



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

February 25, 2010

Mr. Dennis A. Schultz, President
Olympic Stewardship Foundation
250 N. Jacob Miller Rd.
Port Townsend, Wa 98368

RE: Petition to Repeal Chapter 173-517 WAC

Dear Mr. Schultz:

The Washington State Department of Ecology (Ecology) received your petition requesting rule removal on December 29, 2009. The petition requests that Ecology remove Chapter 173-517 WAC, "Water Resources Management Program for the Quilcene-Snow Water Resource Inventory Area (WRIA 17)" from the Washington Administrative Code. The petition contends that the rule does not do what it was intended to do; imposes unreasonable costs; and does not meet the criteria of RCW 19.85.040 (Small Business Economic Impact Statement – Purpose – Contents), and the findings in RCW 19.85.020 (Regulatory Fairness Act. Definitions. Findings).

Ecology reviewed and evaluated your comments. We did not find a basis to support your request and are thereby denying the petition to repeal Chapter 173-517 WAC. A detailed response to your specific concerns is attached. If you have questions, please contact Ann Wessel in our Water Resources Program, at ann.wessel@ecy.wa.gov / (360) 470-6785.

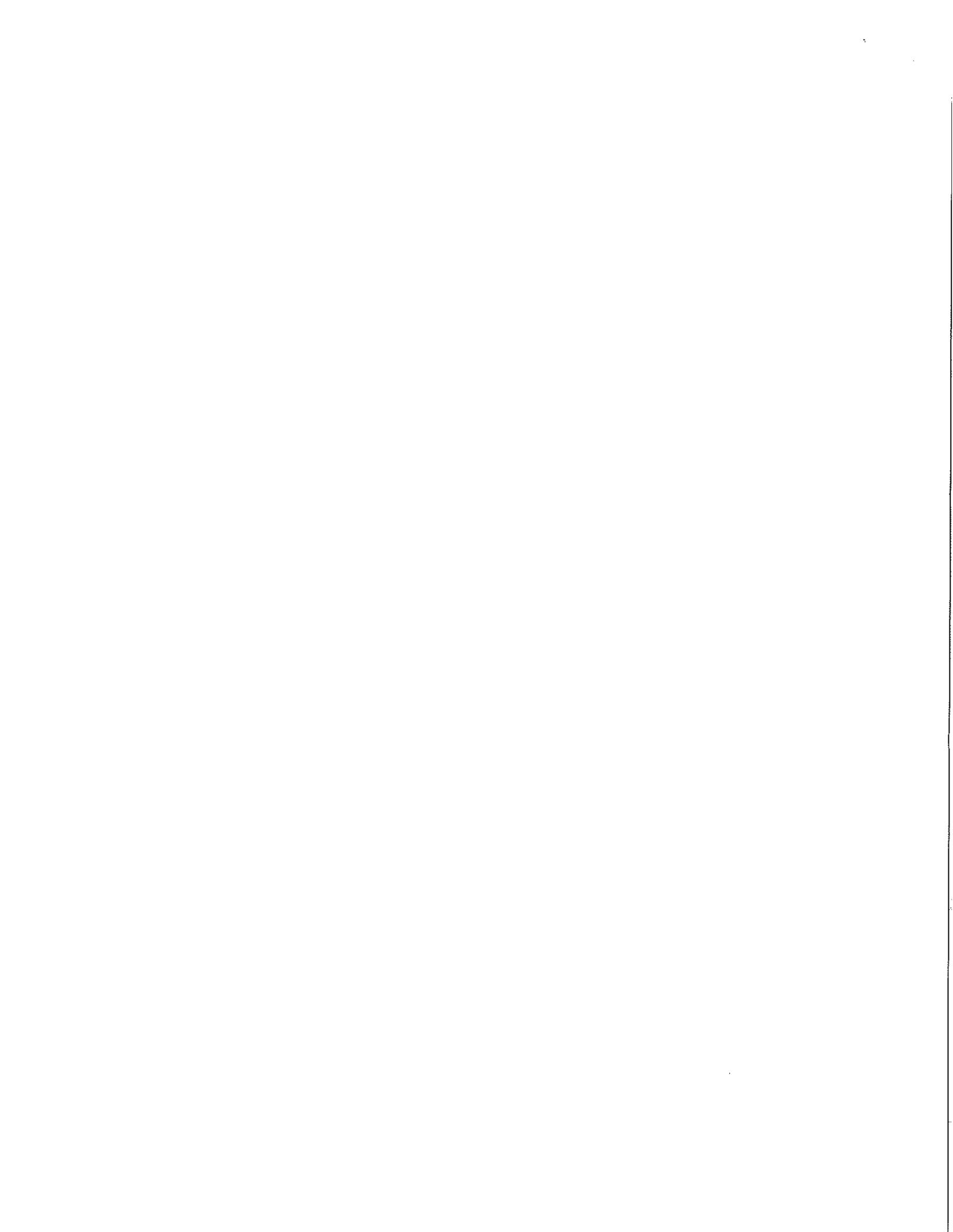
Sincerely,

Ted Sturdevant,
Director

Attachment

cc: Jefferson County Board of Commissioners: John Austin, Phil Johnson, and David Sullivan
Thomas Loranger
Ann Wessel





ATTACHMENT

Page One

WRIA 17 – Chapter 173-517 WAC

List of Petition Issues

1. The rule does not do what it was intended to do.

Response:

Ecology does not agree with the petitioner's claim that the rule does not do what it was intended to do. The petition provides no information to substantiate this claim.

2. The rule imposes unreasonable costs.

Response:

Ecology does not agree with the petitioner's claim that the rule imposes unreasonable costs. The petition provided no information to substantiate this claim.

Ecology calculated the total probable costs of this rule, and published the cost values, assumptions, and methods for our calculations in the Cost Benefit Analysis for this rule. Ecology based the evaluation of the costs and benefits on an analysis and comparison of water right management in WRIA 17 with and without the rule. The analysis of the probable rule costs includes consideration of:

- The cost of restrictions on future water right permitting.
- The cost of restrictions on permit exempt wells, the conservation standards, and outdoor irrigation in Chimacum Subbasin.
- Ecological costs.
- Metering costs.
- Rule implementation costs.
- The cost of an additional public meeting for out-of-subbasin water use.

Ecology found that the probable cost of the rule did not exceed the probable benefits of the rule.

3. The Small Business Economic Impact Analysis does not meet the criteria of RCW 19.85.040 and the Findings in RCW 19.85.020.

The petition argues that the Small Business Economic Impact Statement prepared by Ecology prior to adopting this rule is inadequate for the following reasons:

- It is based on "old data" not current conditions.
- It only compares the effects of the rule vs. a moratorium on all new construction and development for 16 years. No alternative approaches are analyzed.
- It shows a major loss of jobs, not new jobs being created.
- It shows a major loss in construction income.
- It uses an inappropriate model and data to predict growth.
- It does not solve our water management needs here in Jefferson County.
- This rule will discourage the growth of new business - it will place this area in an uncompetitive position, compared to other counties.
- No alternative approaches have been proposed.
- The prime industries in this area, agriculture, aquaculture, forestry, and mining were not involved in drawing up this rule.
- This rule will cause a significant loss in construction sales and in real estate values.

ATTACHMENT

Page Two

- This rule does not reduce any of the costs for small businesses. It will increase the costs for new businesses to locate here.
- It ignores the existence of an existing construction industry workforce, many of whom will not have work under the planned build-out rate of 45 homes a year.
- Other than public meetings and press notices, it appears that no effort was made to contact local businesses or survey their future plans to determine the impact of this rule.

Response:

Ecology does not agree that the Small Business Economic Impact Statement for this rule is inadequate, nor does it fail to meet the criteria of RCW 19.85.

- RCW 19.85.030 requires the preparation of a Small Business Economic Impact Statement to assess disproportionate cost to small businesses resulting from a new rule and, "where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses." The statutes on which this rule is based include 90.03, 90.22 and 90.54 of the Revised Code of Washington. These statutes call for protection of instream values and establishing instream flows. Ecology found that while there are disproportionate costs to small businesses, it is unlikely there will be significant adverse impact on small or large businesses as compared to the baseline.
- The economic analysis does not compare the effect of the rule against a moratorium on all new construction and development for 16 years. It is based on a comparison of water right management in WRIA 17 with and without the rule.
- RCW 90.22.020 states that "flows or levels authorized for establishment under RCW 90.22.020, or subsequent modification thereof by the department shall be provided for through the adoption of rules." In addition, RCW 90.82.130(3) creates an obligation for state agencies to implement Watershed Plan recommendations. These obligations are binding upon adoption of the Watershed Management Plan. The Quilcene-Snow Watershed Management Plan recommended "that Ecology continue to work collaboratively with the Planning Unit, per RCW 90.82.080, in an attempt to achieve consensus and approval of instream flows to be adopted by Ecology." An alternative approach to adopting instream flow levels in a rule was not available to Ecology given these statutory directives. Alternative water management options that Ecology considered during the rule development process are presented in the Least Burdensome Analysis that is incorporated in the Cost Benefit Analysis for the rule. The petition suggested a local "water board" that could manage water allocation decisions as an alternative to this rule. The authority for such a local entity does not exist in the state water code.
- Ecology used Jefferson County building permit data to project demand for new residences outside of water supply areas for each subbasin where we set flows. The high growth rates at Kala Point and Port Ludlow were not included in our baseline. The projected demand for new residences was used to evaluate the sizes of reserves. If actual growth occurs at a slower rate, available water will last longer.

ATTACHMENT

Page Three

- Ecology relied on standard and defensible methods of economic analysis to estimate the economic impacts to small businesses resulting from adoption of this rule. In addition, the economic analysis documents were peer reviewed by an outside economist. The petition provides no information to substantiate the claims that the rule will cause a significant loss in jobs, construction sales, and real estate values, or will increase the costs for new businesses to locate in Jefferson County. The petition seems to indicate that zoning restrictions prevent new businesses from locating in areas under Jefferson County jurisdiction; however, zoning designations are outside the scope of this rule.
- Ecology relies on available data to run the Office of Financial Management's NAICS-based input/output model. This model is recommended by OFM. We do not have access to IRS tax returns, and, therefore, cannot base the analysis on the information described in the petition. We use data from the Washington State Department of Employment Security to make sure we identify active businesses. It is possible to identify sole proprietorship businesses using data from the Washington Department of Revenue.
- This rule establishes instream flow levels, closures, and creates limited reserves of water that together are intended to protect instream values, help protect existing water rights, and serve as a framework for future water management decisions in eastern Jefferson County. Ecology agrees that ongoing effort is needed to solve water management needs in Jefferson County.
- Ecology does not agree that the existing construction workforce will be significantly affected by this rule. The rule does not affect water supply availability for new construction in the city of Port Townsend, or in the service areas of Jefferson County PUD #1 and the Olympic Water and Sewer Company at Port Ludlow, all of whom operate under existing water rights. In addition, the rule does not restrict new permit-exempt well uses in the coastal areas, including the Miller and Quimper Peninsulas. Finally, the rule establishes reserves of water that are projected to meet demand, until 2025, for residential development in the subbasins with newly-established instream flows.
- Ecology extended offers to meet with a wide range of stakeholder interests, including business organizations. Not all organizations chose to meet with us. Those that did included the Brinnon/Quilcene Chamber of Commerce, Jefferson County Association of Realtors, representatives of the agricultural community, Jefferson County Water Utilities Coordinating Council, Jefferson County PUD #1, the city of Port Townsend, Jefferson County, Tribes, Clallam County and the WRIA 17 Watershed Planning Unit.

ATTACHMENT

Page Four

4. It does not meet the criteria of RCW 34.05.325 (6)(a)(iii).

Excerpts from the petition:

RCW 34.05.325 (6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

Many of Ecology's answers to the questions in the comments are of the nature: 'DOE disagrees', and did not respond to the questions asked.

Response:

Ecology agrees that, in some instances, we responded to comments received on the proposed rule with brief statements to the effect that Ecology did not agree with the comment or thanking the person for their comment. In all instances, these were comments expressed as statements about the rule. Where comments were expressed as questions, Ecology made every effort to respond with a complete answer.

5. It does not meet the requirements of the 'Cost/Benefit Analysis' as required in RCW 34.05.328 (1)(d) and (1)(e). Or the findings with respect to The Regulatory Reform Act of 1995.

Excerpts from the petition:

RCW 34.05.328(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

The benefits claimed are over exaggerated and costs minimized or ignored.

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

No alternative solutions have been presented other than a moratorium on all new development.

RCW 34.05.328 Findings -- Short title -- Intent -- 1995 c 403: "(1) The legislature finds that:

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

ATTACHMENT

Page Five

This rule will definitely have a negative impact on the local economy.

RCW 34.05.328 Findings -- Short title -- Intent -- 1995 c 403:

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth.

This rule does not meet the goal of this law.

Response:

Ecology does not agree with the petition's assertions regarding the Cost Benefit Analysis. Please see the responses to petition issues #2 and #3, above.

