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**Sent:** Monday, March 28, 2016 5:13 PM

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**Subject:** ESA and CWA Questions: Icicle Strategy, March 30, 2016 Seattle meeting

Mike and Tom,

Thank you for providing information on the programmatic environmental impact statement (PEIS) for the *Icicle Strategy*, developed by Chelan County and the WA Department of Ecology/Office of the Columbia River. I will attend the March 30 Seattle workshop at Phinney Center to learn from your presentation.

Since the WA Department of Ecology (Ecology) is the US Environmental Protection Agency (EPA) delegated state entity to implement much of the federal Clean Water Act (CWA

A  
)  
in Washington,  
and since Endangered Species Act (ESA) species are

[protected Existing and Designated Uses \(DU\) under the CWA water quality standards](#)

, Ecology guidance is particularly meaningful for CWA actions, including effects on ESA species and their designated critical habitat

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To

provide time for pre-meeting analysis  
, I defined the following  
ESA and CWA

questions to be asked  
at the  
March 30  
meeting  
, based on your PEIS and my 3/30/15 letter

(pasted below)

to you following your last Seattle workshop on 2/17/15.

1. Based on ESA [Section 7\(a\)\(1\)](#), **all federal agencies**

**are to use their programmatic authorities to promote ESA species recovery**, and for the National Oceanic and Atmospheric Administration (NOAA) and US Fish and Wildlife Service (USFWS),

priority goes to the listed species

. Since some of these federal developments are still incomplete, particularly the non-discretionary [ESA Section 7 consultation](#) Terms & Conditions

,

**how and when will federal provisions and ESA regulations be incorporated into the *Icicle Strategy*?**

2. [ESA recovery plans are required](#) for every ESA-listed species (Recovery Plan requirement

summary

file attached). Since each recovery plan should have a voluntary roadmap to recovery (delisting), **are these roadmaps already incorporated into the *Icicle Strategy*?**

3. Every agency is either required to

apply

or

to

comport with

[CWA DU protection](#)

according to the law

, exemptions, and antidegradation (See p. 9-21 of [CWA Watershed Academy](#)).

Since DU includes such uses as ESA species, Tribal rights, commercial and aesthetic water uses, and Wilderness Act, **have these DU protections been accommodated within the *Icicle Strategy***,

such

as indicated by question #7 in your "Supplemental Sheet under nonproject actions"? More specifically, my proposed DU protection matrix (Alpine Lake 2-17-15...file attached) was designed to address DU protection in one single table; **will this DU matrix be used and published?**

4. Given the complexities and

realities

of

some

incompatible uses, DU protections must be negotiated and some not

likely

met. If the *Icicle Strategy* cannot

adequately

protect certain uses, **are economic exemptions planned or have already been explored** under the [CWA Use Attainability Analysis](#) (UAA, also see [CWA Watershed Academy, p. 11](#)), [ESA God Squad Decision](#), or Congressional exemptions?

(See #6, attached DP 3-4-15 letter.)

For full disclosure, I am participating at request of Dr. John Osborn of the Sierra Club, but I speak only for myself. For those who don't know me, my one-page resume is in the attached "DP 3-4-15 letter, BNR, 3-10-15 meeting.pdf."

Since this email and its attachments are public documents in the administrative record, feel free to use, distribute, dispute, or delete, as you see fit. Thank you for your continuous work on this complex project. See you March 30.

Best,

Derek

Attachments:

- 1) ESA Section 4F Recovery Plan criteria, GAO summary.pdf  
2
  - ) Alpine Lake 2-17-15 IWG mtg, with CWA DU MATRIX.pdf  
3)
- DP 3-4-15 letter, BNR, 3-10-15 meeting.pdf.

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