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July 9, 2009

Department of Ecology
Water Resources Program Attn: Ann Wessel
PO Box 47600
Olympia WA 98504-7600
Dear Ms. Wessel:

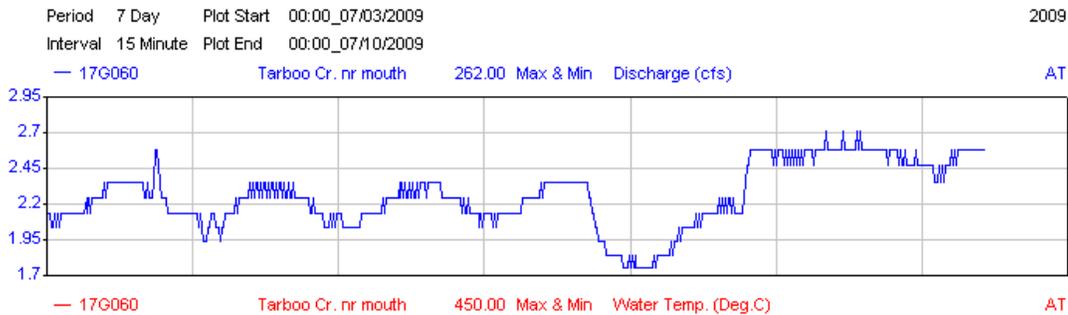
Northwest Watershed Institute is a nonprofit 501(c)3 organization whose mission is to protect and restore fish and wildlife habitats and watershed ecosystems of the Pacific Northwest. We have a special focus on and concern for the Tarboo Watershed in WRIA 17. NWI has helped protect over 500 acres of property along Tarboo Creek, both by securing conservation easements with private landowners, and acquiring and managing the 316 acre Tarboo Wildlife Preserve in the heart of the Tarboo valley. Local, state, and federal agencies, as well as private donors and foundations have collectively invested millions of dollars restoring Tarboo Creek's riparian. We monitor the Tarboo Creek salmon runs closely each year. We are therefore pleased that the Department of Ecology is instituting new regulations that attempt to protect stream flows in our area.

After reviewing the text of the proposed new rules (#173-517 WAC), we are concerned about an apparent lack of provisions for how to handle events of low flow. What happens when flow falls below the instream flow limit in the new regulations? Is action taken immediately? Does instream flow need to stay below the limit for two or three months in order to trigger a response? What will be the mechanism for implementing this response when it occurs?

Notice that the instream flow limit for Tarboo Creek in the month of July is proposed to be 8 cubic feet per second. Below is a graph, from the Ecology gauging station, showing flow in Tarboo Creek over the past week.

Washington State Dept. of Ecology

HYPLOT V130 Output 07/03/2009



Notice that flow has been hovering around 2 cubic feet per second. This is four times less than the level the Department of Ecology has deemed a safe minimum for fish and wildlife!

And this brings up another point: At what point will the Department of Ecology step in to maintain flow in the creek? The new proposed rules make provisions to set aside “reserved amounts” of water that can be taken from the stream even when the flow of water drops below the instream flow limits. And existing rights to water will continue to exist. We would like to see some additional provisions in the rules that outline what actions will be taken to protect instream flow during periods when flow falls below 8 cubic feet per second. We would not like to see the creek turn into a bed of dry, cracked mud because the new rules have provided reserve amounts only for the housing developers.

Additionally, this rule appears to do nothing to improve the poor enforcement of current water rights law. Currently there are many instances of illegal surface water and ground water withdrawal, both in the Tarboo Watershed and throughout WRIA 17. These infringements of the current law are certainly relevant to the current discussion of the proposed rules, as they negatively impact stream flow. Please address this issue also in your new rules.

In summary, we have the following points.

- 1) NWI supports the surface right closure. This should have happened years ago, as in the Chimacum, which was closed in the 1950s.
- 2) No new groundwater wells should be approved that would cause any further reduction in instream flow. NWI urges Ecology to remove the “reservation” of additional water for additional wells that would cause further decreases in already extremely low summer flows.
- 3) All new groundwater rights in WRIA 17 should prohibit use for irrigation. NWI supports the irrigation prohibition in the Chimacum watershed. Other sources of water should be used.
- 4) The analysis that was done to evaluate the effects of the WRIA 17 rules do not provide an analysis of what sort of impacts would occur with domestic water sources that allow for new farm irrigation. This new irrigation from groundwater

wells connected to streamflow would cause unacceptable impacts to ESA listed salmon and other public resources.

Water for instream flow and fish are public resources which must be protected for this and future generations. We appreciate the Department of Ecology's efforts in this direction, and we urge you to make sure this happens. Thank you for your attention to our letter and for all of the work that you are doing as you tackle these tough water rights issues.

Sincerely,

A handwritten signature in black ink that reads "Peter Bahls". The signature is written in a cursive, flowing style.

Peter Bahls, Director
Executive Director