



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

July 20, 2015

Tom Tebb
Office of the Columbia River
WA Department of Ecology
Yakima, WA

VIA E-mail: gteb461@ecy.wa.gov

Dear Mr. Tebb:

In 2012 the Department of Ecology asked CELP to join several state and federal agencies, two local irrigation districts, the City of Leavenworth and a few others in the “Icicle Work Group” (IWG), an advisory committee funded and convened by Ecology’s Office of Columbia River. CELP accepted, and has participated closely in IWG's efforts. CELP helped develop the operating procedures for the IWG, and participated actively, including attending both Work Group and Steering Committee meetings for nearly three years.

The IWG characterizes itself as a “collaborative” work group and is supposed to be working on global solutions to water problems in Icicle Creek. IWG has recently proposed new operating guidelines that essentially gag IWG members, preventing them from criticizing or disagreeing with IWG's “consensus” format and preventing members from suing one another, at pain of being removed from the work group. Such requirements are unreasonable for several reasons.

First, the gag rule defeats the purpose of a collaborative organization and gives the public the false impression that there is no dissent, discussion or disagreement among IWG members. Tacitly acknowledging this departure from a collaborative process, IWG has changed its voting rules to majority rule rather than consensus. Nonetheless, IWG has left numerous references to a “collaborative process” in the operating procedures document, again creating a false impression to the public that some form of consensus process still exists when in fact, IWG has changed to a majority rule approach. This reflects a major shift in direction and should not be misleadingly cast in terms of “collaboration” in any setting.

Second, it is questionable whether it is constitutional for a government organization to impose a gag requirement on private non-profits, especially for such a minor purpose that does not meet any legal or constitutional standard to restrict members' speech.

Third, public outreach and litigation against the state, including Ecology, are important tools for non-profits such as CELP that are actively involved in protecting water resources. The IWG's rule preventing members from engaging in such actions is a transparent effort to eliminate litigation against IWG participants who are violating the law. These proscriptions taken together - particularly the prohibition on litigation - give the impression that IWG is setting itself up as the arbitrator of such suits. No words can properly express the impropriety and illegality of this action.

Changing the decision making process to majority rule, along with the prohibition of litigation, essentially eliminates CELP's ability to meaningfully participate in creating new water resource policy that protects Icicle Creek. Instead of a collaborative group of agencies and NGOs working together with the state to avoid or mitigate litigation and other disputes while preserving participants' independence, the new majority rule attacks participants' independence by making them subject to IWG decisions with which they may strenuously disagree. Such participants are required to support the IWG's decisions, without legal recourse or the opportunity to publicly state dissent without being kicked out of the group.

CELP is unwilling to accept the new changes because of this radical change to majority rule, the prohibition on public disagreement, the likely illegal prohibition on members filing suit, and the concerns over apparent conflicts of interest and legality of the proposed changes. Under these conditions, CELP cannot continue to participate in a process that is inconsistent with our mission to protect Washington State's rivers and aquifers by advocating for science-based, sustainable water management through public education and outreach, advocacy and public interest litigation.

Accordingly and with regret, CELP formally resigns from the IWG and will pursue other efforts to protect Icicle Creek.

Sincerely,

A handwritten signature in black ink that reads "Trish Rolfe". The signature is written in a cursive, flowing style.

Trish Rolfe
Executive Director