

Washington Post

The West is bone dry. Here's how to help

By [Jim Tankersley](#) October 15, 2014

[Photo]

FIREBAUGH, CA – FEBRUARY 25: A tractor moves an uprooted almond tree into a shredder at Baker Farming on February 25, 2014 in Firebaugh, California. Almond farmer Barry Baker of Baker Farming had 1,000 acres, 20 percent, of his almond trees removed because he doesn't have access to enough water to keep them watered as the California drought continues. (Photo by Justin Sullivan/Getty Images)

Drought is rampant these days in many parts of the [American West](#), so consider this a pretty sweet gift: You've just been given the rights to some water. An acre-foot of it, to be exact, which is roughly enough to fill an NBA basketball court so the water laps at the bottom of the backboard. Your job is to turn around and use that resource in the most valuable way possible. You've got three choices.

You could grow alfalfa in California and ship it to China, to feed its cows and its [growing appetite](#) for dairy products, and earn about \$1,000, according to calculations by University of Arizona law professor – and water expert – Robert Glennon. You could grow lettuce in Arizona and earn about \$6,000. Or you could produce tens of thousands of microprocessors for laptop computers and walk away with a cool \$13 million.

You're probably not picking the alfalfa, right? Well, a lot of western water users are. That crop alone – just alfalfa – consumes one-eighth of California's fresh water, according to a [paper](#) out today from the Hamilton Project at the Brookings Institution. Many California farmers still grow alfalfa year-round, using what's called flood irrigation, a technique that allows a lot of water to evaporate in the hot summer sun before it ever reaches the soil.

They do that because America's water markets often don't work very well. As Glennon writes in another [new paper](#) for Hamilton, the way local, state and federal government allocates water can discourage the sort of market trading that should help get the resource in the hands of the people who will put it to its most valuable use. This has long been true in the West, where water rights can be passed down for more than a century and the law encourages sucking as much from the ground and the streams as you can possibly make use of.

But now, as drought rages and climate change raises the risk of future droughts, and as the western population continues to grow, Glennon says America needs better functioning markets to maximize the water it has available – or risk leaving a lot of people poor and thirsty in the future.

“We need to use price signals to price water appropriately and encourage conservation,” he said in an interview. What we have now, he added, is “a government bureaucracy that gives the most powerful interests all the water they want, for low cost.”

Glennon’s recommendations are quite technical but boil down (pun intended) to simple principles: improving the reliability of water supplies, reducing the strain on already dwindling groundwater stocks and, most importantly, making it easier for people who own water rights to sell or trade them in order to maximize their value – unleashing one of the most powerful principles in economics.

A freer water market would almost certainly revolutionize water consumption in the West. You’d see more high-priced crops like almonds and fruit, less alfalfa for export, probably fewer dairy farms in California and perhaps more microchip manufacturing. “It would change the economy,” says Bill Phillimore, executive vice president of the Paramount Farming Company in California’s Central Valley, which is the world’s largest almond and pistachio grower. “If people who owned water rights could make more money by selling them rather than using them locally, and they could move it ... I’m absolutely certain it would change the face of water use in California.”

For the market to work best, Phillimore says, the government needs to play by the market’s rules, too. If federal officials hold back water to, for example, protect endangered fish, they should pay the going rate for that use. (They could also reserve a set allocation every year for public use and buy extra if needed.) All these proposed reforms would be politically tough to pull off, but that one – because state and federal governments have so many laws and treaties governing their water responsibilities – might be the toughest. Still, it’s important in markets for people to know what they own, so they can know what they need and know what they can sell. That’s how \$1,000 becomes \$6,000, or even \$13 million.

Jim Tankersley is the editor of Storyline, where he explains complex public policies and illuminates their human impact.

<http://www.washingtonpost.com/news/storyline/wp/2014/10/15/the-west-is-bone-dry-heres-how-to-help/?hpid=z10>

October 8, 2014

Council on Environmental Quality
Attn: Horst Greczmiel
722 Jackson Place NW
WA D.C. 20503

Dear Mr. Greczmiel:

The following are comments on the Notice of Availability, Request for Public comments on Draft Guidance on Effective Use of Programmatic National Environmental Policy Act Reviews, published in the Federal Register (79 FR 50578, August 25, 2014).

Please review the Bureau of Reclamation's 2011 *Draft Programmatic Environmental Impact Statement Yakima River Basin Integrated Water Resource Management Plan Benton, Kittitas, Klickitat, and Yakima, Counties, Washington* (BuRec Yakima Plan PEIS) as an example of a DPEIS that violates NEPA and the CEQ NEPA regulations.

See: <http://www.usbr.gov/pn/programs/yrbwep/reports/DPEIS/DPEIS.pdf>

1. Sec. IV.A.1 Purpose and Need

CEQ's proposed policy states that the purpose and need for a PEIS "needs to be broad enough so as to avoid eliminating reasonable alternatives. . ." As shown below, the BuRec's Yakima Plan PEIS was based on a narrow pre-selected "plan," with a predetermined objective of providing Yakima irrigators with at least two new controversial dam storage projects, and failed to include reasonable alternatives.

In addition, the BuRec's Yakima Plan DPEIS proposed elements are not all on the same "programmatic" level. For example, one element, the Cle Elum Dam Fish Passage Facilities and Fish Reintroduction Project, already had a project level FEIS issued in April 2011.

See: <http://www.usbr.gov/pn/programs/eis/cle-elum/final/feis-cle-elum042011.pdf>

Another element, the Cle Elum three-foot pool raise project was authorized for implementation, including construction, under the Yakima River Basin Water Enhancement Project (YRBWEP) Title XII (Public Law 103-434, 108 Stat. 4526 U.S. Code), October 31, 1994.

The DPEIS (page 2-1) states that only the Integrated Plan meets the objectives outlined in the Purpose and Need statement. The purpose of NEPA is to provide decision makers with an analysis of alternatives and potential significant adverse impacts. As shown below, the BuRec handpicked a "Workgroup" to select a narrowly defined purpose and need, which then developed a plan without alternatives, other than the required no-action alternative.

2. Sec. IV.A.4. Alternatives

The NEPA regulations (40 C.F.R. 1502.14) provide that the Alternative section "is the heart of the environmental impact statement." 40 C.F.R.1502.14(c) requires federal agencies to "Include reasonable alternatives not within the jurisdiction of the lead agency."

The BuRec's Yakima Plan DPEIS did not provide a range of alternatives as called for by NEPA, but rather only a single plan made up of a mishmash of multiple elements - from land acquisition to the construction of massive new irrigation storage dams, to previously approved projects - and a "no-action" alternative. The Yakima Plan includes a proposed new Bumping Lake Dam within the Okanogan-Wenatchee National Forest that would flood ancient forests and habitat for ESA listed bull trout and Northern spotted owls, and a proposed Wymer Dam that would flood greater sage grouse (an ESA candidate species) habitat. Therefore, a range of alternatives should have been provided, including a non-structural alternative with water conservation and water marketing, crop insurance, coupled with reducing the demand for irrigated water through selection of less water-demanding crops. Changes to Washington water law to make all Yakima Basin irrigators proratable is a reasonable alternative not within the jurisdiction of the Bureau that should have been included.

In addition, the BuRec mischaracterized the no action alternative. DPEIS Sec. 2.3 No Action Alternative states that under the No Action Alternative the BuRec would do nothing to expand programs to protect or enhance fish habitat, would not implement enhanced water conservation, market reallocation, or groundwater storage. This is not correct. For example, both federal and state agencies are obligated to carry out recovery plans for listed ESA species. The DPEIS documents hundreds of thousands of acre-feet of water conservation savings that can be carried out in the Yakima River basin. Limiting the no-action alternative to only projects authorized with funding for implementation is an artificial constraint. As noted above, one element, the Cle Elum Dam Fish Passage Facilities and Fish Reintroduction Project, already had a project level FEIS issued in April 2011, and yet this was not included as a stand-alone project that could proceed without the Yakima Plan.

3. Sec. IV. B.2 Public Involvement

CEQ's proposed policy states that outreach should begin as early as possible – even in advance of formal scoping periods – to afford the public a meaningful opportunity to comment on and shape the NEPA review. This is especially true when proposals for controversial zombie dams such as Bumping and Wymer are proposed. For example, bills introduced in Congress to construct the controversial Bumping dam failed to pass in Congress in 1979, 1981, and 1985. However, a meaningful opportunity to comment on and shape the NEPA review is impossible when the BuRec, the agency in charge of developing the DPEIS, controls the underlying planning process in such a way as to hamper and hinder public involvement.

The Yakima "Workgroup" established by the BuRec should have been formed under the Federal Advisory Committee Act. Instead the BuRec (together with the Washington State Department of Ecology) selected a 20 member work group with only a single environmental organization at the table. The BuRec established Workgroup Subcommittees without public notice of Implementation Subcommittee meetings that remain closed to the public. The Workgroup meeting agendas allowed the Workgroup to approve actions and only allow public comment at the end of Workgroup meetings after decision making took place.

The draft CEQ policy fails to correct how Federal agencies, such as the BuRec manipulate the NEPA public comment process. For the Yakima Plan DPEIS, the BuRec provided a longer comment period for scoping comments than for comments on the DPEIS and refused to extend

the comment period as requested by: Endangered Species Coalition, Federation of Western Outdoor Clubs, Kittitas Audubon Society, Lower Columbia Basin Audubon Society, The Mazamas, The Mountaineers, Seattle Audubon Society, Sierra Club Washington State Chapter, Western Lands Project, Western Watersheds Project, Wild Fish Conservancy. The BuRec also announced that it intended to issue the Final PEIS barely three weeks after the end of the DPEIS comment period. Does this demonstrate to the public that the BuRec is unbiased and will respond to comments seriously on the DPEIS, as required by NEPA? Is it good NEPA policy for the BuRec to hold “public meetings” on the DPEIS during the work day at 1:30-3:30 PM and 5:00-7:00 PM over the dinner hour?

Was it good NEPA policy to have the Yakima Workgroup adopt a new Yakima Plan element to establish two new National Recreation Areas on the Okanogan-Wenatchee National Forest dedicated to motorized recreation and off-road vehicles on public land after the close of comments on the DPEIS?

See:

http://washington.sierraclub.org/uppercol/ucr/yakima/media/Entries/2013/2/15_The_Other_Side_of_the_Story__Yakima_Water_Plan_1.html

4. Impacts on Fish and Wildlife Coordination Act

The BuRec’s slight of hand in the Yakima Plan PFEIS of lumping previously authorized specific projects in with more general program elements has other negative consequences. The Yakima Plan PFEIS included three existing BuRec dam modifications: The Cle Elum Pool Raise, Keechelus-to-Kachess Conveyance, and Kachess Inactive Storage projects. By including these proposed projects in the Yakima Plan PDEIS, the BuRec was able to avoid answering comments on specific impacts to fish and wildlife in the PFEIS.

Now, the DEIS for the Cle Elum Pool Raise (Appendix F-September 2014) contains an email from Gwendolyn Christensen, BuRec, to Jessica Gonzales, USFWS, dated July 29, 2013, stating:

“As we have discussed, the Fish and Wildlife Coordination Act (FWCA) Report prepared by the U.S. Fish and Wildlife Service for the Yakima River Basin Integrated Water Resource Management Plan (Integrated Plan) Final Programmatic Environmental Impact Statement (Reclamation, March 2012) is sufficient for future projects undertaken for the Integrated Plan, including Cle Elum Pool Raise, Keechelus-to-Kachess Conveyance, and Kachess Inactive Storage. Separate FWCA reports for these projects are not required.”

In other words, the BuRec previously proclaimed that the Yakima Plan was a “programmatic” EIS and that specific impacts would be addressed as part of individual project EISs. Then when an individual project EIS is issued, the BuRec dismisses the need for individual FWCA reports. This is an abuse of the programmatic EIS process.

5. EPA and Programmatic EIS Review

EPA Region X provided comments on the DPEIS for the Yakima Plan under Sec. 309 of the Clean Air Act on January 3, 2012. EPA’s review role includes review of whether the lead agency has incorporated all reasonable alternatives and impact mitigation measures in the planning and development of projects.

See: http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-EPA-reviewing_federal_actions.pdf

EPA gave the DPEIS a rating of EC-2 (Environmental Concerns – insufficient information). However, EPA failed to object to the release of a DPEIS that did not have a range of alternatives. EPA also failed to note that several of the Yakima Plan “elements” were actually site specific projects, such as the Cle Elum Pool Rise, which has already been authorized by Congress in 1994, or the Cle Elum fish passage project, which had a project specific EIS prepared in 2011. Rather than focus on NEPA compliance, EPA issued a cheerleading letter supporting the BuRec’s efforts to develop the Integrated Plan, based on a BuRec selected “Workgroup,” including a Workgroup Implementation Subcommittee closed to the public. EPA was overly influenced by a small “stakeholders group” at the expense of the public interest.

See: [http://yosemite.epa.gov/oeca/webcis.nsf/%28PDFView%29/20110389/\\$file/20110389.PDF?OpenElement](http://yosemite.epa.gov/oeca/webcis.nsf/%28PDFView%29/20110389/$file/20110389.PDF?OpenElement)

EPA Region X provided a one page comment letter on the FPEIS for the Yakima Plan under Sec. 309 of the Clean Air Act on March 19, 2012. Again, EPA failed to note that the FPEIS has no range of alternatives or that the “programmatic” EIS actually contains site specific projects or to address potential adverse water quality impacts to the Yakima River from new irrigation storage dams, or the loss of endangered species habitat.

See: [http://yosemite.epa.gov/oeca/webcis.nsf/%28PDFView%29/20120044/\\$file/20120044.PDF?OpenElement](http://yosemite.epa.gov/oeca/webcis.nsf/%28PDFView%29/20120044/$file/20120044.PDF?OpenElement)

SUMMARY

While NEPA provides for tiering and programmatic EISs (40 C.F.R. Sec. 1502.20, Sec.1508.28), it is an abuse of the NEPA EIS process:

- for the BuRec to avoid a true alternatives review by limiting a DPEIS to only one pre-selected plan and a “no-action” alternative
- for the BuRec to mischaracterize the “no-action alternative” as meeting a previously selected need/objective, but not including separate stand-alone previously authorized project elements
- for the BuRec to mix program elements with site-specific and previously authorized project elements
- for the BuRec to include a major element in the Yakima Plan involving NRAs and ORVs with significant adverse environmental impacts after the close of comments on the PDEIS
- for the BuRec to issue a programmatic EIS and then inform USFWS that no further Fish and Wildlife Coordination Act reports are required for specific project elements
- for EPA to act as cheerleader for a plan, rather than take their EIS review, comment, and rating responsibilities seriously.
- for CEQ to allow this to take place without review or comment.

In summary, CEQ’s Guidance on Effective Use of Programmatic NEPA Reviews must address and eliminate the abuses of the NEPA process as documented in the BuRec example above. Please send me a copy of any final policy adopted.

Sincerely,



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