acrolein”? What is deemed by Ecology to be “reasonable” or “reduce” and which species are sensitive in this context and why? Where does this exist in state or federal law?

As written, acrolein, endothall and fluoridone application plans must be submitted, the permit does not specify that they must be approved.

WDWF has informed Roza that “WDWF does not have expertise in toxicity of various conditions and we do not regulate water quality”. D(2)(a) does not specify if ESA listed or state listed species receive higher levels of protection and does not address non-listed salmon species (e.g., Spring Chinook) or extirpated and introduced salmon species (Coho, Sockeye) or native predators (pikeminnow). While Roza has a great deal of political capital and grower funds invested in seeing these species recovered to harvestable, sustainable levels, the permit does not acknowledge or recognize these differences.

What are the appeal criteria for (2) if a request is denied?

We have concerns about how these provisions in this section will be implemented.

#### **Special Condition 5**

Most of the canal systems have been designed with a network of drains and wasteways for return flows which are nearly as extensive as the canal network. Wasteways is the correct term rather than spillways.

Please refer to Exhibit #6 for more detailed comments.

We have concerns about how the provisions in this section will be implemented.

#### **Special Condition 6**

- 6 (C)- Roza uses its website, emails, its annual water user letter, notices in the field and occasionally mailed notice (which is also handed out in the field) in addition to radio ads about canal safety and in person public interactions at community events. Roza also runs hundreds of radio ads about canal safety on Spanish language radio through the irrigation season. Other districts in our TV market run public service announcements on television and radio about canal safety.

While outreach programs vary by district, the permit should not require a separate public education process for districts who already have one. We have a deep interest in ensuring that the public, from

local water users to legislators to consumers of products grown with the water we deliver understand the role irrigation water plays in the local community and the state economy and quality of life. These efforts occur at multiple levels every single day and we support them. Including a requirement for doing so in this permit would add a burdensome and unnecessary planning layer.

Water is not purchased as listed in (g). This is a critical legal distinction which must be corrected. Failure to do increases the districts risk in an unacceptable manner.

Publication of notice in a newspaper of general circulation is not what it used to be. Our district is 95 miles long and there is no one newspaper that covers the entire area and published notices reach almost no people in the modern era. Engaging and notifying the public requires more effective and modern approaches.

- 6(D)(1)(c) would this apply if the treatment were less (shorter in duration, fewer sites or for a shorter period) than described in the issued notice? As written it says “differs”, which if read strictly does not provide for a lessened treatment.
- 6(D)(2)(a)-what is meant by “public” and “highly unlikely” and how is the permit expected to be implemented? Does “treated water” mean being in the water being treated in the canal? As currently crafted D.2.a requires posting “at locations where the public is likely to encounter treated water.” This begs the question what does Ecology mean by “likely to encounter” given the real-world examples above?
- 6(D)(2)(b)-Notice should be posted just upstream of the treatment site. The reason for this is that it is theoretically possible that a landowner could be walking or driving down the canal on or near the O&M road, on property that they own which is encumbered with a canal right of way or easement, and not be trespassing until they enter a treatment site. The barricade style signs that we use now at treatment sites should continue to be used for this reason. 99.99%+ of the time a person on the canal during a treatment will be trespassing. Some of the trespassers do not access the canal via a public road crossing and don’t pass by a warning sign. The barricade at the treatment site handles this type of notice, particularly for a chemical like acrolein.

Roza has what may be a one-of-a-kind physical situation at the milepost 11 treatment site on the Main Canal. The Roza Main Canal comes out of a tunnel and splits into a Y with hydro power water going one way (left in the photo) and irrigation water going another direction and there is nowhere to post the signage and no way to access the treatment location (See exhibit #1). Any other treatment sites should have an upstream sign.

- 6(D)(2)(c)- Section 6.D.2 states that “permittees are not required to post signs in private areas with limited site accessibility where the public is highly unlikely to enter treated areas”. The water in the canal is the area that is being treated and decades of empirical evidence shows that it is highly unlikely for the public to go into the water being treated. It is possible, as seen with the four types of people who tend to wind up in the water, but it is not highly likely or even likely.

One question which arises from this section is whether coterminous (or overlapping) county roads and a canal right of way qualify as a “private area” as shown in the attached picture? See Exhibits #2 & #3.

- 6(D)(2)(d)-Irrigation districts only posts signs on property that they control. “Damage” should be changed to “impact” or this provision should be eliminated.
- 6(D)(2)(e)- Roza posts public notification signs at treatment sites in English and Spanish. The “commonly spoken” catchall provision is of no practical value because it provides no guidance as to how “commonly” is construed in this context. “Write” should probably be changed to “include”.

The District’s general phone number and Ecology’s number are included on the barricade signs at treatment sites already. The people change often enough that their names should not be included on the signage.

There is no requirement in the HEAL act prescribing pictograms. Pictograms do not address visually impaired people.

- 6(D)(2)(f) There are about 50 county road crossings of the Roza Main Canal from Terrace Heights to Benton City. Nearly all are signed with concrete monuments, which are among the most robust canal signs anywhere in the West, and even these signs routinely get hit and broken or knocked over by our equipment and by farmer equipment and the occasional drunk driver or person fleeing the police.

Signs are costly and are a relatively low priority compared to other maintenance work, especially during the water season. Roza went many years with no signs being fixed or replaced due to a lack of staff. We have tried diligently in recent years to make improvements, but even with 54 employees we don’t always get to them in a timely manner. Adding more signs will draw limited resources away from taking care of the signs we already have and struggle to maintain. The concept of requiring hundreds of new signs going up and down seasonally is not feasible due to time constraints.

Ecology needs to have realistic expectations for how new signs can be installed and maintained in the long term and what they can accomplish.

- 6(D)(3) Should specify the title of the person from whom written approval is required.

The notice component of permit cannot be implemented in its current form because it does not spell out where the notice must be posted in the field (e.g., how many signs, how close to the treatment sites and how far downstream). The generalizations are just too broad and do not match the conditions in the field.

If the permit said something like post notice within 50 feet downstream or 250 feet downstream and/or at the public road crossings for a mile downstream would be a standard to manage to. But the permit does not specify how far downstream notice must be posted. Be aware that the farther downstream notice is posted from a treatment site (e.g., miles) the more informal access points along a canal there are between the treatment site and the last sign (see Exhibit #5). At treatment locations, the safety

issue is for the employees making the treatments, rather than for the public encountering the treated water downstream in a canal or after it has been delivered.

If Ecology's is to keep people safe by keeping them away from places they are "likely to encounter treated water" as stated in Section 6.D.2.a, Ecology needs to recognize that Roza already places signs, and installs barricades in places to keep people away from the canals:

1. when the water is being treated with aquatic herbicides;
2. when the water is not being treated with aquatic herbicides; and
3. when there is no water in the canals;

The treatment sites are not open for the public to access. The canal water downstream of a treatment site is also not open for the public to access. The primary danger to people just downstream of a treatment site in a canal is from drowning not from exposure to herbicides in the water. The drowning danger remains when there are no herbicides in the water. There are dangers which remain in and around canals even when there is no irrigation water in the canal (e.g. siphons, check gates, heavy equipment, heavy winter runoff, etc.).

There is no pre-harvest interval (PHI) listed on the labels for the aquatic herbicides that we use.

Treated water can go directly onto food and be consumed safely right after the canal treatment occurs, it is not clear that Ecology staff understand this.

We have locations on the Main Canal where we treat the water and that treated water is delivered several hundred yards downstream within 20 minutes of being treated. That treated water can go directly and safely onto food and which can be safely eaten minutes after the chemical goes in the water under the FIFRA label. No matter how section 6.D.2.a. is worded it will not keep people away from treated water.

The five-year compliance window does not offer any safe harbor because 1 day after the five year window expires, perfect compliance will be expected. A defective permit provision is still defective whether it is in place the day the permit issued or five years and one day later. We need to cure the defect through more practical wording of the provisions in the permit rather than trying to extend the life of defective provisions.

- Exhibit #2 is a picture of the Roza Main Canal along a rural county road.
- Exhibits #3 is a picture of a home along a lateral canal as seen from a county road. Water (including water with aquatic herbicides that we have applied per the FIFRA label) gets to this lateral canal via the Main Canal and a pump system about 1.5 miles upstream. You don't have to drive past a signed location to this home or the canal as it runs along the county road.
- Exhibit #4 is a photo of a house along the Roza Main Canal. Access to the house is over a private driveway bridge. If you were to drive to this house you would not cross the canal on a public road and would not pass a notification sign. You can see that the home has a lawn which runs to the top of the embankment. If a person were to chase a ball out of the yard into the canal during an aquatic herbicide treatment upstream they would not have encountered a sign. Roza has hundreds of houses like this on both sides of a canal. The way the permit is currently drafted, would an irrigation district have to post a sign(s) of an upstream treatment for the people at downstream locations like these?

- Some irrigation districts have thousands of similarly situated houses. Some districts also have parks, schools, golf courses and cemeteries with treated water in open canals flowing by or near them for much of the irrigation season.

Often, landowners on the high side of a canal are not irrigation water users and they may not receive the districts mailed information or information handed out by ditchriders. We do not hand those facts sheets out annually, so any one who bought land since we last did would not be notified in that manner if they are not a water user.

The rub here is:

- Anyone other than an irrigation district employee in the water in a canal or in an irrigation district pond or reservoir is trespassing;
- Anyone fishing in a canal or irrigation district pond is trespassing;
- Anyone walking, riding a horse or a bicycle or driving a vehicle on the canal O&M road during a chemical treatment is trespassing (w/ the exception of a landowner on a canal but not at a treatment site).

Roza has not had an employee encounter a recreational swimmer in a Roza canal in many, many years (20+). Our crews drive the length the Main Canal every calendar day of the irrigation season. Most days we have 15 to 20 people on the canals at various times during the work-day and we do not encounter swimmers.

On the other hand, involuntary swimmers fall into four main categories:

1. Intoxicated people (drivers/walkers/cyclists)
2. people fleeing the police
3. toddlers; and
4. people trying to rescue animals

People in these categories account for nearly all of the people who wind up in a canal, and none of them are dissuaded by signage of any kind. If the permit excludes trespassers from the signage requirements that could likely greatly simplify implementation.

One point of comparison that has not been discussed is the reality that water treated with aquatic herbicides is being delivered to farms downstream in the canal system pursuant to the FIFRA label and farmers, their workers and people doing business on or living near the farm and irrigation district employees are exponentially more likely to come into contact with that water through sprinklers, weir boxes, on farm ponds (where people do swim and fish in places), open lateral canals, hoses and residential lawns than in a main canal, which they can do safely if applied consistent with the FIFRA label.

### **Special Condition 7**

We have concerns about how these provisions will be implemented.

### **Special Condition 8**

F(3)(b)- Aquatic herbicides such as acrolein are toxic to fish. Fish that are in the canal are killed on occasion as a result of treatments.

Despite tens of millions of dollars of public investments in three sets fish screens at Roza dam since the 1970s fish screens are not complete fish barriers. Birds and small mammals can move both live and dead fish into the canals on occasion, and people release fish into the canal system on occasion. Fish can over-winter in siphons and in the tunnels. The number of fish in the canals is a small fraction of what it once was in years past.

We have concerns about how these provisions in this section will be implemented and these provisions need to be revised.

### **General/Overall**

The provision for the DMR to be submitted by a duly authorized person is an improvement. The dye tracing provisions are also a significant improvement over the prior permit.

One problem throughout the permit is the absence of clear and objective standards and a reliance on non-specific generalities which cannot be implemented. The administrators of the permit will change over time, and their views and biases will change as well. We are on the 3<sup>rd</sup> permit writer since the prior permit was issued.

A companion issue is the absence of statutory or administrative authority citations for permit requirements. The permit has arbitrary provisions in places which are not supported with citations of prescriptive requirements. The draft permit does not show an awareness or understanding of the legal principals of nexus and proportionality for permit conditions. These are foundational concepts essential to successful permitting for both the permitting agency and the permittee.

The irrigation districts are mindful of the potential for both future 3<sup>rd</sup> party challenges (e.g., farmworker activists or eco-activists) or even Roza landowner challenges to enforce the terms of the permit. The “permit as a shield” concept is only as good as the permit is written and only as good as our ability to implement the permit.

While this permit is for general statewide applicability, local circumstances will vary wide and the permit must account this range of circumstances. The permit must also account for the nature of open channel canals and that circumstances beyond the irrigation districts control can cause calamities like overtopping, and breaches at the most in opportune times and places.

The permit staff also need to engage directly with the chemical manufacturers to more fully understand the science behind the FIFRA labels. We would be happy to arrange those meetings.

The permit staff also need to become familiar with the state Supreme Court’s holdings in *Meyer v. Gen. Elec. Co.*, 46 Wash. 2d 251 252–53, 280 P.2d 257, 258 (1955).

### **Commenting & Revision Process**

There has been no citation as to regulatory authority in statute or administrative code, or any written policy or procedure to limit permit revisions to portions cited in comments. If a comment results in a



revision to section X (used as a generic hypothetical) of the permit which then triggers a corresponding revision to section Y, the entity commenting does not have to comment on both X and Y because we don't know yet how you might revise Y.

Roza requests that the permit be revised to address the issues that we have raised and that a new public comment period occur after those revisions have been prepared so that all interested parties can review them and appeal them if necessary. Roza also asks that the permit writers make field visits to observe more aquatic treatments in the field before the next version of the permit is available for public comment.

**Related Comments from Organizations Incorporated by Reference & applicable to the Draft Permit, SEPA documents, and Fact Sheet**

1. The Roza Irrigation District is a member of the Roza Sunnyside Board of Joint Control (RSBOJC) and hereby incorporates the RSBOJC written comments by reference.
2. The Roza Irrigation District is also a member of the Yakima Basin Joint Board (YBJB) and hereby incorporates the YBJB written comments by reference.
3. The Roza Irrigation District is also a member of the Washington State Water Resources Association (WSWRA) and hereby incorporates the WSWRA written comments by reference.
4. Roza also incorporates by reference the 11/18/21 letter to Danielle Edelman from the RSBOJC and the 9/24/21 letter to Danielle Eddleman from WSWRA. See exhibits #7 & #8.

**Exhibits:**

1. Photo of Roza Main Canal at Milepost 11 bifurcation
2. Photo of the Roza Main Canal alongside a county road
3. Photo of a Roza lateral canal and home alongside a county road
4. Photo of a home alongside the Roza Main Canal
5. Photo of the Roza Main Canal farm access points which have been blocked off
6. Photo of Roza Main Canal gates and signage
7. 11/18/21 letter from RSBOJC
8. 9/24/21 letter from WSWRA









## Roza-Sunnyside Board of Joint Control (RSBOJC)

P.O. Box 810 ■ Sunnyside, WA 98944 ■ (509) 837-5141 Roza Irrigation District  
P.O. Box 239 ■ Sunnyside, WA 98944 ■ (509) 837-6980 Sunnyside Valley Irrigation

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RSBOJC Board Committee Members

November 18<sup>th</sup>, 2021

Danielle Edelman  
General Permit Writer, Water Quality Program  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
(360) 407-7118  
Danielle.Edelman@ecy.wa.gov

■  
Ric  
Valicoff  
Chairman

Dear Ms. Edelman,

■  
Doug  
Simpson  
Vice  
Chairman

On behalf of the Roza Irrigation District (RID) and the Sunnyside Valley Irrigation District (SVID), collectively formed as the Roza-Sunnyside Board of Joint Control (RSBOJC), we aim to provide much-needed perspective to work surrounding Department of Ecology's (Ecology) reissuance of the Irrigation System Aquatic Weed Control (ISAWC) General Permit. This National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge (SWD) permit is one regulatory license that RSBOJC holds in serious regard as it allows the irrigation districts to carry out the fundamental purpose of delivering irrigation water to landowners in an efficient manner at the lowest possible cost while consistent with good management practices. In addition, each district maintaining coverage under this permit allows RSBOJC to achieve its mission statement goal to enhance water supplies by improving water quality, supporting storage development, and increasing management efficiency throughout the Lower Yakima River Basin.

■  
Scott  
Revell  
Secretary/  
Auditing  
Officer

As Ecology begins to issue a draft ISAWC permit version in Winter 2021-2022 and anticipates reissuing a final permit version in Spring 2022, RSBOJC encourages Ecology's staff members working on this draft permit to consider the following comments and/or suggestions, regarding specific topics covered in recent meetings with most permittee stakeholders in attendance:

■  
Lori  
Brady  
Treasurer

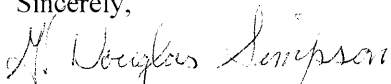
- Timing Windows – In the current permit version, timing windows are only subject to Teton (i.e., Mono(N,N-dimethylalkylamine salt of Endothall). Both districts are requesting the current permit condition for timing windows remain the same for the new version, as the reduced Teton application rate throughout most of the irrigation season is already restrictive towards the effective management of aquatic macrophyte and algae growth within constructed waterway systems throughout each district. If the timing window becomes a requirement for all other aquatic herbicides under the new permit, extreme complications or problems will arise in regards to district landowners not being able to receive their water through a streamlined and efficient process.

- Water Hardness – Each irrigation district is attempting to understand why more of this data collection is going to be required for this new permit version. If a district permittee never discharges treated water from a system to receiving waters, until twelve hours or several days after a treatment end time (ensuring other permit conditions are first met), why have to sample for hardness? Unless Ecology is trying to illustrate a correlation between copper-based aquatic herbicide products and the effects on hardness of receiving waters, it still would be pointless because a permittee would be able to prove through flow records, photo evidence, and DMR sampling data, that no dissolved copper was even discharged to the receiving waters. This certainly comes across as an extraneous requirement just for Ecology’s own research purposes, when no copper treated water is even discharged to begin with. There is also the possibility that this additional hardness data provided to Ecology by permittees will open the pathway for new tighter regulations such as lowering the copper criteria in the state surface water quality standards, which in turn could drive this permit’s copper effluent limit standard even lower when it is already as stringent as is. Therefore, RSBOJC does not endorse including additional water hardness testing in the new, updated version of this permit.
- Signage/Pictograms – Currently, both districts have many various signages widely posted at, near, and/or along facilities that intersect with public accessways to warn about trespassing and hazards. Requiring additional pictograms is unnecessary due to additional costs and time-consuming efforts, which may also lead to failed anticipated consequences, if public violators decide to ignore or misinterpret the message from additional postings (signs and/or pictograms). The bottom line is that the district facilities have restrictive access and are not open to the public (i.e., no fishing, no swimming, no drinking) for recreational activities. By already having permanent, districtwide “No Trespassing” signages in place, the districts are meeting the HEAL Act requirements by providing overburdened communities with hazard warnings to prevent and/or mitigate physical and environmental impacts of our operations to them.
- Education and Community Outreach – The districts currently offer plenty of resources on each of their websites. This range of information related to aquatic treatments can be anywhere from chemical labels, treatment schedules, district facility maps, agricultural extension program links, etc. In addition to the local law enforcement agencies along with the United States Bureau of Reclamation (USBR) in partnership with the irrigation districts sending out radio advisements reminding the public about canal waterway dangers and risks of drowning, both SVID and Roza also pay to release public service announcements about canal safety awareness on local television stations. Therefore, including additional public education and outreach programs required for implementation in the new permit will create an unnecessary burden of taking valuable efforts and time away from the districts’ crucial task(s) to ensure the efficient management and delivery of irrigation water for landowners.

- Treatment Notifications – Permit writing staff have indicated that the revised deadline would be no later than 12:00 PM one day prior to the scheduled treatment event(s). Both districts are requesting that Ecology provide flexibility and consideration by extending the “one day prior notice” deadline as notifying no later than 4:00 PM on the day prior to the treatment(s). This will provide ample opportunity to modify and/or add treatment events that may be required on an immediate or emergency basis throughout each of the seven days in a full week. Also, it is not realistic to provide Ecology with an accurate quantity of the aquatic herbicide(s) ahead of time before the occurred treatment(s) due to unanticipated circumstances, such as ending the duration of a treatment sooner than expected due to an emergency (i.e., equipment problems or failure, adverse weather conditions, etc.) We request Ecology accept an “estimated” quantity provided to them on the treatment notifications whereas the actual, total amount of product applied after each treatment event will be documented on the annual report(s) at the end of the year.
- Expansion on Holding Time Scenarios – S6.B.4.a. of the current permit requires district operators to hold treated water twice the time of travel from an application site to points of compliance (i.e., closed spillway gate), beginning at the end of a treatment duration. At the end of past treatment events, district applicator(s) may sometimes apply marker dye behind the chemical wave to gain a direct understanding of when its entire length and endpoint would pass a closed spillway gate, which recognizes there is no more treated water in the conveyance system. As a result, district operators have expressed recent concerns about why nontreated water needs to be held (i.e., no discharge from an open spillway gate to receiving waters) twice the time of travel, which at times can be a much longer hold time based on two factors: 1) the distance between the furthest upstream application site(s) and points of compliance, and 2) various inflows-outflows along the canal system, compared to a much shorter timeframe of when the entire length of the chemical wave completely exited the system and was either delivered on-farm or to a re-regulation reservoir. The districts are requesting that Ecology expand on this type of holding time scenario (S6.B.4.a. or inclusion of a new holding time special situation in S6.B.) to allow the release of nontreated water sooner than the twice travel hold time as long as another permit condition is met, such as minimum sampling frequency and/or submittal of monitoring data or other form of evidence (i.e., photos, dye tracing studies, etc.) for one full irrigation season during the permit cycle, in order to support this new reduced holding time scenario.

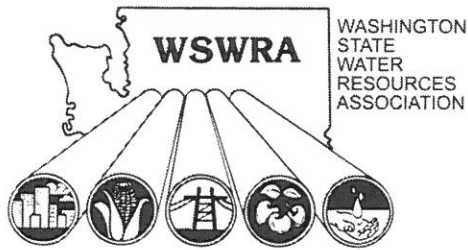
RSBOJC takes pride in our accomplishments as being responsible and strong environmental stewards while operating under the coverage of the ISAWC General Permit over the last two decades. We appreciate you and Ecology allowing us the opportunity to provide comments and/or input on this important matter. The ability for us to all work together as partners during this process will provide future generations with sustainability of water resources, and support the viability of agricultural production.

Sincerely,



RSBOJC Vice Chairman  
Doug Simpson

CC: Scott Revell, Lori Brady



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MAILING ADDRESS - 5729 LITTLEROCK RD SW, SUITE 107, BOX 308, TUMWATER, WA 98512 (360) 754-0756 E-mail: [jen@wswra.org](mailto:jen@wswra.org)

September 24, 2021

Ms. Danielle Edelman  
Water Quality Department – Aquatic Pesticides  
Washington State Department of Ecology  
PO Box 47600  
Olympia WA, 98504-7600

Dear Ms. Edelman,

Thank you for considering our collective comments ahead of the draft release of the 2022 Irrigation System Aquatic Weed Control NPDES Permit (Permit). We believe that our comments would be most complete if we had a copy of the draft Permit. We would appreciate receiving a copy as soon as possible to assist you in finalizing the Permit.

We hope the comments below will provide information valuable to crafting a successful Permit. Additionally, we are seeking clarity on some topics so we can be more of an effective partner as the process continues.

The Permit issued June 2012 (2012 Permit) requires a notification 24 hours prior to any pesticide treatment that eventually flows to a point of compliance (POC). The new proposed requirement for notifications is one business day prior to those treatments. The language of "one business day" has the potential to be more restrictive than the current 24-hour requirement if not clarified. Irrigation districts operate during weekends and holidays and require the ability to conduct treatments when conditions are deemed necessary. We would like to suggest that the upcoming Permit require notification of treatment by 4:00 PM on the day prior to treatment. Additionally, poor flow conditions caused by aquatic vegetation sometimes need immediate attention. For this reason, we suggest that an allowance be made for the occasional treatment on the same day as the notification.

We would also prefer to maintain the flexibility that weekly notifications to Ecology be provided. This flexibility allows districts to operate under best management practices to ensure the proper use of chemical during the optimal conditions afforded during that week.



To satisfy requirements for the 2012 Permit regarding public notifications, activities related to aquatic pesticide usage are posted in the newspaper prior to each season, and many districts post the notice to a website, social media, etc. This method of notification encourages the public to assume that there is the potential for pesticides to be present in the water at any time, and that applications are being conducted at numerous locations every week. Providing specific information such as treatment dates and locations to the public promulgates a message that trespassing is acceptable when treatments are or are not occurring. Furthermore, supplying dates and locations of treatments introduces added legal liability in the event of human error. We suggest that the method for public notification in the 2012 Permit is already sufficient and provides more protection to the public than the public notification requirements proposed under the 2022 draft release.

Regarding signage requirements, district facilities are not intended for recreational activities or any other type of public access. Many districts have already invested a considerable amount of funds to purchase and deploy signage designed to deter trespassing altogether. We feel this encourages the public to always avoid district facilities; not just during chemical treatments, as there are numerous safety reasons for the public to keep off district facilities. We suggest that "no trespassing" is a commonly understood and simplified, yet more restrictive, form of signage language.

The 2012 Permit requires hardness samples to be taken in conjunction with all other copper samples unless a district qualifies for reduced hardness monitoring; In which case, one hardness sample is taken at each POC during the month of July. Consequently, districts have submitted numerous hardness results to Ecology over the life of the 2012 Permit. As such, we feel that an additional sampling program would place an unnecessary burden on the districts' resources. Additionally, moving the hardness sampling location into the receiving water body is not consistent with toxicity information provided on copper algaecide labels. For example, the Environmental Hazards section of the Captain Liquid Copper Algaecide label states the following:

*"In soft water, trout and other species of fish may be killed at application rates recommended on this label. Do not use in water containing trout or other sensitive species if the carbonate hardness of water is less than 50 ppm"*

Other copper product labels have similar statements. Because irrigation districts discharge copper-treated water episodically into the receiving waters at orders of magnitude below label rates, and some districts may not discharge at all, we suggest that sampling for hardness in the receiving water body is unnecessary, and that existing hardness data are sufficient.

On the topic of fish screens, requirements are being sufficiently administered elsewhere by multiple government agencies. We suggest that additional regulatory oversight within Ecology's Permit would be unnecessarily redundant and as such provide no additional value.

The proposal to cap the acrolein treatment rate at 21 µg/L is of major concern. Acrolein does not control vascular weeds or algae at rates that low. The Magnacide® H Herbicide Application and Safety Manual (Manual) advises a range of treatment rates dependent on weed growth



conditions. These rates are given in gallons of acrolein per cubic feet per second of canal water but have been converted here to milligrams per liter for comparison purposes. In order to control mature vascular weeds 36 inches long, the manual recommends a treatment rate of 4 mg/L or more depending on the conditions. Even the recommended maintenance rate of 0.67 mg/L won't control vascular weeds of any significant length. If the maximum allowed treatment rate becomes 21 µg/L, acrolein will no longer be useful for irrigation districts' aquatic weed control. For this reason, we strongly suggest that the maximum allowable treatment rate remain at the current 8 mg/L afforded by the current version of the special local needs label.

In addition to the comments above, we are asking for clarification on a couple of topics discussed in the August listening sessions:

(1) Fish timing windows currently apply solely to Teton (alkylamine salt of endothall) treatments. After reviewing a transcript from the listening session, the blanket word Endothall was used in the discussion of timing windows. We would like to request confirmation that these timing window will not be applied to pesticides other than the alkylamine salt of endothall.

(2) We would like to request clarification about which reporting, and planning requirements would be included on the implementation schedule. Are there additional documents required for the 2022 version of the Permit that were not included in the 2012 Permit?

We appreciate your time and consideration on these matters, and we value the collaborative nature of our relationship. If you have any questions, please let me know.

Sincerely,



Tom Myrum  
Executive Director