



LAW OFFICES OF  
KIMBERLY ORDON

June 30, 2010

Kathleen Emmett  
Department of Ecology  
Water Quality Program  
PO Box 47600  
Olympia, WA 98504-7600

RE: Comments on Pre-Draft Reclaimed Water Rule, WAC 173-219.

Dear Ms. Emmett;

Thank you for setting up a meeting with The Tulalip Tribes on June 7, 2010 to discuss the pre-draft Reclaimed Water Rule. Tulalip is very supportive of the use of reclaimed water in the right circumstances. As I mentioned, Tulalip installed and uses such a project on the Reservation. In many cases, use of reclaimed water is preferable to approval of new water uses.

The Tulalip Tribes is a federally recognized Indian tribe and reside on the Tulalip Indian Reservation established pursuant to the Treaty of Point Elliot of January 22, 1855 (12 Stat. 927) and by The Executive Order of December 23, 1873. The Tulalip Tribes reserved the right to take fish in their usual and accustomed fishing places pursuant to the Treaty. These usual and accustomed treaty fishing areas include the freshwater areas of the Snohomish-Snoqualmie-Skykomish river basin and certain marine waters of the Puget Sound through with fish propagated in such basins pass. *U.S. v. Washington*, 459 F. Supp. 1020, 1038 (W.D. Wash. 1978); *U.S. v. Washington*, 626 F. Supp. 1405, 1527 (W.D. Wash. 1985), *Aff'd*, 841 F.2d 317 (9<sup>th</sup> Cir. 1988). The right to take fish includes the right to habitat protection including a reserved water right of appropriate quality and quantity to support continuation and enhancement of fish.

The Tulalip Tribes primary concerns with the Reclaimed Water Rule center on increasing the consumptive use of water to the detriment of the Tribes' treaty and reserved rights to water. Of particular concern are the definition of impairment, the use of reclaimed water as mitigation for new water rights, and water quality and temperature impacts from discharges of reclaimed water into surface and/or ground waters. As currently drafted, the Rule does not afford adequate protection for senior water rights.

Tulalip does not agree to the use of reclaimed water for mitigation for new water rights. New water rights currently are mitigated where required by like-kind water both in quantity & quality. Reclaimed water is not an adequate substitute.

While it is true that many of the Tribes' water quality concerns already exist with current wastewater discharges, if Ecology is planning to adopt a rule for reclaimed water, it should take steps to address these water quality concerns.

Emerging research into the effect and persistence of household products, pharmaceuticals, and personal care products have revealed adverse neurological, developmental and reproductive effects on many species. Tulalip would like to see the State take a cautious approach to permitting reclaimed water discharge to groundwater (infiltration), use in ASR projects (injection) and direct discharge to surface water (augmentation), until reclaimed water can be treated to remove the chemicals of concern. Such an approach may include pilot projects for monitoring over time. Fish and other aquatic resources are affected by high temperature. Reclaimed water that is discharged back into receiving waters must be temperature regulated. Impairment of water rights occurs from water quality impacts just as well as it does with changes in water quantity.

Tulalip concurs with many of the comments offered by the Muckleshoot Indian Tribe and their expert, Joel Massmann. Please do not hesitate to contact me if you require any further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly Ordon". The signature is fluid and cursive, with a large initial "K" and "O".

Kimberly Ordon

cc: Terry R. Williams  
Daryl Williams  
Abby Hook  
Anne Savery