

Columbia-Snake River Irrigators Association

Policy Memorandum

DATE: October 21, 2025

TO: Mr. Casey Sixkiller, Dir. WA State Dept. of Ecology
Mr. Larry Mattson, Dir. Office of Columbia River (OCR),
Ecology.
Policy Office, Gov. Robert Ferguson

FROM: Darryll Olsen, Ph.D., Board Rep., CSRIA

SUBJECT: Proposed OCR “Interruptible” Water Rights¹ Program Lacks Legal and Policy Support

The CSRIA once again voices its opposition to Ecology’s ill-conceived “Interruptible Drought Insurance Program.” It should be no surprise to OCR Director Mattson that CSRIA is opposed to the “program,” given its less than compelling origin, an embarrassing lack of vetting and stakeholder review, and its vague operational mechanics, seemingly meant to “make-work” for a select group of consultants.

The factors summarized below inform the legality questions and what most water resource managers/planners would consider as unsound public policy.

Origin of the “Interruptible Program:”

When it became apparent the CSRIA leadership would not support the OCR-Ecology “program,” we were contacted by a senior AgriNW manager and informed they were the primary initiator of the “program,” and that it was based on their desire to form a new Trust Water Bank, with apparent revisions to specific relinquishment statute provision required under ACQ² Banking requirements. While a range of needs were stated, it was clear that past irrigation efficiency gains would not be assigned to the Trust Banking action, unless “special public interest” measures were part of new Banking request to Ecology. The AgriNW objective was reaffirmed by a second farm manager. None of these concerns are relevant to implementing an interruptible water rights program.

Lack of Responsible, Lawful Public and Stakeholder Review:

Although CSRIA is a well-known stakeholder in issues affecting Columbia-Snake River water management and water rights, CSRIA leadership received no prior notice of the “program,” until members, and other water right consultants, voiced concerns and alarms

¹ The WAC 173-563 was formulated after the 1976-77 drought, when Columbia River flows April-September were forecast (March 1st, NW River Forecast Center) to dip below 60 MAF at The Dalles Dam. The lowest flow year since 1980 was 2001, with actual April-September flows below 57 MAF.

² Annual Consumptive Quantity (ACQ) requirements per RCW 90.03.380 subject to relinquishment provisions, RCW 90.14.140).

having received Ecology notifications, with a near-threatening tone about loss of active water rights during a river system curtailment period. What makes this inept notification process worse, is that CSRIA leadership was told by AgriNW management that CSRIA was apparently kept from being given an initial notification under the OCR consultants' notification scheme. What? Begging the question, why would OCR, its consultants, and AgriNW be "afraid" of having CSRIA (and other consulting/management entities) review the "program" prior to its release?

A much deeper problem here squarely focuses on what is a disservice to provide adequate public review and input before attempting to release the "program." Ecology's actions are a complete failure, as identified in the attached legal opinion and public policy review memorandum.

Program Mechanics and Equity Issues:

Notwithstanding fundamental flaws in "program" origin and public review, the "program" implementation mechanics are ill defined—a "we will figure it out" omission by OCR and consultants--and a "consultant make work" process is all that is proffered.

For CSRIA, the "pay to play" or "picking winners and losers" aspect of this "program" grinds against a policy that should ensure all interruptible water right holders receive relief, regardless of their financial status or water right allocation.

In 2001, Gov. Gary Locke asserted Executive discretion, and refused to interrupt the Columbia River junior rights; no real benefits but exacting real costs. He determined that any lost power system impacts, or savings via irrigation conservation measures conveyed to junior water users, could be mitigated with a \$1 million payment to the Bonneville Power Administration by the state. A low-cost, equitable, fix to a very overwrought problem. Would Gov. Ferguson be expected to not consider similar solutions?

Getting Back to Sound Water Resources Management, Three Points:

1. The OCR "program" is not acceptable, and it should be formally withdrawn by Director Mattson.
2. Any further interruptible water rights measures must receive adequate legal, public and stakeholder review.
3. The issue raised by AgriNW regarding "interpretation" of relinquishment statute exemptions requires separate, full review rule-making (not policy notes), and should be open for examination by all key stakeholders. No more trying to "camouflage" changes under false management actions.

cc: State-County Elected Leadership,
Interested Parties.

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Attachments:

- 1) October 6, 2025, Legal Opinion, Columbia River Drought Insurance Program.
- 2) October 16, 2025, Columbia Research Corp. Review of Columbia River Drought Insurance Program.
- 3) July 2, 2025, CSRIA Policy Memorandum to Dirs. Sixkiller and Mattson.

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MEMORANDUM

To: Dr. Darryll Olsen, Board Representative
Columbia Snake River Irrigators Association

From: James L. Buchal

Date: October 6, 2025

Re: Columbia River Drought Insurance Program

You have asked me to evaluate the lawfulness of a new program launched by the Washington State Department of Ecology called the “Columbia River Drought Insurance Program” (“the Program”). Ecology’s website presents this effort as a “partnership” with “Western Water Market,” (“WWM”) a private water marketing firm based in Moses Lake, Washington. One of the “founding members” of WWM is a former Ecology official, Dan Haller or his consulting firm Aspect, which may own some sort of interest in WWM.

The Program is described only as providing some unspecified way that “junior water right holders can lease water in drought years to avoid being entirely shut off.” This initiative apparently adds to 33,000 acre-feet of Lake Roosevelt water (RCW 90.90), and outlines a plan to “purchas[e] additional water rights and entering into lease agreements to make even more water available.” Aspect Consulting, with WWM as a subcontractor, was apparently awarded a \$95,000 contract in September 2024 to develop the program. But Ecology’s website is virtually devoid of details that would explain the benefits and potential costs to an interruptible water rights holder.

Instead, a link on Ecology’s website goes to WWM’s website, asking visitors to take a survey pursuant to which Ecology’s Office of the Columbia River (“OCR”) and WWM “are reaching out to interruptible water right holders.” The alarmist tone of this “reaching out” has caused considerable concern among several CSRIA members who are interruptible rights holders and others in the region

In ordinary parlance, an “insurance” program means accumulating funds treated as premiums and investing them to cover potential future costs of water supply during drought circumstances, a scheme that is materially different from recovering the costs of specific water supplies tapped during drought conditions. To make matters worse, Ecology’s directive to Aspect asks it to determine “how much they [interruptible rights holders] will pay in a drought year” (Aspect Contract Task 4(a)), suggesting a quasi-entrepreneurial profit-maximizing approach on the part of the agency. The survey proposes per acre-foot lease payments of \$120-250 per acre-foot per year, substantially in excess of prices identified in Ecology’s water banking publications.

There are three potential defects in the Program:

First, Ecology appears to be moving forward with this effort without complying with its statutory obligations to involve members of the public, particularly stakeholders, including CSRIA, in such policy development.

Second, what little information is available about the Program suggests that unless the title of the Program is entirely misleading, Ecology is ignoring the express authorities given to it to address the needs of interruptible water users. Developing an “insurance program” – in which water rights holders pay a premium to Ecology or a third party – is not one of them.

Third, the optics of the policy development suggest possible favoritism and/or ethical violations by Ecology in benefiting third parties, such as Aspect and/or WWM, as well as select water rights holders. Additional information is being obtained from public information requests to better address potential ethical questions.

I. Lack of Public Notice and Participation

Ecology normally notifies the public and interested stakeholders and seeks comment before new policy initiatives. Indeed, public involvement is at the core of the Legislative directives for water policy. RCW Chapter 90.54, which is the core planning statute for Ecology, including the development of new water supply projects (RCW 90.54.150), provides:

“All citizens of Washington share an interest in the proper stewardship of our invaluable water resources. To ensure that available water supplies are managed to best meet both instream and offstream needs, a comprehensive planning process is essential. The people of the state have the unique opportunity to work together to plan and manage our water. Through a comprehensive planning process that includes the state, Indian tribes, local governments, and interested parties, it is possible to make better use of available water supplies and achieve better management of water resources. Through comprehensive planning, conflicts among water users and interests can be reduced or resolved.” RCW 90.54.010(1)(b).

In particular, Ecology's planning process require public involvement:

"Comprehensive water resource planning must provide interested parties adequate opportunity to participate. Water resource issues are best addressed through cooperation and coordination among the state, Indian tribes, local governments, and interested parties." RCW 90.54.010(1)(d).

The requirement is also set forth in RCW 90.54.060, requiring Ecology to "not only invite but actively encourage participation by all persons and private groups and entities showing an interest in water resources programs of this chapter". The requirement of public involvement is "not only with the development of the program but the implementation by the department under this chapter".

Ecology's own regulations acknowledge that under the Water Resources Act of 1971, it "was directed, through the adoption of appropriate rules, to develop and implement a comprehensive state water program which would provide a process for making decisions on future water resource allocations and use". WAC 173-500-010(2). Rulemaking, of course, is subject to extremely detailed public notice requirements under RCW Chapter 34.05.

There have been a couple mentions of a program to assist interruptible users over the years in Ecology's Columbia River Policy Advisory Group, but no details of any "insurance" program or details that would support the present action to assess what prices interruptible holders might pay to avoid cutoffs. A 2007 presentation by the Ecology official, Mr. Haller, now pushing the program with Aspect, mentions "insurance," but the presentation merely presents additional supply sources and possible demand curtailing measures without any "insurance" concept. By April 2024, Ecology had mentioned water banking as an option to make water available to OCR for the use of assisting interruptible water users, but did not refer to the program as "insurance".

Given that contracts have already been let and largely performed in service of the Program without any details of the Program available to the public or stakeholders, it is clear that Ecology has failed entirely to abide by the RCW Chapter 90.54 planning requirements.

II. Lack of Authority for any "Insurance" Program

A. Ecology's Statutory Authority Generally

There is no specific legislative authority authorizing Ecology to implement an insurance program to address possible limitations in interruptible rights. Pursuant to RCW 43.21A.080, Ecology does have general authority "to adopt such rules and regulations as are necessary and appropriate to carry out the provisions of this chapter". RCW Chapter 43.21A. An important limitation is that the rules and regulations may not be "based solely on a section of law stating a statute's intent or purpose, on the enabling

provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt the rule.” RCW 43.21A.080.¹

Ecology has authority to study the interruptible issue through means such as the survey conducted under the Aspect contract, but that authority does not permit Ecology to implement any program based on the results of the study or survey. RCW 43.21A.130 provides:

“the director may undertake studies dealing with all aspects of environmental problems involving land, water, or air; however, in the absence of specific legislative authority, *such studies shall be limited to investigations of particular problems, and shall not be implemented by positive action.*” (Emphasis added.)

More generally, the Legislature has insisted that “substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs”. 1995 Laws, Chap. 403, § 2(a).

Any authority to establish an insurance program for interruptible water rights must be found in some specific statutory provision. However, a review of Ecology’s statutory authorities confirms no authority for an insurance-based approach to the problem.²

B. Ecology’s Specific Authority to Address Interruptible Water Rights Does Not Include an “Insurance” Program.

First, the RCW contains extensive and detailed provisions for drought circumstances, by allowing emergency withdrawals of water that can address interrupted water rights in drought conditions. RCW 43.83B.410. The Aspect Consulting materials associated with communications to current interruptible rights holders make no mention of this alternative, which was employed during the last drought—a misleading omission potentially associated with the extra-statutory entrepreneurial focus.

In 2001, under low water-drought conditions, Governor Gary Locke did not curtail Columbia River water rights, but provided \$1 million to pay for any Bonneville Power Administration power losses “caused” by continued use of the junior water rights,

¹ The general powers and duties of Ecology with respect to “water resources” are set forth in RCW 43.21A.064. This includes a general authority, “if requested, [to] provide assistance to an applicant for a water right in obtaining or developing an adequate and appropriate supply of water consistent with the land use permitted for the area in which the water is to be used and the population forecast for the area under RCW 43.62.035”. RCW 43.21A.064(5). This provision, however, was intended to provide water supplies for public water supply systems. (1997 Laws, Chap. 443, § 1.)

² The Washington legislature knows how to provide specific authority and given agencies express authority to implement a number of insurance systems. *See, e.g.*, RCW 43.71 (Washington Health Benefit Exchange), RCW Title 51 (workers’ compensation system), RCW 50B.04 (Long Term Care Trust Program).

separate from USBR water supply measures. This action stands in direct contrast to the hyperbole surrounding continued use of the junior rights stated by OCR Director Larry Mattson. What the previous curtailment measure suggests is that any net system costs would reflect (mathematically calculated) power system costs, much from the lower river system, with lower costs per acre-ft.³ Ecology would be expected to fully assess this type of drought relief before considering, much less embarking on, any other action such as an “insurance” program, but there is no reference to any such assessment in the materials so far obtained from Ecology.

Second, the water banking statute states that Ecology is “authorized to use the trust water rights program for water banking purposes statewide,” which purposes include “provid[ing] a source of water rights the department can make available to third parties on a temporary or permanent basis for any beneficial use . . .”. RCW 90.41.100.

There is no basis for suggesting that any sort of special public interest test is required for such use other than what is specified in statute. The legislative history of the statute confirms that the provision of water banking authorities were intended to constitute “critical tools to make water supplies available when and where needed during times of drought”. 2009 Laws, Chap. 283, § 1. Thus, Ecology can and should allow water banking to supply interrupted (or any) users, but cannot prod, or grant favors, for water right holders who comply with any banking requirements. This would include any new “modifications” to RCW 90.14.140 relinquishment provisions, under RCW 90.03.380 ACQ requirements for Trust banking. Any such “modifications” would have to go through formal rulemaking procedures.

Third, and most importantly, RCW 90.90.020(3)(c) provides:

“The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs: . . . A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect streamflows.”

Those involved in developing the “insurance program” have referenced this statute, albeit not identifying it as any source of authority for an insurance program.

³ The actual impact to river system flows, measured at The Dalles Dam, on July 1, 2001, was approximately less than 1% of the net system flow variations for the 24-hour period—in effect not empirically measurable. The calculation was estimated by CSRIA using USACE flows tracking data.

RCW 90.90.020 is quite clear that the Legislature intended Ecology to develop actual, additional water supplies, including “through the development of new storage facilities.”⁴ RCW 90.90.100(2)(a), addressing the Columbia river bank water supply development account, also provides that expenditures:

“may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, develop pump exchanges, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses.”

By all appearances, Ecology has shirked these tasks for years for application to the mainstem interruptible water rights, and now puts forth the Program as a substitute for the performance of its Legislatively delegated responsibilities. Instead of increasing water supplies to the benefit of the State, Ecology appears to be turning to some sort of regulated market reallocation of existing water supplies along the lines marketed by WWM, with a potential “financial engineering” overlay for which it has no authority.

All this specific statutory authority about how to address the interruptible “problem” forecloses other, extra-statutory initiatives to provide additional Columbia Basin water supplies outside the foregoing framework, including any “insurance” program. When the Legislature wants an agency to implement an insurance program, it knows how to say so.

C. Statutes Limit Ecology’s Ability to Extract Funds from Interruptible Holders

Both the drought provisions and RCW 90.90 expressly foreclose Ecology’s ability to charge anything resembling insurance premiums in this context. While Ecology can demand cost recovery for allowing emergency drought use, the provisions allowing for cost recovery provide recovering only those costs associated with “mitigation” “to protect instream flows, federally regulated flows, or senior water rights”. RCW 43.83B.410.

The general purpose of RCW 90.90 and the financial accounts established under it is to provide access to new water supplies, with provisions allowing Ecology to recover

⁴ In RCW 90.90, the Legislature also provided specific statutory provisions to address the use of Lake Roosevelt water. The statute reports agreement between the State of Washington and certain Upper Columbia Tribes that releases of up to 132,500 from Lake Roosevelt would be used in drought years for “enhanced certainty for agricultural water users with water rights that are interruptible during times of drought”. RCW 90.90.060(3). The law provided substantial annual payments to these tribes from the “Columbia river water delivery account”. RCW 90.90.070.

Ecology lists Lake Roosevelt water as a water bank and identified some 4,159 acre-feet available for lease. An additional 7,406 acre-feet is apparently also available from Sullivan Lake, albeit at a higher price—but substantially lower prices than those surveyed by Aspect for “insurance” purposes.

the cost of developing the new supply, but not insurance-related costs. RCW 90.90.010(6), the “Columbia river basin water supply development account,” specifies

“The department of ecology may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing the water supply. . . . The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Columbia river basin water supply program. Water service contracts with federal agencies under RCW 90.42.150 are not required to be established by rule. Revenue collected from water service contracts must be deposited into the Columbia river basin water supply revenue recovery account created in RCW 90.90.100.

Similarly, RCW 90.90.100(6) provides:⁵

“The department of ecology may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing the water supply. Costs recovered under water service contracts does not include staff time expended by the department on developing the water supply. . . . The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Columbia river basin water supply program.”

Costs of “developing the water supply” are not “insurance costs.” Whatever Ecology is intending to do, recovering actual insurance-type costs cannot lawfully be accomplished under existing law.

III. Potential Favoritism and Ethical Questions Raised by the Program

At least one large water rights holder, AgriNorthwest, has claimed some responsibility for initiating the program, raising the specter of whether the Program is, in substance, a vehicle for AgriNorthwest or others to monetize surplus water rights through an unvetted “insurance” program developed by Ecology rather than the development of new water supplies as the Legislature intended.

It is forbidden for Ecology employees to “use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of . . . another”. RCW 42.52.160(1). Without more details concerning the Program, it is difficult to assess the applicability of the statute.

⁵ The next sentence of both statutory provisions states: “Except for the development of new storage projects and pump exchanges, there may be no expenditures from the account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority.” This provision underscores the focus on new development, limits the usefulness of water banking, and confirms that any efforts to move water from Washington to Oregon would similarly require specific legislative authority.

If the Program is nothing more than a list of existing water supplies, including banked water, to which interruptible holders may turn, there is probably no ethical issue here other than Ecology's total failure to develop new supplies, although as a technical matter, offering a link to the "partner" WWM website and use of Ecology's logo probably qualifies as a violation of the statute. *Cf., e.g., Knudsen v. Wash. State Exec. Ethics Bd.*, 156 Wn. App. 852, 861 (2010) (use of e-mail system).

If there are concealed details of an actual insurance-type program, the idea is redolent of Enron-type financial engineering that, when critical demand events occur, simply do not work. Such engineering could offer substantial private benefit with no public benefit. Further investigation of the Program is clearly warranted.

MEMORANDUM

To: Dr. Darryll Olsen, Board Representative
Columbia-Snake River Irrigators Association (“CSRIA”)

From: Daniel Seligman
Columbia Research Corp.

Subject: The Department of Ecology’s Columbia River Drought Insurance Program

Date: October 16, 2025

I QUESTIONS ASKED

At your request, I have prepared this fact-finding memorandum about the *Columbia River Drought Insurance Program* which the Washington State Department of Ecology (“Ecology”) unveiled in April 2025. The purpose of Ecology’s program is to assist interruptible water rights holders who may have their supplies curtailed during severe low-flow conditions.

At this point, the Drought Insurance Program appears to be in the early stages of implementation. To date, Ecology has sent out a survey to interruptible water rights holders but does not appear to have taken major steps to implementation. CSRIA members have expressed concerns about the origins of the program. They have also expressed concerns about the alarmist tone of the survey, which described the need to prepare for a drought this way: “Nearly 380 Columbia River water rights holders are at risk of their water getting shut off when the next Columbia River drought is declared. Are you one of them?”

You asked me to answer six questions:

1. What do we know about the origins of the program? Who proposed it?
2. What are the elements of the program? What, exactly, would an interruptible rights holder do (or have to pay) to obtain new supplies of water?
3. Did Ecology meet the statutory requirements for public and stakeholder review of the program before it was announced?
4. What role do water banks play in the program?
5. Must water rights holders demonstrate they have met a special “public interest” justification (beyond what is spelled out in relevant statutes) before they receive permission from Ecology to create a water bank?

6. Are there conflicts of interest in the design and promotion of the program?

The accompanying memorandum from legal counsel James L. Buchal (October 6, 2025) describes the legal issues raised by Ecology's program in more detail.

II DOCUMENTS EXAMINED

In preparing this memo, I have reviewed documents released by Ecology pursuant to Public Records Act ("PRA") requests. Some PRA requests are still outstanding, and our knowledge of the Drought Insurance Program may change once we review additional information.

III SUMMARY OF ANSWERS

After a review of documents provided by Ecology, my answers are as follows:

1. The Drought Insurance Program was proposed by two companies:

- In February 2024, Aspect Consulting LLC ("Aspect"), an earth science and engineering services company, and Western Water Market LLC ("WWM"), an online digital marketplace for water rights, proposed the program to Ecology.¹
- In September 2024, Ecology hired Aspect as the contractor and WWM as a subcontractor to design and implement the program along the lines that Aspect and WWM had proposed. The business relationship between Aspect and WWM is not known. Although WWM describes itself as an independent company that promotes and facilitates water rights transactions, Aspect is a member of its Board of Governors.²

2. The details of Ecology's program are opaque and difficult to discern:

- Although Ecology and WWM sent a survey (questionnaire) to interruptible water rights holders, the survey does not explain what a water rights holder would do to prevent or decrease its risk of curtailment.

¹ Aspect has offices in Bainbridge Island, Seattle, Bellingham, Olympia, Wenatchee and Yakima, Washington, as well as Portland, Oregon. It provides a variety of hydraulic, engineering and planning services for water rights owners. www.aspectconsulting.com Aspect is owned by Geosyntec, a national consulting firm. <https://geosyntec.com>

² WWM was incorporated in Washington State in September 2019. UBI no. 604-524-700. The company began operations in February 2020 in Moses Lake, Washington. <https://westernwatermarket.com> The founder and president is Kristina Ribellia, who also serves as executive director of the Columbia Basin Conservation District. WWM describes Aspect (and other companies and law firms) on its website as being "founding members." It is not clear if this means Aspect was one of its earliest clients or whether Aspect helped create the company. Aspect became a member of WWM's Board of Governors in 2021. If Aspect owns part or all of WWM, then WWM's description of itself as an "independent" entity is open to question.

- The word “insurance” in the name of the program suggests a water rights holder would pay some sort of premium for water but the survey and other public materials do not explain how this would work.
- Ecology’s survey does not accurately describe the relationship between Ecology and WWM. Ecology’s website, for example, describes WWM as a “partner” but this appears to be inaccurate. WWM is a subcontractor of Aspect. As best I can tell, Ecology has no separate, written agreement with WWM.
- It is not clear if Ecology would spend public funds (and how much) to acquire new supplies of water as part of the Drought Insurance Program. Presentations given by Ecology staff -- which were first developed by Aspect -- suggest that Ecology would encourage interruptible water rights holders to lease water from water banks at market prices. One of WWM’s initial tasks was to assess the “pay-to-play sensitivity” of water rights holders (e.g., how much they would pay for new water rights).
- A different approach was suggested in a podcast sponsored by WWM on March 23, 2025. During the podcast, Ecology representative Scott Turner said that Ecology planned to sign options to lease water from water banks and make it available to interruptible water rights users during a declared drought. Under this scenario, Ecology would serve as an intermediary. But Ecology would apparently have to pay market prices for this water and would then pass on the costs directly to the interruptible water rights holders. Details are not known. If Ecology acquired some water rights at one price and a second batch of rights at another price, how would Ecology decide which interruptible water rights user paid what price?³

3. No. Ecology did not follow the requirements and spirit of the law for public and stakeholder review of an important program. CSRIA first learned of the program’s existence when its members received the survey. CSRIA was not involved in the design of the program.
4. Ecology believes that the use of water banks is critical to achieving its goal of supplying water to interruptible users. Ecology’s presentations, for example, consistently cite the need for additional water to be placed in the water banks, which would then be offered to the holders of interruptible water rights. New or expanded water banks are needed for the Drought Insurance Program.

³ These decisions would apparently be made in a narrow time window. Ecology is currently contemplating a requirement that water banks inform Ecology each February if they have a surplus. In March, if Ecology declared a drought on the Columbia River, it would then exercise the lease options. Interruptible users would purchase water at that time for the April-September drought period. Although most interruptible water rights holders are irrigators, there are some municipal and commercial users as well.

5. The state statute on water banking and trust water rights, RCW 90.42, requires that the exercise of a water right (placed in the trust program) not impair the public interest. But there is no positive obligation on parties to affirmatively demonstrate a special “public interest” or “public benefit” when they seek to create a water bank. It is not possible to know if Ecology gave -- or plans to give -- special treatment to select water rights holders who claim this “public interest.” For months now, Ecology has apparently been in private discussions with certain parties to place more water in water banks. But the details of those conversations and negotiations are not known.
6. The selection of Aspect and WWM raises concerns about potential conflicts of interest if the program goes forward as designed. Both companies may stand to gain financially if water rights holders respond positively to Ecology’s survey. The interruptible water rights holders are potential clients of Aspect, which offers services in (among other things) water banking and mitigation support as well as water rights acquisition and transfer. The interruptible water rights holders are also potential clients of WWM, which offers a digital platform for buying and selling water rights.

IV BACKGROUND

The Columbia River Basin Water Supply Act of 2006 directed Ecology to “aggressively pursue” the development of water supplies, including “a new uninterrupted supply of water for the holders of interruptible water rights on the Columbia River mainstem...”. RCW 90.90.020(3)c. These water rights (“junior rights”) are vulnerable to interruption in a drought because water withdrawals could be curtailed to protect in-stream flows. WAC 173-563-056 (adopted 1980).

There are approximately 379 interruptible water rights holders who could have their water supply curtailed. The amount of water at issue in these permits is about 650,000 acre feet (a-f) per year, according to a recent Ecology presentation (May 21, 2025).⁴ The last time these water rights holders faced curtailment was in 2001. This occurrence is relatively rare -- roughly once in every 15 or 20 years, according to Ecology.⁵

⁴ This estimate is inconsistent with the number (337,318 a-f) for surface water rights cited in the Department of Ecology’s Final Programmatic Environmental Impact Statement for the Columbia River Water Management Program, Publication 07-11-009 (February 2007), page 3-42. Even if ground water rights (55,670) are added, the total (392,988) in the EIS is significantly less than what Ecology’s May 21, 2025 presentation shows.

⁵ During the 2001 drought, Ecology paid \$1 million to the Bonneville Power Administration (“BPA”), the federal power marketing agency, for 40,000 a-f of leased water. The payments compensated BPA for lost revenue.

V CHRONOLOGY OF EVENTS

On **February 29, 2024**, Aspect and WWM submitted a drought insurance proposal to Tom Tebb, director of Ecology's Office of Columbia River ("OCR"). The purpose of the proposal was to assist OCR in meeting Ecology's statutory mandate to develop new supplies for interruptible water rights holders. Aspect -- which held an existing Ecology contract -- would serve as the lead to develop the program. WWM would serve as its subcontractor. The proposal budget was \$95,000.

On **September 5, 2024**, Dan Haller of Aspect prepared a presentation for Ecology called "Developing the Columbia River Drought Insurance Program." The presentation spelled out the need for the program and the details that had been developed to date:

- The potential solution is an "opportunistic drought program" that has no capital outlay for OCR. "While there are permitting and tracking obligations, this new tool would not cost OCR any capital."
- Mitigation "in hand" is limited to 33,000 a-f from Lake Roosevelt though Ecology is evaluating other projects. There is a potential for multiple water banking agreements involving another 30,000 a-f and an additional 40,000 a-f from the proposed Switzler reservoir storage project.
- Some water rights holders would "self-solve" if there was a drought and could reduce risk for themselves. About 200,000 of demand falls into this category.⁶
- The remaining users would have an unmet demand of between 170,000 to 320,000 a-f.
- The cost of buying 320,000 a-f could total approximately \$960 million.
- WWM would serve as the "frontline ambassador" for the initial contact with water rights holders and would assess their willingness to participate, their pay-to-play sensitivity, and their need for technical assistance.⁷
- Once interested water rights users are identified, the parties would cooperate and execute a plan to resolve administrative issues prior to filing any applications for water rights.⁸

⁶ It is not clear where this number comes from. Whether water rights holders "self-solve" or purchase seasonal supplies is typically an internal and confidential business decision.

⁷ The role for WWM in assessing the "pay-to-play sensitivity" of water rights holder underscores the concern about potential conflict-of-interest issues. WWM is not a neutral entity obtaining information in confidence. It is in the business of facilitating the sale and purchase of water through its online system.

⁸ The "behind closed doors" approach to resolve complex administrative issues raises its own concern. These issues are of keen interest to the broad community of agricultural users as well as other stakeholders.

On September 10, 2024, Ecology's OCR executed a work assignment with Aspect under an existing master contract⁹ for the Columbia River Drought Insurance Program Diligence.¹⁰

Ecology's work assignment explained the need for the contract:

OCR is not in regular contact with the estimated 379 holders of interruptible water rights on the Columbia River mainstem. This is because drought on the Columbia River is historically infrequent (approximately every 15 years on average) and unknown property transactions and divisions occur between droughts. Additionally, Ecology has lost significant institutional knowledge from turnover in staff who worked on the last drought in 2001....¹¹

OCR seeks coordinated investigation, outreach, and analysis in advance of the next drought to assist in developing an effective and efficient Columbia River drought insurance program.

The work assignment authorized Aspect and WWM to perform six tasks:

- Task 1 -- Investigate and assess interruptible water rights
- Task 2 -- Analyze demographics and assess likelihood of participation
- Task 3 -- Create, manage and support an information web presence
- Task 4 -- Perform outreach and distribute the survey
- Task 5 -- GIS data Development
- Task 6 -- Create program development recommendations

The total budget was \$95,000, as Aspect had proposed in February. Work products were staggered between November 30, 2024 and May 31, 2025. The contract ended June 30, 2025.¹²

On April 29, 2025, Ecology and WWM sent a joint one-page letter to Columbia River water rights holders that said:

To prepare for future droughts, Ecology's Office of the Columbia River (OCR) and Western Water Market are reaching out to interruptible water rights holders like you. Our goal is to better understand your water needs, help you plan for drought, and make sure we can reach you when a drought happens.

⁹ Aspect is a signatory to Master Contract C2400181 with Ecology.

¹⁰ Ecology-Aspect work assignment no. AC1003.

¹¹ It is not clear why Ecology needed to hire a consultant to communicate with the 379 interruptible water rights holders. Many water rights holders are in frequent communication with Ecology, and Ecology is capable of contacting the other holders on its own.

¹² It is not known if Ecology has extended the contract with Aspect.

To support development of the Drought Insurance Program, we ask that you take a 2-minute online survey (see QR code and website on postcard insert) to:

1. Verify or update your contact information for timely notifications
2. Tell us about your water needs for drought relief planning
3. Request follow-up from Western Water Market if you have additional questions

The letter was signed by Scott Turner, OCR's operations section manager, and Kristina Ribellia, WWM's founder and president.¹³

Supplemental information, prepared by Ecology and posted on its website, asked recipients: "Are you prepared for the next Columbia River Drought Declaration?" A check list encouraged water holders to update their contact information with Ecology and "check in with the team at Western Water Market....Talk to one of our partners at Western Water Market about how a future drought and the new mitigation program will work."¹⁴ (Underlining added for emphasis)

In May 2025, Ecology's Scott Turner and Aspect's Dan Haller prepared a joint presentation on the program that reflected the key points of Haller's September 5, 2024 presentation.

- Approximately 350-400 water rights need "mitigation" in case of a severe drought.
- The rights involve roughly 650,000 acre feet.¹⁵

The presentation said Ecology needed to identify water holders with interruptible rights and their "pay-to-play sensitivity."¹⁶

In June 2025, CSRIA was contacted by several of its members as well as water rights consultants who raised basic questions about the program. Why was it proposed at this time? How would it work?

¹³ The outcome of the survey is not known though preliminary results show that Ecology received only 19 responses by July 2025.

¹⁴ As noted earlier on page 2, WWM is a subcontractor of Aspect Consulting and not a "partner" of Ecology.

¹⁵ As noted in footnote 4, this number is significantly higher than the estimate of interruptible water rights in Ecology's 2007 EIS.

¹⁶ The presentation was released by Ecology in response to a PRA request. It is not known to whom the presentation was made or when.

CSRIA also received a phone call from a representative from AgNorthwest. The company is the largest irrigator in the state but is not a CSRIA member. During a discussion of the Drought Insurance Program, the AgNorthwest representative claimed that his company had helped initiate the program. The company had apparently been told by OCR staff that it needed a special “public interest” justification if OCR created a new or expanded water bank. The Drought Insurance Program was apparently an outgrowth of these discussions in which AgNorthwest offered Ecology the option to lease excess water during drought years from a proposed water bank.

On July 2, 2025, CSRIA requested that Ecology rescind the Drought Insurance Program and deal with water rights through “an open public review process, working with all key stakeholders.” In a memo to Ecology Director Casey Sixkiller and OCR director Larry Mattson, CSRIA said that the program bypassed legally required public and stakeholder review, raised concerns about equitable application and avoided transparency. “OCR-Ecology has transgressed public policy 101: any substantive policy action affecting a large number (class) of Columbia River water rights holders and potentially affected parties is subject to formal public review and direct stakeholder consultation...,” CSRIA wrote.

VI THE LACK OF PUBLIC AND STAKEHOLDER REVIEW

Public involvement is at the core of legislative directives for water policy. RCW 90.54.010(1)(d) puts it this way:

Comprehensive water resource planning must provide interested parties adequate opportunity to participate. Water resources issues are best addressed through cooperation and coordination among the state, Indian tribes, local governments, and interested parties.

RCW 90.42.130 specifically directs Ecology to seek public input on water banking issues:

The department shall seek input from agricultural organizations, federal agencies, tribal governments, local governments, watershed groups, conservation groups, and developers on water banking, including water banking procedures and identification of areas in Washington where water banking could assist in providing water supplies for instream and out-of-stream uses.

As the chronology above makes clear, Ecology did not inform or consult with CSRIA about the Drought Insurance Program before it was unveiled. There was no public meeting or outreach to notify CSRIA and other stakeholders or to seek their opinion. Clearly, Ecology did not comply with the language and spirit of the statutes.

VII A PUBLIC INTEREST TEST?

CSRIA has not seen written documents describing the special “public interest” test for creating water banks. Without knowing more, it is not possible to analyze the legal basis by which Ecology would add this requirement.

As CSRIA pointed out in its July 2 memo to Ecology, the statute, RCW 90.42, requires that water rights in the trust program meet certain requirements.¹⁷ Among them is that water withdrawn from a bank may not impair the public interest. But the statute does not impose an additional affirmative “public interest” test on parties who wish to create a water bank. If Ecology goes forward with the Drought Insurance Program as currently designed, it needs to provide additional information about the proposed special “public interest” standard and whether this standard should be subject to rulemaking prior to adoption.

VIII CONCLUSIONS

Ecology has a statutory mandate to find new supplies for interruptible water rights in the Columbia River basin but it is not clear how Ecology intends to accomplish this goal with the current Drought Insurance Program.

Ecology’s program is in need of transparency and accountability. As things stand now, it is not possible to tell whether the program is consistent with state statute or whether Ecology needs to go through formal rulemaking. We have only seen a survey (questionnaire) and skeleton materials on Ecology’s website. These materials are inadequate to understand how the program would work and how it would help interruptible water rights holders on the Columbia River. Ecology itself has apparently considered different approaches, which is all the more reason for it to disclose the essential elements and mechanics of the program.

In sum, Ecology needs to go through a robust public review process and invite all stakeholders to offer comments on its proposal before implementing it. Documents released by Ecology show that its consultants – Aspect and WWM -- are driving the agenda. They initially approached Ecology in 2024 to launch the program, and Ecology has paid them to promote it. Furthermore, it is not clear how Ecology will ensure that water rights holders are treated equitably under the program. Ecology should not be in the business of picking winners and losers in the effort to address the needs of interruptible water rights users on the Columbia River.

¹⁷ See, also, *Administration of the Statewide Trust Water Rights Program Policy and Interpretive Statement*, Ecology POL-1010 (June 30, 2022), and *Water Resources Program Guidance: Administering the Trust Water Rights Program* (Publication 22-11-012 June 2022).

Columbia-Snake River Irrigators Association

Policy Memorandum

July 2, 2025

TO: Mr. Casey Sixkiller, Director, WA State Dept. of Ecology
Mr. Larry Mattson, Director, Office of Columbia River, Ecology

FROM: Roy (Dewey) Holliday, President, CSRIA
Darryll Olsen, Ph.D., CSRIA Board Representative

SUBJECT: Policy and Legal Flaws Affecting the “Issued” Columbia River
Interruptible Water Rights Water Supply “Program”

The recently “issued program” by the Office of Columbia River-Ecology, ostensibly to deal with Columbia River interruptible water rights, is not supported by the Columbia-Snake River Irrigators Association (CSRIA). This OCR-Ecology sponsored “program” bypasses legally required public and stakeholder review, raised concerns about equitable application, and avoids transparency regarding its underlying objectives. This is a case of new management being led to poor, arbitrary decision making.

OCR-Ecology Failure to Engage Public-Stakeholder Review.

The OCR-Ecology has transgressed public policy 101: any substantive policy action affecting a large number (class) of Columbia River water right holders and potentially affected parties is subject to formal public review and direct stakeholder consultation, including the management of Trust Banking water rights discussed below (including RCW 90.90, 90.42.080, 90.42.110, and 90.42.130 and selected provisions of the Administrative Procedures Act).

The lack of fundamental, legally obligated review from key stakeholders is all the more egregious when the work under RCW 90.90 is considered that brought water supply for interruptible water rights into clear public view. To now dismiss input from the relevant parties is an insult to established principles of sound water resources policy and stakeholder engagement. But as identified below, the apparent primary objective underlying this program “need” was not something that OCR sought to expose to full public scrutiny, given the direct tie, application of Trust water banking. The rules here are explicit per RCW 90.42.130:

The department shall seek input from agricultural organizations, federal agencies, tribal governments, local governments, watershed groups, conservation groups, and developers on water banking, including water banking procedures and identification of areas in Washington where water banking could assist in providing water supplies for instream and out-of-stream uses.

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It is equally disturbing to see the “ad-like” theme on the mailer, asking what are you going to do for water if Columbia River regulation occurs? Besides being amateurish marketing, it is generally perceived as unnecessarily alarming to water right holders, attempting to stroke anxiety? There are other features here that repel technical and policy wisdom.

Among the real policy questions to be addressed in formal review is whether the original empirical justifications for WAC-173-563 should even be valid. For example, among other technical points, the daily net fluctuation in flows measured at McNary Dam in 2001, was more than 35,000 cfs, dramatically overshadowing the net regulation (cfs) trigger tied to the interruptible water rights--3 MAF for the entire 2001 season. Also the “target” flow may be irrelevant given changing flow volumes and timing in the system affected by climate change, during the past 45 years.

The Policy Program Is Inequitable.

The OCR-Ecology cannot field a program that lacks equity among all water right holders with junior rights. The program must be reasonably viable for all water right users, allowing for mitigation to be applied to all—like the emphasis within the water allocation assigned to interruptible rights under RCW 90.90. The state was providing water equally among all right holders.

This new “program” structure creates the perception that water access is contingent on financial capability, rather than policy fairness and a consistent mitigation strategy and availability. Nor is the value basis supportable or the accessible water quantity allocations apparent.

Any interruptible program must take into account ability to comply with provisions not forcing undue hardship. One such program previously allowed all junior water right holders an opportunity to demonstrate optimal water use efficiency, by adopting recalibration measures for their nameplate water rights. If applied equally across all water rights, the “savings” would provide significant “mitigation” water. This represents a more technically sound and equitable approach to mitigation.

To be sure, equity is not balanced by serving a single need of a water right holder, dominated by self-interests. This factor alone should make decision makers pause in implementing the program.

What Real Objective or Purpose Here?

If this all seems somewhat surreal, it is. Are objectives and purposes being obscured?

To their credit, the farm water resources manager from the initiating party for this “program,” called CSRIA representatives (last week) and in a lengthy discussion explained that they brought this proposed agency action to OCR-Ecology, because they wanted “water bank-like” conditions for meeting future water right needs, like industrial-commercial use or food processing on site or presumably on their lands. To accomplish this, they were told by OCR staff that they needed a “public interest” justification to have OCR accept the banking option. From there, the interruptible “program” was concocted with consultant input, relying on a justification that lacks adequate

statutory support or meaningful alignment to sound management policy. This is a totally arbitrary standard.

While we cannot say where all the truth lies herein, there are no special “public interest requirements” for banking other than the basic legal provisions surrounding new permits like available supply, non-impairment, beneficial use, and efficient water use (RCW 90.42.080-120 and POL-1010). Any pretense surrounding other factors is outside the RCW, WAC, or even internal policies; it amounts to arbitrary decision making by OCR-Ecology. Nor can special public interest measures be used to circumvent RCW 90.03.380 requirements affected by relinquishment exemption interpretations, to bank water rights (this is consultant misrepresentation unsupported by statute or administrative policy).

To be on point, the banking approach sought by the subject water right holder is not legally tied to interruptible water rights, as an Ecology “program.” The new purposes of use sought per banking must stand on their own merits under existing water law. Or the right holder can accomplish the same purpose of use objectives by temporary Trust donations, where RCW 90.03.380 provisions are enforced with a water right change/transfer (as with banking). Nevertheless, minus the imaginary “public interest” justification attached to the interruptible “program,” CSRIA finds no reason why the water right holder should be denied Trust banking.

One final point here, the use of Trusted water, banked or temporary donation, is restricted to state use, and so-called public interest measures do not override that fact. While CSRIA has been a proponent of allowing WA water right holders to transfer water rights to their own OR held lands (Columbia River water rights), we firmly acknowledge that a formal public review process would be required, and such action would likely require new state legislation. Bait and switch tactics or attempting to game the system will fail.

CSRIA Recommendation.

OCR-Ecology needs to deal with Columbia River interruptible water rights through an open public review process, working with all key stakeholders, reevaluating the need for the regulation on the Mainstem Columbia River, and fully considering the previous actions identified to resolve the operating question.

The OCR-Ecology is well advised to rescind this proposed interruptible “program” and revise its approach toward a more defensible, stakeholder-inclusive water resources management policy. The agency also needs to keep in mind that consultants are not stakeholders, and they often retain conflicts of interest in promoting a skewed benefit “program.”

cc: Elected Representatives in Eastern WA.
 Interested Parties.