

Finding of No Significant Impact

PN FONSI 07-02

Willamette Basin Water Marketing Program Greenberry Irrigation District's Water Service Contract Request

Introduction

The Bureau of Reclamation (Reclamation) has completed an environmental assessment on a request for a water service contract. The Greenberry Irrigation District (District), located near Corvallis, Oregon, has requested approval to withdraw up to 7,500 acre feet of water from the upstream reservoirs operated by the U.S. Army Corps of Engineers (Corps). Although the Corps operates the reservoirs, Reclamation is authorized to administer water service contracts for irrigation. The District intends to construct a pump station and a pipeline to divert and deliver water to over 6,000 acres of farm land in Benton County.

An Environmental Assessment has been prepared for this request. The District's request for a water service contract could not be categorically excluded from NEPA because it does not meet the definition of any categorical exclusion available to Reclamation. A similar excluded activity is found at 516 DM 14.5D(4): "approval, execution, and implementation of water service contracts for minor amounts of long-term water use or temporary or interim water use where the action does not lead to long-term changes and where the impacts are expected to be localized." In practice, in the Willamette Basin a minor amount of water is typically less than 1000 acre feet. The District's request for 7,500 acre feet exceeds this threshold by a considerable amount. Furthermore, Reclamation determined that it was prudent to analyze this action in an Environmental Assessment because the project as described by the District had uncertain and possibly significant environmental impacts. Therefore, the District's contract application is not categorically excluded from NEPA.

The Departmental Manual (516 DM 14.4) lists actions that normally require Reclamation to prepare and Environmental Impact Statement (EIS). One item on that list is the administration of "proposed repayment contracts and water service contracts or amendments thereof or supplements thereto, for irrigation, municipal, domestic, or industrial water where NEPA compliance has not already been accomplished" (516 DM 14.4(2)). The Willamette Basin Water Marketing Program was evaluated programmatically in a 1980 Environmental Impact Statement prepared by the Corps so the requirement to prepare an EIS is removed unless significant impacts are identified. The Environmental Assessment was prepared to consider if any impacts are significant. An EIS must be prepared if a proposed federal action will have significant impacts on the human environment.

Alternatives Considered

Two alternatives were evaluated and compared in the environmental assessment: a No Action Alternative and a Proposed Action Alternative.

No Action Alternative

The No Action Alternative is a decision by Reclamation to deny the contract request. Without a water service contract the District will continue to use the water sources it has already secured including groundwater and surface-water rights and others it may develop in the future.

Proposed Action Alternative

The proposed action is the District's requested water service contract. The District has asked Reclamation to enter into a contractual agreement allowing the District to withdraw up to 7,500 acre feet of Willamette Basin Project water for use as both primary and supplemental water on 6,300 acres of private agricultural land. Reclamation's Willamette Basin Water Marketing Program receives requests from private landowners and irrigation districts in the Willamette Valley for use of water held in the Federal reservoirs of the Willamette Basin Project. The proposed action is one such request.

Recommended Alternative

Reclamation proposes to implement the Proposed Action Alternative, the preferred alternative, which is a decision to implement the water service contract requested by the irrigation district. Some short-term impacts are expected with the construction of the District's diversion and conveyance facilities, most notably potential adverse impacts on Endangered Species Act-listed Upper Willamette River Chinook salmon. These impacts were identified and evaluated through consultation according to Section 7(a)(2) of the ESA.

Environmental Commitments

The environmental assessment describes mitigation that is included in the proposed action which will ameliorate impacts to resources that may occur as a consequence of the water service contract. Specifically, the District will need a diversion and pipeline to withdraw and deliver water. The structures and their construction are not regulated or funded by Reclamation and they are not federal actions. It is unlikely that these facilities will be constructed without the requested contract; therefore, the environmental assessment included the impacts on the human environment of these structures and Reclamation will incorporate the described mitigation into the District's contract in addition to the standard contract articles to protect natural and cultural resources. Greenberry Irrigation District's mitigation requirements are the following:

- GID will maintain the current erosion control structures in place near the oxbow lakes to avoid erosion which will result in sediment discharges.

- Construction in the Albany Channel will be avoided by attaching the pipeline to the existing bridge. No construction below ordinary high water will occur.
- GID will apply erosion control measures during construction, maintenance, or improvement projects associated with the pipeline right-of-way to avoid or minimize loss of soil. These measures will include erosion control silt curtains and hay or straw bales, as appropriate.
- GID will monitor water quality on Muddy Creek before, during, and after the placement of the pipeline outfall for turbidity impacts.
- The pipeline alignment will be restored to its original condition of ryegrass fields or riparian vegetation.
- Mitigation to visual impacts are to use vegetation to make the diversion intake blend in with the natural setting on the river. A planting plan consisting of native vegetation (shrubs and trees) of the area will be implemented 200 feet upstream and 300 feet downstream providing understory and overstory vegetation along the river bank. In addition, native trees and shrubs will be planted at the riprap bank to mitigate the riprap by enhancing riparian habitat. The Muddy Creek bank will be restored with native species on either side of the outfall structure.
- The District will fully implement and comply with all of the conditions in the incidental take statement issued by NMFS in the December 22, 2006 biological opinion.
- Alternative alignments will be used in the vicinity of archeological sites 35BE106, 35BE107, and 35BE108 so that impacts on the sites are avoided.
- A professional archeologist will be present to monitor excavation of the pipeline trench at 35BE108. The monitor will continue to be present during subsequent construction actions at the site if recommended as necessary by the archeologist performing the monitoring.
- If archeological materials are found during construction of any segment of the pipeline, GID will immediately halt construction activities in the vicinity of the discovery and notify Reclamation and the Oregon SHPO of the discovery. The find will be examined by a professional archeologist to confirm that it is archeological in nature. If the discovery is archeological in nature, the archeologist will make an assessment of actions needed to evaluate or protect the discovery and then GID will notify the SHPO and proceed pursuant to Oregon Revised Statutes (ORS) 390.235. GID will take all prudent actions necessary to protect the site from harm until completion of the consultative and investigative process. No construction will proceed in the vicinity of the discovery until all consultations required to comply with Section 106 of NHPA have been completed; the conditions of any State permit issued under ORS 390.235 have been met; and Reclamation has provided a written notice-to-proceed to GID.
- If human remains are discovered during construction of the pipeline system, GID will immediately notify SHPO and Reclamation. Verbal notification will occur the day of the discovery, followed by written notice within two days of discovery. They will immediately halt construction in the vicinity of the find, and a qualified

person will examine the discovery and its location to assess if they are human remains and if they are likely of Indian origin. If they are of Indian origin, then GID will notify the SHPO and comply with all requirements pursuant to ORS 97.740-760 and ORS 358.940. GID will take all prudent actions necessary to protect the remains from harm until completion of the consultative process. When GID provides Reclamation with certification that it has complied with the State requirements, then Reclamation's archeologist will provide a written notice-to-proceed; no disturbance can occur in the vicinity of the human remains until that notice is received.

Consultation and Coordination

Agency Consultation

The following agencies were consulted in preparation of this environmental assessment:

- U.S. Fish and Wildlife Service,
- National Marine Fisheries Service,
- Oregon Department of Fish and Wildlife,
- U.S. Army Corps of Engineers,
- Oregon State Historic Preservation Office, and
- others as listed in the environmental assessment in chapter 4 and appendix C.

Endangered Species Act Section 7(a)(2)

Thirteen species listed threatened or endangered under the ESA occur or once occurred in the action area. Reclamation provided to the National Marine Fisheries Service and U.S. Fish and Wildlife Service a biological assessment of the Proposed Action and initiated consultation for the potential impacts to threatened Upper Willamette River Chinook salmon and endangered Oregon chub. On December 22, 2006 the NMFS issued to Reclamation its biological opinion on the effects of the water service contract and the District's interdependent projects on UWR Chinook salmon. The NMFS concluded that the proposed action is not likely to jeopardize the continued existence of this salmonid species or result in the destruction or adverse modification of designated critical habitat. The U.S. Fish and Wildlife Service concurred with Reclamation's determination by letter on August 29, 2006 that the proposed action may affect, but is not likely to adversely affect Oregon chub.

National Historic Preservation Act Consultation

In compliance with section 106 of the National Historic Preservation Act of 1966 (NHPA) (as amended in 1992) GID, on Reclamation's behalf, consulted with the Oregon State Historic Preservation Officer to identify historic properties in the area of potential effect. By letter dated August 28, 2006 the Oregon State Archaeologist agreed with the determination that the project will have no adverse affect on any known cultural

resources with some minor adjustments to the pipeline alignment. Furthermore, it is recommended that an archeologist be present during construction near known sites to monitor for the unexpected discovery of cultural material or sites. That recommendation has been incorporated into the environmental commitments.

As required for section 106, potentially interested tribes were notified and invited to comment on the project and its effects on properties of religious or cultural importance to the tribe. On August 18, 2005, in association with application for a State permit for archeological test investigations, GID's contractor notified the Confederated Tribes of Siletz Indians of Oregon (Siletz) and the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde) of the proposed action and invited their participation. No responses were received. On March 2, 2006, Reclamation sent out scoping letters to the Siletz and the Grand Ronde. On March 14, 2006, the Grand Ronde responded with a recommendation that archeological surveys be completed. On May 12, 2006, in response Reclamation provided the Grand Ronde with information summarizing investigations to date. On October 23, 2006, Reclamation provided an update of investigations to the Siletz and Grand Ronde, including a copy of the investigative reports and the August 28 letter of comment from the SHPO. No comment or request for further information has been received from either tribe.

Federal Water Pollution Control Act (Clean Water Act) and Oregon Fill and Removal Law

The District's construction project including the diversion pump facility, pipelines and outfalls, are potentially regulated under Federal and State laws. Greenberry Irrigation District submitted an application to the US Army Corps of Engineers for the construction of its diversion and pipeline. The Corps evaluated the District's application and determined that the District's project is exempt from regulation by the Corps. The District submitted an application to Oregon Department of State Lands in compliance with the Oregon Fill and Removal Law. The State's evaluation of the District's application is pending.

Public Comment Summary and Changes to the Final Environmental Assessment

Public involvement with this Environmental Assessment began early with a request for initial comments, called "scoping", asking any interested party to provide Reclamation with comments, concerns, and information related to the contract request. A project scoping letter was sent to Tribal, Federal, State, and local officials and to interested parties including property owners affected by the project, Marys River Watershed Council, and many others on March 2, 2006. In addition to direct mailing, Reclamation distributed a news release to media outlets locally and nationally and posted the news release on Reclamation's website. Comments and responses from scoping are included in the draft EA in Chapter 4 and Appendix C.

The draft EA was sent out for public, government agency, and non-government agency comment on February 16, 2007. In addition to direct mailing, Reclamation issued a news release with wide distribution (described above) and posted the news release and

draft EA on its website (www.usbr.gov). Reclamation received three comments on the Draft EA. One from the Oregon State Historic Preservation Office confirming that the SHPO remains in agreement with Reclamation that the proposed action will have no adverse affect on any known cultural resources if their previous recommendations are followed. Another comment came from the US Fish and Wildlife Service which reviewed the draft EA but did not provide any comments because of limited funding and staff availability.

A third comment was received from an individual who contacted Reclamation with comments. On April 3, 2007 the commenter also met with Greenberry Irrigation District for clarification of the District's plans and project objectives. Reclamation has been communicating with the individual commenter to address the expressed concerns. The issues raised by the commenter and the response from discussions with Reclamation and Greenberry Irrigation district are summarized below. Correspondence is on file with Reclamation's Lower Columbia Area Office.

- Reclamation did not make a diligent effort to notify of the public of the opportunity to comment on the EA. Reclamation should have purchased advertising in local newspapers.
- The project was not clearly defined in the EA.
- The commenter is concerned that Muddy Creek and Marys River will be degraded by discharging Willamette River water in Muddy Creek.
- The wetland delineation was not properly conducted.
- Intake area resources were not adequately addressed.
- Sensitive species habitat, such as Western pond turtle habitat may be affected.

In response to the comment that Reclamation did not make an adequate effort to notify the public of the opportunity to comment on the draft Environmental Assessment we will summarize the steps that were taken to reach interested parties. Additional discussion of Reclamation's public outreach efforts can be found in Chapter 4 and Appendix C of the EA including the mailing list and copies of the scoping letter and the responses.

In March 2006, Reclamation mailed scoping letters to Federal, Tribal, State, and local government agencies and other groups identified as having an interest in Greenberry Irrigation District's request to use reservoir water for irrigation. The other groups on the mailing list were the Marys River Watershed Council, Ducks Unlimited, and the Greenbelt Land Trust among others. Reclamation also mailed documents directly to the Corvallis Public Library and the Corvallis Gazette Times. The mailing lists are developed with the intention of reaching interested parties and stakeholders, and to be inclusive of all points of view. It is understood that other individuals or groups may be interested in the proposed action and their interest in the project is not known to Reclamation. To reach a wider distribution, Reclamation issued a news release which is distributed to local and national media outlets and posted on the Reclamation internet site. In this case no media outlets reported on the project. Three parties responded to the

scoping letter. The draft EA was distributed in the same manner as the scoping letter. Again, no media outlets chose to report on the proposed action. Reclamation received three comments on the draft EA. All three draft EA comments were from different parties than the three scoping comments.

In response to the comment that the project was not clearly defined in the draft EA, Reclamation and the Greenberry Irrigation District have both discussed the details of the proposed action with the commenter. The irrigation district has multiple projects ongoing at this time. The proposed action is the one of these and the only one that requires involvement with the Reclamation. The details are now satisfactorily understood by the commenter through these communications.

In response to the concern that Muddy Creek and Marys River will be degraded by discharging water piped from Willamette River into Muddy Creek, Reclamation acknowledges that proposed action increases the likelihood of adding water of lower quality into Muddy Creek. However, historically and recently, Willamette River flooding has resulted in water from the tributaries and mainstem mixing together when water rises over the banks and spreads across the floodplain. The District's intended method of bringing Reservoir water to its patrons through a pipeline from the west bank of the Willamette River to Muddy Creek is the one it has chosen to distribute water. Reclamation agrees with the commenter that there is the potential that water of lower quality from the mainstem Willamette River will be discharged into Muddy Creek.

Muddy Creek water is not necessarily of better quality than the Willamette River. Water quality sampling of Muddy Creek occurred in the 1970's and in the 1990's. Dissolved oxygen levels below saturation were reported in the 1970's (DEQ 2005, Water Quality Limited Data). In the 1990's dissolved oxygen levels were reported below 8mg/l and percent saturation of dissolved oxygen at 26 to 66% (Marys River Watershed Preliminary Assessment 1999). The report indicated that high counts of coliforms and dissolved nutrients were present.

The commenter was concerned that the wetland delineation was not properly conducted because it was done in the fall and winter months. The District's consultant conducted the wetland delineation for the pipeline route by walking the length of the proposed pipeline alignment and by visiting the site three times in different seasons. The Oregon Department of State Lands is reviewing the delineation for adequacy.

A comment was made that resources at the proposed intake are not adequately addressed in the EA. The intake is a project that is being planned by the District and is located on private property. Through Endangered Species Act section 7 consultation between the National Marine Fisheries Services and Reclamation, the District modified its plans for bank stabilization at the intake location to include more vegetation and aquatic habitat (large woody debris). Erosion impacts are addressed in a storm water permit (1200c) issued by the Oregon

Department of Environmental Quality which includes a DEQ approved erosion control plan.

The commenter is concerned that habitat to sensitive, threatened, or endangered species may be affected. Reclamation has consulted, as required by the ESA, on the potential impacts to species listed as threatened or endangered. Biologists from both of the Services and the Oregon Department of Fish and Wildlife have been consulted. Short-term impacts caused by the construction of the pumping plant have been identified. To reduce the impacts from construction NMFS has issued requirements in its biological opinion to which the District must adhere. These measures are intended to minimize harm to these species. The proposed action does not jeopardize the continued existence of ESA listed species or destroy or adversely modify designated critical habitat. The commenter was also concerned about the habitat fragmentation impact of the pipeline on Western pond turtle habitat. The pipeline will be a buried pipeline. Once installed the trench will be backfilled to match the grade of the adjacent land. It will not be a barrier to the movement of Western pond turtles in the project area.

Finding

The proposed water service contract requested by the Greenberry Irrigation District was analyzed in the Draft Environmental Assessment. Environmental commitments have been included to minimize possible impacts. The proposed action was considered in the context of the local watersheds including Muddy Creek, Marys River, and the Willamette River. The analysis of potentially impacted resources indicates that impacts that may occur during construction of the District's facilities could have minor effects, but which will not be of sufficient severity to significantly effect the quality of the human environment. The use of stored Willamette Basin Project water will not have significant impacts. Therefore, the proposed action will not significantly effect the human environment or natural resources.

Conclusion

On the basis of a thorough review of the comments received, analysis of the environmental impacts as presented in the environmental assessment, section 7 consultation under ESA, section 106 consultation under NHPA, coordination with various agencies and implementation of all environmental commitments identified in the EA and this FONSI, Reclamation has concluded that issuing the requested water service contract to Greenberry Irrigation District will have no significant impacts on the quality of the human environment or natural resources. Therefore, an environmental impact statement will not be prepared. This FONSI has been prepared to document environmental review and evaluation in compliance with the Council on Environmental Quality's regulations for

implementation of the National Environmental Policy Act of 1969. Reclamation is not issuing a final Environmental Assessment because the comments on the draft EA have been summarized in this FONSI. The outcome of the comments Reclamation received was to discuss the project in detail with the concerned party and to include Reclamation's responses in this FONSI.

Recommended: _____ Date: _____
Tanya Sommer
Natural Resource Specialist

Concur: _____ Date: _____
Karen Blakney
ESA Program Manager

Approved: _____ Date: _____
Ronald J. Eggers
Area Manager, Lower Columbia Area Office