From: Norman MacLeod
Sent: Friday, June 19, 2009 4:43 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

This comment is in regard to the SEPA checklist, which says on the first page, "You must answer each question accurately and carefully, to the best of your knowledge."

On page 2, item 8., you include two draft documents by incorporation as information directly related to this proposal. Because this rule will have significant consequences for the residents of WRIA 17, is it appropriate to use draft documents as a part of the basis for the rule? Draft documents are subject to change, and some of that change may be highly consequential. One is from 2003, the other is from 2004. Were final versions of either or both of these documents ever prepared? If so, why are you relying on the drafts? If not, why were they never brought to completion and publication? Can you please explain why it is appropriate to use the information contained in these documents if it is either incomplete or found to be not worthy of completion and publication?

On page 12, item i., you say, "About 28,800 people currently reside in WRIA 17." In fact, the total population for all of Jefferson County, which includes portions of other WRIAs, has yet to reach 30,000. You may wish to revisit your WRIA 17 population figure for accuracy's sake.

On page 16, item e., you assert that WRIA 17 is served by rail. In reality, it has been several decades since any of Jefferson or Clallam counties were served by rail. Indeed, all of the rails have been removed and most of the former rail beds have either been or are projected to be converted to non-motorized trails.

Norman MacLeod
241 Sand Road
Port Townsend, WA 98368

Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

This comment regards the unnamed stream depicted on Map C, found on page 8 of proposed Chapter 173-517 WAC.

I contend that the mapping of the unnamed stream depicted is inaccurate, and thus that the depicted regulated area is in appropriately sized.

The following photos are provided to help illustrate this inaccuracy.

The first photo is an aerial photo taken from just north of the golf course, looking north. There is no channel north of the northernmost patch of scotch broom. If fact, most of this section of the unnamed stream is more accurately definable as a man-made drainage ditch system that was first put in place in support of the valley's agricultural activities. Soil types here are excellent for agricultural purposes, although some of the farming activities in the valley have not been continued to the present.

The next aerial view is looking to the south. Again you can see that the northern portion of the stream, now at the bottom of the photo, is a straight line, denoting that this is part of a drainage ditch system. The small pond near the center is roughly square, and is another man-made feature. Active agriculture is evident to the southern boundary line of this group of parcels.

The following is cropped from ArcGIS imagery overlay with the Department of Ecology's overlay of the stream course. About one-third of the way up from the bottom of the image you can see where the drainage ditch system terminates with a rough "T" shape. There is no stream channel to the north of that point.

At the northern end of the runway, the topography slopes ***down*** to the north, while the stream is purported to be flowing to the south. The depicted stream course is to the west, and several feet higher than the intermittent depressional wetland to the east of the blue line.

Now that we've taken a look at the disparity between the mapped head of the unnamed stream, let's take a look at its mouth. For orientation, the lower left of

this aerial is located where Discovery road meets the high bluff at Discovery Bay, with the golf course seen at the center area of the photo. The unnamed stream flows during wet times from the pond seen in the lower right portion of the photo. At this size you cannot see the pasture fences that run across the pond, indicating that the pond does not always hold anywhere near the amount of water seen at this phase of our wet-dry cycle.

As can be readily seen, this shoreline is best categorized as high bluff waterfront. There is no stream channel or delta formation seen across the beach where the stream comes down over the bluff. This makes access to the stream problematic for fish.

Taken in combination, these factors lead many in the WRIA 17 community to question whether there is a verifiable and independently peer-reviewed justification for the level of restrictions for this area as proposed in this draft of the rule.

Could you please answer this concern with documentation that demonstrates that the proposed level of restriction is justifiable? Could you please detail the functions and values of the unnamed stream that merit these restrictions? Will you redraft the map to reflect the actual extent of the stream? If not, why not?

Thank you for your time and kind consideration of these concerns, questions, and requests.

Norman MacLeod
241 Sand Road

Port Townsend, WA 98368

From: Norman MacLeod
Sent: Tuesday, July 07, 2009 5:04 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

This comment is my second on the "Unnamed Stream" on the Quimper Peninsula.

On June 25, 2009, I requested and obtained permission from the owners of the parcel where the unnamed stream runs between Discovery Road and Discovery Bay to have access to the stream so that I could speak first-hand as to its appearance and condition.

The owners of the property are members of a family that homesteaded there, and both the brother and sister grew up on the property. They informed me that the stream flows only very occasionally, generally in the January-February winter storm season, when the pond across the road overflows.

Please recall that we are referring to the pond that has several pasture fences across its length and width because there have been years when there is no water in the pond and it can be grazed.

There is a path down to the beach from the main residence on the property, which crosses a bridge:

Footbridge over the unnamed stream

View of the dry streambed from the center of the footbridge.

The bluff where the residence is located is more than fifty feet above sea level, and the normally dry stream channel slopes steeply from Discovery Road to the shore.

Panoramic (non-distorted) view from the edge of Discovery Bay eastward to the mouth of the unnamed stream, located at the center of the photo

The trail opens out onto the beach at Discovery Bay about a third of the way from the left edge of the above photo. The mouth of the dry stream channel is at center. Most notable for the purposes of determining whether this occasional watercourse has functions and values important to fish is the complete absence of any defined channel from the end of the watercourse across the beach.

My next piece of the information-gathering activity was to follow the dry streambed from the edge of the beach back up the hill toward Discovery Road. Although the density of vegetation and the configuration of the slope was such that I spent a considerable portion of the exercise on my hands and knees, I never encountered any water, mud, or

other evidence of a recent presence of water on the surface of the ground, including on those occasions when my only available route was in the stream bed itself.

The following photos are presented in sequence from the mouth of the dry watercourse uphill and eastward toward Discovery Road.

Here we can see where water has been running often enough to carve a channel under the tree roots, but not often enough to seriously affect the tree's health.

This photo of the dry bed shows growing moss in the watercourse, which would not be present if water had been flowing recently.

This location shows the channelization present in the steeper parts of the watercourse. The channel is more or less a deep gully here.

In some places, running water has carved deep holes in the ground under and around the roots of the larger trees present along the dry watercourse.

From a rather precarious perch, this photo shows one of the deep holes that the occasional running water has carved under tree roots and around rocks. This particular hole is at least fifteen feet deep and fish passage would be impossible.

This photo shows the steep sides of the dry watercourse, along with the absence of any stream bed structures that would indicate the presence of suitable salmonid habitat at any time in the recent past

The configuration of the dry stream bed is such that fish passage opportunities simply do not exist at present, nor likely at any time in the past, based on what I found during this visit. Coupled with the property owners' recollection of the extreme infrequency of any significant stream flow, I can only conclude that the Department of Ecology is in error in including the unnamed stream and its limited watershed in the proposed rule as deserving of greater protection than any other area on the Quimper Peninsula.

From discussions regarding this particular part of WRIA 17, I understand that there are studies asserting that the unnamed stream has functions and values considered important to some fish species. If that is, indeed, the case, I request the following documentation be made immediately available to myself and anyone else who may be interested:

- Copies of any and all studies discussing the functions and values of the unnamed stream shown on Map C of proposed WAC 173-517.
- Copies of any and all field notes describing or referencing the above stream.
- Population counts for each species of fish observed at any point in the unnamed stream, including the time of year they were observed.
- Any and all flow measurements taken at any point in the unnamed stream, including the dates those measurements were taken.
- Any and all other existing information discussing the observed functions and values of the unnamed stream.

In proposed WAC 173-517-130, the Department of Ecology asserts that future groundwater withdrawals from the unnamed stream might contribute to seawater intrusion. I believe that the presence of the pond to the east of Discovery Road strongly argues otherwise.

The presence of water in the pond, and its seasonal fluctuation in water levels absent a stream flow (other than winter overflow) from the stream indicates that water impounded by the pond is making its way to Discovery Bay beneath the surface of the ground. This, coupled with the absence of salinity problems reported in wells located immediately adjacent to Discovery Bay in this area, indicates sufficient flow to prevent seawater intrusion, even with additional wells in the upland area.

The valley located in the unnamed stream's watershed has a history of agricultural activity, some of which continues to this date. There are excellent agricultural soils in the area that the Department of Ecology is proposing for additional water use restrictions, over and above what is under consideration for the rest of the Quimper Peninsula.

Why, exactly and in detail, does the Department of Ecology believe such additional restrictions are warranted?

Thank you for your time and kind consideration of this information, and for your anticipated detailed response.

Norman MacLeod
241 Sand Road
Port Townsend, WA 98368

From: _____
To: awes461@ecy.wa.gov
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program
Date: Thu, 9 Jul 2009 09:53:13 -0700

The statutory direction for the Department of Ecology to set and implement instream flows is generally well understood. Proposed WAC 173-517, however, intends to include a new class of "designated coastal management areas" into rule. Coastal areas are generally regulated under the Shoreline Management Act.

What is the Department of Ecology's statutory authority for including these coastal management areas in this instream flow / water resource management rule?

If there is a demonstration of harm driving the need for this additional regulatory reach, it has not been well defined to the public. What is the specific demonstration of harm leading to this new level of regulatory control over land use and access to water resources for people living in these newly designated areas of WRIA 17?

Norman MacLeod
241 Sand Road
Port Townsend, WA 98368

Sent: Thursday, July 09, 2009 5:27 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

On page 15 of the ***Preliminary Cost Benefit, Maximum Net Benefit and Least Burdensome Analyses***, we find the following:

> "Ecology has chosen to use a 16-year real estimated value of $5,000 for an adult returning spawner.
>
> Reduction of 242 adult spawning fish to the people of Washington can be estimated at $1,210,000."

Instead of being seen as a cost to the people of Washington, this should be seen as an opportunity to design a far better approach to the question of preserving instream flows than the Department of Ecology offers anywhere in the proposed Chapter 173-517 WAC.

Throughout the rule-making process, we've been informed repeatedly that the rule will not provide additional water for any stream, and, as proposed, that is certainly true. By valuing each adult returning spawner at $5,000, though, we have an economic justification for putting forward a state-funded effort to actively support stream flows at times and places where additional water is needed for habitat purposes.

If, indeed, the goal is to improve habitat for threatened and endangered species, the Department of Ecology, in partnership with its peer agencies (the Department of Fish and Wildlife, for instance) should be required to drill wells into deeper aquifers to actively supply water to streams at times and places where instream flows need to be increased to provide habitat functions and values that would not only prevent the projected loss of 242 adult spawners, but provide opportunity for increased populations of the species of concern. In addition to providing the flows deemed necessary, the well water would be considerably cooler than the water currently present in late summer, which would also provide improved survival opportunities for fish present in the targeted stream(s).

While a well network would not likely be achievable in CY 2009, siting and installation of a preliminary well network would certainly be achievable by the end of CY 2010. This represents the earliest opportunity for satisfying the goal to ". . . provide a transition until alternative sources of water can be developed" (WAC 173-517-010, as proposed) for not only the Chimacum subbasin, but other streams in WRIA 17.

This approach resolves a long-standing weakness of all instream flow rules, the fact that they are not capable of adding any water to streams to improve stream flows.

This reasonable alternative has been suggested previously, but there was not a per-spawner dollar value attached to the suggestion that demonstrates the alternative to be

economically viable. Given a per-spawner value of $5,000, we can now see that the relatively small investment required to drill and operate such a well network is an economically viable and easily implementable solution.

Because this alternative was not included in the preliminary least burdensome analysis, that analysis is now rendered deficient, because this is a far less burdensome approach to resolving the instream flow challenges our streams are said to have, while also allowing greater quantities of water to be available to new residential and small business uses throughout WRIA 17's subbasins. By implementing these active stream flow support well networks, we also arrive at a more balanced approach that more nearly achieves the Department's goal of providing water for farms, fish, and people.

Specific questions

In addition to requesting your full response to this recommended approach, please answer the following specific questions:

- If there are any barriers to this approach, what are they and what needs to be done to resolve them?
- Where have similar approaches been tried, and what were the outcomes?
- Who do we need to discuss this with in order to achieve early adoption of this solution in WRIA 17?
- Once this approach is implemented, what is the process for reopening the rule so that new residents and businesses in the affected subbasins can take advantage of this advance?

Norman MacLeod
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From: Norman MacLeod
Sent: Thursday, July 09, 2009 10:40 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

The economic assumptions that the ***Small Business Economic Impact Analysis*** and the ***Preliminary Cost Benefit, Maximum Net Benefit and Least Burdensome Analysis*** are based upon rely on a continuation of a pattern of economic growth that came to a rather abrupt halt in late 2008. The economic growth assumed in these documents is not and will not be happening as projected. Thus, the conclusions found in these documents are no longer valid and should not be deemed acceptable as supporting documents for the proposed Chapter 173-517 WAC.

Jefferson County's Department of Community Development has had to lay off staff because building activity has slumped so rapidly and deeply that they could not afford to keep everyone employed. The remaining staff members are now working four days a week and have had to accept a reduction in their hourly pay. The state agencies are experiencing severe budget cutbacks as a result of declining economic activity, yet the economic analyses associated with this rule-making process fail to take this severe economic reversal into account.

While the easily foreseeable economic consequences of the proposed rule, imposed on top of a severe economic downturn, are far more severe than anything reflected in the analyses developed for the rule, the Department of Ecology appears to be forging ahead with the rule-making process in a business-as-usual effort.

While some may view these analyses as statutorily-driven exercises that are accomplished only because they are required, they should be seen and treated as one of the primary justification cores in determining whether this is the time to impose a rule with such severe restrictions. If these analyses are not based on current conditions and readily foreseeable consequences of those conditions, the adoption of the rule may serve to seriously deepen and prolong the adverse consequences of this recession, which the federal government not only characterizes as being the worst since the Great Depression of the 1930's, but as the Vice President recently said is actually much worse than the administration initially understood.

Had the economy continued on the upward trend that the assumptions of the provided analyses used in developing the above documents, then we might be able to accept the results as valid in some definable manner. That is not, however the case. There is every reason to believe that if the analyses were accomplished using currently pertinent data and trend indicators, the costs would far outweigh any benefit to be derived from imposition of the rule under existing economic conditions.

The Keynesian and Chicago School economists who are largely in charge of our economy at all levels are becoming increasingly worried as unemployment rises and recovery remains elusive. Economists of the Austrian School, who are coming much

closer to the mark with their predictions, are telling us that this is not a cyclical recession, but a structural depression.

This is not the time to impose a rule whose economic analyses are so far away from the reality that we are living.

Chapter 173-517 WAC should be placed on hold until such time as we are provided a small business economic impact analysis and cost benefit, maximum net benefit and least burdensome analyses that are based on the economic realities of the day and realistic projections based on the best information available. In contrast to past analyses developed in support of instream flow rules, the state should make available analyses that include “best case / worst case” contrasts. If the projections of the most optimistic Keynesians comes to pass, then we might be able to deal with the rule without much economic hardship. If, on the other hand, the Austrians turn out to be right, we are looking at a decade or two of severe economic difficulties where the costs and consequences of the rule would so far outweigh the benefits that we would need to radically alter our approach.

Specific questions

- Because the underlying assumptions used in developing the analyses to support proposed Chapter 173-517 WAC no longer reflect the economic realities of the day, and are not likely to be valid in the near to medium term, is there any reason why the proposed rule cannot be placed on hold while analyses based on actual current and foreseeable economic conditions are prepared?
- Is there any good reason why the Department cannot accomplish a set of economic analyses that contain both “best case” and “worst case” projections based on both Keynesian and Austrian School input?
- If a completely revised set of economic analyses demonstrate that the foreseeable costs of the rule outweigh foreseeable benefits, is there any good reason why the proposed rule cannot be revised before adoption to take current economic realities and foreseeable trends into account?
- Given that there are identifiable less burdensome alternatives available than those considered at this stage of rule-making, is there any good reason why those alternatives should not be tested in practice before the more severe restrictions now contained in the proposal are imposed?

Norman MacLeod
241 Sand Road
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From: Norman MacLeod
Sent: Thursday, July 09, 2009 11:00 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

On page 10 of the ***Small Business Economic Impact Analysis*** we find a section titled "Expected Jobs Created or Lost." The Department of Ecology's stated expectation is that 819 jobs will be created through the proposed rule.

In a county with a total population of less than 30,000 people, this seems much more a flight of fancy than anything based in reality.

Would someone please explain how, in an economy where the Jefferson County Department of Community Development has laid off employees because of the sharp and deep reduction in the number of new construction permit applicants, we are going to gain 384 new construction jobs?

With a depressed housing market where Realtors are leaving their chosen profession, where are those 20 new real estate positions going to come from?

When restaurants are reporting that people are sharing food orders and drinking water, where are the 36 new jobs in "food services and drinking places going to be found?

How are the retail trades supposed to be able to afford to hire 85 more people when nearly all the economic indicators are telling us that people are not going out and buying as many things as they used to . . . that they are saving their money instead?

Specific question

- Is there any reason why the Department cannot go back and do this over and tell us with greater accuracy how many jobs we can expect will be created . . . or much more likely . . . lost as a result of the proposed rule if it is adopted without significant revision?

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From: Norman MacLeod
Sent: Thursday, July 09, 2009 11:41 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

Throughout this process, several stakeholders in WRIA 17 have been putting forward the case for increased agricultural activity throughout the farmable lands of the WRIA. The documents associated with the proposed Chapter 173-517 WAC convey the Department of Ecology's belief that the Department has met this concern by allowing a small number of small farming operations in defined areas of the WRIA to be developed with access to various amounts of water for irrigation purposes.

Unfortunately, this does not come anywhere close to meeting the need that eastern Jefferson County has for increased agricultural production in meeting the basic food needs of local residents.

There are two primary lines of justification for increased local agricultural production.

The first is mitigating for climate change. In general, the carbon footprint of our food is far larger than it needs to be, particularly when we are importing food from all over the Pacific Rim for stocking in our local grocery stores. With its stated goal of a significant reduction in carbon emissions the state of Washington has a responsibility for making it possible to reduce the carbon footprint of what we eat. In order to grow adequate quantities of food to make that possible locally, our farmers, at all scales, need access to adequate supplies of water to grow that food.

The second is food security in the face of a foreseeable long-term economic recession or depression. The Olympic Peninsula was largely able to feed itself during the Great Depression of the 1930s. We need to be prepared to do the same again, particularly in light of the economic upheaval we are experiencing now . . . an upheaval that may well turn out to deepen and last a decade or more.

Additional risks to our food security are present in the form of the shutoff of water supplies to large portions of Central California and the drug war in Mexico that is in danger of gradually morphing into a more intense form of civil war. A lot of the produce of the produce in our grocery stores comes from those two regions. We need a significantly greater level of "food insurance" in the face of such challenges . . . of which these examples are only those closest to us now.

The stated three-part goal of the Department's program has been sold to us as water for farms, fish, and people. That implies a balance that the proposed rule fails to keep faith with. With the economic challenges we face, it is simply not appropriate for the Department to essentially foreclose our ability to feed our families with locally-grown food from some of the world's best agricultural soils if the day comes when significant portions of our normal food sources become unavailable to us.

The recommended practice of the state agencies drilling and operating wells to actively support stream flows in those times and places where such support is necessary (as the first, most readily and cost-effectively implementable way to make more water available for habitat) also provides us with the opportunity to make more water available for agriculture. Water used for food production is also water being used for people. This will provide a crucial balance that is currently missing from the proposed rule.

Specific questions

- Given the demonstrable need for significantly increasing food production in WRIA 17, is there any good reason why the proposed rule cannot be modified prior to adoption to require the state to begin immediate implementation of a well system designed to actively support stream flow?
- Is there any good reason why, with the ability to actually be capable of serving the instream flow water right through the use of the recommended well system, additional water cannot be made available to support the necessary increase in agricultural productivity in WRIA 17?

Norman MacLeod
241 Sand Road
Port Townsend, WA 98368

From: Norman MacLeod
Sent: Friday, July 10, 2009 11:00 AM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

Regarding the timing for when an exempt well vests . . .

A Jefferson County official received the following informaiton from the Department of Ecology regarding the date beneficial use is considered to occur for domestic use of water:

> Your best assurance of establishing your water right under this exemption is to beneficially use water for the purpose you intend for the future. For domestic use, beneficial use is considered to occur when water is used within a permitted residential structure. Ecology prefers a Certificate of Occupancy for the residence to demonstrate domestic use of water.
>
> The proposed rule establishes reserves of water that will provide water for new and previously unused permit-exempt wells for many years into the future. Based on the building permit record, we project each reserve will provide water through 2025. If alternative sources of water are not developed and available when the reserve is used up, there will likely be further restrictions on those who want to start using water at that time.
>
> After the rule takes effect we will be coordinating with the County, tracking new building permits and applying the requirements of the rule to each new residence. This means we intend to debit the reserves and apply the conservation standard to each new user regardless of their using an individual or shared well.
>
> Ann E. Wessel
> Instream flow rules coordinator
> Water Resources Program
> Dept. of Ecology
> P.O. Box 47600
> Olympia, WA 98504-7600
> awes461@ecy.wa.gov
> phone: 360-407-6785
> fax: 360-407-6574

A common practice is for a landowner who is planning to build a home is for the landowner to permit and install a septic system, drill a well, and then move into a travel trailer or RV on the property while going through the residence permitting and construction process. This temporary primary residence is normally hooked up to the well and the septic system.

While living in the temporary residence, the landowner may also be establishing a garden for personal use, perhaps establishing an additional garden or field for the

growing of food, flowers or other crops that will be sold commercially, and may also build a barn and commence raising and caring for livestock.

During the time the permit application is being processed, and during the subsequent construction of the permanent residence, the landowner is making normal and full domestic use of water from the well. Therefore, it is reasonable to presume that the landowner is making beneficial domestic use of water from the well.

Specific questions

- Why, if a person is making normal domestic use of water from a well while living in a temporary facility (travel trailer or RV) is that not considered making beneficial use of water from the well that the owner has paid for and may also already be making beneficial use of for outdoor watering, commercial use of water, and/or livestock watering?
- RCW 90.44.050 does not stipulate that water be beneficially used in a permitted residential structure in order to qualify for domestic use. What statute voices this requirement?
- If the state of Washington does not have a statute that mandates this requirement, what is the Department of Ecology's authority for requiring that water be used in a permitted residential structure before it is considered to qualify as a beneficial use for domestic use?
- Is there any good reason that using water in a travel trailer or RV from a well on the landowner's property cannot be qualified as a beneficial use for domestic purposes, i.e. domestic use?

Norman MacLeod
241 Sand Road
Port Townsend, WA 98368

From: Norman MacLeod
Sent: Friday, July 10, 2009 1:49 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

Although some have tried repeatedly during the process leading up to this point in the proposed Chapter 173-517 WAC to bring in the historical context of the development of the Chimacum Creek subbasin, there has not been a general willingness to really sit down and come to an understanding of the system as it was prior to settlement. and to an agriculture and working forest landscape.

The presence of bog iron ore in the Chimacum Valley led to the formation of the Puget Sound Iron Company in 1880 in Irondale, just to the north of Port Hadlock. The company initially produced pig iron from local ore before importing various types of iron ore from British Columbia. Most of the local ore was taken from the northern end of Chimacum Valley before it forks into Beaver and Center Valleys.

Before being cleared for farming on what is now recognized as some of the very best agricultural soils in the world, Beaver, Center and West Valleys featured the large fir and cedar wetlands that resulted over thousands of years in the formation of deep peat layers . . . more than 60 feet in some areas of the valleys. The valley portions of the Chimacum Creek and its tributaries that we see today did not exist in anything like its present form. Instead, you would have seen a forested wetland, with the creek flowing into it at its upland extent. Water would have been present throughout the wetland area, but would not have been flowing in well-differentiated channels. Anadromous fish habitat would have normally been limited to only the lower end of the creek.

Recent habitat improvement efforts have produced meandered and shaded fish habitat miles upstream from where it would have existed prior to the land being cleared and drained for agricultural production. These laudable efforts are helping fish return to the subbasin, but they are now able to use habitat much further inland from where it is likely to have historically existed. These efforts should be lauded and supported through active streamflow support from wells purposed to serving the streams' instream flow water right. Human uses of groundwater from the subbasin, however, should not be as heavily restricted as proposed Chapter 173-517 WAC demands. We are, after all, working with a highly altered landscape where we are hosting fish in areas where they would, in all likelihood, not have been present historically.

Specific questions

- What historical condition of the Chimacum Creek, its tributaries, and its landscape are we trying to replicate, if indeed we are attempting to recover fish numbers to some particular historic population levels?
- If we do not intend to return the Chimacum subbasin to its pre-human-occupancy conditions, what are the conditions, functions and values that we intend to create artificially in this subbasin?

- At a Department of Ecology determined value of $5,000 per returning adult spawner, what population of returning spawners is our target, and what financial and technical resources will the state make available to support the creation of conditions that will support that number of spawners?
- Given that the Chimacum subbasin does not have a history of providing fish habitat to the degree the proposed rule expects us to provide, is there any good reason why availability of water for future human use cannot be brought into a significantly higher degree of balance with the quantities of water being made available for fish habitat?

Norman MacLeod
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From: Norman MacLeod
Sent: Friday, July 10, 2009 3:22 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

Proposed WAC 173-517-190 limits the number of livestock served by a livestock tank small diversion of water to facilitate removal of livestock from the stream to “no greater number of stock than historically range that parcel of property.”

The Department of Ecology fails to define the number of years intended by the term “historically” and also fails to identify the statutory authority for the Department to arbitrarily limit the number of livestock a person may raise and maintain on his or her property.

While using a stock tank diversion is a good practice for helping to develop and maintain improved water quality and other habitat conditions, it is not for the Department to determine the number of livestock that a private citizen may introduce or maintain on a parcel.

Specific questions

- What period of time does the Department of Ecology define as “historically” for the purposes of proposed WAC 173-517-190?
- What does the Department believe is its statutory authority to limit the number of livestock that may be served water to “no greater number of stock than historically range that parcel of property”?
- If the authority is not explicitly conferred to the Department to limit the number of stock allowed to be served by a statute of the State of Washington, whose interpretation is it that the Department feels confers this authority?
- If such authority exists in statute or a statute has been interpreted to confer such authority, will the Department please provide the text of this authority in the response to this question/comment?

Norman MacLeod
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Port Townsend, WA 98368

From: Norman MacLeod
Sent: Friday, July 10, 2009 4:06 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

Proposed Chapter 173-517-060 WAC sets regulation review standards. While it's laudable that the Department of Ecology has increased the level of opportunities for opening reviews of the chapter, it would be better for this section to be more sensitive to community needs and the potential for rapidly changing economic, socio-political, knowledge-based, and on the ground conditions. Nearly every aspect of our societal structure rests on firm foundations of melting Jell-o. Climate change is seen as a significant policy driver that carries several wild cards for water supply issues. With all this in play, the proposed rule needs to achieve maximum flexibility well beyond what is proposed here.

Significant changes are taking place in economic and geopolitical conditions at a very rapid pace. There may, at some point in the near, median, or long term be an easily foreseeable need for the people living in WRIA 17 and the surrounding region to become as food supply independent as possible in a very short span of time. If that becomes the case, the rule needs to be accessible to the amending necessary to make water available to provide adequate support the needs of the resulting increase in agricultural activity.

Proposed Chapter 173-517-060 WAC does not specify the identification and implementation of new water sources as a reason to reopen the rule for amendment. It needs to.

Paragraph (3) specifies a regular review of the reserves. It does not specify the timing of "regular".

With our potential for identifying and implementing new water sources, coupled with the need for a significant expansion of local agricultural activity, the proposed rule needs to be visibly open to the development of an effective local water resource management system, perhaps based on the Walla Walla experience with locally applicable feature sets.

While the proposed section makes it possible to open the proposed Chapter 173-517-060 WAC for review for a number of circumstances, it does not require periodic review at a set frequency. It needs to.

Specific questions

- Is there any good reason that language cannot be added to this section to specify a requirement for periodic review and submission of recommended amendments for consideration?

- Is there any reason why the frequency of mandatory review should not be set as no longer than three years between each full review?
- Is there any reason why this section cannot include a provision that allows any stakeholder or stakeholder group to develop and submit a recommended amendment and justification for adoption of that amendment?
- What is the timing of “regular” for the review of reserves in paragraph (3)?
- What specific form of consultation will be used for the initiation of a non-periodic review referred to in paragraph (2)?
- Who, specifically, may request initiation of the form of review outlined in paragraph (2)?
- Is there any reason why a review initiation process cannot be designed such that a citizen-based group may work with a government entity to initiate a non-periodic review?
- The Port of Port Townsend is a government entity with responsibilities in several locations within WRIA 17, including significant responsibilities for economic development within their geographic area of responsibility.. Is there a specific reason they have been left out of the provisions of proposed Chapter 173-517-050 WAC? If so, what is that reason? If not, can they be included here?
- Is there any good reason why this section cannot be constructed so as to motivate the government entities and other stakeholders to engage in the development of a water management program evolving from the Walla Walla experience and designed around local needs and resources? If not, can this be accomplished and incorporated into this rule prior to adoption?

Norman MacLeod
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From: Norman MacLeod
Sent: Friday, July 10, 2009 4:44 PM
To: Wessel, Ann (ECY)
Subject: Comments on Proposed Rule for WRIA 17 Quilcene-Snow Water Resources Management Program

Anne —

I've put together quite a few comments and specific questions for you folks, and have submitted them in separate emails to allow you to put them in categories more easily.

Just to be sure that you have received all of them, I've pulled them together into a single PDF document, with simple headers included for each email so that you will have the appropriate time stamps for them and whatever other information you need to confirm that you received them in a timely manner for full inclusion in the public record.

Thank you very much for your time and kind consideration for the comments and questions I've submitted to date.

I look forward to continuing work with you and everyone at the Department of Ecology on this and other topics.

Norm MacLeod
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