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 Map 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-1943)

Proof of Valid Instream protection for 2023 (CW 119)

Proof of Valid Instream Lease for 2023 (IL-1536)

Proof of Valid Instream protection for 2023 and 2024 (CW 126)

Volumetric Accounting Analysis Scope of Work

RE: Permit #S-54633 (2023 Annual Report and 2024 water use forecast)

**Introduction**

Pursuant to Condition 16 of Permit #S-54633, 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-54633 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 as well as Condition 15.

**2023 Irrigation Season Water Use**

All mitigation use water under Permit #S-54633, was subscribed to and utilized by Madison Ranches, Inc., Windy River and Meenderink Dairy. This water right was used in combination with S-55190 and S-55192 to total 65.26 mitigated cfs.[[1]](#footnote-1) This right was utilized, in addition to all other rights available to Madison Ranches, Windy River, and Meenderink Dairy to irrigate 6,028.5 acres.

The 38.75 cfs was mitigated by 38.75 cfs of legally leased and protected in-stream water via Intream Lease (IL-1943), CW 119, IL-1536 and CW 126. Proof of mitigation is attached to this report.

**Condition 16 (a)**

The following summary is required by and consistent with Condition 16(a) of Permit S-54633:

1. Maximum total used of the approved use: Madison Ranches, Inc, Windy River and Meenderink only utilized water supplies for irrigation purposes. The total irrigation water use for the 2023 irrigation season was 14,261 acre-feet
2. Maximum rate of diversion at the Columbia River Point of Division utilized (CID Point of Diversion) was 183,663 gallons-per-minute.
3. Total mitigation water utilized was:
   1. Madison Ranches Inc: 5015 acre-feet
   2. Meenderink: 691 acre-feet
   3. Windy River: 1206 acre-feet
4. Total water used per acre:
   1. Madison Ranches Inc: 2.4 acre-feet
   2. Meenderink: 3.3 acre-feet
   3. Windy River: 2.2 acre-feet
5. Map of Primary and Supplemental water use, including acreage (Attached)
6. Proof of Mitigation is attached (CW 119, IL-1943, IL-1536, CW126)

**Condition 16 (b)**

The following summary is required by and consistent with Condition 16(b) of Permit S-54633:

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. This water right will be used on the same farms that utilized water in 2023. In addition to the farms that utilized water in 2023, AgriNorthwest and McCarty Ranches also intend to utilize mitigated water in 2024.
   4. Volumetric Mitigation required[[2]](#footnote-2): 12,966.53
   5. Mitigation Source Water[[3]](#footnote-3): CW 126 (5.32 cfs or 1,780.85 acre-feet), IL-1943 (16.53 cfs or 11,946.23 acre-feet)
   6. Note: The Commission intends to utilize this water right to test the ability to utilize volumetric mitigation to activate the remaining 16.9 cfs of the use rate.
   7. Over-Mitigation Estimate[[4]](#footnote-4): 760.55 acre feet

**Condition 15**

Condition 15 requires compliance with gauge heights set below Bonneville Dam to protect Chum Salmon. The condition requires that if mitigation is not secured for the dates of March 1 to April 14 that the Commission shall cease pumping the unmitigated rate if the gauge height falls below the gauge height target set by the action agencies. In 2021 BPA documented that the gauge height is usually set at 11.8 feet from November to April 10. The gauge height was tracked and the 3-day rolling average dropped below 11.8 on March 2 and remained below 11.8 until March 14. The gauge height again dropped below 11.8 on March 15 and remained below 11.8 to March 22. The gauge height again dropped below 11.8 on March 23 and remained below 11.8 until March 29. The gauge height again dropped below 11.8 on March 31 until April 9. Water users listed above had enough valid winter water rights that they were not yet pumping the rate under this permit between March 1 and April 10. Staff coordinated with the CID director and the CID director was informed to contact staff should the CID diversion rate during the period of tracking reach 147,342 gpm which is the valid pumping rate of the users under their existing water rights. The diversion rate never reached 147,342 during the tracking period so mitigation water rights were never pumped during the period of tracking. Therefore while the height was tracked, the need for the rate during that period was never necessary and therefore OWRD can find the permittee in compliance with this condition.

**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-55192 and #S-55190 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 estimate 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)