

**Alpine Lakes Protection Society • Alpine Lakes Foundation
Alliance for the Wild Rockies • American Whitewater • Aqua Permanente
Center for Environmental Law & Policy • Conservation Congress
El Sendero • Endangered Species Coalition • Federation of Western Outdoor Clubs
Friends of the Bitterroot • Friends of Bumping Lake • Friends of the Clearwater
Friends of the Enchantments • Friends of Lake Kachess • Friends of Wild Sky
Great Old Broads for Wilderness • Issaquah Alps Trails Club
Kachess Homeowners Association • Kachess Ridge Maintenance Association
Kittitas Audubon Society • Kittitas County Fire District #8 • The Mazamas
Middle Fork Recreation Coalition • North Cascades Conservation Council
North Central Washington Audubon Society • Olympic Forest Coalition
River Runners For Wilderness • Save Our Sky Blue Waters • Seattle Audubon Society
Sierra Club • Spokane Mountaineers • Spring Family Trust for Trails
Washington Native Plant Society • Washington Wild • Western Lands Project
Wilderness Watch • Wild Fish Conservancy**

May 11, 2016

Via email to: mike.kaputa@co.chelan.wa.us

Chelan County Natural Resources Department
Attention: Mike Kaputa, Director
411 Washington Street, Suite 201
Wenatchee, WA 98801

RE: Icicle Creek Water Resource Management Strategy – SEPA scoping

Dear Director Kaputa:

Thank you for the opportunity to provide scoping comments on the Icicle Creek Water Resource Management Strategy. As non-profit organizations focused on conservation and recreation with members who live, work and play in the project area, we have a strong interest in current and future management activities in the Icicle Creek watershed and the Alpine Lakes Wilderness. Many of our organizations attended the informational and scoping meetings held in 2013-2016 regarding this proposal, and some of us have participated in Icicle Work Group meetings and have submitted comment letters previously. We appreciate the difficult challenge to provide instream flows and supply water for historic agricultural uses. There are impacts inherent in this, and Chelan County should work to minimize such impacts by prioritizing water conservation measures that are not detrimental to wilderness values. We are willing to work towards a solution. We support the tribes' insistence that any solution ensure adequate instream flows for fish. However, we are very concerned about the substantial impact of current and proposed water management activities on the lakes in the Wilderness, and the proposal to increase water diversions from seven lakes in the Alpine Lakes Wilderness that flow into Icicle Creek: Colchuck, Eightmile, Upper and Lower Snow, Nada, Lower Klonaqua and Square Lakes.

Chelan County and the Washington State Department of Ecology jointly issued a SEPA Determination of Significance, determining that a Programmatic Environmental Impact Statement (PEIS) is required, due to the proposal's probable significant environmental impacts. We agree with that determination, and we support the decision to prepare an EIS, given the scope and severity of the potential environmental impacts associated with the proposal.

After reading through the materials you published online, we offer the following comments:

Full range of alternatives

Key to the effectiveness of the EIS is presenting a full range of alternatives. “The range of alternatives considered in an EIS must be sufficient to permit a reasoned choice.”¹ The proposed action and a “No Action” alternative do not present a sufficient range of alternatives, especially given the large scope of the overall proposal. Furthermore, the EIS cannot be constrained solely by the set of principles agreed to by the Icicle Work Group, as that would be contrary to law. “[A]n agency violates SEPA by shaping the details of a project before completing an EIS, effectively turning administrative approval into a ‘yes or no’ vote on that project as detailed, rather than allowing for the development and consideration of alternatives after the EIS is completed.”² The large amounts of money that the Work Group has expended on the proposed action cannot be used to justify foreclosure of other reasonable alternatives.³

We suggest several other reasonable alternatives below to fully evaluate the project opportunities, impacts and needed mitigation. We believe that the alternatives below are reasonable and can “feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.”⁴

Wilderness Protection alternative

The Alpine Lakes Wilderness is a shared natural resource that many people use and care about; it must be respected and protected. It is the Wilderness area nearest to the millions of people who live in the Puget Sound metropolitan area, and is one of the most popular Wilderness areas in the United States. Alpine Lakes Wilderness has operated under a permit system for decades because of the popularity of this Wilderness with the people of Washington State. It has national importance as part of the National Wilderness Preservation System, and it is owned and visited by people from all over the country. It took many years of struggle and hard work by members of our non-profit organizations to establish the Wilderness.

The EIS should include a “Wilderness Protection” alternative. This alternative should promote Wilderness values in keeping with the Wilderness classification of the Alpine Lakes Wilderness area, while simultaneously meeting the objectives of the proposal. This alternative should not increase the amount of water removed from the Alpine Lakes Wilderness; not expand easements; not encroach on wilderness lands; not use mechanical transport; and not build any structure or

¹ *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn.App. 439, 445, 832 P.2d 503 (1992).

² *Columbia Riverkeeper v. Port of Vancouver USA*, 189 Wn.App. 800, 818-19, 357 P.3d 710 (2015).

³ *Id.*

⁴ WAC 197-11-440(5)(b).

installation in the Wilderness. Rather, under the Wilderness Protection alternative, any new water supplies should be obtained from application of conservation measures and from sources outside the Wilderness, and use non-Wilderness options for improving instream flows (for example, the Icicle-Peshastin Irrigation District change in diversion point discussed below). The Wilderness Protection alternative should comply with all provisions in the Forest Service's administrative Alpine Lakes Area Land Management Plan, including: "Except as provided for in Section 4(d)(4) of the Wilderness Act, watersheds will not be altered or managed to provide increased water quantity, quality or timing of discharge."

The EIS list of relevant laws, rules and plans should include the Wilderness Act of 1964; the Alpine Lakes Area Management Act of 1976, the Alpine Lakes Area Land Management Plan (1981), and the Wenatchee NF Forest Plan (1990) as amended.

The Wilderness Protection alternative should evaluate public purchase (buy-back) of private water rights in the Alpine Lakes, which would allow removal of dams and other structures from the lakes to restore the Wilderness area to its true natural character.

The Icicle Work Group's guiding principle on Wilderness should be stated as a separate principle, and not subsumed or merged or blended into the other principles. Most of the Icicle Creek watershed is within the Alpine Lakes Wilderness.

Water Right Relinquishment alternative

We appreciate the irrigators' need for water to irrigate their orchards and keep them productive. We do not object to the exercise of valid, existing water rights of the Icicle-Peshastin Irrigation District, but we question any assertion of water rights that have been relinquished or are otherwise invalid.

The EIS should include a "Water Right Relinquishment" alternative. This alternative should analyze existing water rights to the Alpine Lakes and acknowledge those rights that have been relinquished or abandoned. Further, to the extent that relinquishment of water rights affects the basis of other alternatives, a relinquishment analysis should be part of each alternative considered. For example, has the Icicle-Peshastin Irrigation District (IPID) relinquished through non-use any part of the Eightmile Lake water right on which the dam rebuilding scheme is predicated? If so, it would be improper to analyze an alternative that is based upon the invalid assumption that IPID has valid water rights that would be needed to pursue the project.

The EIS should include an alternative that recognizes Icicle Work Group members' water rights are limited to the purposes for which they were initially granted (for example, agricultural irrigation) and cannot be redirected to other purposes (such as suburban development). Furthermore, all alternatives should be assessed for compliance with all applicable provisions of the Water Code, RCW 90.03.

Water Conservation alternative

The EIS should include a “Water Conservation” alternative that emphasizes aggressive water conservation measures by the City of Leavenworth, Icicle-Peshastin Irrigation District, the Leavenworth Fish Hatchery and other water users as a means to achieve the proposal’s objectives. This alternative should consider the adoption of conservation measures (such as restrictions on watering lawns) that have been implemented in the Seattle area, where water consumption actually declined while the population increased. This alternative should also evaluate water markets that facilitate selling and trading of water rights.

The Water Conservation alternative should evaluate a transfer of water rights from IPID to Leavenworth for properties within the city limits that have now converted from orchards to residential properties. This alternative should analyze how appropriate reductions in water usage (that is, not using agricultural water quantities for lawn irrigation) would save water that would then be available for other Leavenworth needs.

The Water Conservation alternative should evaluate how IPID spills large quantities of water back into the Wenatchee River at the end of several of its canals. This alternative should evaluate how this 19th century irrigation practice (which was required to ensure water made it to the furthestmost customers) could be replaced with modern pumping and piping technologies constructed outside of the Wilderness Area. The EIS should consider the resulting reduction in water demand as an alternative water supply.

A strong water conservation program can and should be a part of all the action alternatives, and should be compared to current practices (the No Action alternative).

Water Right Change alternative

The EIS should include a “Water Right Change” alternative. This alternative would evaluate improving Icicle Creek flows by moving IPID’s point of diversion downstream (to the Wenatchee River). This measure, which would add 100 cfs of water to Icicle Creek every year, would convert the IPID diversion from gravity flow to pumping (requiring electrical power). This alternative should therefore analyze renewable energy options to supply that power, including solar, wind and in-canal hydroelectric. Options for changing the point of diversion have already been studied and information on their feasibility and costs is available.

Relationship Between NEPA & SEPA Review

The involvement of several federal agencies and the likelihood of significant environmental impacts justify a finding of significance under NEPA.⁵ Therefore, it is imperative that the Forest Service, as the federal land manager of the Wilderness, take a hard look at the Wilderness impacts associated with the proposed projects.⁶ If the proposed SEPA EIS is “programmatic” and contains no federal decisions, the SEPA EIS should say so explicitly and note that any project that requires a federal decision will require NEPA analysis and cannot rely solely on this

⁵ 42 U.S.C. § 4332.

⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

SEPA EIS. It is unclear, from the documents produced thus far, how the SEPA and NEPA analyses will be related, if at all. Given the fact that the Wilderness Area is federally managed, the relationship between these two different review processes should be disclosed.

Climate Change Impacts Must Be Considered

The impact of each alternative on Icicle Creek's resilience to climate change, particularly with regard to changes in amount or timing of precipitation and instream flow, should be evaluated.⁷ According to Ecology:

Climate Change will increase the variability – widening the range – of future supply and demand of water. As climate change shifts the timing and volume of streamflow and reduces snowpack, lower flows during the summer will make it more difficult to maintain an adequate supply of water for communities, agriculture, and fish and wildlife. Lower summer flows and higher stream temperatures will continue to degrade our water quality and place stress on salmon.⁸

These impacts are foreseeable and must be assessed as part of the EIS.

Impacts of Water Withdrawal Must Be Analyzed

The EIS should discuss the hydrological and biological impacts of the current drawdowns of the lakes, and how the proposed changes will affect the current situation. The analysis should include a review of scientific literature on the impacts of water removals upon wildlife, vegetation, soil and wilderness values.

Operations, Maintenance & Environmental Monitoring Analysis

The EIS should provide a detailed operations, maintenance and environmental monitoring plan for the water infrastructure, and analysis of the wilderness impacts of specific maintenance actions, including helicopter use. The EIS should also provide a detailed accounting of budgets and funding sources for these items.

The Purpose & Need of the Project Should Be Identified

The EIS should fully explain the purpose and need for the water these projects would provide. We understand the need to increase instream flows in Icicle Creek, but what are the additional

⁷ RCW 43.21C.030(f) (SEPA is to be implemented in a fashion that “recognize[s] the worldwide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment.”); WAC 197-11-444; *Rech v. San Juan Cnty*, 2008 WL 5510438 (Wash. Shorelines Hearings Bd.) (June 12, 2008) at *12 n.8 (“We further note an emerging trend in the case law under the National Environmental Policy Act (“NEPA”) and state NEPA analogues in which courts are increasingly requiring agencies to analyze climate change impacts during environmental assessments.”).

⁸ Ecology, Preparing for a Changing Climate: Washington State's Integrated Climate Response Strategy (April 2012) at 101-102; *id.* at 103 (stating that climate change will lead to “increases in winter precipitation, posing additional challenges for managing reservoirs for flood control, fish, and hydropower.”).

out-of-stream uses to be served by these projects? To what beneficial use will the additional water be put?

The EIS should fully explain what human activities caused the degraded conditions (such as low instream flows in Icicle Creek) that the projects seek to improve. We should not be repeating the mistakes of the past and this information is highly relevant as to the purpose and need of the projects in the first place.

Direct, Indirect & Cumulative Impacts Must Be Assessed

The EIS should analyze each proposed action's site-specific impacts, past practices, and the restoration, mitigation, and funding that would be needed in the future. At each site, proposed construction activities and proposed water diversions need to be spelled out in detail.

The direct, indirect and cumulative impacts of all proposed projects must be assessed.⁹ Cumulative impacts include "the impact from the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."¹⁰ "A cumulative impact analysis need only occur when there is some evidence that the project under review will facilitate future action that will result in additional impacts."¹¹ Here, all of the projects are being analyzed in one EIS, are not speculative, and thus must be assessed in a holistic fashion. In addition, if the projects are going to be implemented in phases, that must be described and done in a manner that does not improperly segment the environmental impacts of all proposed projects.

Instream Flow Impacts on Fish and ESA Consultation

The EIS should analyze the adequacy of proposed instream flows to support spawning, rearing and migration of steelhead, salmon and bull trout. Each project's impacts on instream flows and the species likely to be affected should be identified. Under the Endangered Species Act, the Upper Columbia River distinct population segment of steelhead is listed as a threatened species, and the Upper Columbia River spring-run Chinook salmon evolutionary significant unit is listed as endangered. Therefore, consultation under the Endangered Species Act must be required. Icicle Creek contains some of the last remaining nearly pristine habitat available to these fish. Icicle Creek is designated critical habitat for the Upper Columbia River steelhead and contains spawning, rearing, and migration habitat for this species. Upper Columbia River spring-run Chinook salmon also spawn in Icicle Creek. However, human activities have lowered instream flows and devastated these fish in Icicle Creek.

Information on Existing Diversions Is Needed

The EIS should include maps, diagrams and photos to clearly show the current situation (including the place of diversion and amount of water diverted) at each of the lakes and other project locations and how that would change under the proposed action(s) under each alternative.

⁹ WAC 193-11-060(4).

¹⁰ 40 C.F.R. § 1508.7.

¹¹ *Boehm v. City of Vancouver*, 111 Wn.App. 711, 720, 47 P.3d 137 (2002).

Thank you for considering these comments.

Sincerely,

Karl Forsgaard, President
Alpine Lakes Protection Society (ALPS)

Trish Rolfe, Executive Director
Center for Environmental Law & Policy

Harry Romberg, National Forests Chair
Washington State Chapter
Sierra Club

Mark Boyar, President
Middle Fork Recreation Coalition (MidFORC)

John Spring, Manager
Spring Family Trust for Trails

Brock Evans, President
Endangered Species Coalition

Dave Kappler, President
Issaquah Alps Trails Club

Shelley Spalding, Climate Action Liaison
Great Old Broads for Wilderness

Kathi & Greg Shannon, Steering Comm members
Friends of the Enchantments

Mike Garrity, Executive Director
Alliance for the Wild Rockies

Denise Boggs, Executive Director
Conservation Congress

Gary Macfarlane, Ecosystem Defense Director
Friends of the Clearwater

Lee Davis, Executive Director
The Mazamas

Tom Uniack, Executive Director
Washington Wild

Rachael Osborn
former member, Icicle Work Group

Gus Bekker, President
El Sendero
Backcountry Ski and Snowshoe Club

Mike Town, President
Friends of Wild Sky

Tom Hammond, President
North Cascades Conservation Council

Chris Maykut, President
Friends of Bumping Lake

William Beyers, President
Alpine Lakes Foundation

George Nickas, Executive Director
Wilderness Watch

George Milne, President
Federation of Western Outdoor Clubs

Tom Martin, Council Member
River Runners For Wilderness

Larry Campbell, Conservation Director
Friends of the Bitterroot

Kurt Beardslee, Executive Director
Wild Fish Conservancy

Tom Gauron, President
Kittitas Audubon Society

Janine Blaeloch, Executive Director
Western Lands Project

Doug Scott, Principal
Doug Scott Wilderness Consulting

Lori Andresen, President
Save Our Sky Blue Waters

Robert Angrisano, President
Kachess Homeowners Association

Terry Montoya, President
Kachess Ridge Maintenance Association

Thomas O'Keefe, PhD
Pacific Northwest Stewardship Director
American Whitewater

Melissa Bates, President
Aqua Permanente

Art Campbell, President
North Central Washington Audubon Society

Bill Campbell, President
Friends of Lake Kachess

Jerry Watts, Chair
Board of Fire Commissioners
Kittitas County Fire District #8

Brian Hoots, President
Spokane Mountaineers

Clay Antieau, President
Washington Native Plant Society

John Brosnan, Executive Director
Seattle Audubon Society

Connie Gallant, President
Olympic Forest Coalition

Cc: Tom Tebb, Department of Ecology
other Icicle Work Group members
Governor Jay Inslee
U.S. Senator Patty Murray
U.S. Senator Maria Cantwell
U.S. Representative Dave Reichert
U.S. Interior Secretary Sally Jewell
U.S. Bureau of Reclamation Commissioner Michael Connor
U.S. Forest Service, Regional Forester Jim Pena
Okanogan-Wenatchee National Forest Supervisor Mike Williams
Wenatchee River District Ranger Jeff Rivera