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Water Resources Program Policy Support Section
Washington Department of Ecology
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Black Sand Irrigation District
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To Whom It May Concern:

Black Sands Irrigation District (BSID) appreciates the opportunity to comment on Ecology's draft "**Columbia Basin Project Water Rights Policy and Interpretive Statement.**" BSID is a Columbia Basin Project irrigation district that delivers federally authorized project water to agricultural lands and depends on reliable access to project supplies, including artificially stored and recaptured water that support project efficiency and agricultural production.

BSID generally supports Ecology's effort to provide transparent and consistent procedures for implementing the 2024 amendment to RCW 90.03.380(1) regarding Columbia Basin Project water rights held by the U.S. Bureau of Reclamation. A clear policy framework will improve regulatory certainty, reduce processing delays, and lower the risk of disputes or litigation.

BSID particularly supports two aspects of the draft policy:

- Recognition that **RCW 90.03.380(1)(b)** provides a distinct statutory pathway allowing changes in irrigated acreage for Columbia Basin Project rights so long as authorized instantaneous and annual diversion quantities are not increased and existing water rights are not impaired.
- Reliance on **Ecology v. Bureau of Reclamation**, which affirms the federal project's authority to recapture and reuse waste, seepage, and return (WSRF) flows within the project and clarifies the limited role of state permitting for this water within project boundaries.

While supportive of the draft's overall direction, BSID recommends several targeted revisions to improve clarity and implementation.

1. Clarify Water Accounting and Classification

The policy should more clearly address how "**Initial Use Water**" and "**Recaptured Water**" will be classified in practice. Columbia Basin Project operations often involve blending, multiple reuse cycles, and storage across years, which can complicate classification. Additional guidance is needed regarding:

- Water delivered under Water Service Contracts for WSRF (excluding artificially stored groundwater [ASGW]). Historically, this water has counted against the Bureau's water

right acreage allowance. ASGW has not counted against the Bureau's water right acreage allowance.

- The treatment of artificially stored groundwater (ASGW), which appears to meet the definition of recaptured water but is also subject to specific permitting and acreage limitations under WAC 173-134A and WAC 173-136.
- Is WSRF water (including ASGW) that discharges to Potholes Reservoir considered Initial Use Water or Recaptured Water?

2. Address Artificially Stored Groundwater (ASGW)

Approximately 51,000 acres (177,000 acre-ft at a water duty of 3.5 acre-ft/acre) are identified for irrigation using ASGW supplies in WAC 173-134A. The policy should clarify:

- How ASGW permitting requirements interact with the draft statement that Ecology has no permitting authority over recaptured water within the project.
- Whether existing ASGW permits are protected from impairment when operational changes—such as canal lining—reduce seepage that contributes to groundwater recharge.

3. Rely on Federal Project Accounting Systems

BSID recommends adding a short "**Accounting and Attribution**" section stating that Ecology will rely on the Bureau of Reclamation's established accounting systems when attributing irrigated acreage to initial-use versus recaptured water, unless a specific legal inconsistency is identified. This would reduce disputes related to accounting methodologies rather than substantive water-right limits.

4. Align the Impairment Standard with Statutory Language

The policy should use the statutory wording in **RCW 90.03.380(1)(b)** requiring Ecology to determine that a proposed change "would not result in an impairment of any other water rights."

The analysis should explicitly acknowledge that protected rights include:

- Adopted instream flows under RCW 90.03.345
- Other legally protected water rights recognized in Washington case law

Clarifying this standard will reduce legal ambiguity and potential litigation risk.

5. Define Authorized Quantities and Baselines

The draft would benefit from defining "**instantaneous or annual out-of-stream authorized quantity**" and identifying the baseline used for comparison (e.g., existing permits, certificates, or previously authorized changes). Clear definitions will help ensure consistent application when irrigation efficiency improvements or recaptured supplies alter diversion patterns without increasing authorized quantities.

6. Refine SEPA Language

BSID recommends revising the SEPA discussion to clarify that compliance will occur "**as applicable**" under Chapter 43.21C RCW and Chapter 197-11 WAC, including exemptions and threshold determinations where appropriate. This adjustment would better reflect SEPA practice and reduce unnecessary procedural burdens.

7. Clarify Reporting Requirements and Data Governance

The policy should provide additional details on compliance reporting, including:

- Whether reporting will occur at the project level or district-aggregated level
- Data confidentiality and quality control procedures
- Processes for resolving reporting disputes before enforcement action

Any requests for data regarding recaptured water should be limited to planning or contextual purposes and should not be used to impose state acreage limits on recaptured supplies, consistent with Ecology's recognition of federal authority over internal project allocation.

8. Recognize Voluntary Conservation and Trust Water Tools

BSID recommends including a brief reference to voluntary conservation measures and the state trust water rights program (Chapter 90.42 RCW) as optional tools that may complement Columbia Basin Project operations. Such measures should not be conditions of approval under RCW 90.03.380(6).

9. Tribal and Federal Coordination

Because tribal reserved rights and federal environmental obligations can influence impairment determinations, the policy should briefly describe how Ecology will coordinate with tribal governments and relevant federal agencies when developing the administrative record for change decisions—without implying expanded state jurisdiction over federal project allocation decisions.

Conclusion

BSID supports the adoption of a final policy implementing **RCW 90.03.380(1)(b)** in a manner consistent with Washington's no-impairment doctrine and the federal project recapture authority recognized in *Ecology v. Bureau of Reclamation*. With the targeted clarifications described above—particularly regarding accounting, impairment standards, reporting scope, and SEPA implementation- the policy can provide a clear and workable framework for Columbia Basin Project irrigation districts and water users while protecting senior and instream rights.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Tom Flint". The signature is fluid and cursive.

Tom Flint
Black Sands Irrigation District

A handwritten signature in blue ink, appearing to read "G. Thomas Tebb". The signature is fluid and cursive.

G. Thomas Tebb, LHG, LEG
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