

Columbia-Snake River Irrigators Association

Policy-Technical Memorandum

DATE: September 8, 2020

TO: CRSO Agencies EIS Managers
Interested Parties

FROM: Darryll Olsen, Ph.D., CSRIA Board Representative

SUBJECT: CSRIA Response to CRSO BiOp Litigation—Final EIS

With the Record of Decision (ROD) for the CRSO BiOp Litigation Final EIS (BiOp) being signed on September 30, 2020, the CSRIA is providing formal comments to the EIS managers and agency leadership. We do so to convey CSRIA’s standing issues within key parts of the Final EIS and to provide a record for future court submission, as the EIS-BiOp process is, most certainly, headed back to the U.S. Federal District (OR) Court for a reinvigorated challenge by the plaintiffs.¹

The Legal EIS Framework Requirements:

The National Environmental Policy Act (NEPA) and its “Regulations Implementing the Procedural Provisions of NEPA” dictate that a federal agency EIS must include a review of relevant alternatives to the proposed action (preferred alternative) that manifest “reasonable courses of action...with information sufficient to permit a reasoned choice for the agency to evaluate...” While the newly updated NEPA Regulations streamline review efficiency, alternatives to the proposed action must be identifiable within the “spectrum” of alternatives being analyzed.²

The Final EIS contains no analytical review of Lower Snake River dam breaching/pool drawdown measures other than the complete, four-dam breaching alternative. Other potential hydro project alternatives affecting dam breaching or pool drawdowns are invisible and impossible to consider under the EIS review. The Final EIS presents a “worst case scenario,” avoiding a cogent picture of less disruptive hydro project measures that also could meet multiple project and ESA objectives.

Irrigation Sector:

Despite detailed analyses and comments offered to the agencies,³ the Final EIS does not display substantive changes from the Draft, and the Final retains crucial errors to the estimate of irrigated acres impacted, and the economic value of the affected lands, given a four-dam breaching alternative. The Final EIS irrigation sector impact analyses are impressively insufficient, lacking an experienced and fully engaged level of review.

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¹ EarthJustice, et al., have stated publicly their intent to renew litigation in numerous Media Releases.

² National Environmental Policy Act of 1969, as amended; CEQ, NEPA Regulations, 40 CFR Parts 1502 (and others) updated, FR-July 16, 2020.

³ Including data/information provided in CSRIA, “Risk Mitigation Response Alternative, Irrigation Sector Direct Economic Impacts Under Lower Snake River Dam Breaching/Drawdown Actions,” White Paper Review, available at CSRIA.org (as submitted to the CRSO agencies).

From CSRIA's perspective, the USBR placed little energy into assessing irrigation sector impacts on the Lower Snake River system, because they had no operational experience within the area, and they simply wanted to "get it done"—these mainstem irrigated projects "were not USBR projects." The technical work did not receive adequate quality control; nor did the Denver Technical Center make a dedicated effort to work with CSRIA members and representatives.

The end result of the Final EIS is to underestimate the empirical and economic impacts to private sector irrigation projects along the Lower Snake-Upper McNary Pool river system.

Navigation-Transportation Sector:

As with the irrigation sector, technical analyses for the navigation-transportation sector did not sufficiently commence until late in the EIS preparation process. Nor did this analysis receive much, if any, structured input from parties that had raised key technical concerns. The analysis problem focuses on an alternative rail route for grain shipments, where grain is no longer being shipped by river barge under a four-dam breaching operation.

The Draft EIS did not incorporate into its alternative rail route analyses operation of the main WATCO-Union Pacific rail line that borders the Lower-Snake (and Columbia) River system. This is a high-capacity line capable of moving increased grain volume.

The CSRIA has prepared two technical memorandums that outline the analyses problem, and that the omission of the alternative rail route in the (TOM) modeling analyses leaves a deceptive quality to the EIS analyses. Even the response to CSRIA comments on the Draft EIS is a "non-sensitivity, sensitivity analysis;" more effort was placed on avoiding the WATCO-UP route analysis than actually integrating it into the (TOM) model analyses. Does the end result of the final EIS overstate the alternative grain, rail (or truck) shipment economic impacts?

An acceptable rail route alternative review will only be completed by the principal stakeholders reevaluating the route and directly requesting from the WATCO-UP managers a new operations plan/proposal to ship an additional 3-Mtons of grain to Lower Columbia terminals. The principal stakeholders can then determine, with the rail operators, what is or is not a viable rail alternative under a dam breaching or pool drawdown scenario.

Regional Alternative Corrective Action:

Given the enormous amount of time already dedicated to the new BiOp-EIS process, and disposition of the parties involved, it would seem pointless to re-engage the CRSO agencies in preparing a supplemental EIS, "to fix" the Final EIS analysis problems.

At this stage of the multidecadal review process, more would be accomplished by the litigation parties, along with some direct stakeholders, preparing an action protocol to be placed before the U.S. District Court, via a formal motion. This protocol has been vaguely referred to as a new "Regional Alternative." CSRIA assumes that this alternative would further affect Lower Snake River project operations (perhaps with other targeted habitat measures).

What is unclear to CSRIA is whether the Regional Alternative requires another "regional process," with an extended time frame likely to be unacceptable to the Court, or whether a near-term protocol can be forged by a handful of the litigation participants. Further debate may be a poor substitute for real-time decision making.

CSRIA Technical Review Memorandum
Per Release of Final CRSO BiOp-EIS

TECHNICAL REVIEW MEMORANDUM

Date: September 8, 2020

To: CRSO BiOp-EIS Agencies Managers
Interested Parties

From: Darryll Olsen, Ph.D., CSRIA Board Representative
Patrick Boss, CSRIA Consultant with Cascade Consulting

Subject: CRSO Final EIS Navigation and Transportation Sector Analysis Issues

The Columbia River System Operations (CRSO) Final EIS still retains significant issues inherent to the Navigation and Transportation sectors, for review of Lower Snake River Dam breaching issues. The concerns raised by CSRIA in Draft EIS comments and the Columbia Research Corp. April 13, 2020, memorandum (attached) provided to the USACE EIS managers have not been adequately addressed by the USACE contractor (Annex A. Sensitivity Analysis for Tom Model Assumptions).

CSRIA representatives conclude that the rail alternative route, under dam breaching or pool drawdown scenarios, should be reassessed by an independent contractor, and the analysis must directly involve input from the operations managers for the WATCO and Union Pacific (UP) Rail carriers. This work should be pursued by the primary stakeholders, the wheat producers and their agents.

The revised analyses should be based on a shipment proposal/plan requested from WATCO-UP management and operations staff.

More specifically:

1. As stated by the contractor, the TOM model is calibrated to not include shipping options other from existing grain distribution points and does not even recognize the main river rail route (Lewiston to Lyons Ferry to Columbia River terminals). This factor makes an analysis of dam breaching-pool drawdowns totally flawed.
2. The assumption that the WATCO-UP rail route would increase trucking costs is poorly explained, given that trucks already transport wheat to the main river rail sites, and there would be no change to wheat movements heading north to the existing grain trains (WA and BNSF routes). This assertion is very unclear.
3. As noted above, the existing shuttle trains would not be redirecting grain shipments south, they would maintain their current routes.
4. The WATCO-UP line is not a "shuttle" route, but a mainline carrier route to Columbia River ports and Portland. The WATCO-UP line from Lewiston, ID to Portland, OR is a direct mainline rail route that can handle large unit train volumes. Additionally, the WATCO portion of the line from Lewiston, ID to Ayer, WA was rebuilt with modern heavy gauge rail

track and ballast in the 1970's and is a relatively new rail line. According to WATCO, nearly 16,000 carloads of freight are already being hauled from Lewiston, ID to Ayer, WA annually. Furthermore, WATCO has indicated that with some infrastructure improvements at Lewiston, ID, the line has the capacity to haul increases in volume in wheat that could occur if barging were to cease at Lewiston.

5. To suggest that the WATCO-UP carriers would not be qualified for Positive Train Control (PTC) locomotives, and thus not included in the TOM model analysis based on cost-effectiveness grounds, is nonsense. PTC is required by federal law to be installed and implemented on Class I railroad main lines (i.e., lines with over 5 723 million gross tons annually) over which any poisonous- or toxic-by-724 inhalation hazardous materials are transported. According to WSDOT, *"PTC has been implemented on all 727 rail lines (equipment and infrastructure) in Washington where it is required by law."* According to UP, it is already running PTC operations on its tracks in Washington State and Oregon. In fact, UP recently stated on its website that *"Nearly all Union Pacific trains operating on PTC-mandated rail lines are operating with PTC locomotives."* In particular, this includes the UP portion of the line from Ayer, WA to Portland, OR. The WATCO Line from Lewiston, ID to Ayer, WA does not currently meet the above thresholds that would require it to have PTC. Anyhow, the argument regarding PTC in the EIS relating to TOM model analysis has absolutely no relevance regarding hauling wheat on the WATCO-UP rail line from Lewiston, ID to Portland, OR.
6. The assertion that the contractor has discussed the river rail route with WATCO (or UP) operations staff, and confirmed the route to be unsuitable, lacks factual confirmation—CSRIA representative have had multiple discussions with the WATCO-UP operations management, and informed otherwise. The contractor should provide CSRIA with the dates of his discussions, who specifically was involved, and what questions were asked. Additionally, in a recent newspaper article in the Lewiston Tribune, WATCO's Vice President Ted Kadau was asked the following question *"...whether rail could haul the grain that's now barged to Portland and transferred onto ocean-going vessels headed to the Pacific Rim."* He responded with the following answer *"...yes...Watco would move grain out of the Lewiston-Clarkston Valley, Palouse and Camas Prairie."*
7. The issue raised by the contractor concerning staging areas was not viewed as significant or excessively costly by the WATCO-UP operations managers. Existing facilities space already exists at Lewiston, Lyons Ferry, Tri-Cities Grain, and port terminals exist at Wallula, Boardman, and Portland. We question why additional facilities could not be built between Lewiston and Lyons Ferry. WATCO and UP representatives have indicated to CSRIA that additional rail staging areas could be done in Lewiston and in other locations along the Lower Snake River if necessary. Nobody from WATCO nor the UP has indicated that building additional staging areas for hopper cars or train engines is an issue.

8. Overall, the case for excluding the WATCO-UP route from the TOM model has not been made. If anything, it conveys a lack of objective analysis. In multiple conversations that CSRIA representatives have had over the past year with representatives of WATCO and UP, including some very recent conversations in the past few days, both WATCO and UP strongly asserted that nobody from the CSRO agencies nor any CSRO agency consultants had contacted them. They again reiterated that the WATCO-UP line can haul wheat from Lewiston to Portland and would have the capacity to haul significant volumes of wheat (millions to tons) annually.
9. The EIS states that *"...in TOM, shipments cannot move from rail elevators to river ports via shuttle rail. Information gathered through personal communication with Port of Lewiston and shippers (December 2019) indicate that this modal movement for grain shipments no longer exists."* In fact, WSDOT's own Washington Grain Train webpage states that *"The Washington Grain Train helps carry thousands of tons of grain to deepwater ports along the Columbia River."*
10. The EIS states that Columbia River barge transportation would continue to be important in the region downstream of Pasco. However, despite all of the massive rail infrastructure at Pasco, the EIS assumes that grain transported to the river in Pasco will or can only arrive via truck, and completely and arbitrarily dismisses grain arriving in Pasco by rail.
11. The EIS mentions the new Endicott, WA rail shuttle facility which began operating in 2019, but then goes on to state that the data on wheat volumes in the EIS "does not include the opening of the Endicott shuttle rail facility which will likely compete for grain volumes that previously moved down the Snake River." According to the Northwest Grain Growers, the "high capacity rail loading facility in Endicott, WA...will allow NWGG to load 110-car train shuttles bound for export destinations." Not including the capacity of the new Endicott facility is a huge omission.
12. In total, the omitted capacity of at least three million tons per year of wheat that could be handled by the WATCO-UP line from Lewiston, ID to Portland, OR, plus this one million tons of new or recent annual capacity (beginning in 2019) at Endicott represents more capacity annually than is currently being moved by barge on the Lower Snake River. These are very major and arbitrary omissions in rail capacity that greatly skew the transportation analysis of the EIS, especially regarding future rail rates for wheat in the PNW region. In other words, rail rates for wheat could likely be much lower than what the EIS assumes or suggests.
13. In the above mentioned and attached April 13, 2020, memo from Columbia Research Corp. that was in response to the Draft EIS relating to Navigation and Transportation, and was provided to various CSRO agencies, there was considerable evidence presented in that memo which indicated that significant rail capacity (especially the WATCO-UP line) was omitted from Draft EIS. Additionally, rail representatives from both Union Pacific and WATCO had indicated at that time that they had not been contacted by CSRO consultants

involved with doing rail capacity parts of the Navigation and Transportation section of the EIS. Furthermore, as mentioned in one of the above bullet points, CSRIA representatives again very recently contacted WATCO and UP (in late August 2020), and WATCO and UP again indicated that they had never been contacted by any CSRO agencies nor CSRO consultants about the WATCO-UP line.

Columbia Research Corp. Memorandum
Per Release of Draft CRSO BiOp-EIS
(Provided to CRSO EIS Managers)

MEMORANDUM

To: Dr. Darryll Olsen
Columbia-Snake River Irrigators Association ("CSRIA")

From: Daniel Seligman, Attorney at Law
Columbia Research Corp.
(with research contributions from Patrick Boss of Boss Consulting)

Subject: Additional Questions and Concerns about the Navigation and Transportation
Portion of the draft Columbia River System Operations EIS

Date: April 13, 2020

I SCOPE OF WORK

At your request, I have prepared the following memorandum to identify additional questions and concerns about the navigation and transportation portion of the draft Environmental Impact Statement (February 2020) for the Columbia River System Operations.

On April 8, 2020, the Columbia-Snake River Irrigators Association ("CSRIA") submitted comments that specifically addressed (among other things) missing information in the EIS analysis on navigation and transportation.

This memorandum contains supplemental information based on the work of CSRIA's consultant, Patrick Boss ("Boss"), and additional areas of concern that I have identified.

II ANALYZING THE WATCO AND UNION PACIFIC RAIL LINES

The draft EIS, as CSRIA noted in its comments, "has omitted a very critical and essential component: the availability of the WATCO-Union Pacific rail line from Lewiston....This rail route would be the primary rail route for grain shipments diverted from barge traffic under dam breaching-pool drawdown operations."

CSRIA recommended that the U.S. Army Corps of Engineers direct the principal investigator (consultant) to rerun the Transportation Optimization Model ("TOM") with the WATCO-UP rail operations as an alternative to barge traffic.

Prior the submittal of these comments, Boss, acting on behalf of CSRIA, contacted Professor Eric L. Jessup ("Jessup") of Washington State University, who is apparently the prime author of the navigation and transportation portion of the EIS.

What follows below is a brief chronology to document CSRIA's attempts to learn why the draft EIS omitted the WATCO-UP lines from its analysis and whether Jessup was in fact acting on behalf of WSU when he prepared the analysis for the EIS or as a private consultant:

- In May 2019, Boss contacted Jessup after learning that Jessup was the lead on the navigation and transportation section of the EIS. In an email and phone conversation with Boss, Jessup indicated that the Army Corps had hired a consulting firm, Industrial Economics in Massachusetts, to analyze the potential impacts of the transportation of grain and other goods if the four federal dams on the Snake River were breached and their navigation locks were rendered inoperable. Although Jessup responded to Boss with his WSU email address, which identified him as the director of the Freight Policy Transportation Institute at WSU, Jessup said he and a colleague at WSU, professor Ken Casavant, had been retained as "private sub-consultants" to prepare the navigation component, "based on our past work in the grain (wheat) industry." Jessup wrote: "There is no WSU study that I'm aware of estimating the impact of drawdowns on the Snake/Columbia river system." During a follow-up phone conversation, Jessup told Boss that he could not answer any specific questions about the EIS and referred him to Industrial Economics.
- In June 2019, Boss called vice president Ted Kadau ("Kadau") of WATCO, which operates an 85-mile-long railway between Lewiston, Idaho, and Ayer Junction, Washington. The line -- the Great Northwest Railroad -- generally runs parallel to the Snake River and connects directly with the Union Pacific ("UP") rail line that goes to Portland, Oregon. Kadau said the WATCO line has significant capacity and could haul large quantities of wheat from Lewiston to Ayer Junction if some infrastructure (such as additional loading and staging tracks in Lewiston to accommodate longer trains and more trains) was improved or upgraded. Kadau said the infrastructure upgrades were very doable and could be phased-in over a short period of time (one or two years). Kadau made similar comments in 2017 to the *Lewiston Tribune*, https://lmtribune.com/business_profile/short-lines-tall-orders/article_5143feb3-c126-541d-9bd1-c2b8e7d5865a.html.
- In July 2019, Boss called business manager Jake Bevan ("Bevan") of Union Pacific. Bevan also indicated that the UP line west to Portland has significant capacity and could haul large quantities of wheat from Lewiston if some infrastructure was improved at Ayer Junction, primarily adding more loading and staging tracks for WATCO to hand off its trains to UP there. He also said that the infrastructure upgrades were very doable and could be phased in over one or two years.
- After reviewing the navigation and transportation portion (Appendix L) of the draft CRSO EIS, you and Boss both noticed the omission of the WATCO-UP lines from the analysis. The result of the omission is to inflate the costs of alternative wheat transport and make the cost of breaching the dams more onerous on the industry.

- In March, you met with Army Corps representatives in Portland to discuss the draft EIS and your concerns with the navigation and transportation section. In response, Army Corps officials contacted Jessup who wrote on March 9 from his WSU email (listing himself as the director of the Freight Policy Transportation Institute):

Folks,

Based on interviews with the grain shippers and WATCO, the TOM model does not include the option to move grain from upland grain elevators to any river terminal via rail (similar to what has happened in the past using the Washington State Grain Train cars). The model does allow for these shipments to occur via truck, but according to WATCO the operating agreement with UP now makes this [rail transport] not possible.

- In March and early April, Boss contacted WATCO and UP again and spoke with Kadau (WATCO) and Bevan (UP). Both said they had not been contacted by Dr. Jessup nor had they heard from anyone at the Army Corps or the U.S. Bureau of Reclamation. They both said -- as they had before -- that there were no restrictions on their respective railroads hauling grain from Lewiston to Portland, and they could move significant volumes if shippers needed. They told Boss that with some infrastructure improvements in Lewiston and at Ayer Junction, they could gear up to transport between two and three million tons of grain per year (or whatever would be needed). They acknowledged that their respective rates would be higher than barging but if volumes rose to significant levels, it is possible the rates could come down somewhat.
- In March, you emailed Professor Jessup to explain that CSRIA had conversations with WATCO and UP operations manager who said they could indeed move significant quantities of grain by rail and made no mention of operating agreement constraints. There was no response.
- In April, at your request, I emailed Professor Jessup and asked him for information about the TOM model and the role of WSU in preparing the analysis. Jessup referred me to the Army Corps.

III CLARIFYING THE DESCRIPTION IN THE “LIST OF PREPARERS”

The draft EIS identifies Jessup as the lead author of the navigation and transportation portion of the document. Chapter 10, page 8. It lists him as a:

Consultant and Director of the Freight Policy Transportation Institute and Associate Research Professor at Washington State University, School of Economic Sciences.

If I understand correctly, Jessup (and his colleague, Ken Casavant) prepared the analysis for the EIS in their capacity as private consultants, not as WSU employees. If this is accurate, the List of Preparers should clarify their roles. Jessup and Casavant may have relied on the Transportation Optimization Model, developed by WSU, but WSU apparently did not pay them to prepare the narrative in the EIS.

Furthermore, WSU's Freight Policy Transportation Institute was apparently not involved in this analysis. In short, the final EIS should provide an additional disclosure and clarification about Jessup's and WSU's role to make sure that the EIS does not imply WSU was a contractor (if that is not the case).

IV INQUIRING ABOUT POTENTIAL CONFLICTS OF INTEREST

Jessup describes his consulting arrangements on the WSU website. His (or WSU's) clients apparently include the Idaho Wheat Commission, the Washington State Department of Transportation, Northwest Container Services (Portland) and the Port of Whitman (Colfax, Washington). <https://people.ses.wsu.edu/jessup>

It is not clear which of these contracts, if any, Jessup performed as a WSU employee and which ones he performed as an individual consultant. Under those circumstances, it seems appropriate for the Army Corps to ensure that Jessup did not have private consulting contracts that examined navigation and transportation issues on the Snake River at the same time he was under contract (as an individual) to prepare the navigation and transportation section of the draft EIS.

To be clear, I don't believe it is a conflict of interest for Jessup to have worked on other issues (i.e., price forecasts, other logistic problems) concerning the wheat industry while he was preparing the draft EIS. If, however, he was analyzing the potential impacts of breaching the dams for other clients, then his dual role raises issues about the independence of his analysis. I therefore believe it is prudent for the Army Corps to inquire about Jessup's private consulting work.

V CONCLUSION

The navigation and transportation portion of the draft EIS is one of the most important sections in the document. The final EIS should rigorously analyze the impacts of breaching the Snake River dams on the movement of grain and other products downstream. Among the alternatives that the EIS should discuss are the transportation of grain by rail from Lewiston to Portland using the WATCO and UP lines. The TOM model -- and more importantly, the narrative -- should reflect the potential use of these lines to transport wheat if the dams were breached or if deep pool drawdowns were analyzed in the final EIS.

In my opinion, it will be difficult, if not impossible, for the federal agencies to develop a new regional alternative with stakeholders and end 25 years of litigation in federal court if the final EIS does not contain a more thorough and transparent analysis of the navigation and transportation impacts.