October 10, 2014

The Honorable Keith Goehner  
Chelan County Commissioner, District #2  
400 Douglas Street, Suite 201  
Wenatchee, WA 98801

RE: Wenatchee Rule, WAC 173-545 (WRIA 45)

Dear Commissioner Goehner:

This letter is the Washington State Department of Ecology’s (Ecology) notification that Ecology has determined that the reservations of water set aside under the Wenatchee rule, WAC 173-545 (WRIA 45), are highly insecure. Ecology’s Director, Maia Bellon, I and other senior Ecology staff, met with you, Senator Parlette and the Mayors of Leavenworth and Cashmere recently to discuss the Wenatchee Coordinated Cost Reimbursement Program (WCCR). As you heard from Director Bellon, Ecology is unable to ensure that water rights relying on the reservation are, or would be, in fact, uninterruptible water rights.

Like the Skagit Rule struck down by the Supreme Court in Swinomish v. Dep’t of Ecology (2013), the WRIA 45 rule established new reservations for domestic, irrigation, and stockwater uses. In amending the Wenatchee Rule, Ecology relied upon a determination of the overriding consideration of the public interest (OCPI) to resolve a conflict between the new reservations and the previously-established 1983 instream flows. Ecology established these new reservations out of a good faith understanding that state law allowed this exception. Following the Supreme Court’s decision in Swinomish v. Dep’t of Ecology, we now know it does not.

Ecology will not issue permits that rely on the water reserved in WAC 173-545-090 due to the vulnerability of the reservations. Ecology will not accept cost reimbursement payments or process applications when doing so will not lead to appropriately secure water supplies for domestic and municipal uses as were intended by the reservations. There may be a possibility of issuing permits that do not rely on the reserve and Ecology is willing to explore those possibilities with you and your team.

We appreciate the hard work, participation and consensus that went into the watershed plan and WRIA 45 rule. During that time, as an invited participant, Ecology was determined to creatively find water solutions in the Wenatchee Basin. Ecology is disappointed that the watershed plan did not result in a reliable long-term water supply. Our choice is to assist the County and other stakeholders working together to develop a safer alternative to the reservations.
Ecology is committed to preserving the intent and collaboration of the Wenatchee Planning Unit and to support the goals of Chelan County and all stakeholders. In 2007, we agreed to review the water reservations in 2015 (WAC 173-545-090(7)). In the coming months, we will undertake this process and work with you, the Wenatchee Planning Unit, Tribes, Washington State Department of Fish and Wildlife and others. There are no plans by Ecology to amend the rule or take any other regulatory action without the participation of Chelan County and the Wenatchee Watershed Planning Group and other interested parties.

A new watershed planning process to better address the purpose of the reservations will no doubt be a challenge; however, it offers the possibility of a more sustainable solution. We look forward to working with you and the Wenatchee Watershed Planning Unit to address that challenge.

Sincerely,

[Signature]

G. Thomas Tebb, L.Hg. L.E.G.
Central Regional Director

cc: Linda Evans Parlette, Washington State Senate
Cheri Kelley Farivar, Mayor - City of Leavenworth
Jeff Gormes, Mayor - City of Cashmere
Mike Kaputa, Director – Chelan County Natural Resources Department
Maia Bellon, Director - Ecology
Denise Clifford, Gov. Relations - Ecology
Tom Loranger, WR Program Manager - Ecology
Bob Barwin, WR Section Manager - Ecology
Robin McPherson, Washington State Office of the Attorney General