

Greenberry Irrigation District

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October 23, 2007

Dwight French
Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301

Dear Mr. French,

RE: Request for exception from the Willamette Basin Plan for a live flow water right from the Willamette River to supplement a Bureau of Reclamation Temporary Contract for Water Service.

Background

Greenberry Irrigation District (GID) appreciates the Water Resource Department's (WRD) close cooperation in working with the GID in its efforts to obtain a long term contract for stored water in the Willamette Basin from the Bureau of Reclamation (BOR). As you know, we have diligently pursued the instruction of the Water Resource Commission (WRC) at their direction in 2003 that such a contract was GID's remedy in seeking irrigation water in its location south of Corvallis.

For a period after the Commission's instruction, GID felt that political circumstances made a contract with BOR impossible. However, in the summer of 2005 GID, and with encouragement from Ron Eggers at BOR that fall, began in earnest the NEPA process of approving its pipeline design and corridor to deliver a requested 7,500 acre feet of water at a maximum of 60 cfs to the 50 GID members.

By December of 2006 and over \$500,000 later, the Environmental Assessment for the project was complete. On December 22, 2006, the NMFS issued a Biological Opinion (Bi-Op) covering the BOR biological assessment and the COE authorizing the construction of the Greenberry intake on the Willamette. This Bi-Op stated that the construction or operation of the GID intake... "will not result in the destruction or adverse modification of critical habitat designated for the affected species."

Early in 2007 the Willamette Riverkeeper (WRK) filed an intent to sue the Corps of Engineers (COE). This triggered a letter from National Marine Fisheries Service (NMFS) to BOR to not issue further long term contracts for stored water in the Willamette Basin until consultation is completed. BOR's response to this intent to sue and the NMFS letter was immediate withdrawal from discussions of a long term contract

for GID, and they have vacillated since that time on whether to issue a long term contract to GID. This first intent to sue expired and a lawsuit was not filed.

GID has been in discussions throughout with Travis Williams, Executive Director of the WRK. Initially, he revealed his surprise and distress at this collateral damage to GID, and has been as informative as possible within the confines of the legal environment. The WRK intent is solely to move the CEO into motion in completing the consultation on the Willamette Basin Plan, according to both Mr. Williams and Stephanie Parent, the WRK counsel.

BOR, under continued pressure, issued the necessary Finding of No Significant Impacts (FONSI) in May of 2007, and were discussing language for a long term contract in light of legal developments. A second intent to sue further questioned BOR resolve in mid-summer of 2007. Finally, in a visit to Boise on September 7, 2007, it was made clear by Bill McDonald, Regional Director of BOR, that a long term contract was not in the best interests of BOR, and in his opinion not in GID's interests at this time. On September 20, 2007 the WRK filed suit against the COE, BOR, NMFS and USFWS. A settlement letter has since been sent to the relevant action agencies and consulting services.

At this September 7 meeting in Boise, GID, having previously discussed with WRD the possibility for staff support in requesting a live flow water right to be supplemental to a BOR short term contract, GID negotiated terms for a temporary contract. This "Temporary Contract for Water Service" was to be 5 years in length that contained language indicating that BOR had the intent to renew. However, there are no conditions for renewal, and in no way should this renewal be considered automatic, and is so spelled out in the contract. In other words, it is not a long term contract in disguise, and each reapplication will be in context of the political climate at the time.

Conclusions

This turn of events around the WRK complaint is highly political, in which GID is not being held harmless. GID has been instructed by the WRC in 2003, and given assurance through a series of letters between BOR, the COE and NMFS in 2002 and 2003 that its application for a long term contract would be honored at completion of conditions, specifically that its proposed infrastructure be approved through the NEPA process. Those obligations have been met. Today, a total of over \$600,000 has been spent by the GID to secure a water supply, largely for consulting services in preparation of documents to secure approvals and permitting. GID is now shovel ready for its approximately \$5 million, 4.2 mile pipeline infrastructure project. Lacking only is sufficient assurance of a long term water supply that this investment will not be in vain.

Actual physical conditions, in which irrigation withdrawals from storage via BOR contracts are de minimis in the operation of the Willamette Basin Project, and remain unchanged... there is still 1.3 million ac ft unallocated in storage, and GID is requesting a live flow water right permit for 7,328* acres within the District. It was with the understanding that outstanding applications for irrigation water contracts were

inconsequential in the Willamette Basin that the Federal Agencies decided in 2002 to reopen the Basin to the small number of contracts for water service that had been requested.

*The GID request for the original BOR contract was 6,300 acres, 7,500 ac ft. In the 9 years since the original request for water service, generational and ownership changes have occurred in the District that we would like to accommodate. An additional water service contract from BOR has been applied for to meet these needs.

While the GID is happy to operate within the system of water marketing by the BOR, we find no comfort in the reliability of this system as we have seen it operate, knowing that what is politically expeditious for the action agencies could well spell disaster for GID. We must move forward into the choice of building the approximately \$5 million infrastructure that must be paid for through assessments and the associated efficiencies and opportunities afforded by irrigation by our members. To do so we need a reliable, long term water supply. The "now you see it, now you don't" contract BOR is now compelled to offer is hardly commensurate with the long term commitment of the members of GID.

Request

It is in this context that GID requests an exception to the Willamette Basin Plan from the Water Resource Commission to allow an application for a supplemental live flow water right from the Willamette River to be processed. This supplemental water right will take effect in the event that the BOR cannot make water available to the GID through its water marketing program of stored water from COE projects in the Willamette Basin. It is our intent that a supplemental right will serve only as an insurance policy, which hopefully would not be exercised; only in the event BOR could not provide water service. We ask that this water right not have limitation with respect to time, as our intent is to be farming indefinitely.

Justification

Hardship

Our request rests first based on the inequity of the current situation. GID was rightfully instructed by the WRC, in accordance with the Basin Plan, to obtain a long term water service contract from the BOR back in 2003. In a widely distributed letter to COE in January of 2003, Ron Eggers of BOR Pacific Northwest Region indicates that on December 20, 2002, by agreement of the action agencies and consulting services, it was no longer necessary to hold up contracting in the Willamette Basin due to ESA concerns.

This letter from Mr. Eggers goes on to say that while secure in their belief in meeting action agency and consulting services obligations, it was incumbent on individual projects to address their environmental aspects, and that this would be done through the NEPA process. As detailed above, GID has been through the NEPA process, and is

completely permitted at all levels, federal, state and local. And now a long-term contract is being denied the GID for political and administrative reasons. GID has met its obligations, and we have spent the last 9 months requesting that BOR make good its intent in Mr. Egger's letter of January 2003.

It is clear, from meeting with Mr. Eggers and Regional Director Bill McDonald that the best that GID may hope for is a 5 year contract with the intent to renew. It must be noted, however, that this contract is still written such that BOR may revoke it at any time, in responding to the political forces around them.

In the event that for some reason BOR decided to revoke the contract with GID, most likely temporarily, it would pose an extreme hardship on GID members. (ORS 536.295 (e)) Infrastructure will be financed over a 25 to 30 year period, and performing not only on that debt, but also on irrigation systems individual members will invest in will be extremely burdensome without water to utilize them.

Watershed Improvement

This water right will also result in insuring watershed and riparian improvement. (ORS 536.295 (f)) GID stewardship policy includes beneficially affecting naturally occurring water bodies in the district where possible. The district uses several oxbow lakes and will use Muddy Creek as conveyance. In the case of the oxbow lakes, one flowing into the other, water supplementing natural flows using irrigation water under temporary live flow permit S-54059 has shown a marked increase in health. Where in the past these lakes were pumped to exhaustion, we now see a resurgence in riparian functions and associated wildlife, including the Western pond turtle. In the absence of this supplemental water, the conditions will almost certainly deteriorate in late summer once again.

Furthermore, the GID has had exploratory discussions with ODFW about augmenting stream flows in Muddy Creek during the dry summer months; late July, August, September, and early October as annual conditions fluctuate. This idea was shared with Oregon Water Trust, who is supportive. Early discussions with WRD indicate the possibility of asking for a wildlife water right may be fruitful to alleviate dire summer conditions on an over-allocated stream.

Also, preliminary discussions have been held with Finley National Wildlife Refuge, located contiguous south west of GID, about transporting water to the Refuge to augment supply there. This would include water for early flooding-up of critical goose habitat in the case of late fall rains, development and enhancing of both permanent and seasonal wetlands, and irrigation of feed to attract and keep geese on the refuge.

All these cases require the infrastructure that is at its core vital to GID members. These uses are compatible, as the seasons of use or required quantity of water delivered just increase the utility of the infrastructure, rather than require additional capacity.

Heat Exchange

Although 536.295 (g) (A), heat exchange, likely had other meanings in mind, a joint project currently in feasibility study with the City of Corvallis, contemplates the removal of approximately 9 cfs of treated effluent from the Willamette at the Corvallis Waste Water Treatment Plant and piping it to GID for reuse. This water is listed as exceeding the recent temperature TMDL regulations, and reuse on the GID is one possible alternative to bring Corvallis into compliance.

Conceptually, GID will consume this water by mixing it with some of the water from either a BOR contract for stored water or from this request from a supplemental live flow right should that contract fail temporarily. (At times when Corvallis must keep treated water out of the Willamette and the GID is not irrigating, the project will also include treatment and polishing wetlands to process the reuse water.)

This entire project is designed to exchange the warm water from Corvallis for an equal amount of cool, stored water, from COE dams on the upper Willamette River, otherwise destined to irrigate GID member crops. Functionally, whether the COE is releasing water to meet a GID withdrawal or maintain flow targets downstream, the net effect is the warm, recycled water from Corvallis sent to GID is exchanged for cold Willamette water left in stream by GID. This is a win-win for Corvallis' compliance with TMDL regulations and the Willamette River, through partnership with GID.

This joint Corvallis – GID project further treats water by natural filtration and increased retention time before it once again becomes waters of the State, providing a public value in terms of increased water quality. These outcomes have been practically demonstrated in Oregon at such sites as the Oregon Garden near Silverton and Ladd Marsh, which processes the City of LaGrande's treated effluent before becoming waters of the state in Catherine Creek.

The critical elements to the success of this reuse project are the same that GID membership requires to be successful: The ability to invest in infrastructure, which is predicated on the assurance of a stable, dependable supply of water going forward.

Compliance and Consistency with Basin Policy and Objectives

The GID's request for an exception is subject to the Commission's evaluation of consistency with the Willamette Basin Program. (ORS 536.295(4), and contained in 690-502.) The BOR Environmental Assessment and the NMFS Bi-Op for the GID project indicate that instream uses are protected, that appropriation is not out of proportion with instream uses, and that ESA considerations have been satisfied.

A general review of the statute brings other points of consideration. ORS 690-502-0020 (1)(c) discusses preserving opportunities for future economic development. This is one of those future opportunities; the Environmental Assessment for the GID project outlines

increased productivity and environmental health as outcomes of irrigation, but also a certain amount of 'trickle up' through the community's economy and agricultural services sector in particular.

Given the water situation in the Basin; that sufficient water is physically available, ORS 690-502-0020 (1)(f) "Allow irrigation use for the longest period possible between March 1 and October 31 provided sufficient water is available" can be fulfilled with the GID request. The GID is currently partially operating under a temporary live flow permit and has been offered and accepted a temporary water service contract from BOR, yet has no long term assurance of a stable water supply.

These two policies seem consistent with the Basin Plan and give merit to a GID exception. As noted earlier, however, the GID is also partnering with Corvallis in a reuse water project, as well as other possible projects involving various public, private, and NGO stakeholders. As the necessary first phase of the Corvallis - GID reuse project, several policies and objectives of ORS 690-502 will be met at project completion.

ORS 690-502-0020 (3) concerns water quality: "Municipal and domestic water systems: Support coordinated water service planning and consolidation by water purveyors to preserve and protect adequate and safe drinking water supplies for human consumption in the Willamette Basin." This will be accomplished in cooperation with Corvallis, by improving water quality downstream of the present Corvallis Waste Water Treatment Plant. This outcome can occur with an operating and dependable water supply to GID.

ORS 690-502-0020 (5) concerns water conservation: "(a) Implement programs to eliminate wasteful water use.", and "(b) Improve the efficiency of water use through implementation of voluntary conservation measures." These are the essence and major benefits to both Corvallis and GID in this reuse project. GID will have the ability to use Corvallis' treated effluent at several levels, maximizing the utility of what was once a waste product as a valuable resource put to beneficial use. It could reduce GID withdrawals under a stored water contract with BOR or a supplemental live flow right as much as 30%.

GID believes there are other areas in which policies described in the Basin Program will be achieved in practice and in spirit by the GID, both in context as an irrigation district and in partnership with Corvallis and others. GID is also meeting broad objectives of the Willamette Basin Program, such as ORS 690-502-0030 (3). This objective, "Meet public instream needs for fish life, wildlife, recreation and pollution abatement."; these are all met, in one form or another, in various projects and alliances that depend on a viable and dependable irrigation district, and are therefore currently in discussion and feasibility phases.

Summary

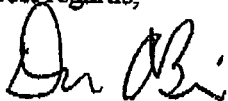
The central responsibility of the GID is to provide water consistently to its members for beneficial use. There are other collateral socially beneficial aspects to a viable GID, which are not possible without GID being viable to its members. GID seeks a long term water supply by which it may invest in and maintain infrastructure, and its members may invest in infrastructure at the farm level.

However, GID, even on successful completion of the NEPA process and all state and local requirements over the last 2 years for a BOR long term contract, has been unable to secure a dependable water supply after months of negotiation. GID had relied on inter-agency communications in 2002-03 indicating that long term water contracts were available, and now, within the last few months, they are not. We believe that even if a long term contract was awarded today that it is inherently insecure, due to the political climate the BOR must operate in.

For this reason, the GID respectfully requests an exception to the Willamette Basin Plan such that the WRD can process a supplemental water right application to make up for any interruption in water service from the BOR's water marketing program. This is not an attempt to circumvent any ESA ruling, but simply insurance that the GID will be able to invest and operate uninterrupted in a volatile political climate in a watershed in which it's proposed withdrawals are de minimis.

Thank you for your consideration.

Best regards,



Dan O'Brien
Manager

Attachments:

2002 letters, BOR, NMFS, COE correspondence
BOR Environmental Assessment for GID
NMFS Biological Opinion
BOR Finding of No Significant Impacts (FONSI)
Joint Permit, COE and DSL
BOR Temporary Contract for Water Service
Willamette Riverkeeper complaint
Willamette Basin Program ORS 690-502