



1820 Jefferson Street  
P.O. Box 1220  
Port Townsend, WA 98368

Phil Johnson, District 1

David W. Sullivan, District 2

John Austin, District 3

RECEIVED

JUL 09 2009

DEPARTMENT OF ECOLOGY  
OFFICE OF DIRECTOR

July 6, 2009

Jay Manning  
Director, Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Re: In-stream Flow Rule for WRIA 17

Dear Director Manning,

Thank you for the chance to comment on WAC 173-517, the proposed in-stream flow rule for Water Resource Inventory Area (WRIA) 17, the Quilcene-Snow watershed. We have appreciated the efforts that the Department of Ecology has made since the fall of 2005 in improving the in-stream flow rule language for WRIA 17. We feel that Ecology has integrated some key requests and language into the rule. In particular, the inclusion of rainwater catchment and the possibility of mitigating for future water withdrawals beyond those allowed for in the reserves. In addition, we appreciate Ecology funding of the development of a ground water and surface water interaction model for the Chimacum watershed by the US Geological Survey (USGS) which is due to be completed in 2010. This model will be an excellent tool in gaining a working knowledge of one of our most resource limited watersheds and the information will be valuable for informing future mitigation and water management actions.

In the spirit of continuing and fruitful interaction with Ecology, the County states, or restates, the following important items of concern:

- The County requests that Ecology continue to support watershed planning efforts and efforts to find and fund mitigation strategies that would allow for the use of new agricultural water and for outdoor irrigation for new homes in the Chimacum sub-basin. We believe that a long term prohibition on new outdoor irrigation in the Chimacum sub-basin, where some of our best soils are located is unacceptable, therefore a mitigation strategy needs to be implemented as soon as possible for this sub-basin.

We believe that several projects and ideas currently proposed or being explored by members of the WRIA 17 Planning Unit may be able to serve as possible mitigation. Included in these are the Aquifer Storage and Recovery study by Jefferson County PUD#1, using existing water rights to augment low flows (“pump and dump”), credit for decommissioning wells in water service areas and reverse osmosis for municipal supplies. The continued exploration of a water bank or exchange also has merit. It is vital that Ecology continue to work with local entities to develop and fund a local watershed planning process after current watershed planning funds run out in 2012.

- Jefferson County has serious concerns that the proposed rule will drastically limit and curtail new agricultural activity in portions of the county. We appreciate that some of the reservations in the Salmon Creek and Snow Creek sub-basins will be available for agriculture. We further appreciate that the rule leaves open the option of additional water rights in the Big Quilcene, Little Quilcene and Thorndyke sub-basins. However, solutions and mitigation will need to be found for those who would otherwise use permit-exempt wells for small scale agriculture but will be unable to under the new conservation standards set for most of WRIA 17 under this rule. We request that Ecology provide technical and financial assistance for mitigation.
- Since habitat, water quality and water quantity are all important aspects of salmonid survival, the County requests that water quality and habitat restoration be credited, where appropriate, toward mitigation strategies for new water withdrawals. In the definition of “mitigation plan” in proposed WAC 173-517-030(12), we request that it reads (changes underlined) “A mitigation plan may address impacts, including those to water quality and habitat, to a stream, basin, reach, or other area, for an individual withdrawal or for multiple withdrawals in a sub-basin.”? Is Ecology aware of any case law that would prohibit the use of habitat or water quality improvements to mitigate and offset water withdrawals, and if so can you please identify it?
- Has Ecology considered a two tiered approach to for the management of water in the Chimacum sub-basin? For example, perhaps groundwater withdrawals further from the creek, near the mouth of the creek, or from a deeper aquifer may be used for outdoor irrigation use. We appreciate the addition of section 173-517-150(8)(b), to allow for data gathered in the groundwater study currently underway by the USGS, to influence areas in Chimacum subject to the no outdoor irrigation provision in the Chimacum Creek sub-basin. However, we request that section read (changes underlined) “If the report for the U.S. Geological Survey ground

water model currently under construction for the Chimacum Creek sub-basin identifies specific areas where new well pumping will not have significant adverse effect on critical stream base flows, withdrawals from these areas ....” For example, if it were determined that a new groundwater withdrawal, used for summer outdoor irrigation only slightly impacted winter creek flows, since this creek is open to new water withdrawals in the winter anyway, this withdrawal would be allowed if this section were rewritten as above.

- We appreciate the inclusion into the proposed rule of the consideration of metering data when accounting for use under the reserves. It is vital that we adjust the reserves based not just on estimates of new use but actual use of water. This will provide a clear incentive to conserve water for new users.
- There are many wells in Jefferson County that are senior in time to the effective date of the in-stream flow Rule but from which there has been either no water withdrawn or less water withdrawn than the 5,000 gpd a permit exempt well owner could withdraw. Few persons understand that a water right is merely a potential right until it is “perfected” by use of that right and that it is “perfected,” in general, only to the extent of the quantity of water withdrawn. The County foresees instances where this misconception about the rights that arise from a permit exempt well will collide with implementation of the proposed rule. In light of these likely collisions the County asks what resources or efforts for education and explanation will Ecology have in place within and for Jefferson County AFTER the in-stream flow rule becomes effective?
- Just to clarify, if evidence is presented to Ecology that an unperfected water right that predates the in-stream flow rule (such as a previously unused permit exempt well) was being used and therefore perfected after the effective date of the rule, would that water right be debited from the reserve for that particular sub-basin?
- The in-stream flow rule should provide clear incentive to decommission wells by crediting the reserve or, potentially, a mitigation bank of water. If a decommissioned well predates the rule, consideration should be given to crediting the reserve or mitigation bank at a higher rate than the conservation standard set out in the rule.
- The maps provided are insufficient in detail. The County requests that the GIS layers generated by Ecology be made available to the County. If a parcel falls on the boundary between two management areas which rules apply to the water withdrawal?

- In WAC 173-517-030 definitions need to be added for beneficial use, reserve management area, timely and reasonable (as it applies to connection to public water system) and coastal management areas. Some of these may be able to be referenced from other statutes.
- The County requests that Ecology provide rebates or other credits to citizens required to install meters to help ameliorate the cost to impacted citizens.
- Is it necessary to “commit (county compliance) to Ecology in writing” as is stated in proposed WAC 173-517-150 (2) since the county is always obligated to follow state law? We presume that if it still deemed necessary, that a letter from the county to Ecology stating that the county has read and understands the rule will be sufficient. Is that an accurate conclusion?
- What will be the mechanism used by Ecology to inform the citizens that the reserve established under Chapter 173-517 WAC for a particular sub-basin within WRIA 17 has been entirely depleted and thus that sub-basin is closed to new water withdrawals?

We understand that after this rule is signed Ecology and County staff will cooperate in educating stakeholders about the rule and transferring information to Ecology. The county will distribute information about the new requirements, developed by Ecology, to interested parties. The county will provide information about rainwater catchment. Indeed, the county already has a policy on rainwater catchment. Lastly, the county will send Ecology yearly data on building permit activity in each of the sub-basins. The County understands this to be the full extent of its obligations with respect to implementing the in-stream flow rule, WAC 173-517. If Ecology determines otherwise it should inform the County as soon as possible.

We look forward to continuing to work with Ecology to develop mitigation strategies and other solutions to our water supply issues in Jefferson County.

Sincerely,

  
David Sullivan, Chairman

  
Phil Johnson, Member

  
John Austin, Member

cc: Anne Wessel, DOE  
Phil Wiatrak, DOE