

Mark Peterson

Love your work! see attached file

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10:03 AM (0
minutes ago)

to carrie.sessions, Keith

Carrie,

Thanks again to you and Dave and anybody else involved for doing such a nice job. I'd appreciate you mentioning my contributions to Tebb. He expressed interest in knowing that I have actively participated.

In response to the second draft findings in the order presented:

F1 findings are ok, but for F.1.4 I think that it would be better to specify that it is only the row crop ag use upstream that is likely to not compete economically to some degree. Potable uses will face no downstream economic competition. Your statement is too broad to be accurate.

P.1.1 The objective statement in the table is wrong. Downstream transfers, not just out of basin downstream transfers can be and are sometimes reversed (e.g. Trend West/ aka Suncadia) moved water upstream under codes that continue to apply). Your current statement says that they "no longer" would be considered permanent when they are not now required to be permanent. This is a misstatement of fact and law. I support the clarification along this line as proposed, but your objective statement appears to reinterpret existing law to create a problem that does not exist. "Water budget neutral" seems to be a useful term to describe a host of transfers that could include those upstream transfers offset by previous downstream transfers. Perhaps its use in this context would help.

The cons cited in the table are not well founded:

Con#1-Currently all downstream transfers fully quantify and document the benefits to benefitted reaches. Bucket for bucket mitigation is easily and cheaply demonstrated.

Con#2- This conclusion would erode the property value of anyone who owns the benefitted reach attributes and preclude all transfers that would only yield temporary benefits. Consider the converse; Downstream transfers intended for ecological purposes might be reconsidered conversely if they become politically or economically advantageous to do so?

Con#3- it may not fix the issue for upstream row crops only, but that is a far cry from not fixing everything else. Even upstream row crops can compete with downstream uses sufficiently if they are consumed locally and avoid transportation costs.

Con#4- incorrect. The downstream move benefits are added to instream flow rules and enforced accordingly.

Subsequent Water rights in the affected reach would have to already be conditioned upon both instream flow and the

downstream benefit in order to show the water availability as required for permits. Otherwise the new permit would impair the downstream transfer's instream flow benefit rights.

P.1.2 this is already legal and a great way to compensate an upstream water right holder. You are still required document the benefitted reach attributes to be held in trust so that the benefits can be enforced.

P.1.3 sounds nice but cumbersome and not likely to be utilized due to funding not being available in a timely fashion.

P.1.4 I really have a problem with "public interest" I view it as a core and inalienable legislative responsibility. When it is delegated in statute to the administrative or judicial branch it violates the separation of powers requirement in the constitution. The reason the legislative branch has so many elected officials is to ensure that it is aware of and able to articulate the public's interest. Why else would any entity have that structure? It is effective to no other end. Administrative and judicial officials are by design insulated from the public to promote a dispassionate execution of their roles. This fact makes cripples their ability to discern, let alone articulate the public interest. Swinomish was a great example. DOE did a very credible job of supporting their determination of overriding considerations of public interest with economic analysis (how else to do this administratively?), but the court correctly pointed out that their were still public interests that could not be valued in this manner. Watershed planning has met with good success in articulating good local consensus on what the public interest is, but it is carried out by county legislators through an elaborate legislative process.

F2.1 agree.

P2.1 agree.

P2.2 agree.

P2.3 I think this is already done for most sales. The excise tax affidavit information just needs to be collected. Sales that don't pay excise tax probably aren't arms length transactions anyway so the data is not very useful. Further DOE tracks assignments of rights. There is already some data from that too. Again there just is not much data and reporting what there is will not yield much benefit. The average person is better off going to DOE's GIS system, finding local water transfers by identifying benefitted reach water in their area and then calling the parties involved. It'll probably only be a few calls to get all of the available data and the probably much more valuable backstory.

P 2.4 agree with not recommending.

P2.5 “

P 2.6 not much useable data anyway. Agree with not recommending.

F3.1-6 are ok.

F3.1.7 there is no known instance of this actually happening.

P3.1 ok

P3.2 nice sentiment, unnecessary legislation. Any mitigation analysis already requires evaluating all aspects of the proposed mitigation to ensure no impairments so we're already doing this. The term periods are unnecessary and artificial and likely to further burden the process to no benefit.

P 3.3 ok

P3.4-6 all look ok.

F4.1 good

F4.2 potable water can/will be available if we plan ahead. Since the Kittitas problem arose everybody now understands the problem and as far as I can see are taking adequate steps to assure that it will not result in monopolies in the future.

F4.3 good see above.

F4.5-7 good.

P4.1 DOE already gets this. Formality is unlikely to improve clarity and likely to create burdens.

P4.2 I'm ambivalent here, surprisingly. I'd be good with it if it in fact generated a higher level of service through adequate funding.

P4.3 DOE already needs to assure itself that signing a water banking agreement (contract) aligns with its statutory mission. Otherwise it probably shouldn't be spending resources on that activity. Is there something wrong with that mission? Do you seek to change that?

P4.4 ok

P 4.5 ok, but providing the service must be feasible. Moreover, defining duty to serve areas probably also means granting a state authorized monopoly in the service provided in that area. Otherwise which entity's duty to serve applies to an area if it is served by more than one such entity?

P4.6 DOE has done/will always do this anyway.

P4.7 I don't understand this. DOE only supports proposals that aligns with its statutory mission. Would this change the mission?