

July 25, 2018

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

Re: Icicle Strategy DPEIS – comments

Dear Mr. Kaputa:

The Alpine Lakes Foundation is pleased to submit these comments on the Icicle Strategy Draft Programmatic Environmental Impact Statement (DPEIS).

Who we are. The Alpine Lakes Foundation is a duly-registered non-profit Washington corporation, that has been active for 25 years. Our mission is to educate the public, through information, study, advocacy and otherwise, on the Alpine Lakes Wilderness and surrounding lands, and to aid and support their preservation and stewardship. We are a separate organization from the Alpine Lakes Protection Society, although we share similar goals.

Comments – Lack of legal authority The DPEIS describes alternatives proposed by a working group of many organizations, but the only member of that group with any primary water rights is the Icicle Peshastin Irrigation District. All the alternatives assume that the irrigation district can exercise those rights or make its water available to the extent necessary to carry out the alternatives. Yet, the DPEIS assumes without discussion that the irrigation district has the legal right to do this, when in fact, for the following reasons, it does not:

1. The irrigation district has forfeited, relinquished, or never acquired the right to store or release more water from the lakes identified in the DPEIS than it has historically stored or released. The irrigation district never held or no longer holds the right to store or use the additional quantities of water envisioned by the various alternatives. Revised Code of Washington 90.14.160. *Okanogan Wilderness League v. Town of Twisp and Department of Ecology*, 133 Wn.2d 769, 947 P.2d 732 (1997). This decision is based on common law abandonment, which is independent of the foregoing statute.

2. Any water within the Alpine Lakes Wilderness that the irrigation district has not historically used now belongs to the federal government under the federal reserved water right doctrine. This doctrine stems from *Winters v. United States*, 207 U.S. 564 (1908). The U.S. Supreme Court has applied it more recently in *U.S. v. New Mexico*, 438 U.S. 696, 702 (1978); *Cappaert v. U.S.*, 426 U.S. 128 (1976); and *Arizona v. California*, 373 U.S. 546, 601 (1963).

3. Any attempt by the irrigation district to store or release more water than it historically has used within the Alpine Lakes Wilderness would violate section 4 of the Wilderness Act, the Alpine Lakes Area Management Act of 1976, and the Alpine Lakes Wilderness Management Plan, pp 162-64 (1981).

4. These foregoing points also apply to the US Bureau of Reclamation and the US Fish & Wildlife Service with respect to Snow and Nada Lakes.

5. The easements, permits, or deeds granted by the US Forest Service to the irrigation district do not override the foregoing laws, nor do they address or affect the extent of the irrigation district's water rights.

6. The irrigation district has never had and currently does not hold any water rights at Upper Klonaqua Lake.

For the foregoing reasons, all the alternatives in the DPEIS are wishful thinking because they lack any legal basis.

Comments – How the Icicle Strategy could be improved.

1. The Strategy should be revised to rely only on those quantities of water at specific lakes that the irrigation district has historically used and therefore has the right to use.

2. Moving the irrigation district's point of diversion downstream to the Wenatchee River, as proposed in Alternative 5, would greatly improve stream flows in Icicle Creek. However, the rest of Alternative 5 should be dropped. It suffers from the same lack of legal authority as already discussed.

3. Water conservation proposals in the DPEIS should be significantly expanded to reduce demands on Icicle Creek's water. This would allow the Icicle watershed to function more naturally, including enhanced stream flows.

4. The DPEIS should acknowledge the land management role and authority of the U.S. Forest Service on national forest lands, its special responsibilities to protect the wilderness character of the Alpine Lakes Wilderness, and the application of numerous federal laws to many of the actions proposed in the Icicle Strategy.

Thank you for the opportunity to submit these comments.

Very truly,

ALPINE LAKES FOUNDATION

s/David G. Knibb

By David G. Knibb, Vice President

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