



SQUAXIN ISLAND TRIBE

June 7, 2019

Kasey Cykler
Department of Ecology
Water Resources Program
PO Box 47600
Olympia WA 98504-7600

Re: Squaxin Island Tribe's comments on Draft POL 2094, Streamflow Restoration Policy and Interpretive Statement

Dear Ms. Cykler:

The Squaxin Island Tribe appreciates the opportunity to comment on Ecology's Draft POL 2094, Streamflow Restoration Policy and Interpretive Statement.¹ The Tribe's comments are as follows:

Background (p. 1)

1. The Tribe disagrees with the view that the law requires no more than offsetting the next 20 years of new domestic permit-exempt wells ("NDPEW").
2. Other laws besides RCW Ch. 90.94, including but not limited to the Growth Management Act, the Water Code, the Groundwater Code and the 1971 Water Resources Act, also impose requirements on local governments' issuance of approvals for buildings and subdivisions, and the degree to which they can impact instream flows.

Definitions (p. 2)

3. For reasons described in its other comments (including on Ecology's draft NEB Guidance), the Tribe disagrees with the definitions of "action", "impact", "Net Ecological Benefit", "Net Ecological Benefit Determination", "New Consumptive Water Use", "offset", "project", and "reasonable assurance".

¹ The Tribe incorporates by reference its previous letters commenting on Ecology's draft guidance, rules and interpretative statements relating to ESSB 6091. The Tribe's participation in this state process should not be interpreted to in any way diminish its Treaty reserved rights.

Applicability (pp. 3-4)

4. While RCW 19.27.097(5) provides that permit-exempt withdrawals existing before January 19, 2018, are deemed to be evidence of an adequate water supply under that section, these wells' impacts on instream flows must still be mitigated under RCW 90.94.020 and .030 and other applicable laws.

5. Ecology refers to "basins with instream flow rules that do not regulate permit-exempt uses". The Tribe disputes that this situation exists. Withdrawals that are junior to instream flow rules are not, and cannot be, exempt from senior appropriations. Ecology lacks statutory authority to effectuate that outcome.

6. The Tribe disagrees that RCW 90.94.020 and .030 only apply to "domestic" permit-exempt wells, and do not affect other uses that are exempt from permitting. The plain language requires otherwise.

7. RCW Ch. 90.94 in no way "supersedes existing case law [sic] and rule pertaining to the issuance of building permits and new domestic permit-exempt well water use in the 15 WRIs identified in the law. The Tribe disputes that blanket statement as unsupported and not reflecting reality.

Local Government Obligations (p. 5)

8. The Tribe suggests adding the following language: "Under chapter 90.94 RCW, Ecology interprets local governments to have the following obligations pending plan approval and rule adoption. . . ."

Water Use Limits under RCW 90.94.020 and 90.94.030

9. Regarding "In the context of chapter 90.94 RCW, "domestic use" and the GPD withdrawal limits include both indoor and outdoor household uses, and watering of a lawn and noncommercial garden up to one-half acre in size", we additionally assert that indoor and outdoor uses can be treated differently as to curtailment, such as during a drought declaration.

10. Regarding "Water withdrawal restrictions are based on a maximum annual average withdrawal. Ecology interprets this to mean that a home's water use cannot exceed 950 or 3,000 GPD as the daily average over the entire year", there may be circumstances that warrant a limitation on a home's water use to less than the maximum annual calculation proposed by Ecology.

11. Regarding "Homeowners are still limited to using no more than 5,000 GPD for domestic use and one-half acre as set forth in RCW 90.44.050. As an example, under 90.94.020 and 90.94.030 RCW, a homeowner could withdraw 4,000 gallons on a summer day, so long as they did not do so often enough that their annual average exceeds the 950 or 3,000 gallon limit", see above comments. Maximum water use can be curtailed by more senior rights.

Planning under RCW 90.94.020 and 90.94.030 (pp. 6-8)

12. Ecology takes an overly limited view of the impacts that must be offset: i.e., it is not only new domestic permit-exempt wells.
13. More analysis is required before the Tribe can agree that SEPA may be completed by either Ecology or a local government. For example, Ecology must make important findings before it can adopt a plan, findings that are not required of a local government.
14. Ecology discourages planning groups from identifying projects that go beyond Ecology's cramped view of what impacts must be offset. The policy improperly downplays the potential of plans to go beyond them. This is inconsistent with the letter and spirit of RCW Ch. 90.94, Ecology's mission, and the Tribe's goals for plans that meet the real needs of watershed restoration. The Guidance should thus encourage planning groups to fully address environmental needs related to streamflow. Minimum requirements as described in the policy are in no way "streamflow restoration", since they only protect streams from a narrow category of future impacts.

Rulemaking under RCW 90.94.020 and 90.94.030

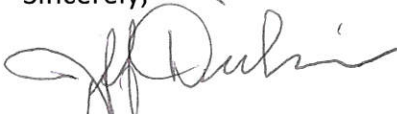
15. If a planning group unanimously approves a plan, Ecology should act expeditiously to adopt it and not allow the statutory deadlines to expire so as to have to default to rulemaking.

Foster pilot projects (pp. 10-11)

16. It is not entirely clear that the mitigation sequence established for pilot projects entirely supersedes the traditional test for impairment and availability of water subject to senior instream flow water rights and closures.

Thank you for your consideration.

Sincerely,



Jeff Dickison, Assistant Director
Squaxin Island Natural Resources Department