



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 \*

November 10, 2020

Ms. Mary Verner, Water Resources Program Manager  
Department of Ecology  
Via email and online portal: [Mary.Verner@ecy.wa.gov](mailto:Mary.Verner@ecy.wa.gov)

Re: Swinomish Indian Tribal Community Comments to Ecology's Advisory Group on  
Water Trust, Banking, and Transfers

Dear Ms. Verner,

The Swinomish Indian Tribal Community would like to provide the following comments to the Department of Ecology regarding Ecology's report on Water Trust, Banking, and Transfers. Tribal staff has been involved with the development of the State's legislation and policy regarding trust water rights since its inception in the mid 1990's. We are frustrated to see that these state actions that were developed to protect and restore instream flows as a result of the Chelan Water Agreement in 1994 have turned into something very different. The Trust Water Rights Program appears to have become a major tool to avoid relinquishment, which in many instances will have adverse consequences on the protection of adequate flows and restoration of diminished instream flows. We therefore have the following suggestions regarding the implementation of the trust water rights and banking programs through legislative or policy efforts.

1. There may be many instances whereby the development of a water bank and trust water right can have beneficial impacts on instream flows, fish, and tribal treaty rights. This has been our experience regarding a number of efforts in the Skagit River Basin. However, despite the fact that Ecology has stated many times that Washington treaty tribes have senior, but unquantified, water rights in basins that have not been adjudicated, these tribal water rights are rarely considered or protected. It is the Swinomish Tribe's view that these rights should be considered before trust water rights are issued or water banks are developed and utilized. We believe the appropriate approach in basins where tribes have

Federally reserved water rights should be that Ecology must have agreement from the affected tribes prior to these tools being implemented.

2. It is the Tribe's view that when trust water rights are used to fund water banks to support additional out-of-stream development, those water rights must be "wet water"; that is water that is currently being utilized. This would preclude the use of inchoate water rights, or perfected water rights that have not been utilized for more than five years, regardless of whether such inchoate or perfected rights are deemed to be municipal rights under State law. Using "paper water rights" to mitigate additional out-of-stream appropriations will in most instances adversely impact instream flows, fish, and tribal treaty rights. The Department's apparent reluctance to pursue relinquishment or abandonment of unused paper water rights has added to the problem of uncertainty regarding available water supply in many basins, has contributed to reduced instream flows, and has thereby compounded the challenge of ensuring adequate instream flows for ESA-listed salmon upon which the treaty tribes' and State's fisheries depend. This problem will only worsen with the increasing impacts of climate change, and thus should be addressed. Therefore, it is our view that only water that is actively being utilized should be available for the Trust water rights program and water banking mitigation purposes.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Trainer", with a long horizontal flourish extending to the right.

Amy Trainer, Environmental Policy Director  
Swinomish Indian Tribal Community

Cc: NWIFC