

COLUMBIA SOLAR PROJECT
SCA COMMENT

JUNE 26, 2018
ATTEN: SONIA BUMPUS
EFSEC STAFF

SONIA:

My name is Jeff Dunning and I was a member of the Kittitas County Citizen Advisory Committee for Solar Facility Siting Regulations. I am not an attorney. I was in management positions for 21 years with the Ellensburg Water Company, one of the water right holders delivering water to 2 of the parcels being considered for the Columbia Solar Project. During my tenure with the water company, my duties included the affirmation and preparation for defense of the company's water rights in the Yakima River Basin Adjudication process. It was necessary for me to study and become intimately knowledgeable with the water right process so I have a very extensive background in the water right process. The Yakima Basin is very complex when it comes to water right issues.

I submitted comments to the MDNS process for TUUSSO's project. Those comments were obviously too brief.

Water right issues affiliated with TUUSSO's projects located within the service areas of the Westside Irrigation Company, Ellensburg Water Company (EWC), and Kittitas Reclamation District cannot be mitigated by TUUSSO. The landowner of the subject parcels does not own the water right, the right is held by the water purveyor. Those rights cannot be placed into a state trust. I have spoken with management of the above 3 entities and all have affirmed this is the case. Waters not used are subject to recall by the water purveyor and are redistributed within the purveyor's service area to those lacking sufficient water.

The adjudication process is an ongoing matter. Any change in use, point of diversion, and so forth must be run through DOE, and then, depending on circumstances, a public comment period, and, may have to go to the court. All of TUUSSO's proposed projects would, at a minimum, require filing for a change of use.

I contacted DOE, Central Regional Office, and have been told that if a subject parcel's water use was to be changed from an agricultural crop production use to a purpose such as the nature of a solar facility, a change of use permit would need to be filed and approved by DOE. This would have to be done prior to an MDNS finding and the issuance of Site Certification.

RCW 90.54.020: "(1) Uses of water for domestic, stock watering, industrial,

commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other use compatible with the enjoyment of the public waters of the state, are declared to be beneficial.”

The lack of including solar power generation along with the other power generation aspects in the RCW raises some questions: (1) Is the use of water in conjunction with a solar facility a beneficial use? (see RCW 90.54.120) It is undefined. (2) Once the water has been diverted into a canal system operated by a private canal company, holding a senior water right, a right adjudicated by the court for the purpose of agricultural crop production, are those waters then specifically subject to the purposes the private purveyor spells out for use? If use of those waters are not specified by the purveyor for use in conjunction with a non-agricultural use such as a solar facility then mitigation is not possible. (3) Can senior water rights held by a private water purveyor, adjudicated by a court specifically for agricultural uses, be arbitrarily changed in purpose of use and amount by independent action of a state agency or council if a court holds jurisdiction?

How can EFSEC accept that TUUSSO states they can mitigate the use/non-use of a water right (in which they have no vested interest) (see RCW 90.14.140 “Sufficient Cause”) as well as, change the purpose of use, without TUUSSO specifying how that will occur, and, not have all these questions answered and a plan in place? The MDNS is in error without that and Site Certification cannot go forward until the water rights issues/questions are addressed/answered and, a detailed plan is in place.

EFSEC should be aware, our state has a 5-year “use it or lose it” rule. I will use the Penstemon site as an example.

The subject parcel was adjudicated as part of the EWC service area water right. The amount of water deemed necessary for agricultural crop production on agricultural lands (see RCW 36.70A.030 (2) is based on soil type (see WAC 365-190-050) and crop need requirement. The parcel consists of the most prime soil class in the valley. I do not know the exact amount of acre-feet per acre but venture it is 5 AF/A.

The only way I can see to proceed would be as follows:

A change of use would have to be filed and approved. Solar facilities are not an agricultural crop or commodity and no agricultural production would be going on. Application of irrigation waters to the parcel will be significantly reduced. The applicant should be required to install a measuring device at the point of entry for the water to the parcel. The water would be monitored on a daily basis and recorded annually for 5 years.

At the end of that period any reduction in amount used differing from the adjudicated amount would return to the purveyor holding the water right and

reallocated to other users within the purveyor's service area (and there are many in line).

For example, if the Penstemon parcel was adjudicated 5 AF/A and the 5-year measurement could show a **beneficial** use of only 1 AF/A the remaining 4 AF would be lost to the parcel. You cannot grow an agricultural crop in this valley with 1 AF/A. I should also note it is questionable that applying irrigation water adjudicated for use in producing agricultural crops and changing that to a non-agricultural use may not fit the definition of **beneficial use** of water rights as defined in the Yakima Basin Adjudication. It does not fit the definition of a beneficial use in the case of the EWC.

Another item of concern related to water is run-off. The council heard, on June 26th, from Mary Monahan, a hazardous waste cleanup scientist. She testified regarding the toxics involved with solar facilities. It would appear the MDNS lacked a plan to monitor irrigation water runoff for possible hazardous waste contamination. Such contamination, if any, would definitely affect the quality of the water runoff and subject adjacent lands and streams to possible contamination. EFSEC chair directed staff to look into the hazardous waste cleanup issue so I would hope the wastewater runoff issue would also be addressed.

I came to the June 26 EFSEC meeting in Ellensburg to comment orally. EFSEC staff person Patty Betts intercepted me at the door and asked if I had questions or concerns. I explained the situation to her and she urged me to forward this written comment. Patty and I agreed a 3-minute time limit was totally insufficient to fully explain this issue to the council in a manner they could grasp.

Considering the water rights and wastewater runoff issues I submit the council erred in issuing an MDNS, at least, where it concerns the water issues. I also submit that the SCA cannot proceed until this issue is addressed.

Thank you for your time. I would be happy to talk with you about this matter in the future should you so desire.

Respectfully Submitted,

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