

YAKIMA RIVER BASIN
ECOSYSTEM RESTORATION
YAKIMA COUNTY, WASHINGTON

APPENDIX J
Public Comments and Responses

June 2018

**Integrated Feasibility Report and
Environmental Assessment**



**US Army Corps
of Engineers®**
Seattle District

This document responds to comments received on the Yakima River Gap to Gap Ecosystem Restoration Project (Project) Draft Detailed Project Report and Environmental Assessment (DPR/EA) by the U.S. Army Corps of Engineers (Corps). The 30-day public comment period began 27 March 2016 and ended on 26 April 2016. Comments were submitted in writing through electronic mail. A total of 2 comment submittals were received; one from the Washington Department of Ecology (WDE) and one from a private citizen. Comments received are either in letter format or listed in italics below, with Corps of Engineers responses in bold type.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

April 21, 2017

Melissa Leslie
U.S. Army Corps of Engineers
Seattle District
PO Box 3755
Seattle, WA 98124-3755

Re: Yakima River Gap to Gap Ecosystem Restoration Project

Dear Ms. Leslie:

Thank you for the opportunity to comment on the notice of the Draft Integrated Detailed Project Report and Environmental Assessment for the Yakima River Gap to Gap Ecosystem Restoration Project. We have reviewed the documents and have the following comment.

SHORELANDS/ENVIRONMENTAL ASSISTANCE

More information is needed in the draft EA to project impacts to wetlands. There is an assumption made in the draft document that wetland function will ultimately be improved, but there is no information on potential impacts to wetlands due to the project, and how wetland function improvement due to the project will be evaluated. Side channel excavations should be designed to avoid currently high functioning wetland areas, especially Category 1 wetlands.

Wetland locations and wetland impact predictions for the purposes of the EA could be made by identifying reference wetlands in the reach and using LIDAR and hydrologic analysis to show where wetlands are likely located now and how the floodplain surface elevations will change as a result of the projects.

For the purposes of Shoreline and 401 permitting, wetland delineations and ratings of impact areas (both direct and indirect) will need to be done as part of a complete permit filing/application. Hydraulic analysis as described in the above paragraph will likely be needed to sufficiently predict indirect wetland impacts. Mitigation for wetland impacts must achieve a no-net-loss of function and may include 10 years of monitoring of certain impact areas to assure that desired floodplain and wetland functions are being achieved by the project.

Please contact **Gary Graff** at (509) 574-3992 or gary.graff@ecy.wa.gov for questions about these Shorelands/Environmental Assistance comments.

Sincerely,

A handwritten signature in blue ink that reads "Gwen Clear".

Gwen Clear
Environmental Review Coordinator
Central Regional Office
(509) 575-2012
crosepacoordinator@ecy.wa.gov

Corps Response to the WDE comment letter: When the site-specific construction drawings (roughly 65% design) are prepared in the Design and Implementation Phase, the Corps will provide these and all other necessary documentation for WDOE as part of our request for Water Quality Certification (WQC) and the Corps will receive the WQC prior to construction contract award.

Matthew Seaman submitted two documents on 22 April 2017. The first document is a 64 page comment letter. The second document is a 164 page document titled "Finding of Facts for Gap to Gap Development Project". The following are comments submitted (in italics) and Corps responses to comments (in bold) from the 64 page comment letter that are directly related to the Yakima River Gap to Gap Ecosystem Restoration Project. All other comments do not pertain to the proposed project, thus were not addressed.

11. The USACE shall affirm within the Environmental Assessment that Yakima County is unlawfully using Centennial grant funds on a flood control project despite the fact that State of Washington law bars Yakima County from using Centennial funds on a flood control project.

The Gap to Gap Project is an Ecosystem Restoration Project, not a Flood Control Project. See page one of the DPR/EA under Authority and Purpose.

16. The USACE shall affirm within the Environmental Assessment that the location of waters of the United States, including jurisdictional wetlands, have not been identified within the project area for the Gap to Gap project.

The EA provides an assessment of impacts to waterbodies and habitats, including waters of the U.S. During the design phase of the project, the boundaries of waters of the U.S. within the project footprint will be delineated consistent with substantive compliance with Sections 404 and 401 of the Clean Water Act, including request of a water quality certification (WQC) from the Washington Department of Ecology. Per Section 6.3 of the DPR/EA, "Any project that involves placing dredged or fill material in waters of the United States or wetlands, or mechanized clearing of wetlands, requires a water quality certification from the State agency as delegated by the U.S. Environmental Protection Agency (EPA). For the Yakima River, the delegated authority is WDOE. When the site-specific construction drawings and contract are prepared in the Design and Implementation Phase, the Corps will provide these and all other necessary documentation for WDOE as part of our request for WQC and the Corps will receive the WQC prior to construction contract award."

17. The USACE shall affirm within the Environmental Assessment that flood-risk associated with the absence of a Blue Slough floodway have not been identified by the project proponents.

See Section 3.0 (Measure 4.1: Blue Slough Culverts) of the DPR/EA. The Blue Slough automated headgate measure would include replacement of the headgate and associated culvert with an automated structure that would allow floodplain managers to maintain a normative hydrograph in the slough without increasing flood risk.

18. The USACE shall affirm within the Environmental Assessment that the project proponents have not created a wetland mitigation plan.

Please see Section 4.4.3.2 (Alternative 5) of the DPR/EA. Implementation of Alternative 5 would greatly benefit riparian zones and wetlands in this reach of the Yakima. At the DID#1 site, reconnection of over 320 acres of floodplain would restore hydrology and recruit native vegetation species to create an assemblage of mixed riparian and wetland habitats. The proposed restoration would result in improvement of existing wetland and riparian zones through channel creation and restoration at Sportsman's Park Island. Once hydrology is restored at Blue Slough, riparian and/or wetland vegetation is expected to recruit. If a wetland mitigation plan is deemed necessary in the Design and Implementation phase, one will be created and coordinated with the WDOE.

19. The USACE shall affirm within the Environmental Assessment that the project proponents do not possess plans to create lawful Riparian Habitat Zones along jurisdictional watercourse channels (i.e. Gap to Gap project).

The Corps is unclear as to what is meant by the commenter in regards to lawful Riparian Habitat Zones. The proposed recommended plan encompasses restoration of lost riparian and aquatic habitat within the Gap to Gap Reach as outlined in the following study objective: Improve riparian habitat within the Gap to Gap Reach for mammals and birds for the 50-year period of analysis.

20. The USACE shall affirm within the Environmental Assessment that the project proponents have not assessed groundwater impacts associated with the Gap to Gap project.

Please see section 4.3.3.2 of the DPR/EA: "The increased floodplain connections and inundation would also result in increased groundwater recharge and subsequent discharge that could provide cooler water to the river during low flows."

21. The USACE shall affirm within the Environmental Assessment that the project proponents have not addressed soil erosion associated with the Gap to Gap project.

Please see section 4.4.3.2 of the DPR/EA: "For the DID#1 levee removal, revegetation would consist of the hydroseeding of erosion-control grasses to minimize the invasion of invasive species. Native tree and shrub species are expected to naturally recruit due to adequate seed sources nearby. Plans for the realigned DID#1 levee would include a more robust vegetation planting plan. The new levee prism would be hydroseeded on the landward side with native grasses. On the riverward side, native grass seed mix would be used to hydroseed where riprap for erosion control is not necessary. For ecological and erosion benefits, the area riverside of the setback levee would be planted with native shrub and/or tree species up to 15 feet beyond the toe."

22. The USACE shall include within the Environmental Assessment a statement involving partiality of the USACE towards Yakima County and shall include a statement addressing the subject of "conflict of interests."

There is no conflict of interest between the Corps and Yakima County.

23. The USACE shall affirm within the Environmental Assessment that real estate development will result from this project; the subject of cumulative impact of real estate development shall be discussed with transparency within the Environmental Assessment.

Please see Section 4.6.1.1 of the DPR/EA: "Land use behind the realigned DID#1 levee would continue to be primarily light industrial and rural residential. As described in Section 3.3, the realigned levee

would provide the same level of flood protection for adjacent properties and uses as currently exists. As the level of flood protection would not change and the project would not otherwise encumber services or opportunities, there would likely be no change in the use of adjacent industrial or residential uses as a result of the project."

24. The USACE shall affirm within the Environmental Assessment that the Gap to Gap project is a Yakima River relocation project, designed primarily to push the primary watercourse channel to the east.

Please see Section 1 or the DPR/EA (Introduction): "This Detailed Project Report/Environmental Assessment (DPR/EA) documents the feasibility phase planning process for environmental restoration in the Gap to Gap Reach of the Yakima River to demonstrate consistency with both the applicable Congressional authorization and Corps planning policy." The purpose of the project is to restore ecosystem process, structure, and function in the Gap to Gap Reach of the Yakima River.

25. The USACE shall truthfully indicate within the Environmental Assessment that a \$10 million grant (also noted as a \$13 million project), issued to Yakima County, will trigger a Large Project Notification to Federal officials in Washington DC; as such, the Gap to Gap project is formally considered a "large project" requiring the creation of an Environmental Impact Statement. A four mile long river-relocation project is a large project.

The DPR/EA is being prepared under the Authority of Section 1135 of the Water Resources Development Act (WRDA) of 1986, as amended. Section 1135 provides the Corps the authority to evaluate potential modifications to existing Corps projects for the purpose of improving the environment in the public interest. Under this authority, no more than \$10,000,000 in federal funds may be expended on any single modification or measure carried out or undertaken pursuant to this section. The fully funded cost estimate to plan, design, and construct the recommend plan is \$13,514,000, of which \$9,993,000 is federal funds. Since the Federal government may not expend more than \$10,000,000 on a single Section 1135 project, if project costs exceed what is estimated such that the Corps expenditures reach \$10,000,000, all further costs would be 100% the responsibility of Yakima County. The DPR/EA discloses the effects of the recommended plan and alternatives and the Corps concludes that the proposed project is not expected to result in significant adverse environmental impacts. The Yakima Project is not considered a major Federal action having significant impact on the human environment. Therefore, the preparation of an environmental impact statement is not required.

26. The USACE shall affirm that the controversial development projects involving Yakima County require the creation of an Environmental Impact Statement for the Gap to Gap project.

Please see Section 1.8 of the draft DPR/EA. "This document is a combined Detailed Project Report (DPR) and Environmental Assessment (EA). The purpose of the DPR is to identify the plan that reasonably maximizes ecosystem restoration benefits, is technically feasible, and preserves environmental and cultural values. The purpose of the EA portion of the report is to comply with the National Environmental Policy Act (NEPA) by identifying and presenting information about the environmental effects of the alternatives and incorporating environmental concerns into the decision-making process." Based on the analysis conducted to date by the Corps environmental staff, the Gap to Gap Project is not expected to result in significant adverse environmental impacts. The Yakima

Project is not considered a major Federal action having significant impact on the human environment; therefore, the preparation of an environmental impact statement is not required.

34. The USACE shall affirm within the Environmental Assessment that Yakima County unlawfully proposes to disrupt the hyporheic zone of a jurisdictional watercourse within a charted FEMA floodplain.

The primary goal of the project is, within the Gap top Gap reach, to restore the hydraulic connection between the floodplain and the river and associated ecosystem processes, to address habitat degradation for fish and wildlife species. The realigned DID#1 levee would improve hyporheic zone-surface water interaction at this site.

38. The USACE shall affirm within the Environmental Assessment that Yakima County performs watercourse relocation projects without informing the Yakama Nation; the failure to lawfully provide notification to the Yakama Nation represents a violation of Treat Rights by Yakima County officials.

Please see Section 6.5 of the DPR/EA. The Corps has corresponded with the Yakama Nation to relay the finding of no historic properties that may be affected by the proposed action in the area of potential affect. The Corps will continue to coordinate and collaborate with the Tribe during the design phase of the project.

40. The USACE shall affirm within the Environmental Assessment for the Gap to Gap project that members of the public are currently not being provided with the following information: Biological Assessment; Wetland delineation studies; Copies of the applicable FEMA 100-year Floodplain maps; COE 404 permit application materials; supporting documentation (emails, letters, statements, all supporting documentation). The USACE shall affirm that members of the public do not possess sufficient information to introduce comments pertaining to the Gap to Gap project.

The public review comment period covered the full 30 days as required by NEPA. As noted on the posted and emailed Notice of Availability, instructions were given on how to request additional information.

41. The USACE shall affirm within the Environmental Assessment that the EPA has a significant role with the evaluation of project Environmental Impact Statements. Completion of an EIS for the Gap to Gap project would allow the EPA to review Yakima County for compliance with the Federal Clean Water Act following multiple projects involving blatant violations of the Federal CWA. Specifically, the EPA can ensure that Yakima County will fully comply with the Federal Clean Water Act and regain compliance with respect to completed projects (i.e. Shaw Creek, Wide Hollow Creek).

The Corps will coordinate with the Washington Department of Ecology for Section 401 compliance. Please see Section 6.3 of the DPR/EA: "Any project that involves placing dredged or fill material in waters of the United States or wetlands, or mechanized clearing of wetlands, requires a water quality certification from the State agency as delegated by the U.S. Environmental Protection Agency (EPA). For the Yakima River, the delegated authority is WDOE. When the site-specific construction drawings and contract are prepared in the Design and Implementation Phase, the Corps will provide these and all other necessary documentation for WDOE as part of our request for WQC and the Corps will receive the WQC prior to construction contract award."

42. The USACE shall affirm that an Environmental Impact Statement is required. The agency must analyze the full range of direct, indirect, and cumulative effects of the preferred alternative and of the reasonable alternatives identified in the draft EIS.

Please see Section 1.8 of the draft DPR/EA. "This document is a combined Detailed Project Report (DPR) and Environmental Assessment (EA). The purpose of the DPR is to identify the plan that reasonably maximizes ecosystem restoration benefits, is technically feasible, and preserves environmental and cultural values. The purpose of the EA portion of the report is to comply with the National Environmental Policy Act (NEPA) by identifying and presenting information about the environmental effects of the alternatives and incorporating environmental concerns into the decision-making process." Based on the analysis conducted to date by the Corps environmental staff, the Gap to Gap Project is not expected to result in significant adverse environmental impacts. The Yakima Project is not considered a major Federal action having significant impact on the human environment; therefore, the preparation of an environmental impact statement is not required.

43. Members of the public have not been involved with the creation of the draft Environmental Assessment for the Gap to Gap project; members of the public should be involved with the scoping and creation of an Environmental Impact Statement for the Gap to Gap project. An EIS should be required to allow for members of the public to participate in the project development.

For this study, the draft DPR/EA public comment period formally ran for 30 days beginning 27 March 2017 and ending 26 April 2017. The Corps considered all comments received during the comment period. The complete list of comments regarding the draft DPR/EA and the Corps' responses is provided in Appendix J to the Final DPR/EA. Please see Chapter 7 Public Involvement.

44. The USACE shall affirm that a river relocation project involving four miles of project area is an "action normally requiring preparation of an EIS"; for this reason, the USACE shall affirm that an EIS is required.

Based on the environmental documentation, coordination, and analysis conducted to date by the Corps environmental staff, the Yakima Gap to Gap Project is not expected to result in significant adverse environmental impacts. The Yakima Gap to Gap Project is not considered a major Federal action having significant impact on the human environment; therefore, the preparation of an environmental impact statement is not required.

45. The USACE shall affirm that the river relocation project and the rewatering of Blue Sough is an action that "is expected to or has the potential to result in significant adverse environmental impacts"; for this reason, the USACE shall affirm that an EIS is required.

Based on the environmental documentation, coordination, and analysis conducted to date by the Corps environmental staff, the Yakima Gap to Gap Project is not expected to result in significant adverse environmental impacts. The Yakima Gap to Gap Project is not considered a major Federal action having significant impact on the human environment; therefore, the preparation of an environmental impact statement is not required.

49. Within the Environmental Assessment, the USACE shall affirm that members of the public requested an extension of the commenting window to extend past April 26, 2017 in order to obtain all project

documents (emails, letters, studies, JARPA's, applications, permits, grant information, biological assessment, wetland studies, all project documents).

The USACE determined that the 30-day public review period for the draft DPR/EA was sufficient, thus did not grant an extension.

50. Members of the public indicate that the USACE is promoting the project as an environmental restoration project; the USACE and Yakima County may be colluding to use Centennial grant match funding (or other environmental grant funding) on a flood control project under the guise of an environmental restoration project. Centennial grant funding is barred by State law on any flood control project. Given that Yakima County is unlawfully using Centennial funds on the Shaw Creek flood hazard mitigation project, Yakima County (in collusion with the USACE) may also be planning to use Centennial funds on the Yakima River relocation project.

The Gap to Gap Project is an Ecosystem Restoration Project, not a Flood Control Project. See pages 1-2 of the DPR/EA under Study Authority.

51. Please include the full content of this document (public comment) within the EA and include the full content of the timeline of evidence within the EA (timeline accompanies this document).

The Corps has provided responses to comments that pertain to the proposed Yakima Gap to Gap Ecosystem Restoration Project. These comments and responses are included in Appendix J of the DPR/EA.