



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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December 6, 2011

The Honorable Ken Dahlstedt
The Honorable Sharon Dillon
The Honorable Ron Wesen
Skagit County Commissioners
1800 Continental Place – Ste. 100
Mount Vernon, WA 98273

RE: Skagit River Basin Instream Flow Rule

Dear Commissioners:

I am writing to you to express my deep concerns about recent developments regarding implementation of the Skagit River Basin Instream Flow Rule and the availability of water in the Nookachamps and Fisher/Carpenter Sub-basins of the Skagit Watershed.

Like you, I am very concerned about the ability of landowners to secure supplies of water in these sub-basins to enable them to build on their property. I am committed to seeking water supply solutions for these landowners in coordination with you and your community. However, I am also very concerned about the ability to protect stream flows needed for threatened fish species, given the significant stream flow problems in these Skagit tributaries during summer low-flow periods.

Our fundamental challenge is both enormous and inescapable: managing a finite water supply to ensure enough clean water for fish to thrive, while meeting critical out-of-stream needs. The time has passed where we could ignore the needs of salmon and stream habitat, or turn a blind eye toward the relationship between groundwater withdrawals and surface flows.

A recent Skagit Valley Herald Editorial summarized our challenge well: "It will take a careful balancing act to distribute water equitably to preserve fish, serve agriculture and the growing urban demand" (July 3, 2011). The Skagit Basin is an exceptional place that deserves our best efforts at balancing these competing interests. It is critically important for both salmon recovery and as a supply of water for the people in the basin.

We know that implementation of the Skagit River Basin Instream Flow Rule and management of water reservations creates serious challenges, and we are committed to seeking solutions in partnership with Skagit County (County), tribal governments and stakeholders. These issues must be addressed through a constructive dialogue based upon our mutual interests and legal responsibilities.

Under state water law, the Washington State Department of Ecology (Ecology) is directed to protect senior water rights and to maintain adequate stream flows for fish, wildlife, recreation, navigation, aesthetics, water quality and livestock watering. The Skagit is such an important watershed for fisheries in our state because it supports all five species of salmon, plus two species of trout. Three of these species have been listed as "threatened" under the Endangered Species Act.



While it seems implausible that a basin such as the Skagit would have flow problems, there are, in fact, smaller tributaries in the watershed that provide valuable salmon habitat, but have significant stream flow limitations during the summer months. Most of the stream flow during these periods comes from groundwater discharge to the streams. For this reason, in 2001, when Ecology adopted the initial Skagit River Basin Instream Flow Rule, Ecology did not include exceptions from the rule's minimum instream flow requirements for future permit-exempt groundwater uses. Ecology took this approach in order to protect this critical habitat. Later, in 2006, Ecology amended the instream flow rule to establish reservations of water that are not subject to minimum instream flows and stream closures. The size of the reservations is limited by the needs of the threatened fish populations that depend on adequate water in the stream.

It is important to remember that, at that time, both Ecology and the County praised the 2006 rule amendment as a more constructive approach to addressing water management concerns. Our shared commitment to this constructive approach was reflected in a 2007 Instream Flow Implementation Agreement between Ecology and the County. That important agreement reflects the difficult challenges and compromises described above, and it charts a strategy for Ecology and the County to "exercise their respective regulatory authority in a coordinated and complementary fashion," as we work together to support the instream flow rule and the implementation agreement.

Consistent with that agreement, the Carpenter-Fisher (allocated) and Nookachamps (nearly allocated) reservations have provided secure water for many new homes, as they were created to do. When the 2006 rule amendment was adopted, both Ecology and the County understood that these reservations would not meet all projected demands for water. We had hoped the reservations put in place would provide sufficient time to work out additional solutions to secure water supply for certain areas in rural Skagit County. Unfortunately, that was not the case. Though both parties believed these reservations would last longer, growth occurred faster than expected. In addition, Ecology rescinded a mitigation plan, which would have enabled some additional residential use in the Carpenter-Fisher Sub-basin, because it became clear that the plan would not, in fact, sufficiently offset stream flow impacts from the new uses. Now we have a choice to either seek a constructive path forward together or return to the old fights where no one wins. I truly hope it is the former.

Regarding our shared commitment to exercise our respective regulatory authorities in a coordinated and complementary fashion, I am very concerned about recent public information materials from the County. These materials have asserted that the County does not have any role in water resources management. This is clearly not the case, as the Washington Supreme Court ruled recently in *Kittitas County v. Eastern Washington Growth Management Hearings Board*. In fact, according to the Supreme Court, counties have a very important role in water management. The court held that in making a land-use decision, it is the local government—and not Ecology—that is responsible for making the decision on water adequacy as part of its land-use decision. However, the court recognizes that Ecology should endeavor to provide assistance to counties in making such land-use decisions, as needed, to ensure adequate protection of water resources. It is critically important that we find a way to move this conversation forward in a coordinated and complementary fashion.

Messages to the contrary only serve to confuse the public on this issue. Thus, I urge you to take a more cooperative and legally consistent position on water management so that the difficult issues before us can be resolved to the satisfaction of all interests. Increasing conflict only triggers the need for a basin-wide adjudication, which would result in years of litigation, extensive costs and uncertainty for all water users in the basin.

When land-use decisions ensure that water is both legally and physically available to support proposed developments, property owners have greater legal protection. Our experience in other basins has shown that cooperation is an essential prerequisite to viable water supply solutions, and that the most durable solutions provide both instream and out-of-stream benefits.

We prefer to partner with the County on finding viable near-term solutions. To that end, I have directed a number of my staff to be available to assist the County with evaluating water supply options. Potential solutions could include one or more of the following:

- **Extension of PUD Pipelines or Satellite Systems:** Ecology has consistently encouraged extension of PUD water service or satellite systems into areas needing water supply solutions. Extended PUD pipelines could serve individual parcels or augment stream headwaters.
- **Water Right Transfers or Trust Water Banking:** Ecology initiated a project with a non-profit trust water organization (Washington Water Trust) to inventory existing rights in the Carpenter-Fisher Sub-basin and evaluate options for acquired rights to offset the impacts of proposed new uses.
- **Banking of Conserved Water:** This concept would transfer saved water, made available through conservation and efficiency measures, and apply it to existing uses. The conserved water could be used to provide water-budget-neutral mitigation offsets for future new uses.
- **Rainwater Collection:** Ecology staff have created an online rainwater harvest calculator for the Skagit Sub-basin. This enables landowners to run various rainwater harvest scenarios, based on cistern size, roof size and desired water-use characteristics, to test the feasibility of this option.
- **Use of Deep Wells to Augment Stream Flows:** This approach would need to be thoroughly tested to ensure that it would actually improve stream flows and offset impacts of new uses, consistent with the September 2010 U.S. Geological Survey (USGS) Study of groundwater and surface water interactions.
- **Water Storage or Artificial Recharge and Recovery:** Surface or aquifer water storage projects could be used to capture and retime surplus flows, if available, to offset impacts of proposed new uses.
- **Ongoing Scientific Assessment.** Recall that Ecology and the County jointly funded a USGS Groundwater Study to assess the stream flow impacts of pumping from wells. The science may support changes in how we assess water availability among the reservations and could potentially result in the availability of more water in some reservations.

In addition, recall that the County, with assistance from the city of Anacortes and Ecology, is conducting a project to measure actual water use in rural domestic households using groundwater wells. Results from this study could change our assumptions about the amount of water that well users consume, potentially increasing the amount of water available for new water uses in a reservation.

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We also believe that the County could play an important role in managing water through locally-administered conservation standards so that remaining reservation water balances can be stretched further to serve more homes with the same amount of water.

Given the options described above, we certainly do not want to give people the mistaken impression that the situation is hopeless. Instead, let's continue to work together on these or any viable solutions that you may have or your constituents may propose.

Ecology has met with County representatives and the County PUD to work toward water supply solutions in this area. We intend to do the same with Snohomish County. The Skagit Water Resources Advisory Committee, which includes the County, PUD, Drainage and Irrigation Districts, consultants, the Western Washington Agricultural Association and other stakeholders, provides another opportunity to collaborate on solutions. In addition, we plan to update citizens at meetings over the winter on progress toward finding water supplies, and to gather ideas and input on the best approaches to meet basin water needs.

We have successfully worked through difficult challenges in other areas of the state and we have reason to believe that we can achieve similar results in the Skagit Watershed if parties choose to find collaborative solutions. Ecology has long valued our relationship with Skagit County, and I am confident that we can, once again, find solutions to these challenges that address both in and out-of-stream needs.

I look forward to working with you toward better water management outcomes in Skagit County.

Sincerely,



Ted Sturdevant
Director

cc: Affiliated Tribes of Northwest Indians
Northwest Indian Fisheries Commission
Swinomish Indian Tribal Community Senate
Senator Brian Hatfield
Senator Mary Margaret Haugen
Senator Kevin Ranker
Senator Val Stevens
Representative Barbara Bailey
Representative Brian Blake
Representative Dan Kristiansen
Representative Kristine Lytton
Representative Jeff Morris
Representative Kirk Pearson
Representative Norma Smith
The Honorable Rob McKenna, Washington State's Attorney General
Skagit County Prosecuting Attorney's Office
Patricia Botsford-Martin, Port of Skagit County
Skagit River Basin Flow Management Committee
The Honorable Dean Maxwell, Mayor, city of Anacortes
Center for Environmental Law and Policy