



PHONE (360) 598-3311  
Fax (360) 598-6295  
<http://www.suquamish.nsn.us>

# SUQUAMISH INDIAN TRIBE

PO Box 498 Suquamish, WA 98392-0498

October 13, 2023

Megan Duffy, Director  
Recreation and Conservation Office  
P.O. Box 40917  
Olympia, WA 98504

RE: WRIA 15 Watershed Restoration and Enhancement Plan

Dear Director Duffy:

The Suquamish Indian Tribe of the Port Madison Reservation (“Tribe” or “Suquamish Tribe”) is a federally recognized tribe and signatory to the 1855 Treaty of Point Elliott. In negotiating the Treaty of Point Elliott, the Tribe’s U& A extends well beyond the Port Madison Indian Reservation boundaries and includes marine waters of Puget Sound from the northern tip of Vashon Island to the Fraser River in Canada, including Haro and Rosario Straits, the streams draining into the western side of Puget Sound and Hood Canal. The U& A of the Suquamish Tribe encompasses all of Kitsap County while also extending west into Jefferson County, south into Mason County, and east to King County.

The Tribe protects all its treaty-reserved resources throughout its aboriginal homeland and U&A. Water quality and quantity is critical for healthy fish populations. In the Kitsap Watershed, Water Resource Inventory Area (WRIA) 15, there are no large rivers. Streams and springs in WRIA 15 tend to be smaller and seasonal and are often dependent on ground water recharge. Over appropriation of water in WRIA 15 is resulting in depleted stream flows which do not support fish populations and jeopardizes the Tribe’s treaty-reserved fishery.

Under the Treaty of Point Elliott, the Port Madison Reservation was reserved and subsequently expanded by Secretarial Order on October 21, 1864, to accommodate the Suquamish Tribe at the request of Chief Seattle. The Tribe’s on-reservation *Winters* water rights are among the most senior water rights in the WRIA.

## **I. WRIA 15 Planning**

The Streamflow Restoration Act (RCW 90.94) passed in 2018, clarifies that local governments can issue building permits for homes that intend to use permit exempt wells for their water supply. The law directs local planning groups in 15 watersheds to develop or update plans that, if implemented, are intended to offset, or “mitigate,” impacts to instream flows associated with permit-exempt domestic groundwater withdrawals and provide a Net Ecological Benefit (NEB) to the WRIA. Offsets are projects or actions intended to compensate for permit-exempt consumptive water use over the next 20-year planning period (2018-2038). NEB is the outcome that is anticipated to occur through implementation of projects and actions identified in the plan that result in a water benefit greater than the impact within the planning period.

The Tribe has participated in good faith in the WRIA 15 Watershed Restoration and Enhancement Planning Committee and has collaborated with other federally recognized tribes and regulatory agencies engaged in the WRIA planning effort under this law. Comments were provided to Ecology on Chapters 1-7 of the draft plan

via email on October 2, 2020 and on the complete draft plan (all chapters) also via email on January 14, 2021. After participating in the WRIA 15 committee meetings, providing comments to Ecology on the draft WRIA 15 plan, and further deliberating on the potential impacts to streamflow and water resources in WRIA 15, the Tribe voted to oppose the plan.

Unfortunately, there have not been substantial changes to the plan and many of the Tribe's concerns remain outstanding. In addition to concurrence with many of the WRIA 15 Watershed Plan comments outlined in the Squaxin Tribal letter dated October 9, 2023, a summary of the Suquamish Tribe's key concerns are provided below.

## **II. Uncertainty regarding streamflow benefits**

In the WRIA 15 draft plan, there are projects that have some offset benefit but there is simply not enough detailed analysis to accurately estimate the offset benefit amount. The law requires that plans include projects that have reasonable assurance of success and provide sufficient documentation of those methods, assumptions, data, and implementation considerations.

None of the projects identified in the draft plan include estimates of the timing on when the benefit would be realized. Ecology Guidance (Final Guidance for Determining Net Ecological Benefit, GUID-2094 Water Resources Program Guidance, July 31, 2019) requires both annual and seasonal impacts of water offset projects be considered and this information is not provided. The Tribe cannot support this lack of certainty.

## **III. Over Reliance on Habitat Projects**

The draft plan does identify some projects that would be beneficial to streamflow, the draft plan relies too heavily on the habitat projects to offset exempt wells. Habitat projects do not mitigate for water withdrawal. Water must be mitigated with water.

Another issue with the draft plan is the inclusion of culvert projects. Culvert projects should be removed from the list and not be included as mitigation because the State is subject to a federal injunction requiring the replacement of fishing blocking culverts and under Washington State law fish blocking culverts and dams are illegal.

No project in the draft plan should impact or alter naturally occurring wetland habitat, resulting in rerouting of streams or include instream structures (including but not limited to flow controls, storm water facilities etc.). Alteration of flows or hydroperiod can impact water quality and other wetland components (pH, temperature, system functions, etc.). In addition, hydrologic changes can impact mammal populations in wetlands by diminishing vegetative habitat.

The habitat projects included in the draft are problematic. Many do not have accurate project cost estimates and lack detail that would assure a measurable benefit to streamflow, and some have already been completed. For example, for West Sound there are only three water offset projects (Koch Creek regional storm water facility, Kitsap Creek outlet structure removal and KPUD stream augmentation); six habitat projects with some offset; nine habitat projects with no offset component; and three managed aquifer recharge projects. The only offset projects that may provide assurance of "in time" and "in kind" instream flow benefit are the Kitsap Creek outlet structure removal and the KPUD stream augmentation. Even then, while augmentation has its assurances it is essentially taking water from deeper aquifers to augment shallow aquifers, in other words robbing Peter to pay Paul. Due to augmentation being one of the only projects providing assurances we request that it remain as an option if needed even if not ideal.

#### **IV. Adaptive Management and Assurance of Plan Implementation**

According to the law and Ecology Guidance, once a WRIA plan is finalized Ecology will cease participation and involvement with the stakeholder group. There are no assurances or requirements that the projects will be implemented. Commitments to plan implementation made by local jurisdictions are laden with funding contingencies. This is simply unacceptable. Future permit exempt wells will impact stream flows, habitat, and fish populations and must be mitigated for within in-kind and in-time projects that are implemented. If Ecology ceases to hold local jurisdictions accountable for the projects, then the state threatens to undermine all the work that has been spent to develop the WRIA plans and to continue allowing residential permit-exempt wells.

Further, in the WRIA 15 draft plan many of the projects are conceptual and lack an assigned 'sponsor' with responsibility for project implementation and monitoring. This is not consistent with Ecology Guidance. Finally, there is no enforcement mechanism, monitoring program or robust adaptive management plan including performance standards to ensure project success or to address failures to comply with the identified offsets required in the plan.

We hope that you will strongly consider the comments that the Tribe, other tribes and WDFW have provided throughout the process to bring forward a revised plan that will more effectively and more assuredly mitigate the impacts of permit-exempt wells on stream flows and ensure that there is water to support salmon for future generations.

Sincerely,

Handwritten signature of Alison O'Sullivan in black ink.

Ecosystem Recovery Program Manager