

July 7, 2009

RE: Quilcene-Snow Water Resource Management Area (Chapter 173-517 WAC) Instream Flow (ISF) Rule

Dear Ann Wessel,

The Port Gamble S'Klallam Tribe is one of several Tribes with senior Federally Reserved Rights and treaty-derived instream flow rights in WRIA 17. While properly stating the State's legal limitations on these rights, this rule does functionally impact Tribes' superior rights.

The Port Gamble S'Klallam Tribe (again five years removed) approves the negotiated flow values set forth in the above Chapter 173-517 WAC. The emphasis should be placed on the word negotiated, as the rule will not restore, increase or enhance the flows, but only attempt to prevent further impact to flows and habitat. It should be further noted that the flow values are based on the validation of the same science based values determined five years ago. The science has not changed, however the water resource has endured additional water withdrawals (at least 60 new wells) during the ensuing time period. If there are to be any further delays in the rule, then it should be incumbent on the Department of Ecology to close WRIA 17 to all new well drilling and water rights evaluations, until the rule is adopted and implemented, to prevent yet another increment of time for further unregulated impacts.

Water reserve values were a concession by the Tribes and others to assist with moving the ISF forward. However, the estimates of how those quantities of water could be distributed, in terms of the number of houses or farms that could be supported by the respective reserve quantities, are only advisory examples. The number of houses, farms, or other uses is a local land-use zoning issue, subject to the available water in the sub-basin as set forth in the "reserves". The ISF and reserves are the boundary conditions for those zoning decisions, nothing more. It is not the Department of Ecology's responsibility to fix a local government's inappropriate or bad land-use decisions or zoning.

Concerns

1. How will the rule be overseen and enforced? Is it merely a "trust us" or the local governments' good will?
2. What are the re-opener triggers when the rule is violated?
3. What would be a re-opener and response if large scale sand and gravel mining in the Tarboo Creek and/or Thorndyke Creeks sub-basin are authorized by the County or State?
4. How will the "reserves" be tracked and who will be the liable party to oversee the adherence to the rule?

Sincerely,

David R. Fuller, LG, LHG
Hydrogeologist
Port Gamble S'Klallam Tribe