Sent Via Electronic Mail

**MEMO**

To: Greg Silbernagel, OWRD Watermaster

Chris Kowitz, OWRD Region 5 Manager

From: J.R. Cook & Gibb Evans, Commission Contract Staff

CC: Jake Madison, Commission Chair

Mid-Columbia Water Commission

NOWA Board of Directors

Attachments: 2023 Use Maps and 2024 Water Use Forecast Map

Mitigation Source and Mitigation Use Water Rights Table in both rate and volume

Proof of Valid Instream Lease for 2023 and 2024 (IL-1620)

Volumetric Accounting Analysis Scope of Work

RE: Permit #S-55167 (2023 Annual Report and 2024 water use forecast)

**Introduction**

Pursuant to Condition 16 of Permit #S-55167, the water rights holder is required to provide an annual water use report by February 14 of each year, including a forecast for the expected use of Permit #S-55167 for the upcoming irrigation season. In November 2020 the Mid-Columbia Water Commission was legally formed and has assumed administrative responsibilities for all Mid-Columbia Mitigation Use Rights currently in use. The following report includes information to comply with reporting Sub-Conditions a, b, c and d of Condition 16.

**2023 Irrigation Season Water Use**

All mitigation use water under Permit #S-55167, were subscribed to and utilized by the JSH and EID POD’s. This water right was used in combination with S-55263 and S-55262 and S-55114 to total 94.65 mitigated cfs.[[1]](#footnote-1) This right was utilized, in addition to all other rights available to the JSH Point of Re-diversion, Cold Springs Canyon (CSC) Re-Diversion, Windblown Ranch Re-Diversion, Golden Valley Re-Diversion, JSH P-Farm Re-Diversion, and Agri-Northwest Re-Diversion to irrigate, either by itself or in combination with other water rights, 17,770 acres.

The 39.3 cfs was mitigated by 39.3 cfs of legally leased and protected in-stream water via Instream lease (IL-1661). IL-1661 is attached to this report.

**Condition 16 (a)**

The following summary is required by and consistent with Condition 16(a) of Permit S-55167:

1. Maximum total used of the approved use: JSH Point of Re-diversion, Cold Springs Canyon Re-Diversion, Windblown Ranch Re-Diversion, Golden Valley Re-Diversion, JSH P-Farm Re-Diversion, and Agri-Northwest Re-Diversion only used mitigation water for irrigation purposes in 2023. The total irrigation water use for the 2023 irrigation season was 42,320 acre-feet
2. Maximum rate of diversion at the authorized Columbia River Points of Division utilized are as follows:
   1. JSH: 25,091 gpm
   2. EID: 57,961 gpm
3. Total mitigation water utilized at each point of re-diversion was:
   1. JSH: 3,736 acre-feet
   2. CSC: 2,150 acre-feet
   3. Windblown: 4,257 acre-feet
   4. Golden Valley 2,155 acre-feet
   5. JSH P-Farm: 5,653 acre-feet
   6. AgriNorthwest: 4,556 acre-feet
4. Total water used per acre:
   1. JSH: 2.3 acre-feet
   2. CSC: 2.3 acre-feet
   3. Windblown: 2.8 acre-feet
   4. Golden Valley 2.7 acre-feet
   5. JSH P-Farm: 2.5 acre-feet
   6. AgriNorthwest: 2.2 acre-feet
5. Map of Primary and Supplemental water use, including acreage (Attached)
6. Proof of Mitigation is attached (IL-1620)

**Condition 16 (b)**

The following summary is required by and consistent with Condition 16(b) of Permit S-55167:

1. Planned activity for 2024 irrigation season:
   1. The Commission plans to utilize water in 2024 consistent with the place of use boundary proposed in the attached map.
   2. This water right will continue to be administered by the Commission.
   3. All re-diversion points utilized in 2023 will be utilized in 2024
   4. Volumetric Mitigation required[[2]](#footnote-2) = 13,150.6 acre-feet
   5. Mitigation Source water[[3]](#footnote-3): IL-1620 (39.3 cfs or 28,402.1)
   6. Over-Mitigation Total[[4]](#footnote-4): 15,251.5 acre-feet

**Condition 16(c**)

Mitigation water rights users formed the Mid-Columbia Water Commission (Commission) in 2020 to administer temporary mitigation and begin working on programmatic mitigation necessary to memorialize a permanent program and certificate mitigation use rights in the future. The Commission held preliminary discussions with the State of Washington and congressional representatives on the possibility of a one-time permanent acquisition of enough “non-treaty” storage water owned in Canada by BC Hydro to permanently mitigate all water rights associated with the Mid-Columbia mitigation effort. Additional options have been discussed with the State of Washington including investing in aquifer recharge projects in the Yakima Basin and Columbia Basin that can aid in introducing cold water back to the mainstem of each river during the summer months and co-investment in Walla Walla Basin projects.

The Commission, in conjunction with the Northeast Oregon Water Association (NOWA) and Umatilla also secured $500,000 in funding to enable more formal, final programmatic discussions regarding mitigation accounting, mitigation source water and optimization of available Columbia River water supplies in the Mid-C region in 2021. While the funding is available and Umatilla County has submitted a letter formally requesting creation of a CRUST II Task Force, no formal appointment has taken place by the Executive Branch of the State of Oregon. The Mid-C recognizes that all preliminary discussions had to date require Sovereign negotiation between the State of Washington, State of Oregon and affected tribal governments. The Commission continues to stress the importance of formation of CRUST II so that mitigation accounting, bi-state management and protection of mitigation investments and water use optimization scenarios necessary for creation of a permanent program and permanent solution can begin.

The Commission has revised its volumetric target on programmatic mitigation to 150,000 acre-feet which is enough water to mitigate the 450 cfs, inclusive of these test mitigation rights, of targeted mitigation demand in the Mid-Columbia region of Oregon. The Commission has applied for new water rights to establish a permanent program boundary and the permanent list of diversions that would be included within a permanent programmatic system. Those water rights have gone through the IR process but are on hold and the timeline for completion is uncertain and out of the control of the Commission. While initial discussions commenced, the Commission was informed in the 2nd quarter of 2023 that interagency discussion was necessary and that a list of questions, etc. would be provided to the Commission. It is now the 1st quarter of 2024 and the Commission has yet to receive any substantive feedback from the agencies.

Volumetric Proposal

The Commission continues to stress the importance of addressing a volumetric mitigation accounting system. Commission subscribers and mitigation purchasers continue to pay for a significantly larger amount of mitigation water than what is being authorized for use. As an example, in 2022 Commission members legally protected 3 acre-feet of water instream for every acre-foot of water diverted. The deal struck and committed too by the state, various interest groups and water users was 1:1 not 3:1. This has resulted in significant stress to the region which has been amplified by stricter and stricter interpretations of how water can be utilized to maximize regional water sustainability and groundwater recovery.

The Commission highlighted in its 2023 report that it intended to address the volumetric issue formally in 2023. During 4th quarter of 2023 meetings with state staff, it was discussed and decided that the Commission shall submit a proposed use plan for 2024 based on a volumetric calculation of mitigation provided to the Columbia River vs. mitigation volume needed to satisfy 180 cfs of demand over the 169-day mitigation period of OAR 690 Division 33.

In this proposed use report, the Commission has documented, via its mitigation and mitigation use right table, that adequate legally protected instream volume exists to warrant activation of all 180 cfs of mitigation use rights. The Commission is requesting activation of all 180 cfs of use rights with a finding that sufficient volume has been legally protected in-stream to ensure compliance with additional public interest review criteria of ODFW.

The Commission is submitting a scope of work to be completed by Mt. Hood Environmental to provide a qualitative assessment of the mitigation benefits of the legally protected water and groundwater storage savings generated by the program. The Commission anticipates additional negotiations with ODFW between the date of this submittal and April 15, 2024 in an attempt to address and memorialize a volumetric mitigation accounting test. Additional discussions and negotiations will be necessary prior to permanent memorialization of volumetric mitigation accounting to meet permanent Commission demands which are anticipated.

The Commission is prepared to memorialize a permanent programmatic approach to long-term mitigation and sustainability needs in the Mid-Columbia region of Oregon. The Commission has requested, numerous times, for formal engagement from the executive leadership of the State of Oregon to engage in a permanent solution. Clarity and certainty for both the regulatory agency and for the Commission is contingent upon memorialization of a permanent programmatic agreement for 150,000 acre-feet of volumetric mitigation shaped over the course of the 169 day mitigation season, protection of groundwater savings and optimization of the Columbia River water rights available to the region.

1. Report for #S-55263 and #S-55262 and #S-55114 submitted separately to comply with permit conditions but volumes have been totalized for reporting purposes. [↑](#footnote-ref-1)
2. Volumetric Mitigation required is calculated using the total rate of the water right multiplied by 1.98 to reach acre-feet per day. The acre-feet per day is then multiplied by 169 to reflect the number of days of the mitigation period as outlined in OAR 690 Division 33. [↑](#footnote-ref-2)
3. Mitigation water volumes are calculated by the actual number of acre-feet legally protected in-stream [↑](#footnote-ref-3)
4. Over-mitigation total reflects the mitigation source water protected in-stream vs. the maximum volume capable of being diverted during the 169 day mitigation period. [↑](#footnote-ref-4)