



JAMESTOWN S'KLALLAM TRIBE

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RECEIVED

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Southwest Region
P.O. Box 47600
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JUN 30 2009

Water Resources Program
Department of Ecology

RE: Comments on Ecology's Water Resources Management Program (Rule) for Quilcene-Snow

Dear Ms. Wessell:

Thank you for the opportunity to review and comment on the *Water Resources Management Program for the Quilcene-Snow Water Resources Inventory Area*, the instream flow rule Ecology is proposing to adopt for Water Resources Inventory Area (WRIA) 17.

As you know, protecting and restoring aquatic resources is a high priority for the Jamestown S'Klallam Tribe, and the Tribe supports establishing instream flows for fish and wildlife. Although we have not had the resources to regularly staff WRIA 17 planning unit meetings, we have followed the WRIA 17 processes through discussions with the Port Gamble S'Klallam Tribe and occasional meetings with the Department of Ecology, and we remain active in the rule-making process for WRIA 18.

The Tribe supports the general purpose of the WRIA 17 rule, which is to ensure instream flows are at levels that protect fish and wildlife, water quality and other environmental values, and to wisely manage current and potential future out of stream uses. It should be stated, however, that the established instream flows and other programs set under this chapter are for state law purposes only. The Tribe fully reserves its right to assert all rights and remedies available to it under its Treaty and other rights as outlined in previous communications to the Department of Ecology regarding this matter.

Naturally, our review of the proposed rule is in light of the Tribe's mission to ensure that quality programs and services that address the unique social, cultural, natural resource and economic needs of our people continue to be provided. Below are general comments on the proposed document, along with specific questions and/or suggestions about certain sections.

General Comments

- The rule should include a statement acknowledging threatened species of salmonids are present in WRIA 17 and that low flows are one of the key factors limiting productivity of these populations. The presence of threatened species necessitates change in the way that water is managed in the basin in the future, and highlights the need for conservation. Salmonid recovery plans are currently being implemented utilizing an adaptive management framework. The rule should include a clause that re-opens the rule provisions for amendment if the status of a threatened species, which includes WRIA 17 salmonid populations, becomes downgraded to endangered, or if the NOAA technical team determines that salmonid populations continue to decline and instream flow trends are not improving substantially.

- The rule should also include a requirement for a water resource review to be convened by Ecology every five years to assess: a.) how much new water has been allocated from the reserves, b.) how well instream flows are being met, c.) results of new science, studies or models, d.) status of threatened or endangered fish and wildlife populations, and e.) whether average flow levels are changing due to climate change. The five-year review should include consultation with the Tribes, Jefferson County, Washington Department of Fish and Wildlife, National Marine Fisheries Service and Jefferson PUD. Results of the review should be used to direct agency changes in water resource management.
- As recently discussed, the maps included in the proposed rule need to be modified to clearly indicate that this proposed rule does not cover the portions of the basins that are within Clallam County. For example, the portion of the Eagle Creek basin that lies in Clallam County is not affected by this proposed rule. We understand these uncovered areas will undergo a separate rule-making process at a yet-to-be-determined date in the future.
- The previous version of the proposed rule reviewed by the Tribe was dated 08/12/05. We note that many of the important details from that rule have been omitted from the current version. For example: the reference to limiting outdoor watering to 1/12th of an acre is missing from the “domestic use” definition and other areas; the reference to the potential requirement to withdraw from deeper aquifers is missing from the reservation section; the entire section describing the establishment of a trust water right program, which gives priority to restoring and enhancing stream flows, is missing; and, all references to hydraulic continuity, including acknowledgement of its existence in the watershed, are missing. Some of these and other omissions are reiterated in the specific comments below.
- The proposed rule includes a definition for “mitigation plan” and references it several times. Parts of the definition are vague, such as what constitutes offsetting impacts. For example, the Tribe would want mitigated water to be of such quality that it is habitable for fish.
- The Tribe supports accurate measurement of water use, including metering of exempt wells. This is particularly important for water allocated from the reserve amounts. The information gleaned from metering data is invaluable for water resource planning and decision-making.

Specific Comments/Questions

In the comments below, italicized font is language excerpted from sections of the proposed rule. The excerpts may include requested text changes by the Tribe (in colored font), and/or may be followed by comments or questions from the Tribe (in bulleted, regular style font) related to the language from that section.

Title: Water Resources Management Program for the Quilcene-Snow Water Resources Area

- We prefer the former title: Instream Resources Protection and Water Management Program for WRIA 17.

WAC 173-517-030 Definitions.

(5) "Domestic use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary requirements, cooking, laundering and other incidental household uses, including potable domestic water requirements associated with commercial and industrial purposes.

- Does this definition include outdoor watering? The 2005 version included outdoor watering, limited to 1/12th of an acre.

(8) "Hydraulically connected" means saturated conditions exist that allow water to move between two or more sources of water, either between surface water and ground water or between ground water sources.

(12) (b) The plan must include assurances that finances will be secured to implement the plan, ensure mitigation measures for the duration of the water use and prohibit water provided for the purpose of mitigation from appropriation for any other purpose.

WAC 173-517-060 Regulation review.

(3) Ecology, in consultation with the counties, Jefferson County PUD #1, tribal governments and the WRIA 17 planning unit (if active), will regularly review the allocated and unallocated amounts for each reserve management area.

- "Regularly review" is vague. Suggest tying to the annual metering reporting.

WAC 173-517-070 Maps.

- As stated previously, all maps need to be modified to clearly indicate that this rule does not cover sections of subbasins in the Clallam County portion of WRIA 17.
- Map B: Needs title at top of page (to be consistent with other maps).
- Map C: Should reference section 130 (3) (d) somewhere on this map.

WAC 173-517-090 Instream flows.

(3) Instream flows will be protected from impairment by any new water rights commenced after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to instream flows:

(a) Water rights existing on the effective date of this chapter as explained in WAC 173-517-020(4).

- Need to make clear here or in section 020 (4) that priority date of "existing" water rights is defined as the date of first beneficial use (per Ecology's guidance document for instream flow setting).

(b) Water rights appropriated from the limited reserves of water established in WAC 173-517-150.

WAC 173-517-100 Closures.

(3) Closures in subsections (1) and (2) of this section include closure to future withdrawals from ground water that would have an adverse impact on surface waters, including permit-exempt withdrawals.

- There should be reference to "hydraulic connectivity", according to Ecology's guidance document for instream flow setting.
- There should be no adverse impact on *any* surface waters, not just closed surface waters. "Closed" should be removed from this section and from sections 110-2, 110-3 and 110-3a.

WAC 173-517-110 Future new water use--Generally.

(4) The person or entity seeking to commence the new appropriation chooses to submit a mitigation plan as defined in WAC 173-517-030(12), and such plan is approved by Ecology. If monitoring shows the mitigation is not effective, use of water under the appropriation shall then be subject to the instream flows. In the case of a closed basin, the use shall cease until an effective mitigation plan approved by Ecology and put in place.

- See general comment regarding missing details about mitigation.
- A reasonable timeframe for monitoring should be included.

WAC 173-517-120 Conservation standard.

(a) Water use greater than 500 gpd must be offset through implementation of an approved mitigation plan as described in WAC 173-517-030(12). If monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the water use shall cease until the department approves a new or revised mitigation plan; and

- See general comment regarding missing details about mitigation.

WAC 173-517-130 Designated coastal management areas.

(1) It is the policy of the state to protect rivers and streams to retain flows necessary to preserve wildlife, fish, scenic, aesthetic and other environmental values (RCW 90.54.020 (3)(a)). It is also the policy of the state that adequate and safe supplies of water be preserved and protected in potable condition to satisfy human domestic needs and to protect the natural environment (RCW 90.54.020(5) and 90.48.010; WAC 173-200-030). Ecology has determined there are areas within WRIA 17 where future ground water withdrawals could negatively impact the instream values of small streams, or contribute to sea water intrusion.

- There should be reference to “hydraulic connection”, per Ecology’s guidance document for instream flow setting.

WAC 173-517-140 Maximum future allocations for interruptible use.

(2) A person or entity seeking a new interruptible appropriation must provide assurances that any negative effects on surface water that may result from withdrawals can and will be mitigated.

- Without the requested text change, this clause implied negative effects from new withdrawals are allowed without mitigation if the stream is open. We feel there should be no negative effect from withdrawals on *any* stream at any time, whether it is closed or open.

WAC 173-517-150 Reserves of water for future domestic use.

- Suggest bolding the river names in this entire section to make it easier to read, since each area has different conditions.

(1) Ecology has weighed the public interest that supports reserving a limited amount of water for new consumptive uses against the potential for negative impact to instream resources. For the subbasins discussed in this section Ecology finds that the public interest advanced by limited reserves clearly overrides the potential for small negative impact to instream resources.

Based on this finding, Ecology hereby allocates a limited amount of water for each reserve management area as indicated in Table 8. These reserves of water are not subject to the instream flows established in WAC 173-517-090 or closures established in WAC 173-517-100. The priority date of an appropriation from a reserve is the effective date of this chapter.

(8) (b) If the report for U.S. Geological Survey ground water model currently under construction for the Chimacum Creek subbasin identifies specific areas where new well pumping will not likely have any effect on creek flows, withdrawals from new wells in those areas may not be deducted from the reserve and may not be subject to the restriction on outdoor irrigation. Instead, use of new permit exempt wells will be regulated by the statutory permit exemption found in RCW 90.44.050. If such a change occurs, Ecology shall notify the public of these findings through publication of a Chimacum Creek Water Supply Bulletin.

- Need to have a condition about confidence in ground water model if it is to be used for decision-making.

(10) When each reserve is fully appropriated, the applicable reserve management areas are hereby closed to any further consumptive appropriation. Under such circumstances water for new uses may be available if:

- *Mitigation is provided;*
 - *The use is nonconsumptive;*
 - *Alternative sources of water are available; or*
 - *An existing water right can be changed or transferred.*
- Instead of listing these four conditions, we suggest referencing section 110, which provides more details about the conditions. Otherwise, repeat the more detailed conditions here.

The Tribe looks forward to a time when a sensible instream flow and water management program is in place, one that protects aquatic resources for fish and for our community, while assuring that the Tribe's needs are carefully addressed/taken into account.

Sincerely,



Scott Chitwood
Natural Resources Director