



DEPARTMENT OF THE ARMY
CHIEF OF ENGINEERS
2600 ARMY PENTAGON
WASHINGTON, D.C. 20310-2600

18 DEC 2019

DAEN

MEMORANDUM FOR THE SECRETARY OF THE ARMY

SUBJECT: Willamette River Basin Review Reallocation Study, Oregon

1. I submit for transmission to Congress my report on the Willamette River Basin Review Reallocation Study, Oregon. It is accompanied by the report of the District Engineer. These reports were completed under the House Committee on Public Works resolution for the Willamette Basin Review Study, adopted 8 September 1988. This authority authorized the Chief of Engineers to determine "whether modifications to the existing projects are warranted and determine the need for further improvements with the Willamette River Basin (the Basin) in the interest of water resources improvements."

2. The reporting officers recommend a project that will contribute to the long-term benefit of the people and environment in the Willamette River Basin, Oregon. It also benefits the nation by repaying a portion of dam construction and operations and maintenance costs to the U.S. Treasury for access to stored water behind the U.S. Army Corps of Engineers (Corps) Willamette Valley Project (WVP) dams. The National Economic Development Plan includes reallocation of storage in the Corps WVP reservoirs to meet Municipal and Industrial (M&I) water supply, Fish and Wildlife (F&W) water supply, and Agricultural Irrigation (AI) water supply needs. M&I will be allocated 159,750 acre-feet of conservation storage and AI will be allocated 327,650 acre-feet of conservation storage. The allocations are subject to agreements under federal law between the Department of the Army and State or local entities for the use of the M&I storage and between the Department of the Interior and irrigation interests for the delivery of AI water. The remaining 1,102,600 acre-feet of conservation storage will be allocated to F&W. No conservation storage will remain allocated as Joint Use. Since reservoir refill is not guaranteed annually, the recommended plan includes an adaptive management plan for operation of the reservoirs when the reservoirs do not completely refill to 1,590,000 acre-feet of stored water; i.e., all uses will be reduced during years when the conservation storage does not refill.

3. The recommended plan was developed in coordination and consultation with federal, state, and local agencies and tribes. The recommended plan represents a compromise among various interests and sectors throughout the basin. There is a strong interest and desire among agencies, basin stakeholders, and others to contribute to a longer-term water management plan and the finer points of implementation.

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4. The National Marine Fisheries Service (NMFS) issued a Final Biological Opinion (BiOp) for this project on 28 June 2019. That BiOp includes a reasonable and prudent alternative (RPA) with five measures for protecting listed threatened or endangered species. One of those measures provided that “[w]hen the Portland District U.S. Army Corps of Engineers submits its final feasibility report regarding the proposed reallocation of conservation storage space in the Willamette Valley System (WVS), it will include a recommendation that the Corps will retain sufficient local authority to modify that reallocation without further Congressional action, as necessary to complete all actions related to the storage and release of water from the WVS that are already called for in NMFS (2008a), any BiOp that will be issued as a result of reinitiating the NMFS (2008a) consultation, and any BiOp that may be issued as the result of a future ESA consultation related to the storage and releases of stored water from the WVS.” The District Engineer included that recommendation in the project report. However, this district recommendation is not included in the Corps’ final recommended plan, as it would add unacceptable risk for the reliability of the new storage levels once authorized by Congress. In addition, the prospect of future undefined administrative modifications to the reallocation would be inconsistent with the Corps’ historically limited discretion for water supply reallocation at its reservoirs and would undermine Congressional prerogatives to define the public benefits to be derived from a project. Congress authorized the project to serve specific purposes and an undefined, unlimited Congressional grant of authority to the Army to modify the reallocation in the future, as recommended, could create conflicts with those Congressionally-authorized project purposes if future Endangered Species Act consultations require changes that would seriously affect project purpose or otherwise involve major operational changes. Further, such a grant of authority could also undermine the ability of the Corps to continue implementing the current allocation should the environmental circumstances change. Congress, not the Army nor NMFS, should continue to determine how best the public good is served by this project, especially in those cases where the realization of Congressionally-authorized project purposes could be undermined by other resource requirements.

5. The recommended plan has been determined to be economically justified and environmentally acceptable. The recommended plan would not have any significant adverse effects; therefore, no compensatory mitigation measures would be required.

6. This project will not include any construction activities at the WVP reservoirs, so there should be no costs incurred for design and construction associated with the reallocation action. Once the action is approved by Congress, the Corps will update the Water Control Manuals and the Drought Contingency Plan to reflect the updated storage allocations and the adaptive management plan. Federal funding for updating the Water Control Manuals and Drought Contingency Plan will be through the Operations and Maintenance budget process, and partially reimbursed to the U.S. Treasury in accordance with federal law pursuant to the terms of the agreements to be entered into between the Government and the M&I and AI interests. The estimated federal cost to update the manuals is \$62,000.

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7. Study and implementation risk were addressed during the study by completing hydrologic analyses, including analyses to evaluate climate preparedness and resilience. Risk includes estimating future demands for M&I water supply, F&W water supply, and AI water supply needs and future available supply to meet those needs.

8. In accordance with Corps guidance on the review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and rigorous review process to ensure technical quality. This includes a District Quality Control review, an Agency Technical Review, an Independent External Peer Review (Type 1), and a Corps Headquarters policy and legal review. All comments from the above referenced reviews have been addressed and incorporated into the final documents appropriately.

9. Washington level review indicates that the plan recommended by the reporting officers is technically sound, environmentally and socially acceptable, and economically justified, except for the district recommendation described in paragraph 4 above, which exceeds the authority generally granted by Congress to the Chief of Engineers to make modifications as in the discretion of the Chief of Engineers may be advisable, that is, authority to make modifications that do not materially change the purposes of the project, the area to be served, the scope of the project, or the plan of improvement. Except in that respect, the recommended plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources Implementation Studies. The recommended plan complies with other administration and legislative policies and guidelines. The views of interested parties including federal, state, and local agencies have been considered.

10. I recommend that the plan for reallocation of conservation storage in the Corps WVP reservoirs to meet M&I water supply, F&W water supply, and AI water supply needs be authorized partially in accordance with the reporting officers' recommended plan. I do not concur in the district recommendation described in paragraph 4 above, but recommend that the Chief of Engineers be granted only such discretionary authority to make modifications that the Chief of Engineers deems advisable to better effectuate the purposes of the project within its authorized scope. My recommendation is subject to cost sharing, financing, and other applicable requirements of federal and state laws and policies, and to the U.S. Bureau of Reclamation (Reclamation) and the Oregon Water Resources Department (OWRD), the non-federal sponsor, agreeing to perform the required items of cooperation. These include, but are not limited to actions required to be carried out by Reclamation and OWRD to adjust the water rights that Reclamation holds under certificates issued by OWRD to store water for irrigation purposes, in order to render effective the reallocation of conservation storage in meeting the needs of users in the Willamette River Basin. These actions are summarized below.

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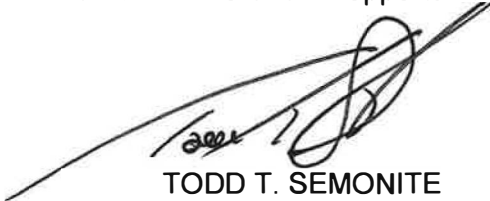
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(1) In order for non-irrigation use categories (e.g., M&I, F&W) to realize benefits from the reallocation of WVP conservation storage, Reclamation's two storage water right certificates with the State of Oregon for the WVP reservoirs must undergo a transfer review process to change the character of use to match the proposed reallocation of WVP conservation storage. Reclamation's Columbia-Cascades Area Office Deputy Area Manager indicated the agency would be willing to change the purpose of use on the two storage certificates.

(2) After Reclamation requests that OWRD issue a change in character of use for its two water storage rights for the WVP, OWRD must review the transfer application. The review includes a determination of whether or not the proposed change in character of use would injure other water rights. In addition, the transfer must undergo a public review process where protests could be filed, potentially challenging an approval determination. OWRD may condition the approval order to eliminate potential injury to other water rights.

(3) Once OWRD has approved the change in character of use for Reclamation's storage rights, ODFW could request that OWRD issue secondary in stream water rights for the purpose of protecting the in stream flows from illegal diversion below WVP reservoirs.

11. The recommendation contained herein reflects the information available at this time and current departmental policies governing the formulation of individual projects. It does not reflect program and budgeting priorities inherent in the formulation of the national civil works construction program or the perspective of higher levels within the executive branch. Consequently, the recommendations may be modified before they are transmitted to Congress for authorization and/or implementation funding. However, prior to transmittal to Congress, the state, interested federal agencies, and other parties will be advised of any significant modifications in the recommendations and will be afforded an opportunity to comment further.



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