Section 6
Implementation

6.1 Overview

This section presents a framework for implementation of the CIDMP. Final provisions for implementation, including monitoring and enforcement, will be developed through the process of developing implementing agreements between the districts and the respective agencies (NOAA Fisheries, USFWS, and Ecology). However, this section outlines the basic elements needed for implementation. Section 5 provides a list of potential actions to address each of the three areas of concern: water quantity, water quality, and listed species and habitat. Determining which actions are enacted by the districts will be the result of negotiations with the agencies and will occur in Step 10 (Interagency Agreements) of the CIDMP process.

6.2 Organizational Structure

6.2.1 Board of Joint Control Option

A Board of Joint Control could serve as the organizational structure for implementation of the CIDMP. The Board of Joint Control would allow the agricultural community a degree of flexibility in the management of the districts' water resources and infrastructure.

Chapter 87.80 RCW-Joint Control of Irrigation Districts is a state law that contains provisions for establishing a Board of Joint Control (BJC). A BJC can be formed by combining an irrigation district with one or more other irrigation entities. The definition of an irrigation entity, as described below, includes all entities that provide irrigation water as a primary purpose, and includes a range of entities from an irrigation district to an individual water right holder.

A BJC has the authority to construct, operate, maintain, make improvements to, and regulate the facilities used for irrigation water supply within the area of jurisdiction of the BJC. In addition, the BJC has the authority to conduct activities and coordinate programs with the districts that promote more effective and efficient water conservation, habitat protection and management, and water quality initiatives.

Specifically related to water rights, a BJC has the authority to authorize a change in the place of use of an existing irrigation water right to another place of use within the area of jurisdiction of the BJC without additional approval by Ecology under RCW 90.03.380. However, a BJC must notify Ecology, and any Indian tribe requesting notice, of any transfers in place of use between individual irrigation entities within the BJC.

A BJC does not have the authority to change the point of diversion/point of withdrawal or purpose of use for any existing water rights, so these types of proposed changes would need to be submitted to Ecology for approval.

Definitions

The following are the definitions that are used in Chapter 87.80 RCW:

1. "Area of jurisdiction" means all lands within the exterior boundary of the composite area served by the irrigation entities that comprise the board of joint control as the boundary is represented on the map filed under RCW 87.80.030.
2. "Irrigation entity" means an irrigation district or an operating entity for a division within a federal reclamation project. For the purposes of this chapter, a water company, a water users' association, a municipality, a water right owner and user of irrigation water, or any other entity that provides irrigation water as a primary purpose, is an irrigation entity when creating or joining a board of joint control with an irrigation district or operating entity for a division within a federal reclamation project.
3. "Joint use facilities" means those works, including reservoirs, canals, ditches, natural streams in which the irrigation entity has rights of conveyance under RCW 90.03.030, hydroelectric facilities, pumping stations, drainage works, reserved works as may be transferred by contracts with the United States, and system interties that are determined by the board of joint control to provide common benefit to its members.
4. "Ownership interest" means the irrigation entity holds water rights in its name for the benefit of itself, its water users or, in federal reclamation projects, the irrigation entity has a contractual responsibility for delivery of water to its individual water users.
5. "Source of water" means a hydrological distinct river and tributary system or aquifer system from which board of joint control member entities appropriate water.

Formation of a Board of Joint Control

The following is a summary of the steps required to form a BJC:

- Filing a petition with the Board of County Commissioners (Commissioners), signed by two or more irrigation entities. Petition contents:
    - Description of relationship between the irrigation entities.
    - Existing irrigation facilities.
    - Irrigable lands held by each irrigation entity.
    - Proposed formula for apportionment of costs among members.
    - Reasons for formation of the BJC.
    - Request to Commissioners to consider the petition and take the necessary steps for the formation of a BJC.
    - Map showing the proposed area of jurisdiction and general location of the water supply and distribution facilities.
- Commissioners meeting to examine petition and set time for a public hearing.

- Commissioners provide notice of public hearing.
    - Publication of three weekly notices of hearing.
    - Hearing time not less than 30 days after first weekly notice.
    - Copy of notice mailed to Ecology at least 30 days prior to hearing.
- Public hearing held by Commissioners.
- Commissioners' adoption of resolution to form BJC, and appoint members of the BJC.

Authority of Board of Joint Control

The following is a summary of the authority of a BJC:

- Enter into contracts; accept grants and loans.
- Appoint and employ officers, agents, and employees.
- Sue and be sued as a Board, without personal liability of members.
- Same authorities as an irrigation district under Chapter 87.03 RCW, including to acquire, sell, lease, or exchange, real or personal property or property rights.
- Pursue conservation and system efficiency improvements to optimize use of appropriated waters and either redistribute the saved waters within its area of jurisdiction, or transfer the water to others, if it can be done without detriment or injury to rights existing outside the BJC's area of jurisdiction, including instream flow rights.
- Design, construct, and operate either drainage projects or water quality enhancement projects.

Funding for a Board of Joint Control

Funding for a BJC is to be based on a budget prepared by the BJC in September of each year that shows the estimated expenses for the next calendar year and the portion chargeable against each of the irrigation entities within the jurisdiction of the BJC.

After adoption of the budget by the BJC, a copy of the budget and their apportioned cost is to be mailed to each of the irrigation entities. Each of the irrigation entities is then to submit their apportioned costs to the County Treasurer or a treasurer designated by the BJC.

Applicability to Skagit Basin

The Planning Area includes the large majority of the County's agricultural land, and is based on the boundaries of 11 districts that have recently been reorganized into drainage and irrigation districts. Since these irrigation districts have been established as such only recently, none of these districts hold title to any existing irrigation facilities or water rights. The individual landowners in each of the irrigation districts hold their own water rights for a specific Place of Use, and have ownership of their individual irrigation equipment and facilities.

Since there are so many individual water right holders who meet the definition of an "irrigation entity", there is a potential for many parties to be included in the area of jurisdiction for a BJC or multiple BJCs in the Planning Area. The Samish River has its own drainage area and is not a tributary to the Skagit River; thus, it is conceivable that a separate BJC could be established for each of the Samish and Skagit River drainage areas that occur within the Planning Area.

Water Conservancy Board

The establishment of a Water Conservancy Board for Skagit County would provide additional flexibility with regard to water right administration. A Water Conservancy Board has the authority to process applications for changes to existing water rights; the final decision regarding such a change is made by Ecology. Participation in the Water Conservancy Board would be on a volunteer basis; board members would be appointed to these volunteer Board positions by the Skagit County Commissioners. The processes of formation and operation of a Water Conservancy Board are discussed in Chapter 90.80 RCW.

6.2.2 Skagit PUD Irrigation Division Option

A "Skagit PUD Irrigation Division" option would involve establishing an irrigation division within the Public Utility District #1 of Skagit County (PUD). The primary purpose of the irrigation division would be to use existing PUD water rights to supplement any deficit between the total existing and projected agricultural irrigation water rights held by individual landowners, and the total agricultural irrigation water existing and projected demands within the Planning Area. Alternately, the PUD could also utilize the existing PUD organizational structure, instead of establishing an irrigation division, to provide additional water from the PUD for the projected deficiencies in agricultural irrigation water rights.

Public utility districts in the State of Washington are authorized under Title 54 RCW and specifically under RCW 54.04.020. In addition, RCW 54.16.030 authorizes a public utility district to construct and purchase water works and irrigation plants and systems to supply water for all purposes, including irrigation.

Authority of an Irrigation Division to Supply Water for Agricultural Irrigation

The authority for establishing an irrigation division within the PUD to supply agricultural irrigation water within the Planning Area is one of the initial areas being evaluated. The following are some factors that being considered:

- Review and analysis of PUD laws and regulations.
- Evaluation of Ecology laws, regulations, and policies relating to the PUD providing agricultural irrigation water under their existing municipal water rights.
- Evaluation of existing PUD water rights.

Formation of an Irrigation Division

The formation of an irrigation division within a public utility district would be a new concept in the State of Washington. There are currently no public utility districts in the state that have an irrigation division, even though the PUD and several other districts provide water for agricultural irrigation.

The PUD is agreeable to further pursue discussions regarding the development of a water management strategy within their service area which includes the CIDMP Planning Area. The organizational approach to this option will need to be further explored; however, the PUD currently serves irrigation water to a few irrigation customers within the Planning Area and has infrastructure throughout the Skagit Basin. There is a range of opportunities for the PUD to work collaboratively with the irrigators to provide irrigation water for current and future needs.

Under this option, the PUD could be the primary irrigation water manager within the Planning Area, or could work collaboratively with the Board of Joint Control to facilitate the technical aspects of the water management via interlocal agreements.

The PUD currently has infrastructure serving areas in the Skagit Basin, and could provide adequate irrigation supply where current hydraulic capacity is sufficient. Certain areas of the Skagit Basin currently do not have capacity to serve irrigation needs; infrastructure improvements would be necessary to meet those needs, particularly in the Fir Island agricultural area. For any PUD role to be successfully implemented, a revenue development plan would be needed to support the operation and capital expenses of such a plan.

The PUD currently holds adequate water rights within their service area to meet the current and future agricultural irrigation water needs identified in this CIDMP.

Agricultural irrigation water right holders and other interested parties have expressed a preference to maintain control of their water rights in good standing. However, it is recognized that there are some cases which should be addressed where water rights that do not have sufficient quantity to meet the current or future needs, or where water rights are not assigned to lands which require irrigation water, and the water right holders are willing to work under agreements with a Board of Joint Control or a PUD irrigation management strategy.

Applicability to Skagit Basin

The PUD is currently authorized to provide water service to all of Skagit County, including the Planning Area. The primary type of water use provided by the PUD is for domestic (municipal) supply, but there are also some existing customers who receive water from the PUD for agricultural irrigation. As shown in Section 2.2.2, the PUD provided agricultural irrigation water to 58 customers for a total of over 100,000,000 gallons (approximately 300 acre-feet) in 2005.

The initial evaluation of the deficit between the existing irrigation and the existing agricultural irrigation water rights in the Planning Area is addressed in Section 2. Table 2-8 shows that the estimated total irrigated acres in the Planning Area for 2005 was 15,684 acres, with an estimated seasonal irrigation water requirement of 25,383 afy. Table 2-9 shows the totals for existing recorded water right permits and certificates in the Planning Area as 10,078 acres and 15,118 afy. This resulting deficit in 2005 between estimated water use and existing water rights in the Planning Area is 5,606 acres and 10,265 afy (see Table 2-12). The projected deficits between the existing and anticipated additional agricultural irrigation water rights and the projected demands for agricultural irrigation water for a specified planning period will be one of the factors to be evaluated for the Irrigation Division Option in determining the potential amounts of water that might be needed from the PUD for agricultural irrigation.

As described further in Section 2, there are other potential existing and requested legal rights to agricultural irrigation water use, such as water right claims and pending water right applications. The extent of these existing and potential future legal rights to water use for agricultural irrigation will be further evaluated as the process of CIDMP implementation moves forward.

The final evaluation of the Irrigation Division Option will include a comparison of the deficits described above and the projected irrigated land areas and water requirements for agricultural irrigation within the Planning Area. The projected deficiencies between the existing and anticipated additional agricultural irrigation water rights and the projected demands for agricultural irrigation water for a specified planning period will be one of the key factors to be evaluated to determine the potential amounts of water that might be needed from the PUD for agricultural irrigation.

Comparison of Board of Joint Control and PUD Irrigation Division Options

In comparing the Board of Joint Control and the PUD Irrigation Division options, there are demonstrated advantages for pursuing each approach to water management. The Board of Joint Control option provides the organizational framework that could be managed most directly by the agricultural community. The infrastructure and area wide management capacity offered by the PUD Irrigation Division option could provide more immediate assistance, and could be managed either in a coordinated way or by the PUD assuming a primary management role.

Additional comparative review and evaluation will be made of the Board of Joint Control and PUD Irrigation Division options in the next phase of this CIDMP process. This evaluation will compare the potential advantages and disadvantages of each approach including environmental, organizational, financial, social, and political issues.

6.3 Implementing Agreements

6.3.1 Implementing Agreements with Federal Services

It is anticipated that the districts will execute an implementing agreement with the USFWS and NOAA Fisheries (known collectively as the Services) in regard to the terms and conditions for implementing the CIDMP and gaining assurances of coverage under the ESA. The implementing agreement may include items such as:

- The obligations, benefits, rights, authorities, liabilities, and privileges of the parties.
- Assignment of responsibility for planning, approving, and implementing specific measures.
- Responsibility of the Services or other state and federal agencies in implementing or monitoring the CIDMP program.
- Specific measures related to habitat acquisition, transfer, or other protections, if applicable.
- The process for amending the CIDMP, if necessary.

- Enforcement provisions and remedies, in the event that any party fails to perform its obligations under the CIDMP.

As discussed in Section 1.3.1, there are generally four pathways to ensure compliance under the ESA. These include: Section 4(d) Special Rules, Section 7 Interagency Consultation, Section 10 Habitat Conservation Plans, and avoidance of take altogether (which has been determined to be not applicable to actions covered within this CIDMP). Based on information gathered during the development of this CIDMP document, a review of the three remaining pathways is presented below.

Section 4(d) Special Rules

This pathway will not be appropriate for implementation of this CIDMP because it applies only to species listed as threatened under the ESA. Within the marine waters (adjacent to the Planning Area), there are humpback whales and southern resident killer whales, both of which are listed as endangered under the ESA.

Section 7 Interagency Consultation

Use of this pathway is dependent upon a nexus with a federal agency. In this case, a nexus could be established through the permitting requirements of the United States Army Corps of Engineers (Corps). The Corps is working with the districts on permitting needs for implementation of the Drainage and Fish Initiative and associated Drainage Maintenance Plans (see Section 2.2.3). To issue permits for actions described within the Drainage Maintenance Plans, the Corps will be required to complete a Section 7 analysis of impacts to species listed under the ESA. This analysis and resulting consultation with the Services would result in coverage of currently listed species for the set of actions described within the Drainage Maintenance Plans.

This pathway could provide a 5- to 10-year term of assurance to the districts participating in the CIDMP. The permitting mechanism and jurisdiction authority are two issues that would need to be addressed in discussions with the Corps. Possible permitting mechanisms of the Corps include, but are not limited to the following: letters-of-permission, Nationwide Permits, Programmatic Permits or a Regional Permit. Jurisdiction boundaries and previously authorized actions (essentially “grandfathered”) would need to be further defined by project proponents and the Corps.

Section 10 Habitat Conservation Plan

Development of a Habitat Conservation Plan (HCP) is the only pathway available to the districts for ESA coverage independent of the federal nexus Section 7 consultation. An HCP allows for the greatest flexibility and longest duration of coverage, but would be very complex for the project proponent to develop. It is assumed that development of an HCP for the districts participating in this CIDMP would be burdensome due to the following factors: variety of habitats present within the Planning Area; variety of species types potentially affected by actions occurring within the Planning Area; number of individual landowners and parties seeking coverage; variety of infrastructure and agricultural actions and processes occurring within the Planning Area; and size of the area required for coverage.

6.3.2 Water Quality Coverage Requested from Ecology

In regard to the water quality elements of this CIDMP, there is no existing formal process for the districts to obtain assurances from Ecology that district activities are meeting CWA requirements. However, as part of its participation in the creation of the CIDMP process, Ecology has committed to create an assurance mechanism. That mechanism is currently being developed as part of the Dungeness CIDMP, which is the most developed CIDMP pilot to date. The assurance mechanism developed out of the Dungeness CIDMP will serve as a model for this CIDMP.

As discussed in Section 1.3.1, two potential pathways have been identified through the CIDMP process that could provide partial or specific assurances of compliance with certain CWA requirements. These options are described below.

Samish Watershed Fecal Coliform TMDL

The TMDL will provide an implementation plan for addressing fecal coliform problems in the Samish River Basin. Using the actions described in Section 5 as a foundation, the affected districts could develop a Pollution Control Plan to comply with the Samish Watershed TMDL requirements.

NPDES Stormwater Phase II Permits

The Phase II Implementation requires participation for certain "secondary permittees." Several districts in the Planning Area could submit notice of intent for coverage under this permitting process. This pathway would require development of a Stormwater Management Program by the districts that must be approved by Ecology. Elements of the Stormwater Management Program would include:

- Development of BMPs; stormwater discharge, detention, and elimination components; education and outreach; and monitoring and reporting requirements.
- Coordination with adjacent jurisdictions that manage stormwater and any necessary interlocal agreements.

Further discussion of the nature and content of potential Ecology assurances will be carried out in Step 10 of the CIDMP process.

6.4 Potential Funding Sources

The following funding sources have been identified for implementation of CIDMP projects. It is anticipated that a combination of these and other sources would be needed to fund the actions described in Section 5. The districts could apply to these sources after finalizing implementing agreements (Step 10) related to this CIDMP.

- **Conservation District Funds for Irrigation Efficiency** – This source would fund water conservation projects. Referendum 38 funds have been made available for efficiency projects in a limited number of conservation districts. A portion of saved water must go to instream flows for some specified period of time.
- **Conservation District Funds for Water Quality** – This source might be used for projects that offer water quality benefits.

- **Washington State Centennial Clean Water Fund (Ecology)** – This source might be used for projects that offer water quality benefits.
- **Washington State Salmon Recovery Fund** – This source might be used for projects that offer benefits to salmon recovery.
- **Fisheries Restoration and Irrigation Mitigation Act (FRIMA) funding** – This is federal funding being administered by the USFWS for the Pacific Northwest states. This source might be used for projects that offer benefits to salmon recovery.
- **Cooperative Endangered Species Conservation Fund (USFWS / WDFW)** – This grant program provides funds for land acquisition for species recovery or implementation of an HCP, or for HCP planning assistance. This source might be used if the districts pursue the HCP option.
- **Direct Appropriations from Washington State Legislature (capital budget)** – It is possible that the districts, working through state agencies such as the Washington State Department of Agriculture, the Washington State Department of Ecology, and/or the Washington State Conservation Commission, could obtain specific allocations in the State capital budget.
- **Direct or Indirect Appropriations from U.S. Congress** – It is possible that the districts, working through state and federal agencies such as WSDA, Ecology, USFWS, and NOAA Fisheries, could obtain specific allocations in the federal budget for actions listed in Section 5.
- **Local bond issues** – In the event that funding obtained from outside sources is inadequate to meet obligations under this CIDMP, the districts could seek passage of bond issues, backed by district assessments on landowners. Issuance of such bonds would be subject to a public vote, as per state law. Passage of bonds would be facilitated once the implementing agreements were in place, providing assurance to agricultural operators that their long-term viability would not be threatened by potential regulatory actions, since bonds require a long-term commitment for payment of debt obligations. However, local bond issues alone could fund only a portion of the actions discussed in Section 5.

6.5 Adaptive Management

Adaptive management is a strategy that involves the use of well-designed monitoring programs to inform management actions and permit adjustments over time. The premise behind adaptive management is that flexibility and continued learning are beneficial, if not critical, due to changing conditions, new information, data gaps, and other uncertainties.

Using adaptive management to monitor the implementation of this CIDMP would reduce the risk arising from uncertainty associated with information used to develop actions, and provide assurances to the parties entering into agreements with the districts that the actions in the CIDMP are being implemented.

6.5.1 Monitoring Progress toward CIDMP Implementation

Effective adaptive management would require the execution, as appropriate, of two types of monitoring programs. These options are described below.

Implementation Monitoring

The first monitoring type is "implementation" monitoring, which tracks whether actions are implemented. For the CIDMP, this could translate into tracking whether the individual actions discussed in Section 5 are being accomplished. Many of the actions lend themselves to implementation tracking, such as improving irrigation efficiency, tracking use of agricultural BMPs, and installing fish screens.

Effectiveness Monitoring

The second monitoring type is "effectiveness" monitoring, which is aimed at determining whether the expected outcomes from activities are achieved. In some cases, this could translate into whether certain individual actions described in Section 5 have the intended result, such as whether installation of fish screens has prevented fish from entering the irrigation system, or whether improved irrigation efficiency results in decreased irrigation water diversions. In other cases, effectiveness monitoring could mean whether each overall goal (e.g., decreased irrigation diversions, improvements in water quality, or minimized agricultural-related impacts to listed species' habitat) is achieved, presumably by a collection of actions aimed at the particular goal. An example would be whether irrigation diversions are reduced by the associated actions, such as water storage, conversion to groundwater or imported water, or irrigation scheduling.

6.5.2 Assessing Effectiveness of CIDMP Implementation

Depending on the outcome of both types of monitoring, actions would be continued, modified, or discontinued as needed to achieve the CIDMP goals. Alternative actions could also be developed.

Adaptive management would be the responsibility of the organization established to implement the CIDMP, presumably a Board of Joint Control, a PUD Irrigation Division, or a Skagit Water Conservancy Board, as discussed in Section 6.2.1. As such, implementation of adaptive management will be developed in the next phase of the CIDMP as that organization is established.