Michael E. McAleer
[redacted]

Ann Wessel, Instream Flow Rule Lead
Washington State Department ofEcology
1440 10th Street, Suite 101
Bellingham, WA 98225

Ted Sturdevant, Director
Washington State Department ofEcology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Wessel and Mr Sturdevant:

Over the years, significant resources of time, staff and taxpayer funds have been invested in meeting the requirements ofRCW 90.82.020, 90.71.010, and 90.74..010. I believe the proposed final administrative rule 173-518 is seriously flawed. There are far too many questions that have yet to be addressed. The following are questions that are of utmost importance to our community:

1. The rule would take away free water from more than 5,000 parcels of land. Why does the Cost Benefit Analysis (CBA) ignore the economic impact of doing so?

2. Using county data there appears to be about 65 new uses per year. This translates into a very small amount of water use. Why hasn't Ecology just mitigated this water use? It appears economically unsound to create a "water exchange" for such a small use of water. How is this justified?

3. Why did Ecology use in the CBA a discount rate that is inconsistent with their other instream flow rule analyses?

4. The CBA predicts over 400 new uses per year. This is 8 times more that county records show for building permits. Did you base fish savings benefits on this? If so your fish impacts/losses are 8 times what they should be. How does this affect the imagined fish savings benefits?

5. How does Ecology calculate avoided fish losses? You credit a $6.8 million dollar benefit. Please provide the documentation.

6. "Increased Certainty in Development" is entirely speculative. Do you believe it will stand up in court?

7. How is protecting existing restoration investment a function of this proposed rule? How this is achieved isn't spelled out in the rule but is still included as a benefit.

8. The Small Business Economic Impact (SBEIS) statement should include an analysis of those who are required to comply with the rule. Why wasn't this included?

9. How can the SBEIS state not find disproportional impacts if businesses vary in size, hours of labor and sales?

10. Why doesn't the SBEIS examine new businesses that would be required to follow the rule?

11. As described in your "executive summary" to the SBEIS, existing businesses would be affected by the proposed rule. Why was this not analyzed?

12. Why does the SBEIS say there won't be costs at times, then contradict itself by saying there will be costs?

13. The assumption that all industries would have equal water use per employee is clearly false. Why did you use that assumption?

14. Why is present value calculated in the SBEIS if costs only accrue in the first year?

15. RCW 19.85 requires a description of how the agency will involve small businesses in the development of the rule. Why was this not done?

Please consider the above as my formal comments on the proposal.

Sincerely,

Michael E. McAleer