

**Alpine Lakes Protection Society • Wilderness Watch
Alliance for the Wild Rockies • Aqua Permanente
Center for Environmental Law & Policy • Conservation Congress
Doug Scott Wilderness Training • East Kachess Homeowners Association
El Sendero Backcountry Ski & Snowshoe Club
Federation of Western Outdoor Clubs • Friends of the Bitterroot
Friends of Bumping Lake • Friends of the Clearwater • Friends of Enchantments
Friends of Lake Kachess • Friends of Wild Sky • Great Old Broads for Wilderness
Icicle Creek Watershed Council • Issaquah Alps Trails Club
Kachess Community Association • Kittitas Audubon Society
Middle Fork Recreation Coalition (MidFORC) • North Cascades Conservation Council
North Central Washington Audubon Society • Olympic Forest Coalition
River Runners for Wilderness • Save Lake Kachess • Save Our Sky Blue Waters
Seattle Audubon Society • Spokane Mountaineers
Spring Family Trust for Trails • Wild Fish Conservancy**

February 1, 2021

Via email to: melissa.downes@ecy.wa.gov

And submitted online at: <https://ecology.wa.gov/eightmile>

Department of Ecology
Central Regional Office
Attn: Melissa Downes
1250 West Alder Street
Union Gap, WA 98903

RE: **Eightmile Lake dam replacement project – SEPA scoping comments**

Dear Ms. Downes:

Thank you for the opportunity to provide scoping comments on the Eightmile Lake “dam replacement project” Environmental Impact Statement (EIS). As non-profit organizations focused on conservation and recreation with members who live, work and play in the project area, we have a strong interest in current and future management activities at Eightmile Lake, in the Icicle Creek watershed and the Alpine Lakes Wilderness. Many of our organizations attended the informational and scoping meetings held in 2013-2016 and submitted comment letters in 2016-2019 regarding the defective Programmatic EIS process involving this proposal, and some of us have participated in Icicle Work Group (IWG) meetings over the years.

Tribal Treaty Rights

We recognize and respect the importance of the salmon in the Wenatchee River watershed to the Treaty Rights of the Yakama Nation and Colville Confederated Tribes and both the wild fish and the hatchery fish bred to mitigate for the construction of the Grand Coulee Dam and other mid-Columbia dams, which eliminated spawning habitat for huge numbers of wild salmon and other fish species.

Valid Existing Water Rights

We also recognize valid, prior existing water rights in the Wenatchee River basin for agriculture, and the importance of that local source of food and the economic benefits to the region.

Programmatic EIS is Defective and Largely Worthless

We hereby incorporate by reference the following attached letters regarding the Programmatic EIS process conducted under SEPA in 2016-2019 for the “Icicle Creek Water Resource Management Strategy” which included this Eightmile Lake dam replacement project:

- May 11, 2016 scoping comments (signed by 38 parties) in response to the SEPA Checklist and Determination of Significance.
- July 30, 2018 comments (signed by 31 parties) on the Draft Programmatic EIS.
- Feb 12, 2019 comments (signed by 34 parties) on defects in the Final Programmatic EIS.

Collectively, these comment letters were co-signed by about 40 organizations, including: Alpine Lakes Protection Society (ALPS); American Whitewater; Aqua Permanente; Center for Environmental Law & Policy (CELP); Conservation Congress; Doug Scott Wilderness Consulting; East Kachess Homeowners Association; Endangered Species Coalition; Federation of Western Outdoor Clubs; Friends of the Bitterroot; Friends of Bumping Lake; Friends of the Clearwater; Friends of Enchantments; Friends of Lake Kachess; Friends of Wild Sky; Great Old Broads for Wilderness; Icicle Creek Watershed Council; Issaquah Alps Trails Club; Kachess Community Association; Kachess Ridge Maintenance Association; Kittitas Audubon Society; The Mazamas; Middle Fork Recreation Coalition (MidFORC); Methow Valley Citizens Council; North Cascades Conservation Council; North Central Washington Audubon Society; Olympic Forest Coalition; River Runners For Wilderness; Save Lake Kachess; Save Our Sky Blue Waters; Seattle Audubon Society; Sierra Club; Spokane Mountaineers; Spring Family Trust for Trails; Washington Native Plant Society; Washington Wild; Western Lands Project; Wild Fish Conservancy; The Wilderness Society; Wilderness Watch.

In 2018, IWG received about 10,000 comments on the Draft Programmatic EIS. Many of the concerns highlighted in our prior comments still remain. In particular, we urged IWG to fix two huge defects in the Draft Programmatic EIS: (1) failure to analyze wilderness impacts, and (2) failure to address water rights issues, especially the question of whether the irrigation district has relinquished any right to increase the amount of water extracted from Eightmile Lake. Indeed, the U.S. Forest Service stated in an email¹ that the Draft Programmatic EIS “is silent on Wilderness effects.”

Incredibly, the IWG co-leads (State Dept. of Ecology and Chelan County) failed to make any significant edits in the Final Programmatic EIS they published on January 3, 2019. For any

¹ October 31, 2018 email from Erick Walker, Deputy Supervisor of Okanogan-Wenatchee National Forest (“The PEIS is silent on Wilderness effects, so there’s no opportunity to tier from or use their analysis”).

projects located in wilderness, the Final Programmatic EIS is virtually worthless, except as evidence of IWG's alarming failure and refusal to analyze the most directly relevant issues.

In the multi-year Programmatic EIS process, from scoping to Draft PEIS to Final PEIS, the Dept. of Ecology dismissed and ignored the comments it received from dozens of conservation organizations. We are very concerned that as we begin another multi-year Project-Level EIS process, from scoping to Draft EIS to Final PEIS, the same Dept. of Ecology will again dismiss and ignore our comments.

Because the 2019 Final Programmatic EIS was mostly unchanged from the draft version, and because the IWG co-leads failed to seek consensus within IWG before releasing it so abruptly that IWG members felt blindsided, the FPEIS immediately drew criticism from both inside and outside IWG. An IWG member, Icicle Creek Watershed Council, initiated an IWG dispute resolution process about the FPEIS in early 2019.

In response to the criticism, Chelan County hired two facilitators in 2019. The facilitators interviewed IWG members and proposed revision of IWG operating rules; they also persuaded Icicle Creek Watershed Council to table its dispute resolution process regarding IWG process fouls. In early 2020, the County's hired facilitators began a series of facilitated "stakeholder" meetings with several conservation nonprofits regarding the Eightmile Lake dam. ALPS asked the lead facilitator to stop describing himself as "neutral" on the Icicle, because he is heavily invested in the Yakima Workgroup and its Yakima Plan, and the Yakima Workgroup and Icicle Work Group are related in many significant ways.

The Proposed Action Alternatives Are Inadequate Because They Ignore Relinquishment

The scoping materials include an "Alternatives Summary Table" entitled "Table 1. Eightmile Dam Alternative Considerations." The table's columns describe existing conditions, a "No Action" alternative, and two "Action Alternatives": (1) "Narrow Spillway With Gates (formerly Alternative 1A)"; and (2) "Wide Spillway Without Gates." Alternative 1A was previously referenced in IPID's proposed "Eight Mile Storage Agreement" in the facilitated "stakeholder" meetings in 2020 as described above; nobody agreed to that proposed "Agreement."

We oppose the proposed "Action Alternatives," because they both ignore the fact of water rights relinquishment.

Both of the "Action Alternatives" propose to raise the maximum lake elevation to 4671 feet, which is four feet higher than it has been since 1990.

Furthermore, both of the "Action Alternatives" propose to lower the outlet pipe intake elevation to be lower than it has ever been. The "Alternatives Summary Table" shows the current outlet pipe intake elevation as 4648.65 feet; both of the "Action Alternatives" proposes 4632 feet (16.65 feet lower than it has ever been).

The dam design that would most simply reflect the relinquishment of water rights would be a dam no higher than the current maximum lake elevation (4667 feet) and a low outlet pipe intake

no lower than the current intake elevation (4648.65 feet). Making the dam any higher, or the outlet pipe intake any lower, would allow the dam operator to store and extract water beyond the amount to which it has a right. However, that baseline alternative design has been absent from IWG documentation thus far, including the current design drawings and the “Alternatives Summary Table.”

For years everyone has been notified of the fact of relinquishment at Eightmile Lake, and everyone knows that we have been preparing for years to litigate the relinquishment issue. The Icicle Work Group should address relinquishment and stop ignoring it.

Full Range of Alternatives

Key to the effectiveness of the EIS is presenting a full range of alternatives. “The range of alternatives considered in an EIS must be sufficient to permit a reasoned choice.”² The proposed action and a “No Action” alternative do not present a sufficient range of alternatives, especially given the large scope of the overall proposal. Furthermore, the EIS cannot be constrained solely by the set of principles agreed to by the Icicle Work Group, as that would be contrary to law. “[A]n agency violates SEPA by shaping the details of a project before completing an EIS, effectively turning administrative approval into a ‘yes or no’ vote on that project as detailed, rather than allowing for the development and consideration of alternatives after the EIS is completed.”³ The large amounts of money that the Work Group has expended on the proposed action cannot be used to justify foreclosure of other reasonable alternatives.⁴

We suggest several other reasonable alternatives below to fully evaluate the project opportunities, impacts and needed mitigation. We believe that the alternatives below are reasonable and can “feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.”⁵

Wilderness Protection

The Alpine Lakes Wilderness is a shared natural resource that many people use and care about; it must be respected and protected. It is the Wilderness area nearest to the millions of people who live in the Puget Sound metropolitan area, and is one of the most popular Wilderness areas in the United States. Alpine Lakes Wilderness has operated under a permit system for decades because of the popularity of this Wilderness with the people of Washington State. It has national importance as part of the National Wilderness Preservation System, and it is owned and visited by people from all over the country. It took many years of struggle and hard work by members of our non-profit organizations to establish the Wilderness.

The EIS list of relevant laws, rules and plans must include the Wilderness Act of 1964; the Alpine Lakes Area Management Act of 1976, the Alpine Lakes Area Land Management Plan (1981), and the Wenatchee NF Forest Plan (1990) as amended.

² *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn.App. 439, 444, 832 P.2d 503, 506 (1992).

³ *Columbia Riverkeeper v. Port of Vancouver USA*, 189 Wn.App. 800, 818-19, 357 P.3d 710 (2015).

⁴ *Id.* at 819.

⁵ WAC 197-11-440(5)(b).

The EIS should provide details of how dam reconstruction must be done in compliance with the Wilderness Act. With narrow administrative exception, the Wilderness Act prohibits roads, motor vehicles, motorized equipment, mechanical transport, the landing of aircraft (including the dropping of persons, materials, and supplies from aircraft), and structures and installations within wilderness.⁶ And in the case of valid occupancies within the wilderness, maintenance activities, as well as modes of ingress and egress, are constrained by the Wilderness Act and its goal of wilderness preservation. Dam maintenance projects should be designed with these restrictions in mind, and alternatives that eliminate or significantly reduce prohibited activities within wilderness must be rigorously explored and fully disclosed. This means that roadbuilding, temporary or permanent, must be avoided. This means that alternatives eliminating the need for mechanized and motorized equipment, both with the current project and in anticipating future maintenance, must be seriously considered. Dams have been built and maintained for decades without reliance on motorized equipment. Alternatives maintaining or reducing the existing human footprint, including dam structures and associated installations, must be seriously considered. The EIS should avoid expansion of the human footprint in the Alpine Lakes Wilderness.

The EIS should identify all impacts on Wilderness resources from dam operation, including impacts on benthic macroinvertebrates and other fauna and flora. Mitigation measures should be identified.

For Wilderness protection, the EIS should evaluate public purchase (buy-back) of private water rights in the Alpine Lakes, which would allow removal of dams and other structures from the lakes to restore the Wilderness area to its true natural character.

The Icicle Work Group's guiding principle on Wilderness should be stated as a separate principle, and not subsumed or merged or blended into the other principles. Most of the Icicle Creek watershed is within the Alpine Lakes Wilderness.

Water Right Relinquishment Analysis

We appreciate the irrigators' need for water to irrigate their orchards and keep them productive. We do not object to the exercise of valid, existing water rights of the Icicle-Peshastin Irrigation District, but we question any assertion of water rights that have been relinquished or are otherwise invalid.

We previously urged IWG to include analysis of water rights in its Programmatic EIS, but IWG refused, asserting "At this point, there has been no water right permitting action that has triggered an extent and validity review." As we noted in criticizing the Final Programmatic EIS in 2019, the fact that a permitting action has not yet begun is not a valid reason for the FPEIS to ignore the consequences of relinquishment here. SEPA requires reasonable forecasting of the future, including forecasts of future government actions related to the proposal. There is too much at stake here not to address the water rights issue before proceeding further. We reiterate

⁶ See 16 U.S.C. § 1133(c); 36 C.F.R. § 261.18(c).

our requests for analysis and determination of whether IPID has relinquished any part of its water rights, and for a dam design alternative that reflects relinquishment.

The EIS should include a “Water Right Relinquishment” alternative. This alternative should analyze existing water rights to the Alpine Lakes and acknowledge those rights that have been relinquished or abandoned. Further, to the extent that relinquishment of water rights affects the basis of other alternatives, a relinquishment analysis should be part of each alternative considered. For example, has IPID relinquished through non-use any part of the Eightmile Lake water right on which the dam rebuilding scheme is predicated? If so, it would be improper to analyze an alternative that is based upon the invalid assumption that IPID has valid water rights that would be needed to pursue the project.

The EIS should include an alternative that recognizes Icicle Work Group members’ water rights are limited to the purposes for which they were initially granted (for example, agricultural irrigation) and cannot be redirected to other purposes (such as suburban development). Furthermore, all alternatives should be assessed for compliance with all applicable provisions of the Water Code, RCW 90.03.

Alternative for Dam Safety

The EIS should include an alternative that is focused on achieving dam safety objectives, without proposed changes in dam elevation, pipe elevation or volume of water extracted. How would the dam replacement project be different if only safety objectives were to be met?

Water Conservation Plan

In our July 30, 2018 comment letter, we provided extensive recommendations on ways to obtain new water supply while reducing demands on Icicle Creek by increasing conservation of water, such as by tightening up water delivery and consumption infrastructure in the Leavenworth area; demand management efforts; and recalculating future demand. However, most of our recommendations were ignored. A voluntary lawn buy-back proposal was added, but the FPEIS does not go far enough. More aggressive conservation efforts are needed.

Relationship Between NEPA & SEPA Review

The involvement of several federal agencies and the likelihood of significant environmental impacts justify a finding of significance under NEPA.⁷ Therefore, it is imperative that the Forest Service, as the federal land manager of the Wilderness, take a hard look at the Wilderness impacts associated with the proposed projects.⁸ The Okanogan-Wenatchee National Forest typically serves as the permitting agency for work in and around the Alpine Lakes Wilderness.

As we stated in 2016, if the proposed SEPA EIS contains no federal decisions, the SEPA EIS should say so explicitly and note that any project that requires a federal decision will require NEPA analysis and cannot rely solely on this SEPA EIS. It is unclear, from the documents

⁷ 42 U.S.C. § 4332.

⁸ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

produced thus far, how the SEPA and NEPA analyses will be related, if at all. Given the fact that the Wilderness Area is federally managed, the relationship between these two different review processes should be disclosed.

Beginning in 2018, the Forest Service wrote several letters regarding permitting requirements and NEPA compliance related to IPID's construction activities at Eightmile Lake. For example, "The issuance of a FLPMA Special Use Permit for the removal of the excavator is not guaranteed by the [Special Warranty Deed] and would need to be reviewed under all applicable laws and regulations including, but not limited to, NEPA and the Wilderness Act" (August 21, 2018 letter from OWNF to IPID).

In a July 3, 2019 letter to IPID, the Forest Service wrote that it could issue a permit or easement for water management "up to" the level that was in use "in 1976" (when the Alpine Lakes Wilderness was created by Congress), which was a dam elevation of 4671 feet, and the "Forest Service would need additional authority to permit the project to exceed this level." Regarding the IPID proposal for "a siphon that would remove water approximately 34 feet below the originally constructed low outlet pipe," the letter said the "Forest Service would need additional authority to permit occupancy" of lands beneath the 1976 low outlet pipe elevation of 4648.65 feet.⁹ IPID proposes to make the new dam four feet higher than the current dam (it has been at 4667 feet since 1990), and make the low outlet pipe 16.65 feet lower than it has ever been.

Recently it has been asserted that the most recent dam designs stay within the "footprint" of IPID's easement at Eightmile Lake, but this is not true, because the footprint is three-dimensional, and the most recent designs still call for an outlet pipe lower than it has ever been, and lower than IPID has a right to put it.

IPID has suggested that it might use portable pumps and generators in the wilderness to draw down Eightmile Lake lower than the low outlet pipe. If this project will not expressly prohibit pumping of Eightmile Lake, then the impact of the use of pumps and generators in the wilderness needs to be fully evaluated.

Climate Change Impacts Must Be Considered

The impact of each alternative on Icicle Creek's resilience to climate change, particularly with regard to changes in amount or timing of precipitation and instream flow, should be evaluated.¹⁰ According to Ecology:

⁹ In 1976 the dam was four feet higher than it has been since 1990, and that 4-foot increment of storage has been relinquished, so we oppose raising the dam to the elevation it had in 1976.

¹⁰ RCW 43.21C.030(f) (SEPA is to be implemented in a fashion that "recognize[s] the worldwide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment."); WAC 197-11-444; *Rech v. San Juan Cnty*, SHB No. 07-035 (June 12, 2008) 2008 WL 5510438 at *12 n.8 ("We further note an emerging trend in the case law under the National Environmental Policy Act ("NEPA") and state NEPA analogues in which courts are increasingly requiring agencies to analyze climate change impacts during environmental assessments.").

Climate Change will increase the variability – widening the range – of future supply and demand of water. As climate change shifts the timing and volume of streamflow and reduces snowpack, lower flows during the summer will make it more difficult to maintain an adequate supply of water for communities, agriculture, and fish and wildlife. Lower summer flows and higher stream temperatures will continue to degrade our water quality and place stress on salmon.¹¹

These impacts are foreseeable and must be assessed as part of the EIS.

Impacts of Water Withdrawal Must Be Analyzed

The EIS should discuss the hydrological and biological impacts of the current drawdowns of the lakes, and how the proposed changes will affect the current situation. The analysis should include a review of scientific literature on the impacts of water removals upon wildlife, vegetation, soil and wilderness values.

Operations, Maintenance & Environmental Monitoring Analysis

The EIS should provide a detailed operations, maintenance and environmental monitoring plan for the water infrastructure, and analysis of the wilderness impacts of specific maintenance actions, including helicopter use. The EIS should also provide a detailed accounting of budgets and funding sources for these items.

The Purpose & Need of the Project Should Be Identified

The EIS should fully explain the purpose and need for the water these projects would provide. We understand the need to increase instream flows in Icicle Creek, but what are the additional out-of-stream uses to be served by these projects? To what beneficial use will the additional water be put?

The irrigation district has said it does not need more water for irrigation – but other parties in the Icicle Work Group want to increase water extraction from Eightmile Lake with a new dam. IWG’s goal to provide domestic water in connection with suburban home construction is referenced repeatedly in the SEPA checklist, issued on February 9, 2016 by the IWG co-leads, Chelan County and the State Dept. of Ecology. For example, “Restore Eightmile Lake/Reservoir ... for both instream flows and domestic use” (p. 8); “Construction activities associated with project activities including ... new home construction that will result from improved domestic water supply...” (p. 9); “Vegetation removal ... may be associated with new home construction” (p. 12); “Improvements to the domestic water supply is one of the Guiding Principles. The PEIS will describe the number and proposed locations of new home construction ...” (p. 17); “Limited discharges associated with ... new home construction are anticipated” (p. 21).

¹¹ Ecology, Preparing for a Changing Climate: Washington State’s Integrated Climate Response Strategy (April 2012), available at: <https://apps.ecology.wa.gov/publications/documents/1201004.pdf>, at 101-102; *id.* at 103 (stating that climate change will lead to “increases in winter precipitation, posing additional challenges for managing reservoirs for flood control, fish, and hydropower.”).

The 2018 City of Leavenworth Water Plan and subsequent discussions show that the City places a larger emphasis on increased water needs for commercial and tourism purposes. This should be addressed in the EIS.

The EIS should fully explain what human activities caused the degraded conditions (such as low instream flows in Icicle Creek) that the projects seek to improve. We should not be repeating the mistakes of the past and this information is highly relevant as to the purpose and need of the projects in the first place.

Direct, Indirect & Cumulative Impacts Must Be Assessed

The EIS should analyze each proposed action's site-specific impacts, past practices, and the restoration, mitigation, and funding that would be needed in the future. At each site, proposed construction activities and proposed water diversions need to be spelled out in detail.

The direct, indirect and cumulative impacts of all proposed projects must be assessed.¹² Cumulative impacts include “the impact from the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”¹³ “A cumulative impact analysis need only occur when there is some evidence that the project under review will facilitate future action that will result in additional impacts.”¹⁴ Here, all of the projects are being analyzed in one EIS, are not speculative, and thus must be assessed in a holistic fashion. In addition, if the projects are going to be implemented in phases, that must be described and done in a manner that does not improperly segment the environmental impacts of all proposed projects.

The Dam Safety Office within the Dept of Ecology recently classified the dams at Colchuck, Lower Klonaqua and Square Lakes as “high-hazard.” The Icicle Work Group has been seeking additional water from these lakes, which are much further into the Alpine Lakes Wilderness and much harder to reach. Colchuck, Lower Klonaqua and Square Lakes are included (along with Eightmile Lake) in the Icicle Work Group's Automation/Optimization project; cumulative impacts must be analyzed.

Instream Flow Impacts on Fish and ESA Consultation

The EIS should analyze the adequacy of proposed instream flows to support spawning, rearing and migration of steelhead, salmon and bull trout. Each project's impacts on instream flows and the species likely to be affected should be identified. Under the Endangered Species Act, the Upper Columbia River distinct population segment of steelhead is listed as a threatened species, and the Upper Columbia River spring-run Chinook salmon evolutionary significant unit is listed as endangered. Therefore, consultation under the Endangered Species Act must be required. Icicle Creek contains some of the last remaining nearly pristine habitat available to these fish. Icicle Creek is designated critical habitat for the Upper Columbia River steelhead and contains

¹² WAC 197-11-060(4)(e).

¹³ *Idaho Sporting Cong., Inc. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002)(internal quotation and citation omitted).

¹⁴ *Boehm v. City of Vancouver*, 111 Wn.App. 711, 720, 47 P.3d 137 (2002).

spawning, rearing, and migration habitat for this species. Upper Columbia River spring-run Chinook salmon also spawn in Icicle Creek. However, human activities have lowered instream flows and devastated these fish in Icicle Creek.

Information on Existing Diversions Is Needed

The EIS should include maps, diagrams and photos to clearly show the current situation (including the place of diversion and amount of water diverted) at the lake and other project locations and how that would change under the proposed action(s) under each alternative.

Thank you for considering these comments.

Sincerely,

Rick McGuire, President
Alpine Lakes Protection Society (ALPS)

George Nickas, Executive Director
Wilderness Watch

Sharon Lunz, President
Icicle Creek Watershed Council

Trish Rolfe, Executive Director
Center for Environmental Law & Policy

Kurt Beardslee, Executive Director
Wild Fish Conservancy

Gus Bekker, President
El Sendero Backcountry Ski & Snowshoe Club

Art Campbell, President
North Central Washington Audubon Society

Judy Hallisey, President
Kittitas Audubon Society

Chris Maykut, President
Friends of Bumping Lake

Mark Boyar, President
MidFORC

John Spring, Managing Trustee
Spring Family Trust for Trails

Doug Scott, Principal
Doug Scott Wilderness Training

David Dunphy, President
Issaquah Alps Trails Club

Connie Gallant, President
Olympic Forest Coalition

John Reeves, President
Save Lake Kachess

Denise Boggs, Executive Director
Conservation Congress

Lori Andresen, President
Save Our Sky Blue Waters

Matt Jeffries, President
Spokane Mountaineers

Kathi & Greg Shannon, Steering Committee members
Friends of Enchantments

Tom Martin, Council Member
River Runners for Wilderness

Christine Johnson, President
Kachess Community Association

Mike Town, President
Friends of Wild Sky

Annie Cubberly, Broadband Leader
Polly Dyer Cascadia Chapter
Great Old Broads for Wilderness

Phil Fenner, President
North Cascades Conservation Council

Melissa Bates, President
Aqua Permanente

George Milne, President
Federation of Western Outdoor Clubs

Larry Campbell, Conservation Director
Friends of the Bitterroot

Gary Macfarlane, Ecosystem Defense Director
Friends of the Clearwater

Mike Garrity, Executive Director
Alliance for the Wild Rockies

Joshua Morris, Urban Conservation Manager
Seattle Audubon Society

Gordon Brandt, President
East Kachess Homeowners Association

Jay Schwartz, Member
Friends of Lake Kachess

Attachments (2016, 2018 and 2019 comment letters)

Cc: Governor Jay Inslee
U.S. Senator Patty Murray
U.S. Senator Maria Cantwell
U.S. Representative Kim Schrier
U.S. Interior Secretary
U.S. Bureau of Reclamation Commissioner
U.S. Forest Service, Regional Forester Glenn Casamassa
Okanogan-Wenatchee National Forest Supervisor Kristin Bail
OWNF Deputy Supervisor Erick Walker
Wenatchee River District Ranger Jeff Rivera
Chelan County Commissioners Bob Bugert, Doug England and Kevin Overbay
Department of Ecology Director Laura Watson
Icicle Work Group members

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Washington Native Plant Society • Washington Wild • Western Lands Project
Wilderness Watch • Wild Fish Conservancy**

May 11, 2016

Via email to: mike.kaputa@co.chelan.wa.us

Chelan County Natural Resources Department
Attention: Mike Kaputa, Director
411 Washington Street, Suite 201
Wenatchee, WA 98801

RE: Icicle Creek Water Resource Management Strategy – SEPA scoping

Dear Director Kaputa:

Thank you for the opportunity to provide scoping comments on the Icicle Creek Water Resource Management Strategy. As non-profit organizations focused on conservation and recreation with members who live, work and play in the project area, we have a strong interest in current and future management activities in the Icicle Creek watershed and the Alpine Lakes Wilderness. Many of our organizations attended the informational and scoping meetings held in 2013-2016 regarding this proposal, and some of us have participated in Icicle Work Group meetings and have submitted comment letters previously. We appreciate the difficult challenge to provide instream flows and supply water for historic agricultural uses. There are impacts inherent in this, and Chelan County should work to minimize such impacts by prioritizing water conservation measures that are not detrimental to wilderness values. We are willing to work towards a solution. We support the tribes' insistence that any solution ensure adequate instream flows for fish. However, we are very concerned about the substantial impact of current and proposed water management activities on the lakes in the Wilderness, and the proposal to increase water diversions from seven lakes in the Alpine Lakes Wilderness that flow into Icicle Creek: Colchuck, Eightmile, Upper and Lower Snow, Nada, Lower Klonaqua and Square Lakes.

Chelan County and the Washington State Department of Ecology jointly issued a SEPA Determination of Significance, determining that a Programmatic Environmental Impact Statement (PEIS) is required, due to the proposal's probable significant environmental impacts. We agree with that determination, and we support the decision to prepare an EIS, given the scope and severity of the potential environmental impacts associated with the proposal.

After reading through the materials you published online, we offer the following comments:

Full range of alternatives

Key to the effectiveness of the EIS is presenting a full range of alternatives. “The range of alternatives considered in an EIS must be sufficient to permit a reasoned choice.”¹ The proposed action and a “No Action” alternative do not present a sufficient range of alternatives, especially given the large scope of the overall proposal. Furthermore, the EIS cannot be constrained solely by the set of principles agreed to by the Icicle Work Group, as that would be contrary to law. “[A]n agency violates SEPA by shaping the details of a project before completing an EIS, effectively turning administrative approval into a ‘yes or no’ vote on that project as detailed, rather than allowing for the development and consideration of alternatives after the EIS is completed.”² The large amounts of money that the Work Group has expended on the proposed action cannot be used to justify foreclosure of other reasonable alternatives.³

We suggest several other reasonable alternatives below to fully evaluate the project opportunities, impacts and needed mitigation. We believe that the alternatives below are reasonable and can “feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.”⁴

Wilderness Protection alternative

The Alpine Lakes Wilderness is a shared natural resource that many people use and care about; it must be respected and protected. It is the Wilderness area nearest to the millions of people who live in the Puget Sound metropolitan area, and is one of the most popular Wilderness areas in the United States. Alpine Lakes Wilderness has operated under a permit system for decades because of the popularity of this Wilderness with the people of Washington State. It has national importance as part of the National Wilderness Preservation System, and it is owned and visited by people from all over the country. It took many years of struggle and hard work by members of our non-profit organizations to establish the Wilderness.

The EIS should include a “Wilderness Protection” alternative. This alternative should promote Wilderness values in keeping with the Wilderness classification of the Alpine Lakes Wilderness area, while simultaneously meeting the objectives of the proposal. This alternative should not increase the amount of water removed from the Alpine Lakes Wilderness; not expand easements; not encroach on wilderness lands; not use mechanical transport; and not build any structure or

¹ *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn.App. 439, 445, 832 P.2d 503 (1992).

² *Columbia Riverkeeper v. Port of Vancouver USA*, 189 Wn.App. 800, 818-19, 357 P.3d 710 (2015).

³ *Id.*

⁴ WAC 197-11-440(5)(b).

installation in the Wilderness. Rather, under the Wilderness Protection alternative, any new water supplies should be obtained from application of conservation measures and from sources outside the Wilderness, and use non-Wilderness options for improving instream flows (for example, the Icicle-Peshastin Irrigation District change in diversion point discussed below). The Wilderness Protection alternative should comply with all provisions in the Forest Service's administrative Alpine Lakes Area Land Management Plan, including: "Except as provided for in Section 4(d)(4) of the Wilderness Act, watersheds will not be altered or managed to provide increased water quantity, quality or timing of discharge."

The EIS list of relevant laws, rules and plans should include the Wilderness Act of 1964; the Alpine Lakes Area Management Act of 1976, the Alpine Lakes Area Land Management Plan (1981), and the Wenatchee NF Forest Plan (1990) as amended.

The Wilderness Protection alternative should evaluate public purchase (buy-back) of private water rights in the Alpine Lakes, which would allow removal of dams and other structures from the lakes to restore the Wilderness area to its true natural character.

The Icicle Work Group's guiding principle on Wilderness should be stated as a separate principle, and not subsumed or merged or blended into the other principles. Most of the Icicle Creek watershed is within the Alpine Lakes Wilderness.

Water Right Relinquishment alternative

We appreciate the irrigators' need for water to irrigate their orchards and keep them productive. We do not object to the exercise of valid, existing water rights of the Icicle-Peshastin Irrigation District, but we question any assertion of water rights that have been relinquished or are otherwise invalid.

The EIS should include a "Water Right Relinquishment" alternative. This alternative should analyze existing water rights to the Alpine Lakes and acknowledge those rights that have been relinquished or abandoned. Further, to the extent that relinquishment of water rights affects the basis of other alternatives, a relinquishment analysis should be part of each alternative considered. For example, has the Icicle-Peshastin Irrigation District (IPID) relinquished through non-use any part of the Eightmile Lake water right on which the dam rebuilding scheme is predicated? If so, it would be improper to analyze an alternative that is based upon the invalid assumption that IPID has valid water rights that would be needed to pursue the project.

The EIS should include an alternative that recognizes Icicle Work Group members' water rights are limited to the purposes for which they were initially granted (for example, agricultural irrigation) and cannot be redirected to other purposes (such as suburban development). Furthermore, all alternatives should be assessed for compliance with all applicable provisions of the Water Code, RCW 90.03.

Water Conservation alternative

The EIS should include a “Water Conservation” alternative that emphasizes aggressive water conservation measures by the City of Leavenworth, Icicle-Peshastin Irrigation District, the Leavenworth Fish Hatchery and other water users as a means to achieve the proposal’s objectives. This alternative should consider the adoption of conservation measures (such as restrictions on watering lawns) that have been implemented in the Seattle area, where water consumption actually declined while the population increased. This alternative should also evaluate water markets that facilitate selling and trading of water rights.

The Water Conservation alternative should evaluate a transfer of water rights from IPID to Leavenworth for properties within the city limits that have now converted from orchards to residential properties. This alternative should analyze how appropriate reductions in water usage (that is, not using agricultural water quantities for lawn irrigation) would save water that would then be available for other Leavenworth needs.

The Water Conservation alternative should evaluate how IPID spills large quantities of water back into the Wenatchee River at the end of several of its canals. This alternative should evaluate how this 19th century irrigation practice (which was required to ensure water made it to the furthestmost customers) could be replaced with modern pumping and piping technologies constructed outside of the Wilderness Area. The EIS should consider the resulting reduction in water demand as an alternative water supply.

A strong water conservation program can and should be a part of all the action alternatives, and should be compared to current practices (the No Action alternative).

Water Right Change alternative

The EIS should include a “Water Right Change” alternative. This alternative would evaluate improving Icicle Creek flows by moving IPID’s point of diversion downstream (to the Wenatchee River). This measure, which would add 100 cfs of water to Icicle Creek every year, would convert the IPID diversion from gravity flow to pumping (requiring electrical power). This alternative should therefore analyze renewable energy options to supply that power, including solar, wind and in-canal hydroelectric. Options for changing the point of diversion have already been studied and information on their feasibility and costs is available.

Relationship Between NEPA & SEPA Review

The involvement of several federal agencies and the likelihood of significant environmental impacts justify a finding of significance under NEPA.⁵ Therefore, it is imperative that the Forest Service, as the federal land manager of the Wilderness, take a hard look at the Wilderness impacts associated with the proposed projects.⁶ If the proposed SEPA EIS is “programmatic” and contains no federal decisions, the SEPA EIS should say so explicitly and note that any project that requires a federal decision will require NEPA analysis and cannot rely solely on this

⁵ 42 U.S.C. § 4332.

⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

SEPA EIS. It is unclear, from the documents produced thus far, how the SEPA and NEPA analyses will be related, if at all. Given the fact that the Wilderness Area is federally managed, the relationship between these two different review processes should be disclosed.

Climate Change Impacts Must Be Considered

The impact of each alternative on Icicle Creek’s resilience to climate change, particularly with regard to changes in amount or timing of precipitation and instream flow, should be evaluated.⁷ According to Ecology:

Climate Change will increase the variability – widening the range – of future supply and demand of water. As climate change shifts the timing and volume of streamflow and reduces snowpack, lower flows during the summer will make it more difficult to maintain an adequate supply of water for communities, agriculture, and fish and wildlife. Lower summer flows and higher stream temperatures will continue to degrade our water quality and place stress on salmon.⁸

These impacts are foreseeable and must be assessed as part of the EIS.

Impacts of Water Withdrawal Must Be Analyzed

The EIS should discuss the hydrological and biological impacts of the current drawdowns of the lakes, and how the proposed changes will affect the current situation. The analysis should include a review of scientific literature on the impacts of water removals upon wildlife, vegetation, soil and wilderness values.

Operations, Maintenance & Environmental Monitoring Analysis

The EIS should provide a detailed operations, maintenance and environmental monitoring plan for the water infrastructure, and analysis of the wilderness impacts of specific maintenance actions, including helicopter use. The EIS should also provide a detailed accounting of budgets and funding sources for these items.

The Purpose & Need of the Project Should Be Identified

The EIS should fully explain the purpose and need for the water these projects would provide. We understand the need to increase instream flows in Icicle Creek, but what are the additional

⁷ RCW 43.21C.030(f) (SEPA is to be implemented in a fashion that “recognize[s] the worldwide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment.”); WAC 197-11-444; *Rech v. San Juan Cnty*, 2008 WL 5510438 (Wash. Shorelines Hearings Bd.) (June 12, 2008) at *12 n.8 (“We further note an emerging trend in the case law under the National Environmental Policy Act (“NEPA”) and state NEPA analogues in which courts are increasingly requiring agencies to analyze climate change impacts during environmental assessments.”).

⁸ Ecology, Preparing for a Changing Climate: Washington State’s Integrated Climate Response Strategy (April 2012) at 101-102; *id.* at 103 (stating that climate change will lead to “increases in winter precipitation, posing additional challenges for managing reservoirs for flood control, fish, and hydropower.”).

out-of-stream uses to be served by these projects? To what beneficial use will the additional water be put?

The EIS should fully explain what human activities caused the degraded conditions (such as low instream flows in Icicle Creek) that the projects seek to improve. We should not be repeating the mistakes of the past and this information is highly relevant as to the purpose and need of the projects in the first place.

Direct, Indirect & Cumulative Impacts Must Be Assessed

The EIS should analyze each proposed action's site-specific impacts, past practices, and the restoration, mitigation, and funding that would be needed in the future. At each site, proposed construction activities and proposed water diversions need to be spelled out in detail.

The direct, indirect and cumulative impacts of all proposed projects must be assessed.⁹ Cumulative impacts include "the impact from the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."¹⁰ "A cumulative impact analysis need only occur when there is some evidence that the project under review will facilitate future action that will result in additional impacts."¹¹ Here, all of the projects are being analyzed in one EIS, are not speculative, and thus must be assessed in a holistic fashion. In addition, if the projects are going to be implemented in phases, that must be described and done in a manner that does not improperly segment the environmental impacts of all proposed projects.

Instream Flow Impacts on Fish and ESA Consultation

The EIS should analyze the adequacy of proposed instream flows to support spawning, rearing and migration of steelhead, salmon and bull trout. Each project's impacts on instream flows and the species likely to be affected should be identified. Under the Endangered Species Act, the Upper Columbia River distinct population segment of steelhead is listed as a threatened species, and the Upper Columbia River spring-run Chinook salmon evolutionary significant unit is listed as endangered. Therefore, consultation under the Endangered Species Act must be required. Icicle Creek contains some of the last remaining nearly pristine habitat available to these fish. Icicle Creek is designated critical habitat for the Upper Columbia River steelhead and contains spawning, rearing, and migration habitat for this species. Upper Columbia River spring-run Chinook salmon also spawn in Icicle Creek. However, human activities have lowered instream flows and devastated these fish in Icicle Creek.

Information on Existing Diversions Is Needed

The EIS should include maps, diagrams and photos to clearly show the current situation (including the place of diversion and amount of water diverted) at each of the lakes and other project locations and how that would change under the proposed action(s) under each alternative.

⁹ WAC 193-11-060(4).

¹⁰ 40 C.F.R. § 1508.7.

¹¹ *Boehm v. City of Vancouver*, 111 Wn.App. 711, 720, 47 P.3d 137 (2002).

Thank you for considering these comments.

Sincerely,

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Center for Environmental Law & Policy

Harry Romberg, National Forests Chair
Washington State Chapter
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Cc: Tom Tebb, Department of Ecology
other Icicle Work Group members
Governor Jay Inslee
U.S. Senator Patty Murray
U.S. Senator Maria Cantwell
U.S. Representative Dave Reichert
U.S. Interior Secretary Sally Jewell
U.S. Bureau of Reclamation Commissioner Michael Connor
U.S. Forest Service, Regional Forester Jim Pena
Okanogan-Wenatchee National Forest Supervisor Mike Williams
Wenatchee River District Ranger Jeff Rivera

**Alpine Lakes Protection Society • The Wilderness Society
American Whitewater • Aqua Permanente • Center for Environmental Law & Policy
Conservation Congress • Doug Scott Wilderness Consulting
El Sendero Backcountry Ski & Snowshoe Club • Federation of Western Outdoor Clubs
Friends of Bumping Lake • Friends of the Clearwater • Friends of Enchantments
Friends of Lake Kachess • Friends of Wild Sky • Great Old Broads for Wilderness
Icicle Creek Watershed Council • Issaquah Alps Trails Club • Kittitas Audubon Society
The Mazamas • Middle Fork Recreation Coalition (MidFORC)
North Cascades Conservation Council • North Central Washington Audubon Society
River Runners For Wilderness • Save Our Sky Blue Waters • Seattle Audubon Society
Sierra Club • Spokane Mountaineers • Spring Family Trust for Trails
Washington Wild • Wild Fish Conservancy • Wilderness Watch**

July 30, 2018

Submitted via email to: nr.iciclesepa@co.chelan.wa.us

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RE: **Comments on Draft Programmatic Environmental Impact Statement (DPEIS)
for the Icicle Creek Water Resource Management Strategy**

Dear Directors Tebb and Kaputa:

Thank you for the opportunity to provide comments on the Draft Programmatic Environmental Impact Statement (DPEIS) for the Icicle Creek Water Resource Management Strategy. Many of the undersigned organizations provided comments in 2016 during the scoping period for the DPEIS. As you will see below, many of the concerns highlighted during the scoping period still remain despite the efforts of the Icicle Work Group (IWG) to scope and refine the range of alternatives presented in the DPEIS. **Because of the range of deficiencies in the DPEIS outlined below, the Washington State Department of Ecology (Ecology) and Chelan County should withdraw, revise, and re-release the DPEIS once the deficiencies are addressed.**

With multiple demands, and a changing climate, it will be challenging to meet instream flow targets, ensure agricultural reliability, enhance hydrologic function of the basin, and protect wilderness values. But that is the task taken on by this DPEIS. We believe there is a package

based in strong conservation measures that can accomplish those goals, but the current alternatives in the DPEIS do not.

Wilderness Values

The undersigned organizations have come together out of our concern and respect for the Alpine Lakes Wilderness and its Enchantment basin. This area is one of the most iconic and treasured natural resources in the entire National Wilderness Preservation System. These are national interest lands, owned by everyone in the nation and protected by Congress to preserve their wilderness character. As detailed in the DPEIS, thousands of hikers explore and visit this area each year and a myriad of wildlife species depend on the critical habitat it provides. 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.

Tribal Treaty Rights

We recognize and respect the importance of the salmon in the Wenatchee River watershed to the Treaty Rights of the Yakama Nation and Colville Confederated Tribes and both the wild stocks and the hatchery stocks developed to mitigate for the construction of the Grand Coulee Dam, which eliminated spawning habitat for huge numbers of wild salmon and other fish species.

Valid Existing Water Rights

We also recognize valid, prior existing water rights in the Wenatchee River basin for agriculture, and the importance of that local source of food and the economic benefits to Chelan County and the region.

Positive Project Elements

There are some project elements presented in the DPEIS that the undersigned organizations could support as part of a comprehensive plan that meets the requirements for fish, agriculture and wilderness preservation while simultaneously reducing water diversions and making meaningful investments in domestic and agricultural water conservation. Favorable elements in the DPEIS include: piping and pumping systems, additional domestic conservation, critical upgrades (such as circular ponds) of outdated hatchery infrastructure, fish passage and habitat improvements, and telemetric control of valves at the existing dams. However, there are fundamental flaws in the DPEIS as discussed below that must be addressed before this process moves forward.

Improper Constraints of IWG Guiding Principles

IWG does not have broad-based support. Chelan County defines IWG as “made up of a diverse set of stakeholders representing local, state and federal agencies, tribes, irrigation and agricultural interests and environmental organizations.” While at IWG’s inception it included

more nonprofit environmental organizations, today only three remain. Important environmental groups have departed IWG, including the Center for Environmental Law and Policy and Wild Fish Conservancy—groups that capture broad environmental values. The Icicle Creek Watershed Council also announced its departure last year, but the group has since rejoined IWG albeit on a provisional basis due to outstanding concerns related to the limited investment in water conservation and the degradation of the beauty and ecology of the Alpine Lakes Wilderness.

Furthermore, many groups who have been invited to the table have declined to join, including the Alpine Lakes Protection Society, The Wilderness Society, and Chelan-Douglas Land Trust, due to concerns about scope of the projects, IWG unwillingness to make adjustments to the proposal, IWG’s prohibition on public criticism, IWG refusal to treat westside owners of these public lands the same as eastside owners of these public lands, or for other reasons. While this “broad-based coalition” of IWG involves federal agencies, municipalities, tribes, and irrigation districts, it falls short in representation from the conservation and recreation community. Consequently, for this non-representative, self-selected group to create “guiding principles” that then become the purpose and need of the DPEIS is self-serving and problematic.

Deficiencies of DPEIS

At present, the range of alternatives currently presented in the DPEIS includes actions unprecedented in a federally designated wilderness area and threatens to exploit one resource (i.e., the wilderness and the water it provides) under the guise of protecting another (i.e., fish in Icicle Creek). Chelan County and Ecology can and should do better to meet instream flow targets, ensure agricultural reliability, enhance hydrologic function of the basin, and protect wilderness values. As proposed, the alternatives analyzed in the DPEIS fail to do so.

SEPA expressly requires an EIS to contain a detailed discussion of alternatives to the proposed action. RCW 43.21C.030. “The required discussion of alternatives to a proposed project is of major importance, because it provides a basis for a reasoned decision among alternatives having differing environmental impacts. Pursuant to WAC 197-11-440(5)(b), the reasonable alternatives which must be considered are those which could ‘feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.’” *Weyerhauser v. Pierce County*, 124 Wn.2d 26, 38, 873 P.2d 498 (1994). When, as in this case, the proposal is for public projects, “the EIS must contain a sufficient discussion of offsite alternative proposals.” *Id.* at 39. Also, “there must be a reasonably detailed analysis of a reasonable number and range of alternatives.” *Id.* at 41.

The DPEIS lacks a sufficient discussion of offsite (i.e. non-wilderness) alternative proposals and does not analyze a reasonable range of alternatives, as the *Weyerhauser* decision requires. Although the DPEIS does list five alternatives plus a no-action alternative, only one of these alternatives (Alternative 5) relies primarily on an off-site proposal (Full IPID Pump Station). Furthermore, all of the alternatives repeat the same Eightmile dam “Restoration” project (construction of a dam in a wilderness area), and thus the DPEIS cannot fulfill SEPA’s requirement for analysis of off-site projects. The alternatives are mere variations on the theme of

building dams, pumps, and pipes inside a wilderness area. As discussed below, it is likely that such construction will be unlawful under the Wilderness Act, a problem the DPEIS does not even acknowledge. Because all of the alternatives involve construction in the wilderness, they do not represent “a reasonable range of alternatives,” as required by the *Weyerhaeuser* decision.

Our specific concerns and recommendations for moving forward with the DPEIS process include:

- 1. The entirety of the DPEIS rests on a flawed assumption of “paper water,” not “real water” based on the actual water usage by the primary water rights holders in the Icicle basin. Ecology must perform an extent and validity determination for the three primary water rights holders in the basin before a new DPEIS and alternatives are developed and released for public comment.**

One thing is clear in the DPEIS: the Icicle Peshastin Irrigation District (IPID) has a paper right to an extraordinary amount of water relative to other water rights holders in the basin, and Chelan County, Ecology, and the City of Leavenworth all want a portion of it to meet their needs. It is also clear that under Western water law, water rights holders must use the water or risk to lose it, simply phrased as “use it or lose it.” See RCW 90.14.170-190 (water rights relinquished if not actually used for five consecutive years). See also *Dept. of Ecology v. Theodoratus*, 135 Wn.2d 582, 592–597, 957 P.2d 1241 (1998) (water rights are based on actual, beneficial water use, not installed capacity of water systems).

The condition of IPID’s water infrastructure in the Icicle basin shows that in its near 80 years of operation, IPID has not maintained its facilities to actually store and use its full water right. This was recently demonstrated in the 2018 Eightmile dam emergency, where the risk of heightened spring flows led to emergency stabilization efforts at the delapidated dam. At Eightmile Lake, a portion of the earthen dam washed away in a 1990 flood event, and IPID did not take steps to restore the dam at that time. Since then—for the last 28 years—IPID has annually released approximately 1,400 (and up to 1,600 acre-feet) at Eightmile Lake (DPEIS, 2-63). The DPEIS states that the condition of the existing facilities at Eightmile Lake has limited the active storage volume to 1,370 acre-feet with an operational range of 23 feet (DPEIS, 3-48).

It is clear, therefore, that IPID has relinquished at least part of its paper water rights. How much of its water rights have been relinquished is precisely the question that a proper PEIS must answer. Yet the DPEIS specifically fails to account for IPID’s potential relinquishment of part of its water rights at Eightmile Lake, despite consistent questions and concerns raised by many groups since the genesis of the Icicle Work Group efforts. The DPEIS and all of its alternatives—including the No Action Alternative—assume that IPID has a right to its full paper right at all of the wilderness lakes, including 3,500 acre-feet at Eightmile Lake (as described in Alternative 4, DPEIS, p. 2-103). IPID has never utilized this much water in the entire history of its operation. Water that IPID has not used now belongs to the federal government under the

federal reserved water right doctrine.¹ If the Eightmile Lake dam is rebuilt, it should remain at its current elevation, where it has been since at least 1990, because that elevation is the largest necessary to support whatever remains of IPID’s relinquished water right. In addition, as discussed below, any dam rebuilding must be approved by the U.S. Forest Service and must comply with the National Environmental Policy Act (NEPA) and other federal and state laws. These points also apply to the U.S. Bureau of Reclamation and the U.S. Fish & Wildlife Service in connection with new storage proposed at Snow and Nada Lakes.

The most egregious misinterpretation of IPID’s water rights is represented in Alternative 4, where massive storage projects are analyzed that result in far more water storage than is needed, at the expense of wilderness values and natural hydrologic function of the basin. Alternative 4 also includes the false assumption that IPID has a right to water at Upper Klonaqua Lake, to which the IPID has no right.

Finally, Ecology has confirmed that it has not made an extent and validity determination of either IPID or the Leavenworth Fish Hatchery, as stated in a letter to The Wilderness Society on June 14, 2018:

“The IPID and the Leavenworth National Fish Hatchery both have storage water rights that originate within the Alpine Lakes Wilderness... At this time, Ecology has not made an extent and validity determination of either IPID or the Leavenworth National Fish Hatchery’s diversionary or storage water rights.”

In other words, the issue of how much water is legally available is not known and has not been addressed.

Failure to revise the DPEIS to account for IPID’s possible relinquishment of some of its water rights would constitute a violation of SEPA. SEPA requires an EIS to analyze reasonable project alternatives. “SEPA rules define ‘reasonable alternatives’ as less environmentally costly action that ‘could feasibly attain or approximate a proposal’s objectives.’” *King County v. Central Puget Sound Growth Management Bd.*, 138 Wn.2d 161, 183, 979 P.2d 374 (1999) (citing WAC 197–11–786). Here, a less environmentally costly action that still achieves the proposal’s objectives would be to limit the dam repair work to the minimum necessary to support IPID’s post-relinquishment water rights, not IPID’s paper water rights or its installed water system capacity. There is no justification to “overbuild” the dams to support a water right that no longer exists.

¹ See *U.S. v. New Mexico*, 438 U.S. 696, 698–700, 98 S.Ct. 3012, 57 L.Ed.2d 1052 (1978). The reserved federal water rights apply only if the federal land reservation pre-dates the state-law claim, and only to the extent necessary to accomplish the primary purpose of the federal reservation. In this case, the National Forest reservation occurred in 1897, according to USFS’s website, which pre-dates IPID’s 1927 water rights adjudication. The purposes of the National Forest reservation, per *U.S. v. New Mexico*, are to “improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber” (citing 16 U.S.C. § 475). Thus, the federal government in this case has reserved rights to any water from the Alpine Lakes Wilderness necessary to accomplish these purposes.

Instead, the DPEIS should analyze how much of IPID's water rights remain and should analyze the impact of building the dams to support that level of service. It is necessary to conduct this analysis because, if IPID has relinquished some of its rights, then *none* of the alternatives analyzed in detail in the DPEIS will be feasible anymore, since all rely on the assumption of un-relinquished rights.

It is alarming that Ecology, the co-convener of IWG and co-lead agency of the Icicle DPEIS, has allowed the IWG process to consume significant time and public funding since 2013 without determining such a fundamental question, especially since groups such as the Alpine Lakes Protection Society and The Wilderness Society have been bringing this specific issue to Ecology's attention for years. Ecology must perform that determination now to inform a revised DPEIS before more public money is spent on the Icicle watershed management planning process. The public cannot comment upon the merits of Ecology's determination until after Ecology makes it and discloses it. This is a fundamental reason why the preparation of a Final PEIS would be premature; the DPEIS should be revised to address its deficiencies, and a revised DPEIS should be released for public comment, before a final EIS is prepared.

- 2. The alternatives and range of projects identified in the DPEIS do not currently comply with the Guiding Principles of the Icicle Work Group, including compliance with federal laws such as the Wilderness Act. The perfunctory checklist in the DPEIS is clearly inadequate. A revised DPEIS needs to analyze limitations on the scope and validity of IPID's water rights, which would limit several proposals; acknowledge areas of non-compliance; and identify the appropriate path forward to ensure complete compliance with federal law.**

One of the seven IWG guiding principles cited in the Icicle DPEIS is to "comply with State and Federal Law, and Wilderness Acts." Several layers of law are relevant to the projects and actions described in the DPEIS, and the interpretation of those laws will determine the viability of the projects proposed, specifically the construction of new dams at Eightmile and Snow Lakes and a tunnel between the Upper and Lower Klonaqua lakes, as well as automation and optimization efforts throughout the wilderness lake system. At present, the DPEIS fails to meaningfully consider fundamental legal issues that will determine which projects can and cannot be built, including federal wilderness law and state water law.

The DPEIS is insufficient because the lead agencies have declined to consider what they are legally permitted to do in the first place, under the "minimum necessary" standard of the Wilderness Act. The time to make that determination is during SEPA review to daylight the government's decision-making process and facilitate meaningful public comment (which are two of the main purposes of SEPA), not afterward. It is nonsensical to suggest that years of effort and significant taxpayer dollars should be expended to evaluate alternatives that are likely to be unlawful in the first instance. The agencies here appear to be procrastinating their resolution of issues that are difficult but necessary to resolve. Two glaring examples include: (1) the DPEIS erroneously assumes that IPID's easements supersede federal wilderness law; and (2) the DPEIS fails to fully analyze limitations on the scope and validity of IPID's water rights, which would limit several proposals (as discussed above).

On March 30, 2018, the U.S. Forest Service wrote to IPID that its dam repair/replacement proposal “contains elements that are beyond the scope of the rights reserved by IPID in the Special Warranty Deed.” The Forest Service requested IPID to “submit a detailed proposal” for both the emergency abatement and any long-term actions to replace the dam, and stated:

“Any modification to the dam and ground disturbance (equipment operation, road construction, etc.) of the surrounding lands may require a Special Use Authorization from the Forest. The federal action of authorizing activities on National Forest Lands is subject to a wide variety of laws including (but not limited to): Wilderness Act, National Environmental Policy Act (NEPA), National Historic Preservation Act, and Endangered Species Act (ESA).”

As the DPEIS Purpose and Need section acknowledges, 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. All of the lakes discussed in the DPEIS are 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 (ALWMP). Relevant direction from these laws is cited below and requires federal interpretation and development of guidance for federal actions in relation to the Icicle DPEIS, which has not been completed despite recommendations for such analyses during the 2016 scoping period for this DPEIS.

The DPEIS fails to address the Wilderness Act requirement of federal approval of facilities that are not compliant with wilderness regulations. Furthermore, Section 4(c) of the Wilderness Act relates to the concept of minimum tool requirements, applicable to activities such as access to inholdings and maintenance of water developments in wilderness:

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area. [emphasis added]

This provision sets such a high bar for the utilization of these nonconforming uses that these uses are unlikely to be available for the wilderness projects described in the DPEIS.

Specific management guidance for water resources in the Alpine Lakes Wilderness is provided in the 1981 ALWMP:

Management Objective: to preserve water bodies and stream courses in a natural state with minimal modification or human-caused contaminants. . .

Management Direction: (1) except as provided for in Section 4(d)(4) of the Wilderness Act, watershed will not be altered or managed to provide increased water quantity, quality or timing of discharge. . . . [emphasis added]

Interpretation and guidance from the U.S. Forest Service regarding the myriad elements of the Icicle DPEIS relevant to the agency's land management authority is imperative and should happen as a part of the SEPA process. IPID currently maintains agreements and easements with the U.S. Forest Service for IPID facilities at Eightmile, Colchuck, Square and Klonaqua lakes, which require consultation with the Forest Service. At present, the DPEIS takes IPID's interpretation of its rights at face value, but the DPEIS needs to take a harder look. Ultimately the range of projects described in the Icicle DPEIS on National Forest lands will require Forest Service consultation and approval. Most of the projects proposed are unprecedented in the National Wilderness System and run afoul of wilderness law and, as noted above, state water law. Many of these projects would unreasonably cause significant harm to wilderness and its purposes, including recreation (by damaging trails, campsites, changing aesthetics, etc.) and scenic and conservation values.

Because the projects are in wilderness, non-motorized access and non-motorized equipment (i.e. hand tools) and traditional skills should be required whenever feasible. Since the dams were originally built that way, the exceptions should be rare. *See Wilderness Watch, Inc. v. USFWS*, 629 F.3d 1024 (9th Cir. 2010) (requiring site-specific, comparative analysis of options to determine if an action that violates the Wilderness Act's activity limitations is indeed the "minimum necessary").

Some of the most egregious projects are included in Alternative 4 of the DPEIS, including: (1) drilling a tunnel between two lakes (Upper and Lower Klonaqua); (2) building a higher dam at Upper Snow Lake (enlarging that lake and submerging designated wilderness lands); and (3) increasing the height of the Eightmile Lake dam (making that lake bigger than it has ever been and submerging designated wilderness lands). The DPEIS utterly fails to consider the issue of compliance with federal law. *See, e.g.*, Tables 2-9 through 2-12, which state that each alternative "complies with federal law" — this claim is simply false, given the lack of analysis of IPID's water right and federal wilderness law. Furthermore, these projects were not part of the proposed action in the SEPA scoping conducted by the IWG in 2016, so the public was not asked to comment on them during scoping. It should also be noted that IPID has no right to enlarge Eightmile Lake and has no water rights or infrastructure at Upper Klonaqua Lake.

Finally, the DPEIS fails to account for the necessity of conducting project-level NEPA processes with the U.S. Forest Service as the lead agency regarding dams and tunnels in wilderness on National Forest lands. As one of many examples of this huge omission, DPEIS Table 5-2 of "Permits/Approvals and Relevant Triggers" (pages 5-8 through 5-13) repeatedly states, erroneously, that a U.S. Army Corps of Engineers National Permit and NEPA Categorical Exclusion "are the likely level of regulatory compliance for this project" – for Optimization/Automation, for Eightmile "Restoration," and for the "Enhancement" (expansion)

projects at Eightmile, Upper Klonaqu, and Snow Lakes. The necessity of U.S. Forest Service NEPA analysis is conspicuous by its absence throughout the DPEIS.

Again, these huge gaps in the DPEIS mean that preparation of a Final PEIS would be premature; the DPEIS should be revised to address its deficiencies, and a Revised Draft PEIS should be released for public comment, before a Final EIS is prepared.

The failure to consider the restrictions imposed on the proposal by the Wilderness Act constitutes a violation of SEPA. As noted above, SEPA requires reasonable alternatives to be explored in an EIS. However, each of the alternatives, except alternative 5 (which the DPEIS gave only “a very cursory review,” DPEIS at 2-35), treats the wilderness lakes as if the lakes are subject to essentially unrestricted development of new infrastructure, including the installation of higher dams, additional dams, mechanical pumps, and underground pipes. The installation of any of this new infrastructure would constitute a violation of the Wilderness Act, so the alternatives analyzed in the DPEIS are not actually “reasonable.” While it is true that not every alternative analyzed in an EIS must be legally certain, the alternatives analyzed in the EIS must nonetheless be feasible. *King County*, 138 Wn.2d at 184.

Here, there has *only* been analysis of the proposal under the legally uncertain assumption that IPID may install all of the infrastructure. There has been *no* analysis of what the proposal might look like if some of the infrastructure cannot be installed. A proper DPEIS would have at least considered the possibility that IPID might have to make do with less infrastructure at the lakes due to the restrictions of the Wilderness Act, and state water law.

3. The DPEIS presents an inadequate range of alternatives, since every alternative would significantly impact and harm wilderness values. A revised DPEIS needs to include an alternative that minimizes wilderness impacts, respects wilderness values, and is informed by the extent and validity determination of water rights as discussed above.

At present, every alternative in the DPEIS—including the No Action Alternative—includes actions that would significantly harm wilderness values. As discussed above, the DPEIS should be withdrawn, revised, and re-released with a new range of alternatives that are informed by the validity determination of the primary water rights holders in the Icicle basin as well as compliance with federal laws such as the Wilderness Act. The DPEIS currently includes the “Eightmile Restoration” project in every alternative, which would “restore usable storage to the historical and permitted high water storage elevation” (DPEIS, p. 2-15) requiring construction of a new dam approximately four feet higher than the current dam. If the dam cannot be raised due to water rights relinquishment and/or Wilderness Act constraints, then it is hardly “reasonable” to suggest a raised dam as a component of every one of the proposed alternatives. A revised DPEIS should include an alternative that includes restoration of the dam to its current height and not any higher. The failure to analyze that scenario means that the DPEIS fails to present an adequate range of alternatives. That is not allowed under NEPA and is an important consideration if the U.S. Forest Service were to adopt, in full or in part, this DPEIS.

- 4. The DPEIS improperly phases (and therefore evades) environmental review of the project components of each alternative, which avoids meaningful analysis of the cumulative impacts of each alternative. A revised DPEIS should include a meaningful and appropriate cumulative impacts analysis that provides more substantive and detailed information for each alternative, such as the number of helicopter flights required for all project components in designated wilderness of each alternative.**

“When a lead agency knows it is using phased review, it shall so state in its environmental document.” WAC 197-11-060(5)(e). Here, although the DPEIS calls itself a “programmatic” EIS, there is no discussion of what phases the project will proceed in, or what additional environmental reviews will be done during each phase. The level of detail in the DPEIS is not sufficient to conduct a site-specific review of each project (required by WAC 197-11-060(5)(c)), yet there is no indication that subsequent phases of review will address this deficiency. Thus, the DPEIS appears to be engaged in phased review without disclosing the phases as required under WAC 197-11-060(5)(e).

The DPEIS’s failure to disclose and discuss the project’s phases is not some picayune, technical violation of SEPA; it has real-world consequences. As Washington courts have noted, the failure to properly tier the phases of a project can lead to a failure to analyze cumulative impacts. *See East County Reclamation Co. v. Bjornsen*, 125 Wn App. 432, 441 105 P.3d 94 (2005). Indeed, this DPEIS suffers from exactly such a failure—for example, there is no analysis of the cumulative impact of the helicopter flights needed for each phase of the project, or the combined visual impacts of the various new pieces of infrastructure that will be installed by the end of the project.

Since this project appears to be operating under phased review, the DPEIS must disclose what the phases are and what additional review will be forthcoming. Failing to do so is both a technical violation of SEPA and leads to a failure to analyze cumulative impacts, which is another, separate violation of SEPA.

- 5. The DPEIS presents inadequate cost estimates for project proposals, skewing alternatives away from Alternative 5, which presents a pragmatic and thoughtful solution to these complex issues (e.g., the full IPID pump exchange). A revised DPEIS needs to accurately scope the potential cost of infrastructure proposals in federally designated wilderness, including consideration of the “minimum tool requirements” (as required by section 4(c) of the Wilderness Act) for federal actions in a wilderness area.**

The cost estimates and timelines for projects proposed for construction within the Alpine Lakes Wilderness are questionable because the DPEIS fails to properly account for the protections of the Wilderness Act, the land management role and authority of the U.S. Forest Service, and the requirement for NEPA analysis and compliance. Cost estimates are an important facet of assessing the reasonableness of alternatives. Analyzing cost-prohibitive alternatives does not help address the mandate to analyze a range of reasonable alternatives; nor does omitting the

additional costs of operating under the restrictive Wilderness Act limitations. While a cost-benefit analysis need not be included in an EIS, WAC 197-11-455, if the agency chooses to include cost information, it must do so in an unbiased and accurate manner.

The true costs of Alternatives 1, 2 and 4 are likely much higher than the DPEIS estimates, and closer to the cost of Alternative 5. Alternative 5 includes the “Full IPID Pump Station,” which would move IPID’s point of diversion downstream to the Wenatchee River, and greatly improve flows in Icicle Creek, especially in future decades when climate change will reduce flows in the Icicle watershed. As evidenced by the cost of the recent emergency dam repair at Eightmile Lake, which required an estimated \$100,000 to fly a piece of heavy construction equipment (an excavator) to the site—after IPID had expected to spend a mere \$2,000 to “walk” it on the ground through the Wilderness to the dam (i.e., a cost overrun of five thousand percent on that one item)—cost estimates such as \$1.6 million for “Restoration” of the Eightmile dam and \$3.9 million for the “Eightmile Dam Enhancement” seem woefully low.

- 6. The DPEIS repeatedly ignores the negative impacts on the riparian ecosystems in the Alpine Lakes Wilderness from the proposed unnaturally timed releases of water from the wilderness lakes, which will significantly alter stream hydrology. The DPEIS fails to recognize that altering the natural flow regime can degrade a stream’s physical and chemical properties, leading to loss of aquatic life and reduced aquatic biodiversity. A revised DPEIS requires proper documentation and analysis of the riparian ecosystem and the potential cumulative impacts of the suite of infrastructure projects on that ecosystem to ensure no harm to wilderness streams or lakes.**

The current DPEIS proposes a range of projects that will alter the natural hydrologic function of wilderness lakes and streams in the Icicle basin. To date, the IWG has not adequately invested in monitoring activities across the basin to fully understand and evaluate the potential impacts to the health of wilderness streams and lakes. Usually, Ecology would be the lead agency to ensure no harm when discharging water from Square, Klonauqua, Eightmile, Colchuck and Snow lakes. Ecology developed an advanced multi-metric index model of biotic integrity in 2012 for the Cascades Region which allowed Ecology to determine the health of reaches along the Wenatchee River and the health of Icicle Creek up as far as Ida Creek Campground.

That same level of detailed analysis has not been applied in the DPEIS, either by Ecology or by any other agency. Appendix A of the DPEIS does identify the Washington State Department of Fish and Wildlife as gathering base-line data for the proposed projects. However, the results from 2016 and 2017 analyze only two wilderness streams (Leland Creek and French Creek) of the five streams of concern, and that analysis was not detailed enough to determine the health of either Leland Creek or French Creek. No analysis was completed at the wilderness lakes. We are concerned that IWG has not done adequate sampling and monitoring of impacts from past releases into these wilderness streams, including cumulative impacts, as it is required under WAC 197-11-080 (requiring agencies to obtain missing information regarding significant adverse impacts, if the cost of obtaining information will not be exorbitant). The cost and delay

of obtaining the missing data would not be exorbitant, yet the absence of such data is leading IWG to make environmentally harmful decisions.

The DPEIS describes impacts on a stream resulting from the release of water from a wilderness lake (to improve the historic channel in lower Icicle Creek) as “insignificant” or they are found to be within the naturally occurring flow range of the stream. The DPEIS goes on to identify the release of water as a benefit for the affected riverine system. This simple analysis is faulty and ignores the natural flow regimes of each stream as having a characteristic pattern of flow magnitude, timing, duration, frequency, and rate of change. All of these patterns play a critical role in supporting the chemical, physical, and biological integrity of each receiving stream, which collectively form the foundation of a healthy Icicle system supporting robust fisheries.

Changes to stream chemical and physical conditions following flow alteration can lead to the reduction, elimination, or disconnection of optimal habitat for aquatic biota. The DPEIS fails to recognize that “human-induced alteration of the natural flow regime can degrade a stream’s physical and chemical properties, leading to loss of aquatic life and reduced aquatic biodiversity. Protecting aquatic life from the effects of flow alteration involves maintaining multiple components of the flow regime within their typical range of hydrologic variation.” See *Final EPA-USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration*.

Altered flows can fail to provide the cues needed for aquatic species to complete their life cycles. For example, Pale Morning Duns (Order *Ephemera Danica*) will not emerge until stream water temperatures reach 60 degrees Fahrenheit. Timing is also a factor, as they will also avoid emerging until the month of July has arrived. Alteration of the quantity and timing of river or stream flows can also significantly affect fisheries resources by introducing competing non-native fishes.

Furthermore, the ability of a stream to support aquatic life is linked to the maintenance of key flow-regime components. For example, altering the regime by increasing flows brought about by releasing relatively high water velocities from a lake during mid-summer causes stream surface water, rich in oxygen, to bypass the sub-surface environment. The typically low summer flows and corresponding low velocity allow oxygen to be pulled into the sub-surface environment, which needs oxygenated water this time of year to support invertebrates living in sub-surface environments. Invertebrates are a source of food for other aquatic life, including fish, and tend to live in a subsurface zone (hyporheic zone).

In addition to the impacts of unnaturally timed increases in discharge rates, the DPEIS also needs to examine the impacts of unnaturally reduced discharge during the period when storage is recovered, as well as lake shoreline (edge) effects.

Further complicating these challenges are the expected changes to historic hydrologic conditions resulting from climate change, which adds additional complexity to the task of estimating acceptable levels of hydrologic variation.

If the projects described in the current DPEIS move forward, water will be discharged from wilderness lakes to improve the last four miles of Icicle Creek. The health of Prospect Creek, the last mile of Leland Creek, the last five miles of French Creek, all of Eightmile Creek, the last five miles of Mountaineer Creek and the upper 20 miles of Icicle Creek are all affected by the proposed projects and must be adequately analyzed. The DPEIS ignores lake ecology and how it might affect the streams below the lakes that are discharging water from the hypolimnetic zone, particularly Eightmile, Square and Upper Snow lakes. Since Ecology has developed a model to determine stream health, Ecology should take the lead and determine the health of both lakes and streams that are part of the proposed project.

With this summary of hydrological alteration in mind, and the importance of stream and lake health, it would be prudent to avoid implementing any of the DPEIS action alternatives until a team of scientists, educated in matters associated with stream and lake health, are ready to share their findings. Such a study would help assure that the Alpine Lakes Wilderness remains a healthy wilderness, and that none of the targeted wilderness streams and lakes are harmed.

7. Conservation components in the DPEIS are insufficient. A revised DPEIS must expand these conservation actions to significantly reduce demands on Icicle Creek's water, thereby allowing its watershed to function more naturally. This will better support our region's livability and economy over the long-term.

Water conservation methods have the potential to meet City of Leavenworth and IPID consumptive demand in the Icicle watershed. A fundamental premise of this approach is that water users are entitled only to the amount of water they need, and must exercise reasonable efficiency in their water use. From a pragmatic standpoint, reducing demand and obtaining new supply through water conservation and efficiency measures and practices is good policy and will be more palatable to the public than projects that manipulate and increase diversions from the Enchantment Lakes region of the Alpine Lakes Wilderness.

From review of documents and field sites, it is clear that significant water savings can be obtained through tightening up water delivery and consumption infrastructure in the Leavenworth area, and through demand management efforts. Further, with respect to the City of Leavenworth, re-calculation of future demand is appropriate.

It appears feasible that water conservation and efficiency measures, combined with a transfer of water and service duties from IPID to the City of Leavenworth, could meet the consumptive use needs of both entities.

Here are more specific comments on water efficiency and conservation:

- (a) Incorrect Legal Assumptions. The DPEIS is incorrect and inadequate in its assumptions regarding necessary water efficiency and conservation. As is established by state statute and court decisions, reasonable efficiency in the use of water is not an option for water right holders. It is a requirement. The DPEIS offers various combinations of water efficiency and conservation projects on the assumption that achieving water efficiency is optional. However, achieving reasonable efficiency for Icicle Creek diverters, i.e., City

of Leavenworth, the Leavenworth National Fish Hatchery, and IPID must be a baseline for all alternatives, and not a bargaining chip for achieving other objectives. This is how the Cascade Orchard Irrigation Company's efficiency upgrades are treated in the DPEIS, and this treatment should extend to all other Icicle Creek water users.

(b) Applied Conservation Analysis. The DPEIS should contain analysis of Washington State water conservation laws, policies and requirements as they apply to each of the Icicle Creek water users. This is particularly appropriate given that this is a “programmatically” EIS, and should be included as part of the extent and validity analysis of water rights as discussed above. To the extent these users do not meet state requirements, projects to improve efficiencies should be established as baseline projects that will be applicable across all of the DPEIS alternatives.

(c) Applied Water Waste Analysis. To the extent water users are wasting water, they are not entitled to maintain and use their rights. An evaluation of the extent of water waste committed by Icicle Creek water diverters, particularly IPID, should include review of conveyance loss and efficiencies from the point of release of water in the Alpine Lakes Wilderness, the canal system, operational spills and any other particulars of the water delivery system. This analysis is particularly important to understand the benefits and appropriate allocation of costs associated with the IPID Full Piping and IPID Pump Exchange alternatives. A water waste analysis is particularly appropriate given that this is a “programmatically” EIS, and should be included as part of the extent and validity analysis of water rights as discussed above.

(d) IPID Irrigation Efficiencies Project (Section 2.5.2). This DPEIS section contains no discussion of actual efficiencies of the system (i.e., consumed water vs. transportation loss and waste). It is rife with vague, unquantified, and anecdotal information about actual conservation activities (i.e., “some farmers have complained”; only “small portions” of canals remain unlined). It lacks discussion about wasteful water use on converted residential properties. For more information and photographs of IPID's inefficient water use, see R.P. Osborn, Center for Environmental Law & Policy, Memo re “Water conservation potential for consumptive demand reduction and supply for City of Leavenworth and Icicle-Peshastin Irrigation Districts” (July 9, 2015), incorporated herein by reference.

(e) Domestic Conservation (Section 2.5.4) – City of Leavenworth. The DPEIS confuses wants and needs. The City of Leavenworth and Ecology need to come to agreement regarding water rights for the City of Leavenworth, including to resolve an outstanding court case. The DPEIS does not provide resolution to this issue but instead proposes to provide additional water rights (i.e., wants) to the City of Leavenworth without requiring the City to implement anything other than an inadequate water conservation plan that provides for water conservation in name only. More specifically:

- a. The City of Leavenworth's future water use demand projections are overly aggressive. The City's Water System Plan states that population will grow by

0.47% per year while its water use will grow by 2.2% per year. The projected growth in water use of 2.2% is not supported by the historic growth of water demands for the City of Leavenworth.

- b. Since 1990, water demands have varied from 850 to 1,165 acre-feet per year without a corresponding upward trend in water demand. At the same time, the City's population has increased from 1,692 to 1,990. Essentially, for 27 years water use has not grown while the City's population has increased. The City of Leavenworth's projections state that water use will begin to grow at a pace which is not supported by historical data.
 - c. If water use growth for the City of Leavenworth is estimated at 1% per year (rather than the 2.2% shown in the City's Water Plan) it will take until 2056 to exceed the temporary water right limitation of 1,465 acre-feet as imposed by the court ruling of Leavenworth vs. Ecology (Water System Plan, Figure B, p. 45).
 - d. The DPEIS states that the City of Leavenworth is considering reclaimed water to meet its demands. The City of Leavenworth's Water System Plan specifically states that it is not going to utilize reclaimed water. These statements are contradictory. Failure to plan for use of reclaimed water indicates the City's water plan is not aggressive.
 - e. The City of Leavenworth should not receive additional water supply until its water conservation plan in the City's Water System Plan aggressively promotes conservation as determined by the following factors:
 - i. The City of Leavenworth is currently allocating only \$1,000 per year for water conservation.
 - ii. The City of Leavenworth's unaccounted water (lost water) is 24%, grossly in excess of the statutory 10% mandate.
 - iii. The City of Leavenworth's water conservation plan does not include leak detection to determine where unaccounted for water is going.
 - iv. Approximately 70% of all water used is during the summer months. The City decided not to impose a conservation-based water rate due to the possible financial hardships imposed on its customers. While we understand this is politically difficult to do, the City could gradually impose a conservation-based rate over many years to minimize the shock of a sudden rate increase.
 - v. The City of Leavenworth water plan is designed to meet only the minimum Department of Health guidelines. This is very disappointing and should have been resolved prior to release of the DPEIS.
 - vi. With a more aggressive conservation program, the City of Leavenworth will not need as much additional water by 2050. The Water System Plan guideline of 1,750 acre-feet of additional domestic supply should be revised to a lower number and the associated project(s) that is required to reach this goal should not be funded.
- (f) Domestic Conservation (Section 2.5.4) – Rural Water Use. The DPEIS allocates 74 acre-feet of domestic water for the growth of 199 additional households in the watershed in Chelan County.

- a. Because Icicle Creek is over-appropriated, the basin should be closed for new growth. If new growth is to occur, new households should be required to purchase existing water rights via water right exchanges and water banks. This approach is similar to what is occurring in Kittitas and Yakima counties. Growth should pay for growth.
 - b. Growth should occur in cities and towns according to the Growth Management Act. The guidelines in the DPEIS for water usage in Chelan County should be changed to reflect this.
- (g) Leavenworth National Fish Hatchery Conservation and Water Quality Projects (Section 2.5.9). The LNFH projects provide a good example of the flawed foundation of the Icicle Strategy. Virtually all of the LNFH projects identified in the DPEIS are required to be completed by other laws and on the initiative of the federal agencies that own and operate the Hatchery in order to meet Endangered Species Act, Clean Water Act, and U.S. treaty obligations. Using LNFH upgrades as a bargaining chip to justify other elements of the DPEIS projects is inappropriate. It is evident from the DPEIS that many LNFH projects have been or will be implemented by the Hatchery, including water supply piping, effluent pumpback, fish screening, streamflow augmentation, circular tanks and fish passage.
- (h) Water Markets (Section 2.5.12). The water market proposal artificially limits itself to discussion solely of providing water to interruptible water markets in the basin. If the City of Leavenworth or other municipalities do in fact require additional water supply for future growth, water markets could serve that purpose. One obvious example would involve transfer of water from IPID to Leavenworth for residences in the Ski Hill area. There appears to be substantial waste of water in that neighborhood (see RP Osborn, Conservation Memorandum, cited above, including photos), which largely converted from orchards at some time in the past. Bringing those properties into reasonably efficient water duties for residential properties could free up water to serve properties elsewhere in the City of Leavenworth water system. This is an example of how a water market might operate to serve new demand. The DPEIS should be amended to evaluate a larger range of options for this tool.

8. Miscellaneous comments.

- (a) Inadequate Instream Flow Goals. The proposed non-drought year 100 cfs flow target does not meet basic needs of Icicle Creek wild fisheries. Further, the 60 cfs drought goal is inconsistent with scientific consensus that fish must have adequate cold water in drought periods to avoid significant impacts caused by high water temperatures. The appropriate flow goal is 250 cfs, which represents not an “every year” flow, but the high water year flow that is necessary to ensure survival and healthy populations of wild fish. For more information, see “Analysis of Icicle Creek Instream Flow Benefits of Three ‘Base Projects’ During Low Flow Months” prepared by Mark Hersh, Wild Fish Conservancy, and Dick Reiman, Icicle Creek Project (16 pp., July 2013), transmitted to

the Icicle Work Group, and letter from Wild Fish Conservancy to Tom Tebb (14 pp., 12/19/13). These documents are incorporated herein by reference.

- (b) IPID Full Piping & Pump Exchange Project. As is evident in Figures 2-6, 2-7 and 2-8, the Alternative 1, 2, 3 and 4 “Base Package” projects are unable to meet even the inadequate 100/60 cfs flow goals. Only the IPID full piping and pump exchange scenario (in Alternative 5) is able to come close to achieving the pre-development natural flows in Icicle Creek that are necessary to support healthy fisheries.
- (c) Junior Water Users. The DPEIS sets forth as a “guiding principle” agricultural reliability, with a specific goal of providing full water rights to the 56 interruptible water rights holders in the basin. While this principle is compassionate, it fails to recognize that these water users took their rights with an understanding that they were interruptible, and indeed the prior appropriation doctrine operates on the principle that junior users will be curtailed during low water years. The predicament of these users was deliberately created by Ecology when it chose to issue more water rights than there is sufficient water to fulfill each year, and by the water users when they chose to accept such rights. Because Ecology has not closed the basin, what is to prevent this cycle from repeating itself? As specifically contemplated in the DPEIS alternatives, Ecology will continue to issue junior water rights, which are then curtailed, leading to future water projects to make these juniors “whole.” The DPEIS fails to discuss the implications of this open-ended water management.
- (d) Easement Map. The description of IPID’s easements in the Alpine Lakes Wilderness (DPEIS p. 2-44) should include maps, including the map that shows that IPID does not hold an easement for the entirety of Eightmile Lake.
- (e) Section 2.5.7 Habitat Protection. The discussion of land acquisitions through the Upper Wenatchee Community Land Plan appears to target lands outside the Icicle Creek basin. The DPEIS does not provide a basis for understanding how these land acquisitions benefit Icicle Creek. It appears the Icicle Work Group has evaded an issue by simply adopting the goals and priorities of another group. This approach does not support expansion of the Wenatchee basin instream flow reserve for the Icicle sub-basin.
- (f) Section 2.5.7 Instream Flow Amendment. As noted in discussion of City of Leavenworth water conservation above, the City has significantly overestimated future demand, and is underperforming on state mandated water conservation requirements. Expansion of the instream flow rule domestic reserve based on City demand and planning is not justified. The DPEIS fails to discuss this.
- (a) Section 2.5.9 LNFH Groundwater Augmentation. The DPEIS fails to identify or analyze the problem of utilizing groundwater collectors to pump groundwater in direct hydraulic continuity with Icicle Creek. This proposal appears to propose improving reliability of LNFH groundwater supply at the expense of depleting flows in Icicle Creek.

(b) The Cost of Water. The DPEIS provides a misleading and inappropriate comparison for developing water. Chapter 2 states five times that the cost of water in the Columbia Basin is \$500/acre-foot for projects developed by the Office of the Columbia River (OCR). OCR projects such as the Lake Roosevelt Drawdown or Sullivan Lake transfer represent heavily subsidized projects that were developed as “low hanging fruit,” and are not appropriate for comparison in the DPEIS. One problem is that this number does not appear to include infrastructure costs, thus creating an apples-to-oranges comparison. In contrast, the costs associated with providing water to, for example, the Odessa Subarea have been astronomical, but covered by programs such as the ARRA and other grants. We suspect these numbers are not included in the \$500/acre-foot “baseline.” The DPEIS at page 2-57 does, however, identify the previously completed IPID Canal to Pipeline Conversion as costing \$2 million to obtain 360 acre-feet of water, i.e., a \$5,555/acre-foot cost. The DPEIS is deficient in failing to provide appropriate and realistic cost comparisons for Columbia Basin water development.

Conclusion

Thank you for the opportunity to provide comments on the Icicle DPEIS. Our organizations support collaborative efforts to develop innovative and sound approaches to water and natural resource management for Icicle Creek and the greater Wenatchee River basin, and we appreciate the commitment of organizations, tribes, agencies, and individuals to this important endeavor. As we face a certain future of increased demands on limited water resources, such collaborative efforts will be required to balance the range of competing needs. Broad-based community involvement and support as well as transparency and trust are critical ingredients for success.

For all reasons described above, we request the Icicle DPEIS be withdrawn, revised, and re-released as a Revised Draft PEIS for public comment once the deficiencies detailed here are addressed.

Sincerely,

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Alpine Lakes Protection Society

Kitty Craig, Washington State Deputy Director
The Wilderness Society

Trish Rolfe, Executive Director
Center for Environmental Law & Policy

George Nickas, Executive Director
Wilderness Watch

Gary Macfarlane, Ecosystem Defense Director
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Icicle Creek Watershed Council

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North Central Washington Audubon Society

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El Sendero Backcountry Ski & Snowshoe Club

John Spring, President
Spring Family Trust for Trails

Mark Boyar, President
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cc: Governor Jay Inslee
U.S. Senator Patty Murray
U.S. Senator Maria Cantwell
U.S. Representative Dave Reichert
Okanogan-Wenatchee National Forest Supervisor Mike Williams
Wenatchee River District Ranger Jeff Rivera

**Alpine Lakes Protection Society • The Wilderness Society
Aqua Permanente • Center for Environmental Law & Policy
Conservation Congress • Doug Scott Wilderness Consulting
East Kachess Homeowners Association • Endangered Species Coalition
Federation of Western Outdoor Clubs • Friends of the Bitterroot
Friends of Bumping Lake • Friends of the Clearwater • Friends of Enchantments
Friends of Lake Kachess • Friends of Wild Sky • Great Old Broads for Wilderness
Issaquah Alps Trails Club • Kachess Community Association
Kachess Ridge Maintenance Association • Kittitas Audubon Society
Middle Fork Recreation Coalition (MidFORC) • Methow Valley Citizens Council
North Cascades Conservation Council • North Central Washington Audubon Society
River Runners For Wilderness • Save Lake Kachess • Save Our Sky Blue Waters
Seattle Audubon Society • Sierra Club • Spokane Mountaineers
Spring Family Trust for Trails • Washington Wild
Wild Fish Conservancy • Wilderness Watch**

February 12, 2019

Tom Tebb
Director, Office of Columbia River
Washington Department of Ecology
1250 Alder Street
Union Gap, WA 98903

Mike Kaputa
Director, Chelan County Natural Resources Department
411 Washington Street, Suite 201
Wenatchee, WA 98801

RE: **Defects in Final Programmatic Environmental Impact Statement (FPEIS)
for the Icicle Creek Water Resource Management Strategy**

Dear Directors Tebb and Kaputa:

This letter provides comments on outstanding gaps and deficiencies in the Final Programmatic Environmental Impact Statement (FPEIS) for the Icicle Creek Water Resource Management Strategy. The undersigned organizations provided comments in 2018 on the Draft Programmatic Environmental Impact Statement (DPEIS) and/or in 2016 during the scoping period. As you will see below, many of the concerns highlighted in our prior comments still remain.

The FPEIS fails to recognize that fundamental legal issues may not be resolved the way the FPEIS implicitly asserts they will be resolved – legal issues that will determine which projects can and cannot be built, including federal wilderness law and state water law. Failing to address these fundamental issues before any further public funding is spent on implementation is wasteful and irresponsible. Because the Icicle Work Group (IWG) relies on interrelated projects

to accomplish common goals, later invalidation of an individual project may require IWG to revise all of the other projects in IWG’s Preferred Alternative.

To avoid repetition, a copy of our July 30, 2018 letter (signed by 31 organizations) is attached and incorporated by reference. We reiterate our concern and respect for wilderness values, the Alpine Lakes Wilderness and its Enchantment Basin; the tribal treaty rights of the Yakama Nation and Colville Confederated Tribes; and valid, prior existing water rights in the Wenatchee River basin for agriculture. Our outstanding criticisms are detailed below.

1. The FPEIS Fails to Adequately Analyze Wilderness Impacts.

An EIS must address a proposal’s “relationship to existing land use plans.” WAC 197-11-444(b)(b)(i). Lands designated as wilderness under the Wilderness Act are subject to land use plans that are very restrictive in terms of allowed uses. An EIS must address the relationship between a proposal and those federally-established land use restrictions. Likewise, an EIS must consider impacts to “unique physical features,” “habitat,” “nonrenewable resources,” and “conservation.” WAC 197-11-444. All of these are components of the wilderness values sought to be protected by the Wilderness Act and the designation of wilderness areas under the act. An EIS must consider a proposal’s impacts on all of these and other environmental elements sought to be protected in designated wilderness areas.

Like the draft version, the FPEIS fails to meaningfully consider environmental impacts flowing from fundamental land use restrictions imposed and values sought to be protected by federal wilderness law. This omission violates SEPA and renders the FPEIS useless for subsequent environmental review of projects on or near designated wilderness lands. Indeed, a U.S. Forest Service official wrote: “The [Draft] PEIS is silent on Wilderness effects, so there’s no opportunity to tier from or use their analysis.” (October 31, 2018 email by Okanogan-Wenatchee National Forest Deputy Supervisor Erick Walker). The same is true of the Final PEIS, since it changed so little¹ from the draft version. The FPEIS Fact Sheet states “the PEIS will serve as the basis for future project-level environmental review that may be required and NEPA review that would be required for projects that receive federal funding or permitting.” This is wrong, because the FPEIS is fatally flawed in its failure to adequately analyze wilderness values and impacts.

The project as proposed and currently analyzed could violate the Wilderness Act, including federal agencies obligation to preserve wilderness character (16 USC 1133(b)) as well as the Act’s prohibition on structures and motorized uses (16 USC 1133(c)).

All federal agencies enforce the Wilderness Act. Congress has designated wilderness on lands managed by other federal agencies besides the U.S. Forest Service, such as the National Park Service, the U.S. Fish & Wildlife Service, and the Bureau of Land Management. All of these agencies have personnel who are familiar with the Wilderness Act and who know how to

¹ Other than the addition of a new Appendix A (copies of public comments on the Draft PEIS followed by cursory responses), the Final PEIS is almost entirely unchanged from the Draft version. The few Wilderness-related revisions included: “To address potential increased costs of work in the wilderness area, an additional 25-percent contingency has been added to all projects proposed in the wilderness area in the FPEIS.” App. A, response 12-32.

recognize impacts on Wilderness lands they manage, as well as impacts on nearby designated wilderness lands managed by a sister agency. Icicle projects put forth by any agency must acknowledge the gaps, omissions, and absence of analysis of Wilderness Act values and impacts in the FPEIS.

Our July 30, 2018 comment letter said that because of the deficiencies in the DPEIS (including the lack of Wilderness impacts analysis), Ecology and the County should withdraw, revise, and re-release the DPEIS once the deficiencies are addressed. The IWG co-leads declined to revise it to correct the deficiencies, explaining as follows in the FPEIS (Appendix A, response 12-1):

“Per WAC 197-11-405 a supplemental draft EIS is required if there are substantial changes to the proposal so that the proposal is likely to have significant adverse environmental impacts; or there is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts. New information has not been found nor has the proposal changed in a way that new probable significant adverse environmental impacts are likely.” [emphasis added.]

The IWG co-leads' purported “response” is nonresponsive. The issue here is not whether to prepare a supplemental EIS. That issue would arise only if there were a prior EIS that was arguably in need of supplementation. Here, the issue is whether the draft EIS adequately addressed wilderness impacts. Thus, the issue is not whether wilderness impacts are “new information,” but whether they were incorrectly omitted from the draft EIS. The reality, of course, is that the proposal's impacts to wilderness plans and values have been known to federal agencies for a long time. As the Forest Service states, they are missing from the PEIS (e.g., OWNF statement that the PEIS is “silent” on wilderness impacts). The omission renders the EIS deficient and useless.

2. The FPEIS Fails to Adequately Analyze Water Rights of Icicle Peshastin Irrigation District (IPID) Which Are a Core Issue in the Preferred Alternative.

The FPEIS fails to account for IPID's relinquishment of some of its water rights. The proposal's impacts will vary depending on how this issue is resolved. This omission violates SEPA and renders the FPEIS useless for subsequent environmental review of projects involving relinquishment. The FPEIS fails to analyze how much of IPID's water rights remain (i.e., how much water is legally available) and fails to analyze the impact of building the dams to support that level of service. If the Eightmile Lake dam is rebuilt, it should remain at its current elevation, where it has been since at least 1990, because that elevation is the largest necessary to support whatever remains of IPID's relinquished water right.

Our July 30 comment letter said that because of the deficiencies in the DPEIS (including the lack of water rights relinquishment analysis), Ecology and the County should withdraw, revise, and re-release the DPEIS once the deficiencies are addressed. The IWG co-leads declined to revise it to correct the deficiencies, explaining as follows in the FPEIS (Appendix A, response 12-6):

“An extent and validity analysis, which is completed to determine if a water right or a portion of a water right has been relinquished by non-use or abandoned, is triggered by a

water right permitting action. There are several exemptions to relinquishment, which would be reviewed during an extent and validity analysis. At this point, there has been no water right permitting action that has triggered an extent and validity review. The process and timing of an extent and validity analysis is provided in Water Resources POL-1120.”

The fact that a permitting action has not yet begun is not a valid reason for the FPEIS to ignore the consequences of relinquishment here. SEPA requires reasonable forecasting of the future, including forecasts of future government actions related to the proposal. *See, e.g., King County v. King County Boundary Review Board*, 122 Wn.2d 648, 860 P.2d (1993); *Alpine Lakes Protection Society v. Washington Dept of Natural Resources*, 102 Wn.App. 1, 15, 979 P.2d 929 (1999). *See also Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1246 n. 9 (9th Cir.1984) (“Reasonable forecasting and speculation is ... implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry,’ ” quoting *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C.Cir.1973)). Where two or more outcomes are reasonably foreseeable, the EIS must analyze each.

There is too much at stake here not to address the water rights issue before proceeding further. As a practical matter, all of the streamflow numbers in the FPEIS will change if it is determined that relinquishment occurred and the Eightmile dam will be repaired at its current elevation, not four feet higher. The FPEIS also added a two-page section on the “Regulatory Framework” of water rights (FPEIS section 3.6.1.1), but it similarly dodges the central question about whether relinquishment happened here and the differing environmental impacts associated with each outcome.

Environmental review is designed to address the wisdom of taking or not taking the action in question. Accordingly, complete and meaningful review must come before governmental inertia and incremental decision-making takes on its own momentum and drives the project forward. *See Boundary Review Bd.*, 122 Wn.2d at 664 (“Even a boundary change, like this one, may begin a process of government action which can ‘snowball’ and acquire virtually unstoppable administrative inertia.”). *See also* William H. Rodgers, *The Washington Environmental Policy Act*, 60 Wash. L. Rev. 33, 54 (1984)(postponing review risks “a dangerous incrementalism where the obligation to decide is postponed successively while project momentum builds.”).

That environmental review must come at the earliest time – when a range of options are still practically on the table – is also a hallmark requirement of SEPA’s federal counterpart, the National Environmental Policy Act (NEPA), 42 U.S. Code § 4321 *et seq.* *See Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768 (9th Cir. 2006)(“Federal regulations explicitly, and repeatedly, require that environmental review be timely”); *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000)(review “must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made”); *Conner v. Burford*, 848 F.2d. 1441, 1446 (9th Cir. 1988)(“The purpose of an EIS is to apprise decisionmakers of the disruptive environmental effects that may flow from their decisions at a time when they retain a maximum range of options.”); *Save the Yaak Committee v. Block*, 840 F.2d 714, 718 (9th Cir. 1988) (“Proper timing is one of NEPA’s central themes.”). Here,

“complete and meaningful” environmental review includes an analysis of whether IPID’s remaining water rights would require any increase in Eightmile Dam’s height above its present level.

As we have consistently stated, the structure of the Icicle Work Group provides the opportunity to do things differently, which is at the heart of finding new solutions to long-standing problems. Addressing the water rights validity question up front and prior to a future “water right permitting action” is an example of doing things differently, within the safety of the IWG collaboration, and would respect the purpose and spirit of SEPA review. Instead, the IWG co-leads (Ecology and Chelan County) claim to be doing things differently, but instead hide behind the ways things are traditionally done, punting a fundamentally critical question down the road, thereby threatening the viability of actually accomplishing the ambitious goals of IWG and wasting millions of taxpayer dollars in the process.

3. The FPEIS Fails to Adequately Plan for Climate Change Impacts in the Icicle Watershed.

IWG made a significant investment in working with the University of Washington’s Climate Impacts Group, but incorporates very little of its analysis and long-term projections into the Icicle FPEIS’s forecast for future drought conditions. As stated by Aspect Consulting at a December 20, 2018 meeting with Ecology, Chelan County and other stakeholders, the graphs presenting future conditions “could underpredict drought years and overpredict non-drought performance,” which begs the question whether the analysis will truly meet future drought conditions. FPEIS Figure 2-6 (p. 2-22) shows that stream flows are predicted to fall short of the Icicle FPEIS’s goal of 60 cfs in the fall based on historic drought conditions. If these potential drought conditions are underpredicted (which they are since they are based on historic data and not modified to consider future flow conditions), the Preferred Alternative meets only the bare minimum needs, and certainly will not set the Icicle basin on the path to success for fishery goals in 2050 and beyond.

Furthermore, in the December 20, 2018 meeting referenced above, the IWG co-leads affirmed that the Icicle FPEIS focuses on addressing water needs only for the “short-term,” which the co-leads defined as a period of 20 years, which is simply not long enough given the proposed magnitude of public investment in this project. The January 27, 2019 *Seattle Times* article on the Icicle (“Crumbling dam foreshadows potential water-supply crisis”) quotes Dan Haller of Aspect Consulting stating that the plan indeed needs to account for and plan for climate change: “We’d hate to invest \$100 million in a suite of projects and then 20 or 50 years from now find they’re underperforming.” Ironically, the Preferred Alternative would do just that, as admitted during the December 20, 2018 meeting referenced above, and as indicated in data presented throughout the FPEIS. This means that at present the Preferred Alternative will not set the Icicle basin on the path to climate resiliency, as promoted by the IWG co-leads. At best, it helps agricultural interests and domestic users to have some level of reliability for the next 20 years, but does not go far enough for fish and wildlife and other out-of-stream interests and uses.

4. The FPEIS Punts Substantive Analyses to Future Project-Level Review, Which Threatens to Overlook Cumulative Impacts and Shifts the Burden of Planning and Review to Other Agencies.

The IWG co-leads consider the FPEIS a foundational document for project-level review and did not include additional substantive information in the FPEIS despite a robust response during the public comment period.

A failure to include updated information such as the IPID Comprehensive Water Management Plan or the City of Leavenworth’s Water System Plan, both completed in 2018, or any updated information on emergency dam and outlet repairs completed at Eightmile Lake in 2018 show either a deliberate exclusion of pertinent information or a lack of effort in the final stages of drafting the PEIS.

The FPEIS states that for projects for which adequate environmental review is contained in the FPEIS, “the permitting agency may decide to adopt the PEIS analysis and proceed to permitting . . . projects that may have new or additional significant adverse impacts not analyzed in the PEIS would require additional project-level review.” (FPEIS, p. 1-39-40) The requirement for additional environmental review at the project level does not excuse the obligation to analyze the issues as fully as reasonably possible at this time. To the extent impacts can be reasonably forecast now, the EIS must do so (see caselaw cited above).

5. The FPEIS Fails to Present an Adequate Water Conservation Plan and Commits Public Funding Toward Subsidizing Inefficient Use of Water.

In our July 30 comment letter, we provided extensive recommendations on ways to obtain new water supply while reducing demands on Icicle Creek by increasing conservation of water, such as by tightening up water delivery and consumption infrastructure in the Leavenworth area; demand management efforts; and recalculating future demand. However, most of our recommendations were ignored. A voluntary lawn buy-back proposal was added, but the FPEIS does not go far enough. More aggressive conservation efforts are needed.

Conclusion

The Icicle FPEIS implies that it is a comprehensive review of all of the environmental issues, but it is not. The FPEIS cannot be said to comply with the Guiding Principles of the Icicle Work Group, including compliance with federal laws such as the Wilderness Act, when analysis of those laws has been skipped over and punted to subsequent project-level review. The outstanding gaps and deficiencies in the Icicle FPEIS are egregious, and too significant for it to serve as the “foundation” for environmental review of any project in the Alpine Lakes Wilderness. Government agencies responsible for project-level review need to be aware of these defects, and refrain from basing their decisions on the Icicle FPEIS. Instead, lead agencies should make threshold determinations of whether projects are lawful in the first place, before proceeding with further review.

Sincerely,

Rick McGuire, President
Karl Forsgaard, Past President
Alpine Lakes Protection Society

Kitty Craig, Washington State Deputy Director
The Wilderness Society

Trish Rolfe, Executive Director
Center for Environmental Law & Policy

George Nickas, Executive Director
Wilderness Watch

Art Campbell, President
North Central Washington Audubon Society

Kurt Beardslee, Executive Director
Wild Fish Conservancy

Harry Romberg, National Forests Co-Chair
Washington State Chapter
Sierra Club

Brock Evans, President
Endangered Species Coalition

George Milne, President
Federation of Western Outdoor Clubs

Jasmine Minbashian, Executive Director
Methow Valley Citizens Council

Tom Uniack, Executive Director
Washington Wild

Kathi & Greg Shannon, Steering Committee members
Friends of Enchantments

Gary Macfarlane, Ecosystem Defense Director
Friends of the Clearwater

John Spring, Managing Trustee
Spring Family Trust for Trails

Judy Hallisey, President
Kittitas Audubon Society

Melissa Bates, President
Aqua Permanente

Chris Maykut, President
Friends of Bumping Lake

Mike Town, President
Friends of Wild Sky

Mark Boyar, President
MidFORC

Carolyn McConnell, Vice President
North Cascades Conservation Council

Tom Martin, Council Member
River Runners For Wilderness

Larry Campbell, Conservation Director
Friends of the Bitterroot

Denise Boggs, Executive Director
Conservation Congress

Lori Andresen, President
Save Our Sky Blue Waters

William Campbell, President
Friends of Lake Kachess

Terry Montoya, President
Kachess Ridge Maintenance Association

Christine Johnson, President
Kachess Community Association

John Reeves, President
Save Lake Kachess

Gordon Brandt, President
East Kachess Homeowners Association

Annie Cubberly, Broadband Leader
Polly Dyer Cascadia Chapter
Great Old Broads for Wilderness

Doug Scott, Principal
Doug Scott Wilderness Consulting

Kirt Lenard, President
Issaquah Alps Trails Club

Brian Hoots, President
Spokane Mountaineers

John Brosnan, Executive Director
Seattle Audubon Society

Attachment: July 30, 2018 comment letter of 31 organizations

cc: Governor Jay Inslee
Washington State Dept. of Ecology Director Maia Bellon
U.S. Senator Patty Murray
U.S. Senator Maria Cantwell
U.S. Representative Kim Schrier
Chelan County Commissioners Bob Bugert, Doug England and Kevin Overbay
Okanogan-Wenatchee National Forest Supervisor Mike Williams
Wenatchee River District Ranger Jeff Rivera
Icicle Work Group members