Suquamish Indian Tribe

Attached please find a copy of Suquamish's comments on the Interim Guidance for Determining Net Ecological Benefits.

THE SUQUAMISH TRIBE
FISHERIES DEPARTMENT

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November 9, 2018

Annie Sawabini
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Suquamish Indian Tribe's comments on Interim Guidance for Determining Net Ecological Benefit

Dear Ms. Sawabini:

This letter transmits the Suquamish Tribe's comments on the Department of Ecology's Interim Guidance for Determining Net Ecological Benefit. The Suquamish Tribe (Tribe), a federally recognized Indian Tribe, is a signatory to the Treaty of Point Elliott with the United States. 12 Stat. 927 (1855). The Tribe's adjudicated usual and accustomed fishing grounds and stations (U&A) extend from the northern tip of Vashon Island through the Puget Sound and Salish Sea to the Fraser River, including Haro and Rosario Straits, and the Hood Canal. *United States v. Washington*, 459 F. Supp. 1020, 1049 (W.D. Wash. 1975). The Tribe's U&A includes several WRIAs; however, the Tribe has decided to focus on WRIA 15 while requesting updates on the WRIAs 7 and 9 to continue its engagement in these WRIAs.

The Kitsap Watershed (WRIA 15) is located on the west side of Puget Sound and the eastern side of Hood Canal, containing all Kitsap County, the northeastern part of Mason County and the northwestern part of Pierce County. The watershed lacks major rivers but does include numerous smaller streams. Due to reliance on precipitation, low summer stream flows are dependent on groundwater inflow, which means that groundwater and surface water are least available when water demands are the highest.

The Interim Guidance confuses the purpose and intent of the legislature with respect to Net Ecological Benefits. Any watershed restoration and enhancement plan must mitigate for new domestic permit-exempt wells and other withdrawals with either water rights acquisitions or other projects that provide instream flow benefits. New water withdrawals must be accounted for with in-kind and in-time mitigation. Withdrawal mitigation then must contribute to the Net Ecological Benefit. If mitigation under ESSB 6091 does not include water-for-water mitigation

plus a Net Ecological Benefit then in 20 years the streams in Kitsap County will not be "restored" or "enhanced" but will simply continue to be degraded until no longer present and would defeat the purpose of protecting stream flow and habitat for salmon survival.

1. **The first priority in mitigating for domestic permit-exempt wells and other withdrawals is replacing the quantity of consumptive water use during the same time and in the same basin or tributary.**

WRIA 15 is a §203 WRIA meaning that it has no watershed plan and that a watershed restoration and enhancement plan must be developed and include recommendations "for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids." RCW 90.94.030 (a). Recommendations should "include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes but is not limited to such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance stream flows and not result in negative impacts to ecological functions or critical habitat." RCW 90.94.030 (a).

At the bare minimum a §203 watershed restoration and enhancement plan require actions "necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use." However, "the plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects *are in addition* to those actions that the committee determines to be necessary to offset potential consumptive impacts to instreams flows associate with permit-exempt water use." RCW 90.94.030 (b) (emphasis added). Before adoption of a watershed restoration and enhancement plan Ecology must determine "actions identified in the plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area." RCW 90.94.030 (c). The first and most critical priority and action is mitigating water with in-kind and in-time contributions.

Ecology has also not meaningfully addressed diminishment resulting from return flow lag time. The methods recommended in ESSB 6091- Streamflow Restoration Recommendations for Water Use Estimates, cited in Element 1, do not explicitly discuss diminishment resulting from return flow lag time except as part of a complication presentation on Highest Priority Projects. Instead, this analysis should be a minimum requirement upon which to base any assertion that consumptive use is less than 100 percent. Any assumption that consumptive use is less than 100 percent needs to be based on basin-specific hydrogeological conditions and a scientifically valid estimate of return flow lag times for streams within the basin.

2. A Net Ecological Benefit must do more than simply offset exempt permit-exempt wells and other withdrawals, especially in WRIA 15.

Most of the water legally available in WRIA 15 is appropriated. Pressures from population growth, low groundwater levels and diminishing surface water streams coupled with impacts from climate change often lack water when it is most needed during the summer months. Currently 21 streams are closed year-round and 14 streams are closed seasonally in WRIA 15. *Focus on Water Availability*, Department of Ecology.[1] From the Tribe's perspective, we begin this process in a deep hole due to over-appropriation and the proliferation of domestic permit-exempt uses from unfettered growth in rural areas.

Low flows in all streams within the basin are completely controlled by groundwater. Groundwater is also the primary source of drinking water for current and future human populations of WRIA 15. *See 2016 State of our Watersheds-Suquamish Tribe*, Northwest Indian Fisheries Commission.[2] Chico Creek, one of the most important salmon producing streams on the peninsula and a recovery focus area for the Suquamish Tribe, failed to meet minimum instream flows during June to September for at least 13 years that data were available. *Id.* Critically low flows throughout Kitsap County, especially in summer months, is a serious threat to the survival of salmonids and other instream Treaty-reserved resources.

Ecology's NEB Guidance emphasizes Endangered Species Act (ESA)-listed species, while ESSB 6091 does not mandate ESA-listed species over other in-stream resources. Ecology "interprets 'instream resources' in the context of this provision of ESSB 6091 to include instream resources and values protected under RCW 90.22.010 and 90.54.020(3)(a), with an emphasis on measures to support the recovery of threatened and endangered salmonids." Interim Guidance, pg. 3. The Tribe supports measures to support the recovery of ESA-listed salmonids as well as the recovery of all instream Treaty-protected resources including non-ESA listed salmonids, such as chum salmon. All salmonids are at risk due to low stream flows. Ecology's Guidance, therefore, should emphasize protection and enhancement of all Treaty-reserved resources both ESA-listed species and other species.

In order for there to be any kind of net ecological benefit in WRIA 15, each new domestic permit-exempt well must first, mitigate for water with water and then contribute to the net ecological benefit of the stream system or the streams in WRIA 15 will continue to degrade. On average, approximately 250 new permit-exempt wells per year are installed in Kitsap County. Without a dramatic reversal of development patterns in WRIA 15 that add home after home to rural areas not served by permitted water utilities, future impacts to streamflow in WRIA 15 associated with current and future permit-exempt wells are not speculative and, therefore, demand mitigation that more than off-sets impacts to streamflow. The impacts from climate change are only exacerbating the impacts.

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[1] Available at https://fortress.wa.gov/ecy/publications/documents/1111020.pdf.
[2] Available at geo.nwifc.org/sow/SOW2016_Report/Suquamish.pdf.

Ecology's Interim Guidance needs to clearly define the Net Ecological Benefit as the ecological benefit to a stream system after water-for-water mitigation has occurred to achieve a healthy stream system. ESSB 6091 (including RCW 90.94) requires more than simply offsetting by requiring streamflow "restoration" and "enhancement." A plan that would perpetuate future and ongoing degradation of streamflow is incompatible with the intent of the Legislature and is not the course change that is needed to protect and enhance healthy streams and healthy salmon populations. For WRIA 15, there must be steps taken to enhance streamflow and fish habitat that provides an overall benefit and not merely mitigation as an offset of new domestic permit-exempt wells and other withdrawals.

Sincerely,

for Rob Pursuer, Fisheries Department Director
Suquamish Tribe

cc: Mary Verner, Water Resources Program Manager, Department of Ecology
Tom Laurie, Ecology Senior Advisor for Tribal and Environmental, Department of Ecology
Stacy Vynne McKinstry, Water Resources, Department of Ecology