

Loranger's Draft – Duffy Comments – March 19, 2007 – this was as quickly as I could get it out.

THIS DOCUMENT IS A **TOOL** TO HELP FOCUS DISCUSSION. IT IS **DRAFT**. IT IS SUBJECT TO PLANNING UNIT REVIEW. IT IS SUBJECT TO CHANGE.

I've taken Loranger's draft and incorporated comments and input from a number of sources for the Planning Unit to consider. Tom mentioned that regarding rain catchments and buying back water rights have statewide significance and should probably be posed as recommendations for legislative changes (for rain catchments) or programs to be established (to fund purchase of water rights).

At the moment, I'm thinking that some of the particulars related to reservations may need to be discussed after the plan is completed, but before Ecology begins rule making. I don't think we can come to consensus on all these items in one meeting. Such discussion could occur during "Phase IV" – plan implementation. At the moment, I'm thinking that the following provisions of reserves should be addressed during Phase IV unless everyone comes to agreement quickly:

- Specific recommendations for State and County and PUD roles

- Specific exceptions to reserve limits, except emergencies. Exceptions to include consideration of temporary habitat restoration needs.

- Specific mitigation requirement recommendations

- Specific uses allowed (single family and other)

- Allotment amounts (GPD for each development)

- Recordkeeping

- Restrictions on reservation withdrawal locations

- Requirements to use PUD or other public water first

- Other provisions I can't think of or new issues that come up

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What is the purpose of this Q &A?

This paper uses a question and answer format to address a number of questions related to reserves. The Planning Unit can use this paper to help develop recommendations related to this subject.

What was the source of information for this Q & A?

As each watershed has different circumstances, there is no specific reserve example that can be directly applied to every watershed. Each watershed must develop recommendations that work best for the local situation.

The Department of Ecology has recently collected the reservation recommendations from a number of watershed plans from a variety of areas in the State, including the Entiat, Stillaguamish, Skagit, and Walla Walla. In response to the Planning Unit's request, we have generally summarized the recommendations and some options from these plans for the Planning Unit's consideration. The recommendations have been edited for easier reading. (The specific recommendations were provided at the February 2007 Planning Unit meeting by Jim Pacheco in a handout titled "Basic Policies Behind the Reserve".

In addition to the examples reviewed from the watersheds mentioned above, comments from Ecology's Water Resources Program staff and WRIA 19 Planning Unit members, as well as input from a number of other folks, has also been used to develop this Q & A.

What is a reserve?

Reserves are quantities of water that have been set aside during instream flow rule making.

The purpose of a reserve is to provide water after a stream closure has occurred.

Reserves of water have specified out of stream uses associated with them, and may contain a variety of other limits.

What about existing water rights – how will they be impacted by reserves?

Existing water rights are NOT affected by a reserve. Existing water right holders can continue to withdraw water under the provisions of their permits or permit-exempt requirements.

While existing water rights are not impacted by reserves, State agencies should continue to pursue efforts to reduce pressure on streams that are over allocated

and to help restore late-season low flows. Agencies should use existing tools to acquire and retire existing water rights on a voluntary basis and promote the development and use of new techniques to help restore instream flows. In particular, efforts should be focused on incentive programs and buy-back of water rights, especially where existing rights exceed actual flows.

How can the plan introduce the discussion of reservation recommendations?

The plan can acknowledge that reservations take additional water out of our rivers. We also know that global climate change is happening although there is uncertainty about the exact effects it will have on our streams in the near future. The effects of climate change could be severe, especially for summer low flows. The Planning Unit reservation recommendations should be considered as a last resort to provide water for people, not as a resource of first preference or a resource to be used as quickly as possible.

To help salmon thrive, a key recommendation in this plan is for water to be used more efficiently so that we can, over time, add water back to streams and rivers where flows are already too low and where water quality has suffered.

What role could PUDs take to avoid use of reservation water?

By reducing existing demand, the use of reservation water can be reduced or eliminated. All public utility districts within WRIA 19 should consider the preparation of (shall prepare?) plans to reduce average household water consumption within their service areas. A minimum recommended reduction of household consumption is 30 percent by 2015, from current use levels, which could be achieved by conservation or other means.

What role could the State and County take to avoid use of reservation water?

Water demand can be reduced by State and County actions. The State and County should consider the establishment of (shall prepare?) rules that require water-efficient homes. Rules should allow and encourage the use of rainwater catch basins for the full range of domestic water needs. The County should consider adoption of (shall adopt?) revisions to the Critical Area Ordinance to protect small streams and biological hot spots from low flow impacts. These State and County actions should be established before any reserves can be accessed.

What is a Closure of Surface and Ground Waters?

A closure is the termination of availability of surface water and associated/connected ground water to appropriation because not enough water is available to meet human and fish water needs. Closures to surface waters generally apply to surface as well as connected ground water. Closures can be defined in an Ecology instream flow and water management rule as either seasonal or year round. Because of weather patterns on the North Olympic Peninsula, most closures in WRIA 19 would be in the summer and early fall when streams are low or dry up. Water is generally (but not always) expected to be available (say for storage or other purposes) during the wet winter months.

When a stream closure is set by rule, this means no surface (or surface and ground water) from that stream's watershed is available for new consumptive uses during the closure.

For months when closures are NOT in effect, surface or groundwater would be available for authorized new consumptive uses.

Are there exceptions to closures?

Yes, an exception can be made within the Ecology rule to allow small reservations of water to be designated for new consumptive uses, even with an overall closure. Conditions, or mitigating measures, can be added to the use of any reserved water to reduce or eliminate the impact to instream resources from the additional loss of water. Conditions may include restrictions on amount, timing, and location of reserve withdrawals and the requirement for habitat enhancement. In addition, certain monitoring, reporting, and other requirements can be established in conjunction with the use of reserves.

For example, in limiting the location of reserve withdrawals, a restriction may be placed on taking reservation water from small tributaries and from biologically sensitive areas. In WRIA 19 these areas include Charlie Creek on the Clallam, Sadie Creek on the East Twin, and Susie Creek on the Lyre.

During Phase IV, the successor group to the Planning Unit should evaluate additional small tributaries and other biologically sensitive areas where reservation water is not available. This evaluation should be forwarded to Clallam County and the Department of Ecology. Ecology should close those areas when instream flows are not met. The County should add identified reservation-limited areas to a list of areas where alternative sources of must be used when permitted or permit-exempt water is not available.

Can an exception to closure be made if adequate mitigation is made?

In some watersheds, exceptions have been made for to closures if adequate mitigation is made.

Mitigation typically offsets the effects of pumping or diversions. For example, buying out and retiring upstream water rights can offset new withdrawals. A range of water conservation activities can be used to improve low flows under certain conditions (but not under other conditions). Habitat restoration activities can also offset the impacts of reservation use.

In some watersheds that use mitigation, the requirement for mitigation is broadly addressed by an agency rather than individual homeowners.

During Phase IV, the successor group to the Planning Unit should evaluate whether or not reservation water should be available if adequate mitigation is made, and, if so, what the specific conditions and limitations would be required for such mitigation.

Can an exception to a closure be made for emergencies like firefighting?

Yes, exceptions to closures are made for emergencies like firefighting.

Can an exception to a closure be made for habitat restoration projects?

Yes, exceptions to closures can be made for certain habitat restoration projects. In WRIA 19, exceptions for habitat restoration projects will be considered by the successor group to the Planning Unit during Phase IV, plan implementation.

What happens when a reserve is all used up?

When and if the full amount of reserved quantities are allocated, those sub-basins as identified as subject to closure are then closed to further availability of surface and ground water for new consumptive uses except for emergencies and other authorized exceptions such as approved habitat restoration projects, unless the surface waters impaired by the use have any depletions mitigated for (provided mitigation is permitted).

Do closures also apply to lakes and ponds?

Yes, when a closure for new consumptive use is put in place for a surface or groundwater body, lakes and ponds are in the same drainage are included in the closure.

Reservoirs and other constructed storage ponds are not included in a closure.

How are reservations calculated?

Reservations of water for future out-of-stream uses are calculated based on impacts to fisheries habitat at times when flows are usually at the lowest levels. Calculations are based on Ecology's September 2004 "Guidelines for Setting Instream Flows and Allocating Water for Future Out-of-Stream Uses". Biologists from Ecology, in consultation with Washington Department of Fish and Wildlife, have used 1% to 2% as a limit on loss of habitat during low flow months (usually August or September) and low flow years (90% exceedence – very low - flows). The habitat loss is converted into a reserve amount for year round out of stream uses that are not limited by the instream flows set by rule.

State agencies try to calculate the habitat loss using site specific fish habitat information on a stream by using the results from a fish habitat model such as IFIM/PHABSIM. Using this approach the State has recommended that reservations in WRIA 19 be calculated as a maximum of 1% of stream low flows.

In WRIA 19, after evaluation of the information presented and discussion of the various options, 1% has been selected as the recommended reservation amount. Other provisions of the reservation will be reviewed and recommendations made to Ecology during Phase IV.

What can reservation water be used for?

The WRIA 19 Planning Unit has the option of recommending restrictions on the uses of the reservation water (e.g. domestic use only, with or without outdoor irrigation). Or, alternatively, the uses for the reservation can be much broader, e.g. single and group domestic supply, stock watering, commercial agriculture, and commercial/light industrial uses. Any use consuming a portion of the reserve could be limited to a maximum number of gallons per day.

How much water should be allotted for each development when calculating the amount of reserve that is used?

State law currently allows up to 5,000 gallons per day from each permit exempt well. However, when establishing reservations in closed basins, restrictions can be added to the use of the water.

When calculating household demand, including lawn and garden watering, other planning units have used 350 gallons per day per household for planning purposes.

The greater the amount allowed to be used the faster the reserve is used up.

Coming to agreement on the amount to be allocated can be difficult.

For example, it can be hard to trust that a 350 GPD limit can be relied on without metering and enforcement. However, it is highly unlikely the majority of well users in WRIA 19 use the maximum of 5,000 GPD.

There are a number of options for the Planning Unit to consider in coming up with a specific recommended number:

Until research on alternative numbers and discussion of options can occur, reservations could allowed to used allowing 5,000 GPD for each permit exempt well. This amount would provide maximum protection to the resource.

The Planning Unit could recommend some number - 5,000 GPD or a lower number – now or after hearing public comments on the draft plan.

A GPD number could be evaluated and recommended during Phase IV.

What about reservation record keeping and administration?

Clallam County will be directly involved with Ecology in accounting for, and administration of, the reserve. The administration provisions of a reserve can be recommended in the watershed plan, developed during Phase IV, finalized during rule-making or formulated using some other appropriate mechanism.

Ecology expects Clallam County to be directly involved in some aspects, with Ecology, in administering any reserve. Ecology can report to Clallam County when regular sources of water are no longer available and any further building permits must use water from a reservation or other approved alternative source. Clallam County could then report to Ecology's Water Resources Program on building permits issued that use water from a reservation.

Ecology can calculate water used under a reservation using the accounting method specified in the instream flow rule and would notify Clallam County when a reserve is exhausted. When a reserve is exhausted, Clallam County would inform building applicants that only alternative sources of water must be used to meet water supply needs, citing Ecology's notification. The particulars of this approach would be

unique to WRIA 19 – there is not a similar approach that can just be applied directly from another location.

A reservation for a finite amount of water will need a system to track future use. Agreements between Ecology and the County government are one mechanism to do this.

Is there any requirement to use municipal water if it is available?

Maybe, as some watershed planning units, (including the Elwha/Dungeness), have recommended requiring hook-up to existing water systems when available and have made reserved water accessible for municipal water use. One option is to have no requirement to use a municipal water supply before using water from the reservation. The other approach is a new surface or ground withdrawal would not be allowed in areas where a municipal connection is available in a timely and reasonable manner and the water is for domestic purposes.

This is another provision of reserve use that could be evaluated after a public meeting on the plan or during Phase IV.

Where can reservation water be taken from?

Protecting small tributaries during low flow periods can be very important to minimizing impact to fish habitat. In some watersheds, critical areas have been identified and restrictions placed on taking reservation water from these locations.

Concern about impact to habitat has been expressed in WRIA 19, and some specific areas have been identified where reservation water should not be accessed. One suggestion was to limit reserve access to the lower 1 mile of each river, however without some additional evaluation and discussion, this suggestion may not provide sufficient protection, or it may be unnecessarily restrictive.

Adding additional restrictions on where reservation water can be taken from can be recommended before or after public review, or discussed in greater detail during Phase IV.

Where can reservation water be used?

The plan may or may not address restrictions on where reservation water is used. In other words, the Planning Unit may or may not recommend that the place of use of reservation water be restricted. If restrictions are recommended, the plan may require reservation water to be put to use in the reservation management area from which the water is withdrawn and

prohibit transfers between management areas. (Restrictions on interbasin transfer have been proposed in some parts of the State.)

It should be noted that currently some interbasin transfers already occur in WRIA 19. Both Clallam PUD and Crescent Water serve areas outside the basin where they have a water right.

What exactly is a “reservation management unit”?

A reservation management unit is any stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular use, action, instream flow level or reserve of water applies.

Besides reserves, what are some other possible sources of water for development?

Alternative sources of water have been discussed in the storage study portion of the WRIA 19 watershed planning process. Some of these options include multipurpose storage facilities, conservation and efficiency measures applied to existing uses and the transfer of water from other existing uses of existing rights desalinization, or other sources, alone or in combination. Any of these alternatives can also be incorporated into reserve recommendations or inserted into an instream flow rule as exceptions. This is especially true of beneficial storage projects.

The State appreciates the efforts of the Planning Unit to develop recommendations, and in particular recommendations regarding instream flows, closures and reserves. We hope this summary will assist the Planning Unit in finalizing recommendations regarding reserves and we look forward to receiving the adopted watershed plan. Ecology will use the recommendations in the adopted plan to help develop rules that will specify instream flows, reserves and closures in WRIA 19. Comments received during rule making also have the potential to impact the final reservation rule.