

Alan Chapman

Memorandum

To: Washington State Department of Ecology

From: Alan Chapman

Subject: Comments on Rulemaking - Amendment to Chapter 173-501 WAC IRPP Nooksack WRIA 1

Summary

1. The identification of a conservation standard of 500 gallons per day is a more effective way to estimate the potential offset for impacts of new domestic permit exempt wells than an annual average daily impact of 3000 gallons.
2. The provision for retiming instream flows under specific conditions provides a useful tool in meeting the requirements of ESSB 6091
3. There are other out of date issues that should have been addressed in the rule amendment. Several instream flow levels are based on gauging stations that no longer exist and might be significant gaps in issuing new permitted withdrawals.
4. The supporting documentation should indicate that the project list was developed by the WRIA 1 Planning Unit in the rush to update the plan through the local process and was not final or completely agreed upon. Grant project funding for consideration under the Stream Flow Restoration Act (Chapter 90.94) should be prioritized by the local Planning Unit and Watershed Management Board before consideration in the statewide funding prioritization.
5. The local watershed planning process should be encouraged to continue working diligently on developing a comprehensive plan to balance salmon recovery, instream flow and ecosystem benefits to meet the diverse needs of the local community.
6. The resolution of existing conflicts between land use and water availability could be effectively addressed through increased flexibility in implementation of current water law to meet locally agreed objectives. This could be done by moving away from a system of water rights permitting to locally proscribed water management.
7. More information on the relationship between ground water and instream flows is necessary to forge a community consensus and the development of a locally accepted instream flow rule with the priority to meet treaty reserved hunting and fishing rights that integrates salmon habitat conditions with water quality and quantity.

General Discussion

The Department was faced with a difficult task to revise WAC 173-501 to allow the requirement of Chapter 90.94 RCW to permit exempt domestic wells to meet local building code requirements for the issuance of new residential building permits in areas not served by water purveyors under conditions that met the concerns raised in the Supreme Court of Washington decision in *Whatcom Cty. v. Hirst*, 186 Wn.2d 648, 381 P.3d 1 (2016) about impacts on senior water rights and critical salmon habitat. The Department's task was further complicated because of requirements to offset impacts of these new permit exempt wells on instream flow requirements without clear information

on the impact of pumping ground water on instream flows, the lack of clear prioritized goals for ecological benefits of instream flows in diverse sub basins with different instream flow and habitat characteristics, and the impact on Planning Unit functioning on the absence of three of the initiating governments.

The identification of a conservation standard of 500 gallons per day estimated domestic indoor and outdoor consumptive water use based on information from a number of situations throughout the state made it possible to estimate the more likely impacts of new domestic permit exempt wells on instream flows and senior water rights than the annual daily consumptive use of 3000 gallons indicated in Chapter 90.94 RCW that needed to be offset to protect senior water right holders and ensure net ecological benefits. It is not a limit to be enforced, but the most likely actual consumptive use. Because the conservation standard is an estimate and uncertainties relative to the number of projected households, the number of residents per projected household and the actual withdrawals from new domestic permit exempt wells may affect the validity of these estimates, The actual values should be should be regularly checked and adjustments made in offset and net ecological benefits required for mitigation.

It should be recognized that instream flow is an important ecological benefit for the watershed residents but the use of the land and withdrawal for local economic, social and physical wellbeing of residents for housing, food and fiber, enterprises providing employment and infrastructure impact the ecological benefits of stream flow requires a balance between human needs and natural processes that can only be achieved through local actions consistent with statewide objectives. Watershed planning under Chapter 90.94 RCW recognized the need to harmonize the needs of many segments of the local community to the benefit of all. The supporting documentation should reflect that although a plan was developed through the 90.84 process it relied heavily on monitoring and adaptive management of proposed actions to address specific issues related to meeting salmon recovery , water supply, and providing for an increasing human population. The Planning Unit under this process involving the initiating governments and caucuses representing a variety of local interests for land development, sustainable fisheries, water supply and environmental protection has not functioned well with the withdrawal of three of the initiating governments from the process. While there was general agreement of all parties that the RH2 estimates of consumptive use were acceptable for considering offsets, there was more a rush to identify projects that could offset this estimated projected use than a consensus on the projects that should be implemented to offset the impact of new domestic permit exempt wells. It would improve the supplementing documentation to indicate that the projects identified are representative of the type of projects that would offset the impact of new domestic permit exempt wells on senior water rights and net ecological benefits and that the priority of specific projects directed toward offsetting new domestic permit exempt wells submitted for funding provided for this purpose under Chapter 90.94 RCW should be determined by the agreement of the Planning Unit as it is currently implemented and the Watershed Management Board representing implementing governments.