

VOLUNTARY REGIONAL AGREEMENTS Interim Report to the Legislature

OFFICE OF COLUMBIA RIVER



DEPARTMENT OF
ECOLOGY
State of Washington

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Office of Columbia River Voluntary Regional Agreements

Introduction

RCW 90.90.030(9) requires Ecology to monitor¹ water allocated to instream and out-of-stream uses under Voluntary Regional Agreements (VRAs), and provide an interim report on allocations and the program to the Legislature by June 30, 2008. A final report is due to Legislature by June 30, 2011.

In whole, the statute provides:

RCW 90.90.030

Voluntary regional agreements — Scope and application — Reports to legislature — Definitions. (Expires June 30, 2012.)

- (1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.
- (2) Such agreements shall ensure that:
 - (a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;
 - (b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and
 - (c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.
- (3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out-of-stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.
- (4) Before executing a voluntary agreement under this section, the department of ecology shall:
 - (a) Provide a sixty-day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, the department of fish and wildlife, and affected tribal governments, and federal agencies. The department of fish and wildlife shall provide written comments within that time period. The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and
 - (b) Provide a thirty-day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty-day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

¹ This will include metering for out-of-stream uses, water masters to verify that water savings are instream and not being diverted by others, stream gauging where possible, and the Columbia River webmap for transparency.

- (5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.
- (6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.
- (7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.
- (8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.
- (9) The department of ecology shall monitor and evaluate the water allocated to instream and out-of-stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.
- (10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.
- (11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.
- (12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.
- (a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.
- (b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.
- (13) This section expires June 30, 2012.

The legislature created VRAs in 2006 in order to provide a means for groups of water users to enter into agreements with the state to acquire water for both instream and out-of-stream uses. VRA's are one of the tools the Office of Columbia River may employ as it carries out its mandate under RCW 90.90.005 to "aggressively pursue the development of water supplies ..."

This interim report updates the Legislature on the progress and status of VRAs. This report and the final report in 2011 will help Ecology and the Legislature determine if VRAs are a useful tool for allocating water and should be retained beyond the sunset date of June 30, 2012.

This report includes:

- An overview of the VRA program.
- A summary of Ecology's preferred policy alternatives for carrying out VRAs from our Programmatic Environmental Impact Statement (PEIS).
- A status update on the one VRA Ecology has entered to-date, made with the Columbia Snake River Irrigators Association (CSRIA).
- A report on the progress in forming a potential VRA with several north central Washington communities.
- A list of methods Ecology will use to monitor and evaluate water allocations in a VRA.
- A summary of early impressions of VRAs as a tool for allocating water.

Voluntary Regional Agreement--Overview

A VRA is a legal agreement between the State and one or more Columbia or Snake River water users to provide new water for out-of-stream use, streamline the application process, and protect instream flow” (RCW 90.90.030).

After years of struggle over the granting of new water rights, the legislature created VRAs as an experiment to see if the process could be streamlined. The statute sunsets in 2012.

The two key VRA elements that make them unique are:

1. A procedure for consulting with external stakeholders who may have an interest in new water allocations from the Columbia and Snake Rivers.
2. A substantive performance standard for mitigating impacts to instream flows.

VRAs have a two-step consultation and public notice (see Figure 1 for outline). The consultation process is similar to that Ecology adopted in rule (WAC 173-153-020), but with fixed time frames for each step.

VRAs also have a fixed mitigation standard for new water rights. VRA agreements must ensure that new mainstem Columbia or Snake River water rights have no negative impact on Columbia River mainstem flows during the months of July and August, or on Snake River flows during April through August. Since it was not defined in statute, Ecology assessed policy options for interpreting “no negative impact” in the Columbia River Program PEIS (see next section). In general, this means bucket-for-bucket mitigation for out-of-stream diversions during the period of concern. Options to achieve the VRA mitigation standard include:

- Conservation projects.
- Modification of existing reservoirs.
- Water right acquisitions.
- Construction of new reservoirs.

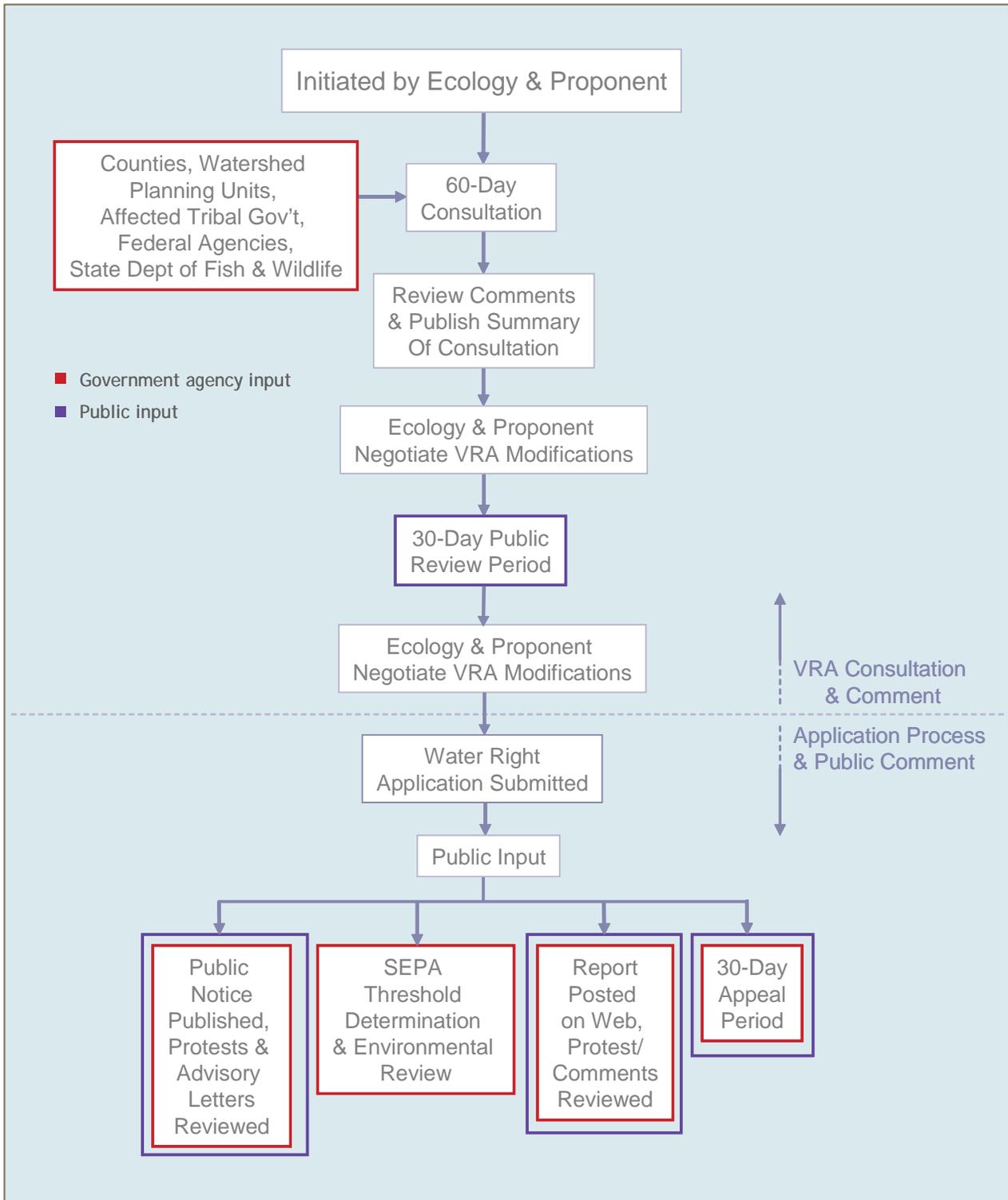
Under the statute, Ecology has discretion whether to enter into a VRA. Ecology would not enter a VRA if it did not meet the requirements in statute--benefiting both instream and out-of-stream uses, and streamlining permitting processes. Ecology may also consider other factors when deciding whether to enter into a VRA. For example, Ecology has only limited staff to manage VRAs. The VRA must provide significant public value and compliance certainty to warrant the resources needed.

A group of water users may propose a VRA, and negotiate its terms with Ecology. If Ecology accepts and adopts the VRA, it serves as the framework for issuing new water rights to that group of water users. In general, one can view the VRA as a “ledger” of needs or wants by each side. For a permittee, this may include new water rights, drought permits, and funding of projects. For Ecology, this may include conservation or best management practices, amending paper water rights to show actual use (referred to as “cleaning up the paper”), fees to recover water supply development costs, ordinances or policies, and others.

Once Ecology accepts the VRA, those taking part in the VRA can file a new water right application². The water right application is then subject to the normal statutory public notice and public comment and SEPA review. Following a review of SEPA comments, Ecology prepares a draft Report of Examination (ROE). The draft ROE is typically posted for comment on the web, followed by a final ROE. There is a 30-day appeal period before issuing the new water right permit to the applicant.

² Water to fulfill these new water rights will largely be derived from water acquired through the Columbia River Grant Funding Program and major project development, such as the new Incremental Storage Releases from Lake Roosevelt.

Figure 1: VRA Process Overview



The pool of eligible VRA applicants is limited geographically by statute in RCW 90.90.030(12) to the Columbia and Lower Snake River main stems, where:

- (a) “Columbia river mainstem” means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.
- (b) “Lower Snake river mainstem” means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

Columbia River Programmatic Environmental Impact Statement (PEIS)

Ecology released a Final PEIS on the Columbia River Basin Water Management Program on February 15, 2007. The PEIS had three main goals:

1. To satisfy the requirements of the State Environmental Policy Act (SEPA) for carrying out a new comprehensive river management program.
2. To provide an opportunity for the public to review policy alternatives for program implementation.
3. To evaluate potential impacts of three Early Action Items.

The PEIS contained policy options affecting VRAs in general, and the Columbia-Snake River Irrigators Association (CSRIA) VRA was one of the three Early Action Items. These alternatives provide the Office of Columbia River with a policy framework to guide decision making.

Policy Alternatives³

Seven of the 13 policy alternatives in the PEIS included discussion of VRAs. A summary of each of the preferred alternatives Ecology chose is provided below.

1. **How aggressively should Ecology pursue VRAs?** Ecology will support consideration of a VRA where it benefits the Columbia River Management Program and is in the public interest. Ecology will respond to and work with proponents to carry out new VRA proposals that are consistent with RCW 90.90.030. However, this will not be a major focus of Ecology’s actions.
2. **Should Ecology give priority processing to VRA applications?** Ecology currently processes water rights applications according to the “Hillis Rule⁴” (WAC 173-152-050). Ecology will continue this practice for new Columbia River applications, including those associated with a VRA.
3. **How should Ecology define “no negative impact”?** “No negative impacts” means no loss of flow in the mainstem Columbia River, on a weekly basis, during the period when flows are inadequate to provide for existing water rights and preserve environmental and navigational values. Ecology clarified that mitigation must occur within the same pool or upstream of any impacts.
4. **How will Ecology define the “main channel” for VRAs?** A straight line will be drawn across the mouth of each tributary to divide it from the mainstem channel. The main channel ordinary high water mark does not include any of the backwater areas on tributaries nor does it include tributary surface water rights within the one-mile corridor.

³ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/finaleis/VI_chp68.pdf.

⁴ Under the Hillis Rule, Ecology processes applications in the order they are received within the same source of water, subject to several exceptions. See WAC 173-152-050.

5. **How will mitigation from VRAs and non-VRA be provided?** Processing new water rights from the Columbia River will require mitigation for any impacts to instream flows. The mitigation will be provided either through a VRA or through the consultation process (WAC 173-563-020, see Section 1.3 for more information).
6. **How will VRA applications and non-VRA applications be coordinated?** Following the principles in Hillis, Ecology will work on and provide mitigation water, as developed, to the oldest application first. However, Ecology must also consider the source (mainstem or tributary) and manner (storage, conservation, or acquisition) of the mitigation water, given the limits on cross-watershed transfers in RCW 90.90.010.
7. **How will projects associated with a VRA be funded?** Ecology will use Program account funds for projects that would provide mitigation for mainstem water right applicants, including those taking part in VRAs.

Early Action Alternative

One of the three Early Action Alternatives assessed is the draft VRA that CSRIA submitted to Ecology in 2006. The PEIS looked at the potential environmental impacts from the proposed VRA, including the adequacy of the proposed mitigation. Ecology also completed a SEPA Addendum on January 17, 2008 to address changes to the VRA made after the consultation process.

Columbia Snake River Irrigators Association VRA

Ecology and the CSRIA have entered into the first VRA on July 18, 2008 (see Appendix A). This section provides an overview of the terms of the CSRIA VRA and a summary of comments we received during consultation and public review.

Overview

The purposes of this VRA are to:

- a) Provide water for issuing drought permits to existing interruptible water rights⁵ holders.
- b) Provide new water rights on the Columbia and Snake Rivers.

This VRA provides that use of these new water rights cannot reduce or negatively impact stream flows in the months of July and August for the Columbia River mainstem and April through August for the Snake River. To meet this standard, Ecology and CSRIA will pursue methods to provide new water for use to offset new withdrawals during the summer months, such as conservation, storage, and acquisition.

The CSRIA VRA addresses two groups of water users: existing water right holders with interruptible water rights and new applicants. There are around 340 water right holders on the Columbia River and 33 water right holders on the Snake River whose rights are interruptible. Not all are CSRIA members. CSRIA interruptible water right holders may enroll in the VRA. The first enrollment period occurred in the spring of 2008 and ended with the signing of the VRA on July 18th. Twenty members enrolled for drought permits, although one, located outside the statutory one-mile corridor --was rejected. The second enrollment period runs through December 31, 2008. As of the date of this report, one further CSRIA member has enrolled. Figure 2 summarizes the actions required under the CSRIA VRA to receive a drought permit.

Under the VRA, Ecology commits to issuing drought permits⁶ to enrolled CSRIA interruptible water right holders if mitigation water is available to offset their water use during the summer. Members taking part commit to use of BMPs to improve their efficiency. For example, Figure 3 summarizes BMP performance standards for irrigation.

⁵ During drought years, interruptible water right holders must curtail their use of water.

⁶ Drought Permit means a standby/reserve permit authorizing the use of Columbia River Mainstem or Lower Snake River Mainstem water in a drought year in the same quantities and manner as authorized by an Interruptible Water Right in a non-drought year, subject to available Mitigation Water.

The difference between average and “best” efficiency can result in net water savings. The exact amount of savings resolved through a “recalibration” (or determination of extent and validity) of their water rights. Net water savings that can be placed in trust will add to the group of water rights available to meet the Columbia River program objectives (benefit for in-stream and out-of-stream uses).

Figure 2: Interruptible Water Rights under the CSRIA VRA

Interruptible Water Right Holders Enrolled in the CSRIA VRA		
	Enrollment Period 1	Enrollment Period 2 ⁷
Columbia River	19	1
Snake River	0	0

- To meet statutorily-required mitigation objectives, enrollees must maintain state-of-the-art water use efficiency standards through the use of best management practices (BMPs)⁸.
- Enrollees must submit their water rights to Ecology for “recalibration” to actual use and transfer any water savings into Ecology’s trust water rights program or voluntarily relinquish it if it cannot be placed in trust.

Figure 3: CSRIA BMPs

Irrigation Technology	Average Application Efficiency	BMPs Consumptive Use Efficiency
Solid Set (Above Canopy)	70%	85%
Solid Set (Below Canopy or Row Crop)	75%	90%
Wheel or Hand Line (Impact Sprinkler)	75%	85%
Traveling Gun – Single Nozzle	65%	90%
Center Pivot (Overhead Impacts, >25psi)	80%	85%
Center Pivot (Drop Tube, <25 psi)	85%	90%
Micro-Sprinkler	85%	90%
Drip-Precision Irrigation	88%	95%

Ecology will only issue new water rights (Phase 2) through the CSRIA VRA if:

1. The conservation projects CSRIA identifies provide enough water to support issuing the new water rights foreseen in the VRA.
2. Ecology and CSRIA create the basis in Phase 1 (drought permits) that supports a long-term working relationship.

⁷ Additional members may enroll through the end of the year.

⁸ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/csria_vra/csria_bmps.pdf. Currently, Ecology is in the process of negotiating with the Conservation Commission on the potential for the Conservation Districts to assist in the BMP certification process for CSRIA VRA participants.

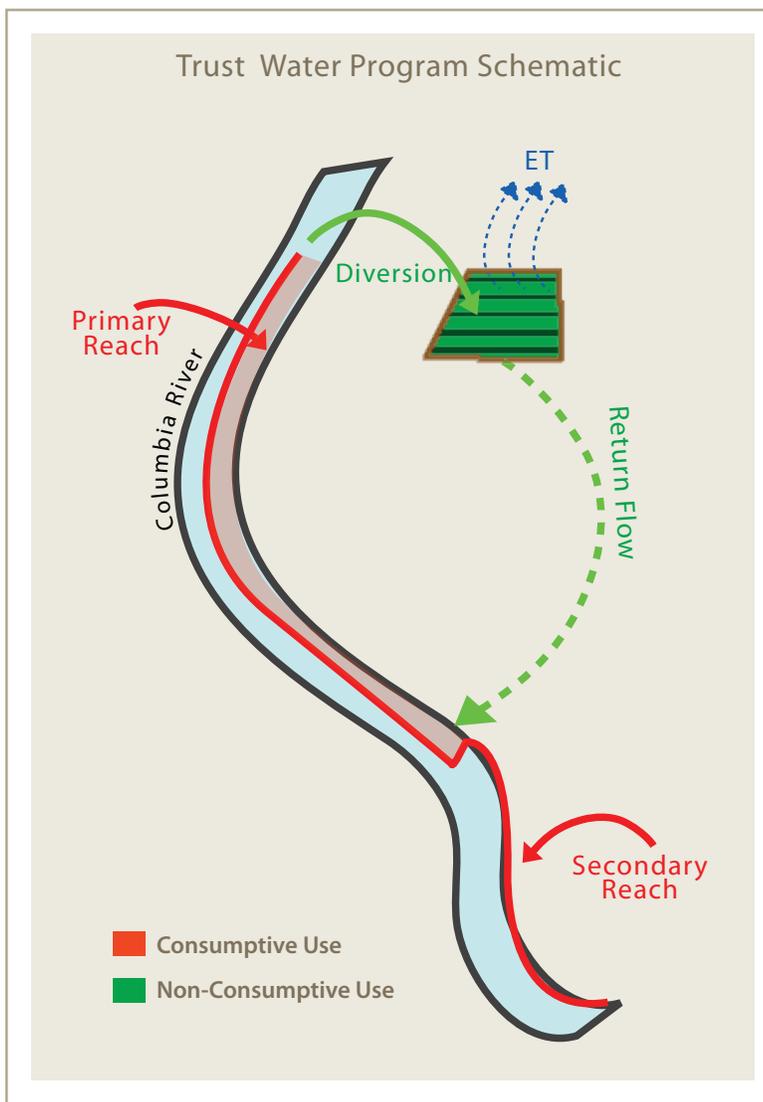
To meet the first criteria for Phase 2, CSRIA and Ecology will select three pilot projects to test the physical and legal viability of retiming of return flows (non-consumptive water). Typically, Ecology treats net water savings by consumptive uses (for example evapotranspiration (ET)) apart from non-consumptive uses (water that later returns to the river). The type of savings determines where Ecology can protect the water through its trust water program (see Figure 4).

To meet the statutorily-required bucket-for-bucket mitigation standard for VRAs, Ecology typically uses consumptive water savings to offset impacts to the river. However, if return flows can be retimed from periods of relative abundance (winter and spring when flows exceed fisheries goals) to scarcity (the summer), then non-consumptive savings could also be used. Ecology described this issue in its 2007 Legislative Report⁹.

“More Water could be used for out-of-stream mitigation if, like storage, the savings are retimed from periods of low demand to high demand. However, because retiming of return flows tends to be project specific, it is difficult to estimate the volume. However, we could consider the magnitude of this retiming potential to be on the order of one-third of the total savings (e.g. approximately 300,000 acre-feet) if water is retimed from four months in the winter to four months in summer”.

The large potential for water savings is an incentive to study this issue. Ecology and CSRIA hope, through constructing three pilot conservation projects, to prove the value of conservation savings as a basis for new water allocations.

Figure 4: Consumptive and Non-Consumptive Uses



The second criteria for Phase 2 will depend on the working relationship between Ecology and CSRIA during Phase 1. In the past, Ecology and CSRIA have been litigants on opposite sides of policy issues in the Columbia River. By entering this VRA, both parties have pledged a new cooperative working relationship. Since the VRA is a new framework for coordination, both parties will benefit from the chance to reflect on the success and obstacles of Phase 1. Figure 5 summarizes the features of Phase 2, which would have a separate enrollment period.

⁹ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/2007_Draft_Leg_Rpt/final%20leg%20report/exec_summ.pdf, Page ES-7.

Figure 5: New Water Rights under the CSRIA VRA

New Water Rights

- To meet statutorily-required mitigation objectives, applicants must maintain state-of-the-art water use efficiency standards through the use of best management practices (BMPs)¹⁰.
- Applicants must submit their water rights to Ecology for “recalibration” and transfer any accumulated water savings into Ecology’s trust water rights program or voluntarily relinquish it if it cannot be trusted.
- Applicants must pay Ecology \$10 per acre-foot (tied to annual inflationary index) of metered water use under the new water right.
- Applicants must document that the water right applications meet the requirements of the Columbia River Management Act and applicable water law, including RCW 90.03.290.

CSRIA applicants would receive new non-interruptible water rights in exchange for the same use of best management practices and water right recalibration as under the drought portion of the VRA. They would also commit to pay \$10 per acre-foot (adjusted yearly for inflation) for the full amount of water used under the permit. The first payment would cover the first three years of use. Following payments would be due each year that water is used under the permit. These revenues would be placed in the Columbia River Water Supply Development Account.

CSRIA will work with Ecology to select the most cost-effective and feasible water projects with the location and timing to provide mitigation needed for new water rights.

Government / Public Comment

RCW 90.90.030 requires Ecology to conduct two statutory reviews before entering a VRA. First, Ecology must consult with affected counties, tribes, watershed planning groups, federal agencies, and Washington Department of Fish and Wildlife. Second, Ecology provides the public a 30-day comment period.

October 16 through December 15, 2006, Ecology held the governmental consultation period. Ecology and CSRIA negotiated changes to the VRA based on received comments. A public comment period on the proposed VRA was held from January 17 to February 19, 2008.

Ecology received numerous comments during the consultation and public comment periods¹¹. Major themes on the comments received included:

- The mitigation standard required in RCW 90.90.030 of no negative impact in July and August on the Columbia River and April through August on the Snake River was inadequate. Some commenters, including tribal, agency, and environmental organizations expressed concern that new permits have the potential to harm fish and senior water rights in months outside the mitigation standard.
- The mitigation payment of \$10 per acre-foot was too low considering the costs of new water outlined in Ecology’s 2007 water supply inventory.
- Clarification requests on the VRA language.

On May 29, 2008, Ecology held a workshop in Yakima to discuss public comments. At this workshop, Ecology staff responded to the comments and explained the process for completing and carrying out the VRA. Ecology and CSRIA negotiated final changes to the VRA resulting from public comment. Once agreed, they signed the final VRA on July 18, 2008.

¹⁰ http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/csria_vra/csria_bmps.pdf.

¹¹ For a full accounting of comments received, see http://www.ecy.wa.gov/programs/wr/cwp/cr_vra.html.

Rock Island VRA

Alliance Consulting Group, LLC (Alliance) of Wenatchee received a Community Development Block Grant and enlisted Ecology's advice on a VRA feasibility study for a group of small cities. Communities taking part included the cities of Rock Island, Brewster, Bridgeport, Entiat, and Pateros. They also developed a list of other potential partners/participants in a VRA, including landowners with interruptible water rights and various industries with large discharge permits, such as agricultural processors.

Ecology provided technical assistance to Alliance on how VRAs work, and discussed possible options for municipal water rights. Ecology also attended a meeting in Brewster and presented information on how a VRA might benefit their community.

Although no specific proposal has resulted from these efforts, a VRA may result in the future. Alliance, on behalf of the City of Rock Island, is seeking a grant to prepare a VRA proposal for Ecology. This VRA would be different in that it would primarily address the need for municipal water rather than agricultural water.

Summary

VRAs create a new framework for issuing water rights, which will take time to evaluate. Currently, Ecology has successfully negotiated only one VRA, with the Columbia Snake River Irrigators Association. Ecology has begun carrying out the CSRIA VRA and has made some early observations. Advantages and disadvantages will doubtless become clearer over the next several years. Ecology expects to report on these issues in the final report in 2011.

Balance of Public and Private Benefit

The CSRIA VRA has elements that benefit the public and that benefit CSRIA members. Those benefits were the subject of protracted negotiations with CSRIA. We held over a dozen meetings and discussed many drafts of the VRA. Under the VRA, the public receives higher efficiency standards, some trust water savings, closing the gap between paper water rights and actual water use, and in Phase 2, payments for water supply development. CSRIA members received a fixed consultation process and certainty in the mitigation standard (rather than the consultation process in WAC 173-563-020). As Ecology carries out the VRA, we will learn whether this was a good balance that could be extended in the future.

Mitigation Standard

The single most controversial aspect of the VRA statute is the mitigation standard for impacts to instream resources. Ecology heard repeatedly from tribal, agency, and environmental organizations that the standard is not adequate to protect aquatic resources. Ecology expects this issue to be a recurring theme with external stakeholders as we implement VRAs.

Time/staff

The CSRIA VRA was a significant investment in Ecology staff and resources. Ecology used a team of five senior staff and an Assistant Attorney General to negotiate the VRA. The government consultation process alone consisted of several dozen meetings with tribes, and federal, state, and local governments. These "start-up" costs may be offset by efficiencies in permitting as Ecology begins to implement the VRA. Ecology will continue to assess the impact on staff resources to carry out the CSRIA VRA. This may be a factor in Ecology's ability to consider new VRAs.

A Voluntary Regional Agreement

Between

The Columbia-Snake River Irrigators Association (CSRIA)

And

The Washington State Department of Ecology (Ecology)

A. Preamble

CSRIA members specified in Appendix A and the Department of Ecology are entering into a Voluntary Regional Agreement (VRA), as authorized under RCW 90.90.030. This statute provides that Ecology may enter into voluntary regional agreements for the purpose of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.

This VRA is intended to result in the issuance of drought permits to existing interruptible water right holders and new permanent water rights on the Columbia River and Lower Snake River. New water rights shall only be issued by Ecology if the standards in RCW 90.03.290 are met. This VRA also provides that new water uses resulting from the issuance of permits under this agreement shall not reduce or negatively impact streamflows in the Columbia or Snake Rivers during the critical periods established by the legislature.

To meet this standard of protection, Ecology and CSRIA will pursue water conservation, acquisition, storage and other appropriate actions that will provide new water in a quantity sufficient to fully offset any and all new water uses during summer months (see RCW 90.90.030(2)). CSRIA members who participate in this VRA will provide Ecology with an annual mitigation payment. Additionally, CSRIA members who participate in this VRA will submit their water rights for recalibration, to reflect beneficial use consistent with best management practices. Any water saved during the recalibration that can be enrolled in the State's trust water program will be permanently assigned to Ecology. Consistent with state law, Ecology will use water acquired through recalibration, and acquired through other conservation and storage actions funded by the Columbia River Program, to mitigate for new water right applications in the order they were/are received¹ (WAC 173-152-030).

Establishment of Pilot Projects and Implementation

This VRA will be implemented in two phases. Phase 1 will involve full implementation of the VRA, except Section E. Under Phase 1, the feasibility of Section E will be investigated by conducting three pilot water conservation projects to be mutually agreed upon by Ecology and CSRIA. The pilot projects are intended to demonstrate the potential for the types of conservation projects proposed by CSRIA to fulfill the provisions of Section E of the VRA. Phase 1 will terminate no later than December 31, 2010 (unless extended by

¹ Ecology has a backlog of several hundred existing applications for new water rights. See Columbia River Programmatic EIS for a discussion on processing of water rights in the Program.

mutual written agreement). Findings and conclusions regarding Phase 1 will be documented in Ecology's 2009 Columbia River Basin Water Management Program Legislative Report.

Phase 2 would consist of continued implementation of the Phase 1 portions of this VRA as well as full implementation of Section E. Phase 2 will be entered into by written agreement of Ecology and CSRIA only if the parties agree to the following:

- 1) The types of conservation projects identified by CSRIA appear to be capable of providing water in sufficient quantities to support issuance of the new water rights envisioned in Section E of this VRA; and
- 2) An adequate foundation has been established in Phase 1 that will support a long-term working relationship between Ecology and CSRIA.

B. Parties

This VRA is entered into by the State of Washington, acting through the Department of Ecology, an agency of Washington State government in Olympia, Washington, and designated members of CSRIA, defined in this document as CSRIA VRA Participants (see Appendix A), and the CSRIA organization.

C. Definitions

1. "Best Management Practices (BMP's)." BMP's mean conservation and efficiency measures that must be implemented by "CSRIA VRA Participants" under this VRA (see Appendix B, CSRIA Irrigation BMPs, June 2005 edition). The intent of best management practices is to ensure the highest and most economical, beneficial use of water and the elimination of project return flows. Every 5 years from the date of this agreement, Ecology and CSRIA shall meet to discuss whether this agreement should be modified to reflect updated BMPs.
2. "Columbia River Mainstem." Columbia River Mainstem means all water in the Columbia River within the ordinary high water mark of the main channel of the Columbia River between the border of the United States and Canada and the Bonneville dam, and all ground water within one mile of the high water mark (RCW 90.90.030(12)(a)).
3. "Columbia River Mitigation Standard." Columbia River Mitigation Standards means water rights issued from the Columbia River mainstem, where there will be no negative impact on Columbia River mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement (RCW 90.90.030(2)(a)).
4. "CSRIA VRA Participant." CSRIA VRA Participant means a CSRIA member who meets the following conditions:
 - a. The participant is a CSRIA member as of the required enrollment deadline; AND
 - b. The participant is identified in Appendix A as having agreed to have an application for a drought permit or new water right processed under this VRA in lieu of the consultation process provided in WAC 173-563-020(4); AND

- c. The participant has an “interruptible water right” on the “Columbia River Mainstem” or the “Lower Snake River Mainstem” and an application for a drought permit associated with that “interruptible water right” is on file with Ecology as of the required enrollment deadline²; OR
 - d. The participant has a water right application on the “Columbia River Mainstem” or the “Lower Snake River Mainstem” on file with Ecology when Phase 2 is initiated as specified in Section E.1.
5. “Drought.” Drought means that the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less (see WAC 173-563-056(c)) and the Governor has declared a drought under WAC 173-166.
 6. “Drought Permit.” Drought Permit means a standby/reserve permit authorizing the use of Columbia River Mainstem or Lower Snake River Mainstem water in a drought year in the same quantities and manner as authorized by an Interruptible Water Right in a non-drought year, subject to available Mitigation Water.
 7. “Interruptible Water Right.” An Interruptible Water Right means an existing certificate or permit that is subject to the 1980 Columbia River instream flow rule (WAC 173-563).
 8. “Lower Snake River Mainstem.” Lower Snake River Mainstem means all water in the lower Snake River within the ordinary high water mark of the main channel of the lower Snake River from the head of Ice Harbor pool to the confluence of the Snake and Columbia Rivers, and all ground water within one mile of the high water mark (RCW 90.90.030(12)(b)).
 9. “Mitigation Payment.” Mitigation Payment means an annual payment by a CSRIA VRA Participant to Ecology for mitigation water funded in advance for permits issued under this VRA.
 10. “Mitigation Water.” Mitigation Water means water managed in Ecology’s trust water program or otherwise developed through Ecology’s efforts to find, fund and secure water rights through acquisitions, surface and aquifer storage projects, pumps and pipes infrastructure and other conservation projects.
 11. “Recalibration.” Recalibration means Ecology’s tentative determination of the extent and validity of a water right certificate, permit or claim consistent with state law, including applicable regulations, and with appropriate Ecology and Benton & Franklin Water Conservancy Board’s guidance. The process of developing a tentative determination shall include consultation with CSRIA. As a condition of this VRA, an existing water right must be recalibrated if a CSRIA VRA participant applies for a new water right or a drought permit, and if the water right is:
 - a. The interruptible right associated with the drought permit; OR
 - b. A water right owned by the participant that shares a point of diversion or withdrawal with the proposed new water right, interruptible water right or drought permit; OR
 - c. A water right that shares a place of use with the proposed new water right, interruptible water right or drought permit; OR

- d. A water right that is specifically conditioned with a diversion or beneficial use limitation as a water right in a., b. or c. (e.g. Diversions under Water Right A and B shall not exceed 1 cfs).

The provisions of b., c., and d., above, shall not apply to water rights that are under separate ownership from the CSRIA VRA Participant for whom recalibration is being conducted.

12. “Saved Water.” Saved Water means the difference between the tentative determination of the water right and the quantity of water required for beneficial use based on best management practices following recalibration of a water right. The process of developing a tentative determination and determining the saved water quantity shall include consultation with CSRIA.
13. “Snake River Mitigation Standard.” Snake River Mitigation Standard means water rights issued from the Lower Snake River Mainstem, where there will be there is no negative impact on Lower Snake River Mainstem instream flows from April through August as a result of the new appropriations issued under the agreement (RCW 90.90.030(2)(b)).
14. “Trust Water Program.” Trust Water Program means Ecology’s statutory authority under RCW 90.42 and RCW 90.38 to manage waters of the State for instream and other uses.
15. “VRA Implementation Plan.” The VRA Implementation Plan means a plan that describes the location and quantities of (where and in what quantities) Mitigation Water is available in Ecology’s Trust Water Program (or in storage managed by Ecology) and which applicants will receive it. Updates to the VRA Implementation Plan will be completed iteratively as the program expands.

D. Terms and Conditions For Drought Permits

The parties agree to the following mutual obligations:

1. CSRIA VRA Participants will be allowed to file applications for drought permit in two enrollment periods. Enrollment period 1 will conclude on July 1, 2008. Enrollment period 1 applicants will be identified in the VRA at time of signing. Enrollment period 2 will conclude on December 31, 2008. Consistent with provisions of Section F, the parties agree to modify the VRA subsequent to the conclusion of enrollment period 2 solely for the purpose of identifying the additional applicants. The parties agree that such modification will not represent a substantive modification to the VRA.
2. CSRIA VRA Participants shall maintain compliance with BMPs (see Appendix B CSRIA Irrigation BMPs, June 2005 edition.). CSRIA VRA Participants shall submit to on-site BMP certification inspections conducted by Ecology’s staff or contractors (e.g. conservation districts). Such inspections shall be coordinated with CSRIA.
3. CSRIA VRA Participants applying for drought permits shall submit their existing water rights for recalibration by Ecology. The process of developing a tentative determination shall include consultation with CSRIA. Any “saved water” shall be permanently transferred to Ecology. Where possible, Ecology will manage “saved water” in its Trust Water Program, in part to mitigate for the impacts of out-of-stream uses for the next pending water right applicant, and in part to meet the instream flow objectives in RCW 90.90.005(2). If said waters do not meet the criteria for protection

under the trust water program, then they shall be voluntarily relinquished (perfected water) or otherwise forfeited (inchoate water) by the CSRIA VRA Participant to the State. Ecology will provide standardized forms for trust water conveyances, voluntary relinquishment or inchoate water forfeiture.

4. CSRIA VRA Participants shall complete the initial BMP certification process and recalibration of existing water rights before receiving a drought permit from Ecology.
5. In establishing demand reduction conditions for drought permits issued under this agreement, consideration will be given to the difference between the amount of water permitted under the original interruptible water right or permit and the quantity of water required for beneficial use based on implemented best management practices. Such conditions will be determined on a permit-by-permit basis. Drought preparedness planning currently conducted by Ecology is relies largely on assumptions based on 2001 drought conditions; however, it is recognized that under more severe drought conditions, more extensive demand reduction measures may be necessary.
6. RCW 90.90.020(3)(c) directs Ecology to develop “a new uninterrupted supply of water for the holders of interruptible water rights on the Columbia River mainstem that are subject to instream flows or other mitigation conditions to protect stream flows.” Ecology will make a good faith effort to provide the mitigation water necessary to ensure that drought permits will meet the Columbia River and Snake River Mitigation Standards under RCW 90.90.030(2); Ecology will consult with CSRIA in the process of identifying measures to prevent drought curtailment in advance, and to avoid curtailment during a drought condition. For example, these measures could include voluntary sales of water by CSRIA members.
7. Mitigation through water savings must be secured by Ecology either before or at the same time that water use under a drought permit occurs.
8. When mitigation water is secured, Ecology will prepare a VRA Implementation Plan describing the sources and quantities of mitigation water. Ecology will conduct a SEPA review of the Implementation Plan before permits are issued.
9. Ecology commits to issue drought permits effective during the periods in which Interruptible Water Rights would be curtailed.
10. Ecology will process applications for drought permits under this VRA as follows:
 - a. In advance of a declared drought if the applications can be priority processed under WAC 173-152 (Hillis Rule) or cost-reimbursement; OR,
 - b. In a drought year, subject to a declaration by the Governor.
11. In the event that sufficient mitigation water for a given drought year is unavailable, then mitigation water shall be assigned to CSRIA VRA participants who are in compliance with this VRA in the drought year in a manner consistent with the Ecology’s environmental review for the mitigation water. Ecology will consult with CSRIA in the process of identifying measures to prevent curtailment in advance, and to avoid curtailment during a drought condition.

12. CSRIA will actively support all tangible and pragmatic water supply options identified and pursued by Ecology to provide mitigation water for drought permits.
13. CSRIA and CSRIA VRA Participants agree that all water use authorized in Ecology-issued permits pursuant to this VRA must meet the Columbia River and Snake River Mitigation Standards under RCW 90.90.030(2) and the criteria of applicable water law, including but not limited to RCW 90.03.290.

E. Terms and Conditions Regarding New Water Rights

The parties agree to the following mutual obligations:

1. Within 60 days following mutual written agreement by both parties that Phase 2 will be initiated, CSRIA VRA participants will file applications for new permits with Ecology. However, such agreement shall not be made prior to the legislative approval for the Mitigation Payment in Section E.2. in compliance with I-960. If both parties agree to initiate Phase 2, both Ecology and CSRIA will jointly seek legislative approval for the Mitigation Payment.
2. CSRIA VRA Participants agree to pay a mitigation payment for mitigation water funded and acquired by Ecology in advance of issuance of new permits. The first payment will be calculated based on \$10 per acre foot of water, times the full quantity of the issued permit, times the first 3 years of authorized use of water. The first payment shall be made to Ecology within 30 days of the date the permit is issued. Starting in Year 4 and thereafter, annual payments will be based on \$10 per acre foot of water times the actual measured use of water (or the full permitted quantity in the event of measurement failure) from the previous year. Payment in Year 4 and thereafter are due by January 31st. Should Ecology incur charges or fees associated with securing service contracts from the Bureau of Reclamation, the parties agree to negotiate pass-through costs, if any.
3. CSRIA VRA Participants shall maintain compliance with BMPs (see Appendix B CSRIA Irrigation BMPs, June 2005 edition.). CSRIA VRA Participants shall submit to on-site BMP certification inspections conducted by Ecology staff or contractors (e.g. conservation districts). Such inspections shall be coordinated with CSRIA.
4. CSRIA VRA Participants applying for new permits shall submit their existing water rights for recalibration by Ecology. The process of developing a tentative determination shall include consultation with CSRIA. Where possible, Ecology will manage “saved water” in its Trust Water Program, in part to mitigate for the impacts of out-of-stream uses for the next pending water right applicant, and in part meet the instream flow objectives in RCW 90.90.005(2). If said waters do not meet the criteria for protection under the trust water program, then they shall be voluntarily relinquished (perfected water) or otherwise forfeited (inchoate water) by the CSRIA VRA Participant to the State. Ecology will provide standardized forms for trust water conveyances, voluntary relinquishment or inchoate water forfeiture.
5. CSRIA VRA Participants shall complete the initial BMP certification process and recalibration of existing water rights before receiving a new water right permit from Ecology.
6. CSRIA and CSRIA VRA Participants agree that all water use under permits issued pursuant to this

VRA must meet the Columbia River and Snake River Mitigation Standards under RCW 90.90.030(2) and the criteria of applicable water law, including but not limited to RCW 90.03.290 and I-960.

7. CSRIA will work with Ecology to identify the most cost-effective and feasible projects that can be funded to provide mitigation water for new water rights.
8. CSRIA will support Ecology efforts to find, fund and acquire mitigation water, utilizing funds from the Columbia River Basin Water Supply Development Account and/or Mitigation Payments paid by CSRIA members to Ecology.
9. CSRIA VRA Participants shall install and maintain water measuring capability or devices (in compliance with permit conditions) on each diversion for each water right (drought permit, new water right and recalibrated water right) authorized under this VRA consistent with WAC 173-173.
10. CSRIA VRA Participants shall provide the information necessary for Ecology to investigate the proposed new water right permit, drought permit, and associated water rights to be recalibrated. This information shall be shared with CSRIA by Ecology once it has been received from the VRA Participant. Documentation will include but is not limited to:
 - a. Historic water use information;
 - b. Water right ownership interest(s);
 - c. Proposed water use information;
 - d. Compliance with BMPs.
11. For CSRIA VRA Participants that are municipal or quasi-municipal entities (special service districts), the following additional terms apply for new water rights and those pending development:
 - a. Municipal, utility, or special service district water efficiency standards consistent with applicable CSRIA BMPs may be considered as one option for best management practices, but shall in no case be less stringent than required by the State Department of Health
 - b. Nothing in this Agreement shall supersede the terms of the Settlement Agreement in *Center for Environmental Law and Policy v. Department of Ecology*, and the subsequent water right permit issued by Ecology subsequent to that agreement, Surface Water Permit No. S4-30976P.
12. Ecology will identify the most cost effective and feasible projects that can be funded to provide mitigation water for new water rights.
13. Ecology will enter into agreements with water right holders to fund mitigation water projects utilizing funds provided by the State and/or CSRIA VRA Participants.
14. Ecology will deposit Mitigation Payments received from CSRIA VRA Participants into the Columbia River Basin Water Supply Development Account.
15. Mitigation Payments made by CSRIA VRA Participants will be adjusted annually for inflation by

Ecology. Ecology will use the Implicit Price Deflator (IPD) for Personal Consumption as provided by OFM to adjust payments. An alternate IPD may be used provided both parties agree.

16. Ecology will make a good faith effort to provide the mitigation water necessary to ensure new permits meet the Columbia River and Snake River Mitigation Standards under RCW 90.90.030(2).
17. Mitigation through water savings must be secured by Ecology either before or at the same time that water use under a new permit occurs.
18. When mitigation water is secured, Ecology will prepare a VRA Implementation Plan describing the sources and quantities of mitigation water. Ecology will conduct a SEPA review of the Implementation Plan before new permits are issued.
19. All new water rights issued under this agreement shall meet the Columbia River and Snake River Mitigation Requirements, the requirements of I-960 and applicable water law, including but not limited to RCW 90.03.290.
20. Ecology will develop and implement a billing and notification system to track compliance with Mitigation Payments collected under this agreement, saved water developed through mitigation water projects and CSRIA VRA Participants benefiting from saved water. Ecology will include this information in applicable legislative reports.
21. Ecology will process applications for new water rights in as timely a manner as possible, in accordance with applicable law and the funding and staff provided by the Legislature.
22. In order to enable priority processing of water right applications, CSRIA VRA Participants may propose priority processing under the “Hillis Rule” (WAC 173-152) if applicable.

F. Modifications and Amendments

This agreement may be modified or amended in writing by mutual agreement of the parties. Modifications and amendments shall be signed by managing, authorized agents of the parties and binding on the parties, their representatives and assignees. If Ecology deems a proposed modification or amendment is substantive, it will consult with CSRIA on the scope of the proposed amendment. Following consultation, Ecology will provide public notice as specified in RCW 90.90.030(4) if Ecology determines the amendment is substantive.

G. Assignment

If a CSRIA VRA Participant or their heirs, successors or assigns receives a new water right permit or a drought permit, then participation under this agreement can be assigned if the following conditions are met:

1. Ecology receives signed notification by the CSRIA VRA Participant waiving equity interest in all or a portion of the affected water right; and,
2. Ecology receives signed notification by the assignee of consent to abide by the terms and conditions of this VRA and the affected water right; and,

3. The assignee owns property appurtenant to the affected water right.

Assignments shall be made on a form provided by Ecology. Any assignment beyond the scope of the terms of this VRA constitutes a new VRA. This VRA and each of its terms, provisions, conditions and covenants shall be binding upon the parties and their respective heirs, successors and assigns.

H. Compliance

If a CSRIA VRA Participant receives a drought permit or a new water right under this VRA, then active compliance with the terms and conditions of this VRA is required in order to divert water under their water right(s). These conditions will be included in the permits themselves and are binding even if the VRA itself is terminated. These conditions include, but are not limited to the following:

1. BMP's must be maintained and certified.
2. Measurement devices and/or capability shall be installed and maintained consistent with WAC 173-173. Measurement data shall be submitted in a timely manner. If measurement data is either not submitted or is unusable, then the mitigation payment for that year shall be based on the full permitted quantity.
3. Mitigation Payments and fees must be paid by January 31st of each year starting in Year 4. If payment is not received by January 31st, then Ecology shall notify the water right holder that pumping shall not be authorized under the permitted water right(s) until payment in full is provided to Ecology. If payment is provided after January 31st, then a late payment fee of 2 percent per month (or portion thereof) is required.

In the event of noncompliance, Ecology will provide technical assistance and enforcement according to RCW 90.03.605 in order to facilitate compliance.

I. Termination for Convenience

Any party may terminate this Agreement upon prior written notice of at least 30 calendar days to the other party. If this Agreement is terminated for convenience, the parties shall be liable only for performance rendered or costs incurred in accordance with law and the terms of this VRA prior to the effective date of termination. Any valid permits and/or water right decisions issued pursuant to this VRA before Termination for Convenience shall remain in effect so long as the permit conditions are met.

J. Termination for Cause

If, for any cause, any party does not fulfill in a timely and proper manner its obligations under this Agreement, or if any party violates any of the terms and conditions of this Agreement, the aggrieved party shall give the other party written notice of at least 30 calendar days of such failure or violation and of the aggrieved party's intention to terminate this Agreement. The responsible party will have the opportunity to correct the violation or failure within 30 calendar days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice by the aggrieved party to the affected party. If this Agreement is terminated for cause, the parties shall be liable only for performance rendered or costs incurred in accordance with law and the terms of this VRA prior to the effective date of termination. Any valid permit and/or water right decisions issued pursuant to this VRA before Termination for Cause shall remain in effect so long as the permit conditions are met.

K. Disputes

In the event that a dispute arises that relates to any way to this VRA, the parties shall first attempt to resolve the dispute on an informal basis. If informal negotiations do not resolve the dispute, the parties may agree to jointly select a mediator to help resolve the dispute. Mediation is not required. If a party chooses not to mediate the dispute, any party may proceed to terminate the VRA, in accordance with the termination provisions.

Ecology permit decisions and orders are appealable to the Pollution Control Hearings Board. Further action may only occur after the exhaustion of administrative remedies, as an “other agency action” under the Administrative Procedure Act, RCW 34.05.570 (4).

L. Governance

This agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules; and
- b. any other provisions of the agreement, including materials incorporated by reference.

M. Waiver

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

N. Severability

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

If a provision of the VRA is held invalid and Ecology deems that a modification is necessary and substantive, it will consult with CSRIA and provide public notice as specified in RCW 90.90.030(4).

O. All Writings Contained Herein

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

P. Term of Agreement

The term of this Agreement shall be based on successful implementation of the Phase 1 pilot projects. The start date of Phase 1 shall be the date of this agreement. The termination date of Phase 1 shall be December 21, 2010. Phase 1 may be extended until June 20, 2012 based on mutual written consent of both parties. Phase 2 shall commence at the conclusion of Phase 1 and occur by mutual written agreement of both parties. Phase 2 shall end on June 30, 2012, unless extended through mutual written agreement the parties.

This Voluntary Regional Agreement is Executed By:

Representing the Washington State Dept. of Ecology:



*Derek I. Sandison for
Jay J. Manning, Director*

Date

7/18/08

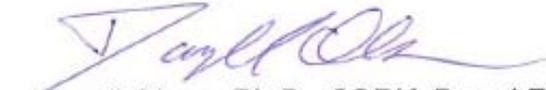
Representing the Columbia-Snake River Irrigators Association VRA Participants in Appendix A:



Don Odegard, President, CSRIA

Date

7/18/08



Darryll Olsen, Ph.D., CSRIA Board Rep.

Date

7/18/2008

Appendix A: CSRIA VRA Participants

Phase 1: Interruptible Water Right Holders

CSRIA VRA Participant	Drought Water Right Application No.
Shore Properties Inc	G4-35181
Sandpiper Farms Inc	S4-35183
Auvil Fruit Co Inc	G4-35184
Auvil Fruit Co Inc	G4-35185
Auvil Fruit Co Inc	G4-35186
Auvil Fruit Co Inc	G4-35187
Auvil Fruit Co Inc	S4-35188
Auvil Fruit Co Inc	G4-35189
Auvil Fruit Co Inc	G4-35190
Auvil Fruit Co Inc	G4-35191
Auvil Fruit Co Inc	G4-35192
Auvil Fruit Co Inc	G4-35193
Auvil Fruit Co Inc	G4-35194
Dan Pariseau	S4-35195
Sunshine Ag Inc	G4-35196
Sunshine Ag Inc	S4-35197
Sunshine Ag Inc	S4-35198
Stemilt Irrigation Dist	S4-35199
Gunkel Orchards	G4-35200
Aeneas Lake ID	S4-35202

Phase 2: New Water Right Applicants

CSRIA VRA Participant	New Water Right Application No.

Appendix B: CSRIA Best Management Practices

(http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/csria_vra/csria_bmps.pdf)



