

Columbia-Snake River Irrigators Association Policy Memorandum

DATE: February 20, 2015

TO: Mr. Estevan Lopez, Commissioner, USBR; Ms. Lorri Lee, Regional Director, PNRO-USBR; Mr. Robert Quint, Chief of Staff, USBR

FROM: Ron Reimann, CSRIA President
Darryll Olsen, Ph.D., CSRIA Board Representative

SUBJECT: Irrigators' System 1, North-I-90 Project, Water Service Contract Request

The ability of the U.S. Bureau of Reclamation to offer responsible water resources management for the 21st Century is being tested by whether the agency can execute a new water service contract (WSC), for the System 1 Participants, North I-90, Odessa Subarea (Columbia Basin Project). It is now necessary for the Commissioner to oversee personally this effort, requiring the Pacific NW Regional Office to work effectively with private sector Irrigators, to embrace water management practices that will overshadow the future of Western irrigated agriculture.

At our January 28th meeting with Regional Director Lee, a meeting requested since August of 2014, she spoke of "relationships." To that end, we left the meeting with an understanding that USBR-CSRIA legal counsel would pursue substantive discussion on the pending WSC, provided to the USBR in May 2014, followed by a letter from the East Columbia Basin Irrigation District for the USBR to take the WSC review lead. Instead, CSRIA legal counsel received renewed obfuscation from your legal counsel, not cooperation.

Working with the CSRIA, the System 1, 2, and 4 Project Irrigators have completed all necessary preconstruction engineering/economics analyses and water right transfer review; and the System 1 Project participants have secured \$42 million of private capital to commence construction, now, with receipt of a new WSC. But the Region has displayed a remarkable ambivalence toward private capital and state water law; and its disregard for efficient water use applications, paramount to making the Project economics viable, is bewildering.

The Regional USBR has vacillated between lethargic and obstructive action; and the District's unfunded "normative" approach is being rejected by many--if not most--of the Irrigators, as it rests on complicated (speculative) public sector financing, and it increases costs for most of the Irrigators. The wells are running dry, and the USBR and District are delaying Project construction while falsely claiming some obscure "social benefits." So whose interests are really being served here—the USBR Region, the District Board members/staff, the Irrigators?

This deteriorating circumstance begs for USBR intervention from the highest executive level.

**3030 W. Clearwater, Suite 205-A, Kennewick, WA, 99336
509-783-1623, FAX 509-735-3140 DOlsenEcon@AOL.com**

cc: Mr. Mr. Lowell Pimley, Deputy Comm., USBR, Operations.
Mr. David Reeplog, TC-WA, Office of WA State Senator Maria Cantwell.
Rep. Hans Dunshee, House Capital Budget Chairman, WA.
Sen. Judy Warnick, Sen. Agriculture Committee, WA.
Mr. Mark Shoesler, Senate Majority Leader, WA.
Ms. Stephanie Utter, USBR, Quincy, WA.
Mr. Derek Sandison, OCR-Ecology, WA.
Mr. Craig Simpson, ECBID, and Board of Directors, WA
Interested Parties

Attachments: 1) James Buchal's (CSRIA) February 17, 2015, reply letter to Mr.
Hockberger (USBR PNW Region).

Murphy & Buchal LLP
Attorneys at Law

3425 SE Yamhill Street, Suite 100
Portland, Oregon 97214

James L. Buchal

telephone: 503-227-1011
fax: 503-573-1939
e-mail: jbuchal@mblp.com

February 17, 2015

BY FIRST CLASS MAIL & E-MAIL (Jack.Hockberger@sol.doi.gov)

John J. Hockberger, Jr., Senior Attorney
U.S. Department of the Interior
Office of the Boise Field Solicitor
960 Broadway Ave. Ste. 400
Boise, ID 83706

Re: *Water and Primary Irrigation System Agreement, System One, North I-90*

Dear Mr. Hockberger:

Your e-mail of February 11, 2015 usefully crystallizes the issues that apparently cannot be resolved short of litigation.

First, with respect to “institutional relationship building” and the Bureau’s duty to consult with the District, the District commenced that process with its July 14th letter to the Bureau *asking for the Bureau’s review*. As far as I know, the Bureau has thus far never even deigned to offer a direct response to the District’s request. The Bureau’s apparent perception that the District does not “embrace” the System One proposal is no excuse for failing to completing review and providing the requested findings to the District.

Your insinuation that it would be breach of contract, or the duty of “good faith and fair dealing” with the District is surprising, since you had previously informed us that the Bureau had, in appropriate cases, the power to contract directly with appropriate entities. We are not aware of any governing contractual documents to support this assertion,¹ and note that by saying if we demonstrated “misfeasance or malfeasance” by the District, we might then secure direct service, you seem to be contradicting any contractual duty with respect to the District. It may be that your suggestion is founded in a continuing failure to understand the materials provided: we are not seeking to have the Bureau “assume direct O&M responsibilities . . . that ECBID has rejected”.

¹ You do make general reference to an “Amendatory and Supplemental Replacement Contract;” and if there is a specific contract to which you refer, we would appreciate receiving copy of it.

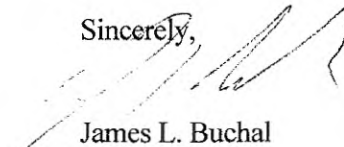
Second, the Bureau's interpretation of RCW 90.44.510 is plainly wrong, and an obvious candidate for a declaratory judgment count in any litigation should the Bureau persist in its interpretation. The statute simply requires that when Ecology issues the superseding water permits, use is limited in accordance with the provisions of the superseding permits. It does not repeal RCW 90.03.380 within the Odessa subarea and prohibit Ecology from expanding the place of use in superseding permits.

The Bureau has been subject to considerable public criticism concerning high costs and inefficient use of water. Continued promotion of this misinterpretation of Washington State water law, which would force Odessa area irrigators to use water inefficiently, merely further substantiates criticism of the Bureau.

Third, whether or not any "normalization" policy applies to District- or Bureau-constructed works—a policy that is utterly amorphous under the statutes you cite—those statutes plainly do not govern any contractual relationship *among the Participants* as to how to share the cost of new distribution systems. As we have previously informed you, all the Participants are prepared to pay the same per-acre charges to the District or Bureau, as the case may be for the facilities outside their distribution system.

The Bureau and District are poised to make a mistake of historic proportions for which they may be justly reviled in future decades. At a time of rapidly deteriorating public finances, there is what may be a one-time opportunity to obtain \$20 million from the State of Washington to complete the canal improvements. The Regional Director told us all on January 28th that these funds will not be forthcoming from the federal government. The District's alternative of normalizing those costs, and its own higher costs, on the Odessa landowners promises to produce continued delay, continued groundwater pumping, abandoned farms, and the decimation (or worse) of the goals in the Bureau's Record of Decision.

Sincerely,



James L. Buchal

cc: Dr. Darryll Olsen
Columbia Snake River Irrigators Association