

RECEIVED
JUL 06 2012

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF
SE 2012-03/WV 2012-04/WV 2012-112
Pioneer Water Users District

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS, DECISION
AND CONDITIONS OF
APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on June 27, 2012, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. The proponent is Dan Jaspers, Pioneer Water Users Association, 2817 School Street, Wenatchee, WA 98801.
2. The agent is Thom Kutrich, Forsgren Associates, Inc., 112 Olds Station Road, Suite A, Wenatchee, WA 98801.
3. The access point to the two Pioneer Water Users Association tax parcels (23-20-28-240-470 and 23-20-28-240-500) are adjacent to the SR 285 Wenatchee River bridge (west and upstream). The access, pump house, intake and fish screen are located on these parcels and the PUD parcel number 23-20-28-240-505, see attachment A of the JARPA application.
4. The remaining project is located on existing Pioneer Water Users Association right-of-way east to Monitor (south and downstream of the Monitor Main Street bridge) thence north, parallel to the Wenatchee River, to the Pioneer Water Users Association diversion dam. There are two (2) locations within 200' of the Wenatchee River, along this right-of-way, as referenced in the two (2) attachment B's to the JARPA application.
5. The pump house is proposed for NNA Chatham Hill Road, Wenatchee, WA; parcel number 23-20-28-240-500; owner Pioneer Water Association
6. The proposal is partially within the Urban Growth Area for the City of Wenatchee as well as Chelan County.
7. The Comprehensive Plan Designations and Zoning Districts are Residential Single-Family (RS), Rural Village (RV), Rural Residential/Resource 5 (RR5), Rural Residential/Resource 10 (RR10), Rural Commercial (RC), and Rural Public Lands and Facilities (RP) zoning districts.
8. The Wenatchee River is a shoreline of statewide significance, with a Rural and Conservancy shoreline environment classification for the subject project area.
9. The project area is approximately four miles of Gunn Ditch irrigation right-of-way from the intersection of Easy Street and State Highway 2 in Monitor, WA, east to the terminus of

the ditch at its intersection with State Highway 285 within the City of Wenatchee's Urban Growth Area. The project area is open ditch with natural vegetation and built irrigation structures, including a dam.

10. The Federal Emergency Management Agency, FIRM map panel 5300150625C indicates that the proposed project is partially within the flood plain or floodway associated with the project area. In water work is proposed for the project.
11. Pursuant to Chelan County Code Chapter 11.86, the project area does not contain identified Geologically Hazardous Areas.
12. The Washington State Department of Fish and Wildlife Priority Habitat and Species Maps show that the subject site contains, Mule Deer and Riparian areas, Class II habitat; therefore, the provisions of Chelan County Code Chapter 11.78 Fish & Wildlife Overlay District, as related to known habitat areas, applies.
13. The proposed project, specifically the dam removal, meets the exemption criteria of Chelan County Code Section 11.78.020(16).
14. The Department of Natural Resources has identified several streams crossing the proposed development area. A stream typing completed by Grette Associates, dated December 16, 2010, indicates that the DNR map "incorrectly includes the ditch adjacent to the highway" as part of the stream. The report concludes that "the mapped stream does not meet the criteria to be classified as a natural water; no riparian buffers apply."
15. Stream buffers are regulated under Chelan County Code Chapter 11.78 Fish & Wildlife Overlay District. The proposed project meets the exemption criteria of Chelan County Code Section 11.78.020(16).
16. The applicant has submitted two Wetland Delineation and Classification Reports. One dated, June 2011, addresses the overall Gunn Ditch and dam. The second dated, January 17, 2012, addresses the proposed dam removal site and the proposed intake site. The proposed dam removal and pump house appear to be within wetlands and associated buffer areas.
17. The applicant is seeking a wetland variance to complete the project.
18. The applicant did not submit an Aquifer Recharge Area Disclosure Form. Pursuant to Chelan County Code Section 11.82.030(1), the proposed development is required to submit an Aquifer Recharge form.
19. The Department of Archaeology and Historic Preservation comment letter, dated March 28, 2012, states that the project, as proposed, will have "no adverse effect" on National Register or listed historic and cultural resources. If cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes, and Chelan County Community Development.

20. The applicant is requesting a Shoreline Exemption, pursuant to WAC 173-27-040(2)(i) and Chelan County Code Section 11.78.020, and two wetland variances for irrigation canal improvements that include relocating the point of diversion to a new pump house with intake and fish screen on the Wenatchee River near the SR 285 bridge; replace approximately 4 miles of the Gunn ditch with pressurized pipe; and, the removal of the diversion dam on the Wenatchee River side channel near Monitor, WA. Wetland variance, file number WV2012-004, is for the pump house; and, wetland variance, file number WV2012-112, is for the dam removal. The shoreline exemption, file number SE2012-003, exempts the project as a whole from the Shoreline Master Program, Shoreline Management Act RCW 90.58 and the implementing guidelines of WAC 173-27. During staff review of the project it was discovered that the applicant requested a pump house within the City of Wenatchee's Urban Growth Area boundary, zoned Residential Single-Family (RS) which requires a conditional use permit. As a recommended condition of approval, the applicant shall be required to apply for a conditional use permit.
21. This application is being processed under Chelan County Code Section 14.08.015, Consolidated Application Process, which combines the shoreline exemption with the wetland variances and requires both items be addressed through a single decision of the Hearing Examiner.
22. Specific implementation of the project will require the following:
- 22.1 **General Description of New Diversion:** A fish screen cone structure will be placed in the Wenatchee River approximately 50 feet off shore of the north bank adjacent (west) of the SR 285 Wenatchee River Bridge. It will mount on four (4) I-Beam piles driven into the riverbed. One (1) 18" pipe will be connected to the bottom of the cone screen. This pipe will extend north to the river bank then directly beneath the pump house structure.
- 22.2 **Intake Pipe with Fish Screen Structure:** A walking backhoe will excavate a 50 foot long by 3 foot wide by 3 foot deep trench within the river bed. The excavated material will be placed either on shore or on a small barge. Approximately 50 feet of 18" pipe and elbow (opening end of elbow face up) will then be placed in the trench. The excavated material will then be placed back into the trench.
- A walking backhoe will drive approximately four (4) steel I-beam piles in a square pattern equidistant from the proposed location of the center of the 18" pipe elbow. Each pile will extend approximately 1 foot above the riverbed. The backhoe will then attach a cone screen base to the elbow and secure it to the piles by hand with bolts/nuts.
- The environment will be protected from the construction work by use of BMP's as outlined in the Stormwater Management Manual for Eastern Washington. A Construction Stormwater Permit will be obtained from Ecology for the entire project. This work is within the 100 year floodplain.
- 22.3 **Pump House Structure:** A split block or wooden building with electrical controls, HVAC and wet well pumps will be located within 200 feet of the Wenatchee River

and above the 100 year flood plain. A building pad will be excavated and all excavated materials will be hauled offsite. A foundation and wet well will be excavated with a backhoe/loader, footing forms placed by hand, cement concrete poured via pump truck and standard building construction with typical power equipment per the Chelan County building codes. This work is not in the 100 year flood plain.

- 22.4 **Utility Lines from Pump House to Monitor (pressure pipe):** Pipe will be placed with a wheeled and tracked backhoe using standard trenching techniques, i.e. excavate the material, place the material adjacent to the excavation, place pipe, fill trench using excavated material and compact. This work is not within the 100 year flood plain. North and up slope of Wenatchee River (west of the SR 285 Wenatchee River Bridge to river mile 1.8) approximately 3,000 feet of pipe will be constructed within 200 feet of the Wenatchee River. East and upslope of Wenatchee River (river mile 5.8 at Monitor Main Street Bridge) approximately 200 feet of pipe will be constructed within 200 feet of the Wenatchee River.

- 22.5 **Dam Removal:** The dam is located on a side channel, adjacent to SR2/97, east of the river main-stem. The dam is proposed to be removed "in the dry" by blocking the flow into the side channel. The channel entrance is narrow and shallow and can easily be temporarily blocked via large sand bags. Water seepage below and through the bags will be pumped back into the river.

Sand bags would be delivered by trucks to the channel entrance by the existing road providing access to the river located northeast of the proposed diversion. The bags would be unloaded and placed by a walking excavator. After construction of the temporary coffer dam is complete, the standing water above the dam would be seined to capture any fish that may remain. If any fish are found they will be removed and returned to the river following procedures for fish removal and handling.

The water behind the dam will then be lowered by a controlled breach. This will be accomplished by removing a portion of the east or west edge of the dam at one (1) foot intervals.

The river bed will then be allowed to dry out. After it is dry, a track-hoe will be used to break up the concrete and load trucks that will haul the material offsite using the existing PWUA access road.

The accumulated material behind the dam will be used to re-grade the riverbed at the dam removal location. Excess material will be loaded into trucks and hauled offsite using the existing PWUA access road.

The temporary large sand bag dam will then be removed. This work is in the 100 year flood plain.

- 22.6 **DNR Stream Crossings with Utility Lines (pressure pipe):** There are three (3) locations in which the existing canal crosses DNR typed streams. In each case, the work will be limited to the PWUA right-of-way. The existing infrastructure would

either be removed by backhoe and hauled away by truck or abandoned. New pressure pipe will be placed using the same methodology as discussed above in "Utility Lines from Pump House to Monitor (pressure pipe)." This work is not in the 100 year flood plain.

- 22.7 **Existing Fish Wheel:** This structure is located just south (downstream) of the Monitor Main Street Bridge. Since water will no longer be flowing through the canal it will be abandoned.
23. The construction will start October 2012 and conclude by April 2013.
24. Pursuant to Wenatchee's Zoning Code Section 10.10.020, lists "public utilities & services" as requiring a conditional use permit within all zoning districts. Pursuant to Wenatchee's zoning code section 10.08.115, "public utilities and services means equipment installations for utility and service purveyors including, but not limited to, telephone exchanges, electrical substations, water reservoirs, pump house, and similar facilities of service providers, specifically excluding diesel, natural gas and similar internal combustion engine generated power production."
25. The irrigation ditch is accessed at various points. Washington State Department of Transportation (DOT) comment letter, dated May 16, 2012, states concerns with access along US Highway 2. Furthermore, there may be areas of infringement of the existing canal and DOT right-of-way. The DOT is requesting additional information and project review.
26. Stormwater/drainage plan does not apply to this application.
27. Water does not apply to this application.
28. Sanitation does not apply to this application.
29. Chelan County Public Utility District No. 1 comment letter, dated May 11, 2012, states that the proposed project is within the Rock Island Hydroelectric Project area and, therefore, requires Federal Energy Regulatory Commission review and approval prior to commencement of work.
30. Fire protection does not apply to this application.
31. Temporary construction noise will occur if the project is approved.
32. In-ground piping will replace an open canal ditch.
33. The Notice of Application and environmental review was referred to jurisdictional agencies, adjacent property owners and departments of the County on May 2, 2012. These agencies were notified within 600 feet excluding 240 feet of public right-of-way. Property owner notification was for parcels adjacent to both the concrete dam removal and the proposed intake pump. Notice was not provided along the Pioneer Water Users Association Gunn Ditch canal right-of-way. Comments were due on May 16, 2012. Agency comments are addressed, as appropriate, in the form of recommended Conditions of

Approval for the proposal. The following agencies and County departments provided comments:

- 33.1 Department of Fish & Wildlife responded on February 21, 2012
- 33.2 City of Wenatchee responded on May 3, 2012, and June 5, 2012
- 33.3 Chelan County PUD #1 responded on May 11, 2012
- 33.4 Department of Transportation responded on May 16, 2012
- 33.5 Department of Archaeology & Historic Preservation responded on May 28, 2012

34. The following agencies were notified but did not respond:

- 34.1 Chelan County Public Works
- 34.2 Chelan County Building & Fire Marshal
- 34.3 Department of Ecology
- 34.4 US Department of Fish & Wildlife
- 34.5 Yakama Tribe
- 34.6 Department of Natural Resources
- 34.7 Fire District #6 and #1
- 34.8 Colville Confederated Tribe
- 34.9 US Army Corps of Engineers
- 34.10 Chelan County Natural Resources

35. No comment letters were received from the public.

36. The applicant submitted an environmental checklist on January 6, 2012 and revised on March 13, 2012. Pursuant to WAC 197-11-355 the optional DNS process and RCW 43.21C of the State Environmental Policy Act (SEPA), environmental review and a threshold determination was completed, and the Mitigated Determination of Non-significance (DNS) was issued on June 11, 2012. The comment period for the optional DNS was complete in conjunction with the Notice of Application. The SEPA Checklist and DNS are included within the file of record.

37. The application was submitted on January 6, 2012.

38. A Determination of Completeness was issued on March 26, 2012.

39. Notice of application was May 2, 2012.

40. Notice of public hearing was June 27, 2012.

41. The applicant is requesting modification of the existing irrigation system to improve function and water quality/flow for the Wenatchee River.

42. The application is consistent with the Chelan County and City of Wenatchee's Comprehensive Plans.

43. The proposed project is within both Chelan County and the Urban Growth Area for the City of Wenatchee.

44. The Chelan County District Use Chart, Section 11.04.020, lists "Utilities, Low Impact" as "permitted" within all zoning districts. Development standards indicate the required setbacks from property lines. Utilities placement for piping is exempt from required setbacks. Chelan County Code Chapter 14.98 defines "Utility, low impact" to mean "buildings, structures and facilities in public or private ownership relating to the furnishing of utility services such as electric, gas, telecommunication, water, sewer and technology infrastructure. Low impact utilities shall include, but are not limited to, poles, lines, pipes, antennas or repeaters when installed on a building, carrier hotels and similar technology infrastructure."
45. Chelan County has not adopted the City of Wenatchee's critical area codes.
46. The adopted Urban Growth Area code for the City of Wenatchee, Section 10.10.020, lists "public utilities & services" as requiring a conditional use permit within all zoning districts. Pursuant to Wenatchee's zoning code section 10.08.115, "public utilities and services means equipment installations for utility and service purveyors including, but not limited to, telephone exchanges, electrical substations, water reservoirs, pump house, and similar facilities of service providers, specifically excluding diesel, natural gas and similar internal combustion engine generated power production."
47. The proposed intake pump house is within the City of Wenatchee's Urban Growth Area for Residential Single-Family zoning district. The required setbacks for the pump house will be reviewed at time of building permit. Any structure will be required to meet a 25' from front property line plus any additional public right-of-way; a 20' setback from rear property line; and, a 5' setback from side property line.
48. Critical areas have been determined and reviewed pursuant to Chelan County Code and are addressed. Setbacks for structures shall be reviewed at time of building permit(s).
49. The proposed development, specifically the pump house, within the City of Wenatchee's Urban Growth Area, requires a conditional use permit. Due to a processing error, the conditional use permit was not applied for at the time of this application. Staff recommended the applications for the shoreline exemption and wetland variances move forward. The pump house is an integral part of the project and requires a conditional use permit. The County recognizes all components of the project need to be identified and approved in order to obtain funding. The applicant will be required to satisfy the City code review process by submitting a conditional use permit application as soon as possible. The County will review the application and schedule a public hearing as quickly as local and state processing mandates can be met. Through discussions with the City of Wenatchee, they support this approach.
50. The project is consistent with WAC 173-27-040(1) as follows:
 - 50.1 The WAC provides a list of items exempt from shoreline permit process. It includes the following excerpts which apply to this project:
 - 50.1.1 WAC 173-27-040 (2)(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar

agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

- 50.1.2 WAC 173-27-040 (2)(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands.
- 50.2 The wetland variance applications pertain to the Chelan County Code requirements and are being processed pursuant to Chelan County Code Chapter 11.80.
- 50.3 The proposed development is exempt from shoreline permitting pursuant to WAC 173-27-040 (2)(e) and (i). The required wetland variances are governed under Chelan County Code regulations for critical areas.
- 51. The project is consistent with CCC 11.78 as follows:
 - 51.1 The Washington State Department of Fish and Wildlife Priority Habitat and Species Maps show that the subject site contains, Mule Deer, a protected habitat area.
 - 51.2 Chelan County Code Chapter 11.78, Fish and Wildlife Conservation Areas Overlay District (FWOD), regulates development within known habitat areas. Chelan County Code Section 11.78.020 provides a list of items exempt from the overlay district requirements. It requires that "all exempted activities shall use all reasonable methods to avoid potential impacts to critical areas. Any substantial damage to a critical area that is not a necessary outcome of the exempted activity shall be restored. Best management practices regarding clearing and grading may be obtained from Chelan County and the Chelan County Conservation District."
 - 51.3 Exempted developments include: (2) the maintenance or construction of pumping stations and irrigation facilities.
 - 51.4 The proposed development is exempt from fish and wildlife habitat review, pursuant to CCC 11.78.020(2). As a recommended condition of approval, staff is requiring re-vegetation of all impacted riparian areas. Additionally, proper removal of excavated materials from the riparian areas, erosion control measures, and standard best management practices for equipment use within the riparian area shall be adhered to.

52. The project is consistent with CCC 11.95 as follows:

52.1 County Code requires the applicant provide a description of the proposed variance (including an explanation of the hardship). The following narrative is the applicant's response:

Pioneer Water Users Association (PWUA) operates and maintains the Gunn Ditch, often referred to as the Pioneer, in Chelan County, Washington. As part of their system PWUA maintains an irrigation diversion dam on the Wenatchee River. PWUA and Trout Unlimited are working together to change the delivery of water to the customers of the PWUA and will be removing the irrigation diversion as part of the project. The diversion structure itself spans the entire side channel. There is a fish ladder; however, fish passage beyond the irrigation diversion is limited due to sediment accumulation and low flows downstream of the diversion dam.

The Pioneer side channel is located along the left bank of the Wenatchee River at river mile 6.7 (47° 28.6' N, 120° 25.3' W), beginning approximately 1,600 feet downstream of US Geological Survey (USGS) Gage 12462500, within the Wenatchee River in Monitor, Washington. The side channel is approximately 2,400 feet long with a dam located approximately 650 feet downstream of the confluence of the side channel and the mainstream Wenatchee River. This structure is the diversion for the PWUA and the Gunn Ditch, which conveys water along river left and north bank of the Wenatchee River.

To relocate the point of diversion PWUA proposes to install a new irrigation intake in the Wenatchee River. To access the river the intake pipe and pump must be located within and adjacent to the river. The pump would be located within the wetland buffer 80 ft from the wetland. Due to the location of the irrigation pipe and the topography of the property, the water intake cannot be located elsewhere.

The hardship is that there is no location available where the pipeline would not have to be within the wetland buffer while still allowing the project to be completed. The pump must be located in close proximity to the river for it to perform its function. Because of the nature of this project it is dependent upon the river which has a wetland associated with it in this location. There is no other feasible location to pump water from the river and connect to the Pioneer Ditch to provide irrigation water.

The project also provides to remove the existing diversion dam located at river mile 6.5. The existing dam is within the buffer of a wetland located downstream of the dam. Access to the dam by machinery travelling along PWUA's existing pipeline and ditch and the dam itself are located within the wetland buffer.

The project as a whole provides an environmental benefit by increasing in-stream flows in the Wenatchee/Columbia Rivers. The objective of this project is environmental enhancement through conservation of water that will provide the following benefits:

(1) to increase in-stream flows of the Wenatchee River from river mile 6.5 to its confluence with the Columbia River. (a) The current Wenatchee diversion averages 11-15 cfs annually from April to October. (b) The proposed new diversion will have a summer peak range of 3.2 to 7.7 cfs. (c) The proposed new diversion will deliver water up-stream to agricultural lands which will also add to the surface and ground water flows to the Wenatchee River.

(2) To provide the PWUA with a long term, low cost water supply.

(3) To maximize reduction of current irrigation delivery losses from an open/unlined canal evaporation and infiltration.

53. The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same neighborhood or district and shall not constitute a grant of a special privilege because:
- 53.1 Any properties that withdraw surface water enjoy the right to do so without regard for the zoning district in which they are located. Many agricultural operations on the Columbia and Wenatchee Rivers and Lake Chelan exercise their right to have a water intake, pipe and pump for irrigation. This applicant does not seek any privileges not enjoyed by other irrigators in the county.
 - 53.2 The proposed development is within the existing Gunn Ditch canal right-of-way. Irrigation water is used by the surrounding lands. Water rights are reviewed by the Department of Ecology and may be requested by any land owner. There is no other irrigation district and associated canal within the project area.
 - 53.3 The Pioneer Water Users Association provides, at least, ninety-five (95) property owners with irrigation water, generally used for agricultural purposes.
 - 53.4 The variance will provide for the modified use and function of the canal. No special privilege is granted by the approval of this variance.
54. The plight of the applicant is due to unique circumstances such as topography, lot size or shape, or size of buildings, over which the applicant has no control because:
- 54.1 The plight of the applicant is a result of the topography of the property which causes a wetland to be located along the Wenatchee River. The applicant has no control over the location of the wetland or the location of the existing diversion dam.
 - 54.2 The irrigation canal and dam were placed to use the natural topography of the area to allow water flow throughout the growing season. The proposed removal of the dam has been designed to minimize in water work and impacts to the wetland buffer. The pump house location is the result of the current Gunn Ditch right-of-way placement and the need to reverse the water flow from the historical outlet of the canal on the Wenatchee River.

- 54.3 The proposed dam removal is planned for minimal impacts to the wetland buffer. The proposed pump house development is located and designed to minimize impacts to the wetland buffer while working within the existing right-of-way.
55. The hardship asserted by the applicant is not the result of the applicant's or the owner's action because:
- 55.1 The hardship results from the application of Title 11, the topography of the property, the location of the wetland, diversion dam and the location of the existing irrigation ditch. The applicant has no control over these elements and has not caused them by their actions.
- 55.2 The irrigation canal, specifically the dam, was placed prior to the adoption of the Chelan County critical area codes. The location of the canal reflects the natural topography of the area to allow water flow throughout the growing season.
- 55.3 The hardship is not a result of the owner's actions.
56. The authorization of the variance shall not be materially detrimental to the public welfare and safety, to the purposes of this title, be injurious to property in the same district or neighborhood in which the property is located, or be otherwise detrimental to the objectives of the comprehensive plan because:
- 56.1 The authorization of this variance would not be materially detrimental to the public welfare and safety. The proposed project would not create any additional public welfare or safety issue. The completed project would be almost indistinguishable from the existing conditions thus continuing to provide important attributes to promote public welfare and safety including, fire separation for structures, access by emergency personnel and light and air movement between properties.
- 56.2 The proposed development has been designed to improve water quality within the Wenatchee River while increasing the function of the irrigation system. Irrigation systems provide water for agricultural lands for the surrounding areas.
- 56.3 The proposed development will not be detrimental to the public welfare and safety, injurious to surrounding property owners, or detrimental to the objectives of the comprehensive plan.
57. The hardship asserted by the application results from the application of this title to the property because:
- 57.1 The authorization of this variance would not be injurious to property in the same district or neighborhood in which the property is located. This application is requesting approval of the preservation of a property right the same as is enjoyed by other irrigators in the county. The authorization of this variance would avoid injury to the applicant's objective of environmental enhancement rather than cause injury to other property in the neighborhood because:

- 57.2 The irrigation canal, specifically the dam, was placed prior to the adoption of the Chelan County critical area codes.
- 57.3 The hardship is a result of the Chelan County Code requirements on the proposed project.
58. The project is consistent with CCC 11.95.030(2)(A) as follows:
- 58.1 The proposed project meets the overall goals of the wetland protection plan for Chelan County which includes the following priority issues.
- (i) To strive for no net loss of the functions and values of regulated wetlands by mitigating for lost functions and values;
- There would be no direct impact to the wetlands. The project avoids the wetland and would only be within the buffers. The entire area of impact would be mitigated for by re-vegetating the area with native trees and shrubs. The pump house building would be no larger than is necessary.
- (ii) To avoid or minimize damage to regulated wetlands wherever possible;
- The project has been designed to be constructed within the existing irrigation right-of-way to avoid wetland impacts to the greatest extent possible. The new pressure pipe from the pump to the upstream extent will be constructed entirely within the existing ditch and access road area thereby avoiding all wetland impacts. During and after construction the two wetlands in close proximity to the ditch will be protected with standard BMPs such as installing erosion control devices to prevent accidental discharges to the wetlands. Upon completion of the project all disturbed areas will be re-vegetated per the SWPPP [Storm Water Pollution Prevention Plan].
- At the new pump intake location on the Wenatchee River; all improvements would be constructed outside of the wetland thereby avoiding any direct impacts. The location was specifically selected to avoid the wetland to the greatest extent possible. The area of the buffer disturbed by excavation and installation of the pipeline and pump house would be re-vegetated with native plants to restore and stabilize the area.
- Where the diversion ditch would be removed is within the buffer of a wetland associated with the Wenatchee River. Impacts to the wetland would be avoided by conducting all construction/demolition outside of the wetland area. Any areas of the buffer disturbed during the project would be restored and re-vegetated.
- (iii) To protect the public interest;
- The public interest will be protected and enhanced by this project as a whole. Increasing in-stream flows in the Wenatchee and Columbia Rivers is intended to improve the aquatic environment for salmon, steelhead and bull trout listed on the Endangered Species Act.

(iv) To ensure protection of private property rights and avoidance of impacts to neighboring properties.

This application protects the property rights of the Pioneer Water Users Association by allowing them to continue their irrigation practices while being responsive to environmental needs in the Wenatchee and Columbia Rivers. There would be no negative impacts to neighboring properties.

58.2 All proposed work is within the wetland buffers. The proposed removal of the dam will improve water flow which may improve the wetland and associated buffer functions.

58.3 The proposed new pumping station is located within the wetland buffer. Placement of the pumping station is determined by proximity to the Wenatchee River, existing irrigation right-of-way and property location. The proposed development, as documented in the file of record, will improve water flow for the Wenatchee River, a water of the State.

58.4 The applicant proposes re-vegetation of impacted areas and best management practices during construction to minimize impacts to the wetland buffers and the neighboring properties. Chelan County Code Section 11.80.110 requires a mitigation plan.

58.5 Improved irrigation water systems are necessary for the agricultural lands of the lower Wenatchee Valley and serve the community as a whole. As a recommended condition of approval, the applicant shall submit a mitigation plan which includes re-vegetation and monitoring of impacts to the wetland buffers.

59. The project is consistent with CCC 11.95.030(2)(B) as follows:

59.1 No other way to complete this environmental enhancement project is possible. Impacts to the wetlands within the project area have been minimized to the greatest extent possible. Because of the location of the irrigation ditch and the public property available to complete this project there is not another location to complete this project.

59.2 There are numerous wetlands and associated buffers located at various locations along the Wenatchee River. The existing dam was constructed prior to the Chelan County Code regulating wetlands. The proposed pumping station is located on property at the southern end of the Gunn Ditch irrigation canal right-of-way.

59.3 The proposed location of the pump house is the best location based on the existing right-of-way location. The proposed remove of the dam is within the wetland buffer and there is no alternative to removal than being within the wetland buffer.

60. The project is consistent with CCC 11.95.030(2)(C) as follows:

- 60.1 As proposed, the project would be located in an area which would have minimal impacts to fish and wildlife habitat; consequently the impacts cannot be lessened through location or design changes. Pumping and intake structures must be located within and adjacent to the river and all the property in this location has a wetland along the shore of the river.
- 60.2 The proposed removal of the dam has been designed to minimize in water work and impacts to the wetland buffer. The pump house location was determined by location, topography and functional requirements.
- 60.3 The proposed dam removal and pump house are placed and designed to minimize impacts to critical lands.
- 61. The project is consistent with CCC 11.95.030(3) as follows:
 - 61.1 The applicant did not make the request based on similar illegal or nonconforming uses. The proposed development is to benefit the habitat functions, protect water availability and use, and benefit the users. The variance request is based on the location of the Gunn Ditch right-of-way and development. The current use and proposed use is permitted within the respective zoning districts – permitted outright, including the pump house, in Chelan County code; however, the pump house requires a conditional use in the City of Wenatchee's Urban Growth Area boundary. The proposed wetland variance will not impact density regulations.
 - 61.2 The proposed development meets the criteria for a variance.
- 62. Because of the approval of these land use permits, the applicant is directed through the conditions of approval to file paperwork for a conditional use permit to construct a pump house. After review and consideration of the application materials and related Chelan County Code, staff recommended approval of the project based on the site plan of record, dated January 30, 2012, the file of record and the recommended conditions of approval.
- 63. Approval of the shoreline exemption and wetland variances shall constitute authorization for the applicant to develop the facilities and improvements after the conclusion of all appeal periods and in strict accordance with the standards established by this resolution and any conditions imposed by the Hearing Examiner.
- 64. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received; admitted into the record and considered by the Hearing Examiner.
- 65. An open record public hearing after legal notice was provided was held on June 27, 2012.
- 66. Admitted into the record were the following exhibits:
 - 66.1 Exhibit 1: June 26, 2012, email from Susan Metcalf to Lilith Yanagimachi.
- 67. Appearing and testifying on behalf of the applicant was Thom Kutrich. Mr. Kutrich testified that he is an agent authorized to appear and speak on behalf of the property owners and

applicant. Mr. Kutrich testified that the new irrigation system will be a "pump back" irrigation system. The current system is a gravity system. Mr. Kutrich testified that they had no objection to any of the proposed conditions of approval and that a conditional use permit would be timely submitted. Mr. Kutrich also testified that hundreds of trees will be removed because there will be no water for them and they would become a hazard. He further testified that the timing of this project is that the system will be up and running by April, 2013.

68. No member of the public spoke in favor of this project.
69. Testifying in opposition to this project were the following individuals:
 - 69.1 Fred Kleinschmidt. Mr. Kleinschmidt testified that he is a member of the Pioneer Water Users Association and that there was no vote of the Pioneer Water Users Association to approve this project. He further testified in his belief that there was no need for this project.
 - 69.2 Nikos Milonas. Mr. Milonas testified as to his belief that there was no need for this project and that there had been a lack of communication by the Pioneer Water Users Association Board regarding this project. Mr. Milonas also testified as to his concerns of wildlife that uses the water in the Gunn Ditch and the vegetation surrounding the Gunn Ditch.
 - 69.3 Florence Robinson. Ms. Robinson testified that she is the Secretary of the East Monitor Water Users Association and owns property by the Gunn Ditch. She stated that the East Monitor Water Users Association has a pump near the Gunn Ditch and she wanted to make sure that this project did not impact their pump.
 - 69.4 Ken Smekofske. Mr. Smekofske testified as to his understanding that the ditch passes through right-of-ways and that the Pioneer Water Users Association is not owners of the land.
 - 69.5 Jim Cleveland. Mr. Cleveland testified that he is opposed to the project because of the process that has been utilized for moving this project forward.
70. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
71. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has authority to render this Decision.
2. Referral agency comments were received and considered in the review of this proposal.

3. The site of the subject proposal is in the proximity of the Chelan County Comprehensive Plan Rural Village, Rural Industrial, Residential/Resource 2.5 and Residential/Resource 5 land use designations. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. As conditioned, the subject proposal is consistent with the Chelan County Code, Title 11.
5. Environmental and Critical Areas review has been completed. As conditioned, the proposal does not have negative impacts on critical areas which cannot be mitigated.
6. The proposed project meets the definition of "Development" as defined in the Chelan County Shoreline Master Program and WAC 173-27-030 and is considered a substantial development.
7. The authorization of the shoreline permits will not be materially detrimental to the purposes of the Revised Code of Washington, the Washington Administrative Code, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Plan, the Chelan County, or not be otherwise detrimental to the public interest.
8. The project is not located on a public beach, nor does it block or reduce public use or enjoyment of the area.
9. Subject to the Conditions of Approval, the project design is consistent with the Chelan County Shoreline Master Program requirements.
10. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, SE 2012-03/ WV 2012-04/WV 2012-112, Pioneer Water Users District, is hereby **APPROVED**, subject to the conditions noted below.

CONDITIONS OF APPROVAL

Chelan County Community Development

1. All conditions imposed by the Administrator shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.
2. A copy of this permit and attached conditions shall be kept on-site and provided to the contractor and/or site manager working within the project site at all times. The applicant, contractor, machinery operators and all others working within the project site shall have read this permit and attached conditions and shall follow its conditions at all times.

3. The project shall proceed in compliance with the Shoreline Management Act (RCW 90.58), the Washington Administrative Code, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Plan, and the Chelan County Code.
4. Prior to commencement of this project, the applicant shall obtain all necessary permits from agencies with jurisdiction. This may include, but is not limited to: the United States Army Corps of Engineers, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, and the Washington State Department of Natural Resources.
5. No structures or development other than what is described within the JARPA, date stamped March 13, 2012, shall be conducted under this permit unless modified by this decision or as required by another State or Federal permit or regulation.
6. Construction activity or development of any kind is prohibited within a wetland boundary without amendment to this decision and proper State and Federal permits.
7. Prior to commencement of this project, the applicant shall submit fees for the wetland variance file number WV 2012-112 in the amount of \$950 wetland variance and \$25 archiving; total of \$975 payable to Chelan County Community Development.
8. No later than July 13, 2012, the applicant shall submit an application for a conditional use permit with appropriate fees for the pump station within the City of Wenatchee's Urban Growth Area boundary. No development of the pump station shall commence prior to final decision of the conditional use permit and associated appeal timelines. No building permit shall be issued until the end of the mandated appeal period(s).
9. Prior to commencement of this project, the applicant shall submit an Aquifer Recharge Disclosure Form, pursuant to Chelan County Code Chapter 11.82.
10. Prior to commencement of construction activities, the applicant shall submit a Mitigation Plan, pursuant to Chelan County Code Section 11.80.110 for the wetland buffer restoration. The plan shall be reviewed and approved by Chelan County Community Development.
 - 10.1 The applicant shall submit to Chelan County Community Development a monitoring report, showing the survival rate and any replanting, three (3) and five (5) years from the date of this decision.
 - 10.2 The applicant shall send a copy of the approved Mitigation Plan to the Chelan County Public Utility District No. 1, contact Steve Vaughn.
11. Existing native vegetation within the riparian buffers shall be maintained as riparian habitat. Disturbance of this vegetation shall be limited solely to the permitted activities outlined within this permit. Disturbed riparian vegetation shall be supplemented with native vegetation and plant materials selected from an approved plant list, developed jointly by Chelan County, the Washington State Department of Ecology and the Washington State Department of Fish & Wildlife, or as approved in a Habitat Management

and Mitigation Plan for this site. New plantings shall consist of large nursery stock, commercial tublings or seedlings, and/or cuttings from local donor sites.

12. Construction activities shall commence for the project for which these permits have been granted, within two (2) years of this decision. Authorization to conduct development activities granted by these permits shall terminate five (5) years from the filing date of this permit.
 - 12.1 Pursuant to Chelan County Code Section 11.95.080, the wetland variance work shall be completed within three (3) years of this decision unless the applicant is granted an extension pursuant to Chelan County Code.
13. Any construction debris and excavated material removed from the riparian area shall be transported to a legal disposal facility located outside riparian and wetland buffers.
14. The applicant shall be responsible for properly installing and maintaining erosion control devices on the site to control silts, soils or other debris from entering the Wenatchee River, and wetland areas due to runoff across disturbed areas of the property. Erosion control shall be installed and maintained until such time that native vegetation has been planted and established in all disturbed areas.
15. The project shall not interfere with the normal public use of the surface waters, excluding the temporary impacts related to the dam removal.
16. Construction equipment will be limited to the minimum access and construction footprint required for this project.
17. Should heavy machinery be used, refueling of all heavy machinery shall occur at least 200 feet from the Wenatchee River.
18. Prior to entering the project area, all equipment shall be checked for leaks and cleaned free of any external petroleum products, hydraulic fluid, machinery coolants, dirt, weeds both aquatic and terrestrial, weed seeds, and/or any other deleterious materials. Equipment shall be maintained throughout all stages of construction activity.
19. If the applicant or his agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/agent shall immediately stop work and notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.

Chelan County PUD

20. The applicant shall work with the Chelan County Public Utility District No. 1 to obtain Federal Energy Regulatory Commission approval for the proposed work within the Rock Island Hydroelectric project boundary. The applicant shall be responsible for providing the District with all required permit information.

21. The applicant shall not commence work on Chelan County Public Utility District No. 1 lands until the District has issued a license for the pipeline and facility intake structure.
22. The applicant shall be required to enter into a License to Occupy Hydroelectric Project Waters and Land, at the time of any District permit issuance.

Washington State Department of Transportation

23. Prior to commencement of work, the applicant shall receive written verification from WSDOT regarding the following items:
 - 23.1 All right-of-way infringements have been address to WSDOT's standards
 - 23.2 Documentation addressing accessing the ditch from US 2, in order to determine if a Temporary Utility Construction Permit or Temporary General Permit are required.
 - 23.3 Documentation addressing method to secure irrigation pipe within the ditch; specifically those areas in close proximity to state right of way and whether any kind of fill will be imported or excavated on site.

Approved this 3rd day of July, 2012.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040(4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3)(c)" ..the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.

Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.

