



February 1, 2021

Tom Tebb
 Director, Office of the Columbia River and Icicle Work Group Co-lead
 Washington State Department of Ecology
 1250 Alder Street
 Union Gap, WA 98903
 Comments submitted electronically to: Melissa.downes@ecy.wa.gov

RE: Eightmile Dam Rebuild Project – SEPA Scoping Comments

Dear Director Tebb:

Thank you for the opportunity to provide scoping comments on the proposed Eightmile Dam Rebuild Project. Many of the undersigned organizations provided comments in 2016 and 2018 during the development of the Icicle Strategy. As you will see below, many of the concerns highlighted during the scoping and draft Programmatic Environmental Impact Statement (PEIS) comment periods of the Icicle Strategy remain and are still relevant to the proposed Eightmile Dam Project. Now that the Department of Ecology (Ecology) and the Icicle Work Group (IWG) have moved into the implementation of the PEIS and project-level review phase, the failure of the IWG and the PEIS to address substantive concerns regarding wilderness impacts, water rights validity, and compliance with federal public land law bring these critical issues to light again in the proposed Eightmile Dam project.

The 28 undersigned organizations have come together out of our concern and respect for the Alpine Lakes Wilderness and the Enchantment basin. The Alpine Lakes is one of the most iconic and treasured places in the National Wilderness Preservation System, and one of the most visited wilderness areas in the country. Eightmile Lake lies within the Enchantment Permit Zone, which has seen exponential growth in visitation in the last decade, with combined day and overnight use increasing from 19,678 visitors in 2009 to 45,810 visitors in 2018 given the unique recreational experiences offered in the area. Our organizations and members have great interest in the management and stewardship of these lands, and are committed to working to ensure wilderness, recreation, scenic, and other natural resource values are protected into the future. Our organizations also support the maintenance of the Eightmile Lake dam, recognizing the import of protecting public health and safety downstream, and ensuring the Icicle-Peshastin Irrigation District (IPID) can continue to provide irrigation water to its users in the Wenatchee Valley.

The initiation of the scoping period for the Eightmile Dam Environmental Impact Statement (EIS) provides stakeholders and concerned citizens with the opportunity to comment on the proposal’s alternatives, impacts, and potential mitigation measures to be analyzed in the EIS. The purpose of scoping is to narrow the focus of the EIS to significant environmental issues and identify alternatives to be analyzed in the EIS. Our organizations respectfully submit the

following concerns and potential alternatives for Ecology's careful consideration and evaluation as the agency moves forward with the complex Eightmile Dam project:

- 1. Ecology must respect the Wilderness Act of 1964 and ensure no precedent-setting actions are considered as part of the Eightmile Dam project and work with the U.S. Forest Service (USFS) to ensure compliance with relevant federal laws and management plans and identify additional environmental considerations and impacts.**

The U.S. Forest Service manages 87 percent of the land in the Icicle sub-basin, 74 percent of which is located within the Alpine Lakes Wilderness. As discussed, Eightmile Lake is located within the Alpine Lakes Wilderness, which adds multiple layers of federal law to consider for all actions proposed on federal land, most notably the 1964 Wilderness Act, 1976 Alpine Lakes Area Management Act, and the 1981 Alpine Lakes Wilderness Management Plan. While the IPID negotiated a Special Warranty Deed with the USFS to continue to maintain and operate its infrastructure in the wilderness, the USFS retains its land management authority and must ensure all elements of the project comply with federal law. Importantly, it is critical that Ecology not pursue precedent-setting actions in the wilderness that would jeopardize the integrity of the National Wilderness Preservation System. Enlarging or expanding water reservoir capacity is an action that would require Presidential approval and set dangerous precedent for wilderness management across the country. Ecology must specifically work with the USFS to:

1. Ensure no project alternative considered requires Presidential authorization;
2. Evaluate ingress and egress needs and determine the appropriate permitting path and required environmental impacts analysis; and
3. Minimize impacts to wilderness values, including recreation (by damaging trails, campsites, changing aesthetics, etc.) and scenic and conservation values.

- 2. Ecology must complete a "Tentative Determination of IPID's Eightmile Lake Storage Right," to ensure the project is appropriately designed to store the amount of water the IPID has a legal right to use.**

Many of the undersigned organizations have consistently raised concerns about the extent and validity of IPID's water storage right at Eightmile Lake—all proposals have relied on the 1929 adjudication of IPID's water right, not the real consideration of water rights relinquishment because of non-use under western water law's "use it or lose it" principle. IPID has only used ~1,400-acre feet of its claimed 2,500-acre-foot water right since the Eightmile Dam was partially damaged in 1990. Nonetheless, Ecology has continued to press ahead, consuming significant time and public funding since 2013 without answering this fundamental question. Through persistent advocacy from the environmental community, Ecology committed in 2020 to conduct a novel, non-binding "preliminary determination" for IPID, but it is unclear when that analysis will be complete and how it will inform this EIS and the alternatives evaluated. A prudent approach—that would build trust, use taxpayers' dollars wisely, and minimize wilderness impacts—would be for Ecology to conduct a Tentative Determination of IPID's water storage right and THEN determine the appropriate alternative that is designed to store the amount of water the IPID has a legal right to use. Ecology has clarified that, by law, this would require agreement and initiation from IPID. With Ecology covering the costs of the Eightmile Dam project (as well as the emergency stabilization costs in 2018) in addition to other efficiency and maintenance upgrades throughout IPID's system, IPID and Ecology should be able to negotiate an agreement to initiate a Tentative Determination now under the collaborative compact of the Icicle Strategy so the entirety of the Icicle Strategy can move forward with more certainty.

- 3. Ecology should evaluate two additional alternatives in the EIS, including a viable no-action alternative and an alternative that does not require Presidential authorization.**

The range of the proposed alternatives to be evaluated in the EIS is too narrow. At present, the two action alternatives propose to retain the same amount of water with the same elevational levels for the spillway (4,671') and outlet pipe intake (4,632'). Additionally, the no-action alternative is not viable because of the Office of Dam Safety's requirement for IPID to fix the dam due to its high-hazard classification and poor condition. Ecology should evaluate a true no-action

alternative that would meet the Office of Dam Safety's requirement but represent existing dam conditions. This new no-action alternative could use the Narrow Spillway design to maintain the existing dam's footprint and be designed to meet the existing spillway elevation (4,667') and maintain current outlet pipe levels. IPID would also have enough water to meet the district's irrigation needs, accessing ~1,540-acre feet of water. At present, the no-action alternative considered is not viable and does not serve as an appropriate benchmark from which the impacts of the other alternatives can be measured.¹

The second new alternative Ecology should consider would be designed to guarantee no Presidential authorization would be required for the construction of the dam. At present, the USFS has not provided a written opinion exempting the proposed alternatives from Presidential authorization. In February 2020, the USFS shared that any dam design that would modify the spillway elevation (4,671') or outlet level (4,648') from its conditions in 1976 when the Alpine Lakes Wilderness was designated would require such authorization. The USFS modified its opinion in November 2020 but has not provided a written opinion or explanation of its change in position. To prudently prepare for a potential legal challenge to the USFS position, Ecology should evaluate a new alternative that would adhere to the 1976 conditions of the dam design, including a narrow spillway with gates, spillway elevation of 4,671', and outlet level of 4,648'. This would present an alternative that allows IPID to access ~1,700-acre feet of water, which exceeds the district's planned future needs.

4. Ecology must work with the U.S. Forest Service to evaluate ingress and egress options and impacts and should not allow motorized overland transport as a construction method. Ecology must also identify and evaluate associated staging needs and impacts.

As discussed above, Ecology must work with the USFS to evaluate ingress and egress methods to enable construction at the dam site and the impacts of such activities. Motorized overland transport must not be allowed and is currently not allowed without consent and approval of the USFS. Aerial transport and non-motorized overland travel should be the only means of ingress and egress. The EIS documents fail to acknowledge the USFS's regulatory role in permitting egress and ingress to IPID's deeded area and must do so. Allowance of motorized overland transport would violate the Wilderness Act, destroy the fragile subalpine environment, disrupt recreational access and enjoyment of the area, and leave a long-lasting scar along the 3.3-mile trail from the access road. Furthermore, the EIS documents do not identify staging needs associated with construction activities; with such a constrained footprint, Ecology must determine if any permits are required from the USFS for use of national forest lands. In considering ingress and egress impacts, the EIS should evaluate visitor use patterns and ensure recreational access is not unduly impeded.

5. Avoid potential long-lasting disruptions to recreation in the project area

The Enchantment Permit Zone is one of the most cherished recreational options in Washington. For example, since 1998, WTA has contributed 7,471 volunteer hours to trail work in the Enchantment Area Permit Zone. Collectively, hikers and climbers have filed over 1,100 trip reports for trails within the project, including the Enchantments Trail, Eightmile Lake Trail and Klonaqu Lakes Trail. This equates to more than 11,500 miles hiked on these trails alone.

As a highly managed recreational area, careful steps must be taken within this project to ensure the trails and campsites within it are maintained throughout work and into the future. This means that, as discussed in item 1, the Wilderness Act of 1964 must be respected with no precedent-setting actions undertaken. The use of overland vehicle transport as indicated in the *Construction Methods* section of the Alternatives Description document must be removed as a potential option for construction. The environmental costs in using overland transportation include negative impacts on soil, flora and fauna along the length of trails, and surface tread disruption to the trail which, if not mitigated could cause lasting stability damage to the trail and surrounding areas. These costs far outweigh the costs of using helicopter transport.

¹ See WAC 197-11-440(5)(b)(ii); Ecology, SEPA Handbook, Publication #98-114, at *55 (2003), <https://fortress.wa.gov/ecy/publications/documents/98114.pdf>

The Alternatives Description also notes that construction methods may "vary considerably in terms of schedule implications, costs, and potential impacts to the construction access route." As this popular area requires weeks of planning and preparation for recreationists to access, the same careful planning should apply to the construction methods used. Schedule implications, costs, and decision-making frameworks for the choice of construction method should be delineated clearly. Mitigation measures for any impacts to the lakeshore trail and campsites at Eightmile lake should also be detailed within the SEPA. Further, there should be advanced notice of any potential recreation impacts to this project, and we recommend measures be taken to avoid construction during peak-season.

Lastly, we expect that the appropriate agencies within the Federal and Washington State governments have or will engage in the proper consultations with local Tribes as appropriate given their sovereign status and the fact that this landscape is within many of their usual and accustomed treaty rights relating to hunting, fishing, gathering and resource management considerations. Our organizations recognize and respect that decisions under this project may have impacts of tribal treaty rights and lifeways.

Conclusion

Thank you for the opportunity to provide scoping comments on Eightmile Dam project. Our organizations acknowledge the need to take action to maintain the Eightmile Dam to protect public health and safety downstream and ensure IPID can continue to access the water it needs to sustain agricultural operations of its users. As Ecology moves forward with this project, we strongly urge the agency to carefully consider the recommendations and concerns in this scoping letter. Eightmile Lake and the Alpine Lakes Wilderness are natural treasures that must be carefully stewarded for the benefit of future generations.

Sincerely,

Tom Uniack
Executive Director
Washington Wild

Annalise Willie
Co-founder
Women for Wild Lands

Kitty Craig
Washington State Deputy Director
The Wilderness Society

Robb Krehbiel
Northwest Representative
Defenders of Wildlife

James Moschella
Policy & Planning Manager
Washington Trails Association

Lindsay Frickle
Executive Director
Issaquah Alps Trails Club

Betsy Robblee
Conservation & Advocacy Director
The Mountaineers

Donna Osseward
President
Olympic Park Associates

J. Michelle Swope
Washington Regional Coordinator
Native Fish Society

Dave Werntz
Science and Conservation Director
Conservation Northwest

Robert Kaye
Chair, Conservation Committee
North Cascades Audubon

Hilary Eisen
Policy Director
Winter Wildlands Alliance

Lance Reif
Owner
Wild Water River Guides (Leavenworth)

Judy Hallisey
President
Kittitas Audubon

Ann Darlington
President of the BOD
Friends of Heybrook Ridge

Bob Bartlett
President
Wenatchee Valley Fly Fishers

Pamela Brulotte
Owner
Icicle Brewing Company (Leavenworth)

Phil Fenner
President
North Cascades Conservation Council

Dr. Patricia A. Jones
Executive Director
Olympic Forest Coalition

Amy Brockhaus
Deputy Director
Mountains to Sound Greenway Trust

Eddie Espinosa
National Volunteer Program Senior Manager
American Alpine Club

Margie Van Cleve
Conservation Chair
Sierra Club - Washington State Chapter

Gustav Bekker
President
El Sendero Backcountry Ski and Snowshoe Club

Arthur Campbell
President
North Central Washington Audubon Society

Joe Sambataro
Northwest Regional Director
Access Fund

Ashley H. Siple
Board President
Washington Climbers Coalition

John McGlenn
President
Washington Wildlife Federation

Thomas O'Keefe, Ph.D.
Pacific Northwest Stewardship Director
American Whitewater

Cc: Governor Jay Inslee
U.S. Senator Patty Murray
U.S. Senator Maria Cantwell
U.S. Representative Kim Schrier
USFS Region 6 Regional Forester Glenn Casamassa
Okanogan-Wenatchee National Forest Supervisor Kristin Bail
Wenatchee River District Ranger Jeff Rivera
Laura Watson, Director of Ecology
Dave Blodgett, Technical Coordinator, Yakama Nation
Chuck Brushwood, Fish & Wildlife Policy Analyst, Colville Confederated Tribes