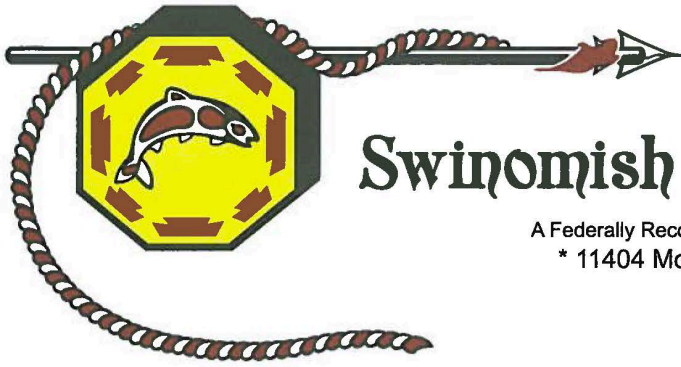


Main Office: 360.466.3163  
Facsimile: 360.466.5309



# Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476  
\* 11404 Moorage Way \* La Conner, Washington 98257 \*

March 15, 2019

Rebecca Inman  
Department of Ecology  
Water Resources Program  
PO Box 47600  
Olympia WA 98504-7600

Re: Comments on Proposed Streamflow Restoration Funding Rule (Chapter 173-566 WAC)

Dear Ms. Inman,

The Swinomish Indian Tribal Community (Swinomish Tribe) appreciates the opportunity to provide the following comments on the Department of Ecology's (Ecology) Proposed Streamflow Restoration Funding Rule (Chapter 173-566 WAC). The Swinomish Tribe is a party to the Treaty of Point Elliott and, among other rights, has a Treaty-protected right to take fish in its Usual & Accustomed fishing areas (U&A) that includes, but is not limited to, the Skagit River and its many tributaries. The Skagit River is the largest river in Puget Sound, and provides habitat for all six wild salmon species, as well as Cutthroat trout. Since time immemorial the Swinomish Tribe and its predecessors have occupied and stewarded vast areas of land and water in the Puget Sound region to support its fishing lifestyle. These fish and their habitat are part of the Swinomish Tribe's cultural, spiritual, subsistence and commercial way of life, as well as a central pillar of its reserved rights under the Treaty of Point Elliott.

The Swinomish Tribe offers the following comments and proposed revisions on specific subsections of the proposed rule.

## **Section 173-566-020 (4)(a) - Cultural Resource Review**

The proposed rule states that grant recipients must follow steps to work with the Department of Archeology and Historic Preservation and tribes "under Ecology instruction" to determine if a site has the potential of disturbing or impacting cultural or historic resources, and to protect such resources. The Swinomish Tribes finds this language problematic. As part of our review of any

proposed project that may affect Treaty protected resources, the Swinomish Tribe reserves the sole right to determine if, when and the extent to which a project has the potential of disturbing or impacting its cultural or historic resources, as well as what steps are taken to address such disturbance or impact.

The language stating that tribes would be required to work under Ecology's instruction in making this determination is not appropriate and should be stricken. We request that sub-section -020 (4)(a) be revised as follows:

(a) Grant recipients must follow the appropriate steps to work with DAHP and tribes, ~~under ecology instruction~~, to determine if a site has the potential of disturbing or impacting cultural or historic resources as determined by the affected tribe(s), and to protect such resources at the direction of the affected tribe(s).

#### **Section 173-566-020 (5) - Water Quality**

The rule proposed states that all funded projects “must protect water quality and comply with relevant water quality standards.” Washington State’s Water Pollution Control Act, RCW 90.48, requires Ecology to “control and prevent pollution” to maintain the “highest quality” of state waters. Washington State’s rivers and streams, and particularly salmon streams, have widespread impairment due to pollution from temperature, nutrients and pathogens. We want to ensure that any streamflow restoration projects funded under this program will not merely protect the existing water quality in instances where such water quality is degraded, but will work to contribute to the restoration of water quality as appropriate. We request that sub-section -020 (5) be revised as follows:

(5) Water quality. All funded projects must protect healthy water quality.<sup>7</sup> Where water quality is degraded funded projects must advance water quality recovery to achieve ~~comply with~~ relevant water quality standards.

#### **Section 173-566-202 (7) – Puget Sound Action Agenda**

The proposed rule precludes Ecology from funding a project that is “designed to address the restoration of Puget Sound” if it is “in conflict with the action agenda” developed by the Puget Sound Partnership. The statute that created the Partnership, RCW 90.71, does not include or incorporate by reference any legal standards for water law or instream flow rules in its requirements for the contents of the Action Agenda. Thus, we believe that this provision is a problematic and unnecessary limitation on streamflow restoration projects. We therefore request that this entire sub-section be deleted.

**Sections 173-566- 120 (f) – Application and -310 (7) – Ineligible Projects and Costs**

The proposed rule requires a project applicant to demonstrate the “source of project water, if applicable, and how water will be managed to ensure there will be no impairment to senior water rights.” We agree that the project applicant should have to demonstrate that its project would not impair senior water rights. We believe that the rule should be clear that if a project would impair senior water rights it would not be eligible for funding.

Accordingly, we believe sub-section -310 (7) should be revised to deem ineligible for grant funding any project that would impair senior water rights as follows:

(7) Projects that conflict with other ecology rules, projects or guidance-, including any project that would impair senior water rights.

Thank you for your consideration of our comments. Please let us know if we can answer any questions.

Sincerely,

A handwritten signature in black ink that reads "Amy Trainer". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Amy Trainer, Environmental Policy Analyst  
Swinomish Indian Tribal Community