

# Public Utility District #1

Of Jefferson County

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July 10, 2009

**RE: Quilcene-Snow (WRIA 17) Instream Resources Protection and Watershed Management Program Rule (WAC 173-517) - formal comments**

Dear Ann -

The Jefferson PUD (PUD) welcomes this opportunity to comment on Ecology's WRIA 17 water rule (WAC 173-517). We know that many professional people from Ecology and Washington Fish and Wildlife have worked very hard to make this rule a fair and scientifically valid management rule. While we would in no way call this effort a failure, it does possess flaws that we can not support largely because in spite of assurances by Ecology we consider the rule a threat to new water rights and our own existing rights. Perhaps it is far more a testament to the complexity of our local hydrology and geology than any lack of effort that we still don't adequately understand water in WRIA 17. We certainly hope that the rule does not end Ecology's efforts to help us better understand, protect and manage the resource in the future.

While this new version of the rule is more innovative, and noticeably more reflective of the issues facing WRIA 17 than the September 2005 draft, we ultimately do not find it to be a better management framework than the status quo. Unfortunately, we think this rule exaggerates the impact of permit exempt wells and could make some areas worse off than before. When Ecology has completed the process and the rule is in force, the difficult work of adapting to the rule will have only begun. This is our most fundamental concern: how will the implemented rule impact our communities in WRIA 17? Will the rule protect existing rights or will the high flow values be used as pretense to crack down on all existing rights? We cannot convince ourselves that this rule will be any more protective of water rights compared to what already exists and there are many reasons to suspect that rights are more threatened under the rule. While clearly there needs to be boundaries set in our water-limited WRIA of hydrologically isolated, seawater-bound peninsulas, islands and small catchment basins in the rainshadow of the Olympics, those regulatory boundaries need to be reasonable, and not arbitrary. And too much of the rule is

arbitrary and unreasonable.

That being said, we would like to express our concerns in more detail below.

### **Ecology should continue to help find water for Chimacum basin**

One way to prevent the rule from hurting our community other than stopping it altogether is to develop a mitigation strategy and plan to secure outdoor use supply for the Chimacum sub-basin. Ecology, to their credit, did fund a water market study for trust water rights in the Chimacum basin through Washington Water Trust, but that effort fell short of anything resembling a mitigation plan in the Chimacum basin. Chimacum is the most promising section of Jefferson County for locally generated, sustainable agriculture--a growing asset in our food-short, geographically isolated location. Ecology should aid us in purchasing some active water rights in the Chimacum valley as mitigation to eliminate this unenforceable Chimacum conservation standard. We assume this will be a Planning Unit priority and Ecology priority once the rule is in effect. How will Ecology assist us in this mitigation plan effort?

### **Ecology's rhetoric does not match its inaction on permit exempt wells**

In 2005 we heard that in order to adequately protect these streams we need to get the reserve system in place immediately before additional stream impacts from permit exempt wells further impair flows and our salmon populations. Since then there have been four years of unimpeded well drilling in the Chimacum basin to the tune of about 60 wells. Just one of those wells is currently entitled to put to beneficial use nearly 2.5 times the entire proposed reserve of 1940 gallons per day. In total this is an appropriation equal to nearly one half the PUD's Sparling water right. If WDFW and Ecology believed a single new well for a hobby farm could wipe out the reserve, why did they do nothing to stop it these last 4 years? Why was there not an emergency rule calling for a moratorium on well drilling or at least a ban on new outdoor watering? Both agencies appear inconsistent in their rhetoric and actions in how they have dealt with the Chimacum permit exempt well issue since 2005. We think this fact impairs the rule's credibility on this most controversial issue.

### **Instream flows could hurt existing water right holders**

Regarding the flows themselves, we still do not understand how they will be managed beyond how they are managed now. How will the setting of summer base flows - that is, the stream's contribution from ground water - at biologically optimum levels that are rarely met - actually benefit either fish or people? What are the consequences of setting summer low flows at a 10% or less a frequency of exceedence? By definition, such flows are not intended to flow 90% of the time. Why set yourself up for failure 90% of the time? Certainly no new water rights would be possible at that frequency of flow, and probably wouldn't be possible at 50% exceedence. Ultimately, the instream flow numbers are purely academic, but what will the consequences be if flows are set so high? We have been led to believe that in other WRIAs, the inability to meet instream flows has been grounds for denial of new rights or the curtailment of existing rights. Can you guarantee us that such information will not be used to reject water right applications or curtail existing rights? Will there be consequences for WRIA 17 water rights that don't fit Ecology's definition of "good standing" over the last 5 years? Ultimately, our concern is that the inflated flow numbers and the consequent inability to meet them on any given day will be used as pretense for initiating the relinquishment or curtailment of water rights--perhaps in a general adjudication of the basin. If that day comes, won't all of us be defending our rights against the pressure to meet the unrealistic high flow values proposed by Ecology and WDFW?

In this sense, we find the assertion that the setting of flows and ground water reservations somehow protects existing water rights to be short-sighted and specious. There are few ways to put more water instream other than the purchase, curtailment or relinquishment of water rights that may have lapsed passed the 5 year non-use criteria. And if meeting instream flows is one of the goals of the rule, it stands to reason that existing rights such as those of the PUD will be targeted by either Ecology or others as a solution to our low flow issues.

### **Fostering agriculture on Quimper and Miller Peninsulas could be harmful**

Where small agriculture will be permitted on the Quimper and Miller Peninsulas, new ag wells could induce seawater intrusion where water tables were previously stable, thereby potentially infringing on senior well owners' ability to extract potable water. We are concerned particularly about our water right for the Gardiner water system (G2-25395C) and whether or not it will be affected. The idea that agriculture is encouraged in the rule on two peninsulas with average to poor soils over reclaiming prime lands within a basin that has streams, several aquifers and excellent soils makes little sense as the rule will effectively orphan the most fertile agricultural lands in the County. For agriculture to prosper, attain sustainability, and support a family, it requires at least a capable farmer, market access, decent soil, solar gain, and usable water. The prospect of increased agricultural activity in northeastern Jefferson County outside Chimacum is tempting, but to induce it with cheerful talk of available water without determining the maximum total acreage and yield which such water could support, and without addressing to the potential for seawater intrusion, is potentially detrimental to the resource.

While we welcome the prospect of more farms, conditions for their success would be greatly assisted were Ecology, local ag. groups, and State and National Agricultural agencies to join in a serious effort to provide technical assistance and improved opportunities to farm within the fertile Chimacum Valley as well as other parts of the WRIA..

### **Apportion the reserve as an impact to stream from groundwater withdrawal**

The rule proposes to deduct groundwater withdrawals from new wells against a reserve of surface water. The reserve was set based on the maximum amount of surface water impact, generally 1% of the low flow of a stream that was deemed permissible by Ecology and WA Department of Fish and Wildlife to meet an “over-riding concern of the public interest” test. We understand that the reserves have been set aside as an acceptable level of impact as one per cent of the low flow from a given stream (except Chimacum Creek where it is one tenth of one percent). Because Ecology lacks detailed hydrogeologic data to determine the stream capture from a well, the reserve is the maximum amount of ground water it judges can safely be allocated without resulting in the loss of the one percent flow. If it can be demonstrated in the USGS ground water model that a new well has less impact, additional permit exempt wells should be possible beyond for instance, the 109 new allowed single wells in the Chimacum valley under the conservation standard. A standard of no effect as proposed in the rule (WAC 173-517-150(b)) is far too stringent to be listed as a possibility for new water and misses an opportunity to use the USGS groundwater model as a tool to allocate the reserve based upon an individual well’s modeled impact to Chimacum Creek.

### **Chimacum could have a two tiered conservation standard**

Another solution for Chimacum could be a two tiered Chimacum reserve system that is based on relative impact. Valley wells would have the strict conservation standard and new wells above

the valley floor could have the 500 gallon per day standard and not be deducted from the already meager 1940 gpd reserve. This area is already growth limited by low density zoning. A tiered system could be developed or at least investigated using the USGS groundwater model.

### **Rain catchment is a legally tenuous offering as an outdoor watering option**

Many locals as well as legislators are leery of Ecology's authorization of rainwater catchment. This concept is unprecedented and according to one influential lawmaker is an inappropriate use of the agency's authority. Offering this legally untested outdoor watering source is classic Ecology: the agency pushes the envelope with its authority to write rules or interpret the law in ways that either the courts ultimately reject or the legislature is compelled to fix. If catchment in WRIA 17 is authorized by Ecology ALL rain catchment activities will be in the bullseye of any legal challenge. We think catchment is a good thing, but concerned that Ecology is offering something it doesn't have the authority to give, namely, surface water without a permit. If this is later deemed illegal, what of the people who invested tens of thousands of dollars in catchment facilities? Will Ecology compensate them for their loss?

### **Desalinization as new source or mitigation**

We strongly believe more and more that desalinization is a viable solution to our water availability problems and have advocated the idea in effectively every possible venue for several years. We commissioned a feasibility study, completed in 2007, to consider costs relative to other supply options, investigate prospective sites including an eelgrass survey. Why has Ecology not promoted desalination more prominently as either a source option or as mitigation? Are there grant and or loan opportunities for using seawater as a source for public water or for mitigation? In what ways specifically could Ecology assist our community in developing seawater as a viable source option? A declarative statement within the rule regarding desalinization as an alternative source could be used to support future supply grant opportunities. Why is desalinization not listed specifically as an alternative source option?

### **In summary, our principle criticisms of the rule and questions are:**

- 1) How will flows be managed any differently than they are now?
- 2) Setting flows at low frequency intervals predestines the failure to meet flows. How will that failure impact the community, future rights and existing rights?
- 3) The actual effort to limit permit exempt well usage in the Chimacum basin since late 2005 does not match the inflamed rhetoric that implies a water shortage emergency. Why did Ecology not protect against the proliferation of wells in the Chimacum valley between 2005 and the present with an interim emergency rule? A volume the size of nearly ½ the PUD's inchoate right was potentially appropriated by permit exempt wells.
- 4) The Chimacum Conservation Standard is extreme in that it is now being arbitrarily applied compared to what Ecology understood – and did - about the basin from 2005 onwards.
- 5) Lacks a reasonable alternative approach to Chimacum such as a two tiered system that could allow a 500 gpd standard above the valley floor or at some reasonable distance or deeper aquifer beneath the creek and the conservation standard in the upper aquifer on the valley floor. Could such an alternative be considered in the Chimacum basin? And if not, why not?

6) Ecology does not explicitly define the reserves as they were determined: the reserves are an acceptable stream impact that would result from ground water withdrawals. Why can't new wells in Chimacum be deducted against the reserve based on their modeled impact?

7) Ecology's stringent "no impact" standard fails to use the USGS ground water model as a meaningful management tool. Why can't the model be used to manage reserves based on the modeled impact of new individual wells?

8) Rain catchment is, according to the water code, not legal without a permit. This makes those in the WRIA 17 community who do rain catchment a target for a potential legal challenge upon Ecology's authority to grant rain catchment amnesty. Can Ecology guarantee these folks will never be told to cease and desist from their catchment activities?

9) Desalinization should be listed and promoted as a viable alternative source option in the rule.

While we are very concerned that certain aspects of the rule could have unforeseen negative consequences and that there are many flaws within this proposal, we do understand and appreciate Ecology's charge to complete a rule that includes water for people, fish and farms. The individuals who have worked on the rule since 2005 have been very professional and diligent in their efforts to get a rule that includes the input of local stakeholders, at times under contentious conditions. We acknowledge that Ecology has changed the rule based on the feedback of locals and most notably in extending the maximum allocation period for the Big Quilcene River. That action made the use of Big Quilcene River water for aquifer storage and recovery significantly more feasible. But we also think there are some significant missed opportunities to use the USGS groundwater model and in listing desalinization as viable alternative source options. We hope that Ecology will assist us in how the rule is implemented so that it will not adversely impact the community or the resource and will help us actively seek out opportunities to improve water availability for a multitude of uses in the future.

Sincerely,

Wayne King  
President  
District 3

Ken McMillen  
Vice President  
District 2

Dana Roberts  
Secretary  
District 1

Note: This copy was submitted electronically with the expressed approval of the PUD Board of Commissioners and represents the formal position of the PUD Board regarding the WRIA 17 Water Management Rule WAC 173-517. The PUD will email a signed scanned copy to Ecology on July 16 following its July 15, 2009 meeting.