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PORT GAMBLE S'KLALLAM TRIBE

May 3, 2021

Mary Verner, Program Manager
Water Resources Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Mary.verner@ecy.wa.gov

Re: Port Gamble S'Klallam Tribe's Water Rights and WRIA 15 Streamflow Restoration Plan

Dear Ms. Verner,

The Port Gamble S'Klallam Tribe is a federally recognized tribe with reserved aboriginal fishing rights and water rights under the 1855 Treaty of Point No Point. 12 Stat. 933; *United States v. Washington*, 459 F. Supp. 1020, 1039 (W.D. Wash. 1978). Dating to time immemorial, Port Gamble S'Klallam Tribal members have held deep ancestral ties to their traditional use areas, including both the Tribe's current reservation and its off-reservation usual and accustomed fishing and hunting grounds. The Tribe holds significant Federally protected senior water rights sufficient to serve the needs of the reservation as a permanent homeland for the Tribe, as well as to prevent the depletion of stream flows in a manner that impairs the habitat of fish that the Tribe has a Treaty-protected right to take.

PGST participates regularly in federal, state, and local processes to ensure that its members' unique historic relationship with and knowledge of these areas and their natural resources are considered, accounted for, and protected in environmental and natural resource decision-making. It is on this basis that the Tribe has participated in and invested considerable resources in the streamflow restoration planning process for WRIA 15 required under the Streamflow Restoration Act, RCW 90.94.030 (ESSB 6091, Section 203). The Tribe has participated in good faith and with the fervent hope that a cooperative process would result in a plan for WRIA 15 that respects the Tribe's reserved fishing and water rights, bedrock principles of water law, and the mandates of the statute.

Unfortunately, the Tribe finds that the plan, as drafted, does not sufficiently protect the Tribe's treaty reserved fishing and water rights. There is far too much uncertainty that the impacts to

streamflows by permit exempt well withdrawals will be adequately mitigated and streamflows will not be further impaired. We have advocated for an adaptive management process that would allow for continued cooperation and improve water management in the WRIA, but the lack of well-developed projects and the absence of a framework for offsets to occur both in place and during critical flow periods, along with robust monitoring and water use enforcement, prevents us from approving the plan at this time. For these reasons and the reasons described in Port Gamble S'Klallam Tribal Council Resolution 21-A-056, the Tribe voted to disapprove the plan.

The Tribe appreciates the participation of all entities and Ecology and consultant staff who have participated in this process, particularly committee Chair, Stacy Vynne McKinstry.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeromy", is positioned above a horizontal line.

Jeromy Sullivan, Chairman
Port Gamble S'Klallam Tribe

THE
PORT GAMBLE
S'KLALLAM
TRIBAL COUNCIL
OF THE
PORT GAMBLE
S'KLALLAM TRIBE

I.

WHEREAS, the Port Gamble S'Klallam Tribe entered into the Treaty of Point No Point with the United States of America on January 26, 1855, reserving sovereign and aboriginal rights in perpetuity;

II.

WHEREAS, the Port Gamble S'Klallam Reservation was proclaimed on June 16, 1938 to be an Indian reservation, held in trust by the federal government "for the benefit and use of the Port Gamble Band of Clallam Indians" under the provisions of Section 5 of the Indian Reorganization Act, and the purchase of which was paid in full by the Tribe;

III.

WHEREAS, the Port Gamble S'Klallam Tribe's General Council delegated the Tribe's authority to negotiate and enter into agreements with other governments, their agencies, and with private persons and entities; regulate land use; and to protect the Tribe's natural and cultural resources to the Tribal Council under Article IV, Section 3, (H, P & T) of the Constitution of the Port Gamble S'Klallam Tribe, approved by the Secretary of Interior on July 7, 2007, **AMENDED BY CERTIFIED ELECTION JULY 8, 2013;**

IV.

WHEREAS, S'Klallam people rely on fisheries for food, income and ceremony, both subsistence and commercial harvest pre-date the Treaty, and the Treaty of Point No Point reserved to the S'Klallam the right to take fish at "usual and accustomed grounds and stations" (U&A), which include waters draining to Port Gamble Bay and Hood Canal;

V.

WHEREAS, 164 years after the signing of the Treaty of Point No Point, the Tribe retains the right to conduct fisheries in its U&A including the right of access to places, the right to a share of harvest to meet tribal moderate living needs, and the right to protection of fish habitat in all areas of the Tribe's U&A;

VI.

WHEREAS, the Tribe holds treaty-reserved senior water rights and fishing rights as a sovereign nation with rights over natural resources, including enough water to fulfill the purposes of the reservation and in quantities that are necessary to support healthy salmon populations, and such rights are property rights held in trust by the United States for the benefit of the Tribe;

VII.

WHEREAS, Water Resource Inventory Areas (WRIAs) are large watershed areas formalized under Washington Administrative Code for the purpose of administrative management and planning; and WRIA 15, also known as the Kitsap Watershed, is one of the 62 designated WRIAs in Washington State;

VIII.

WHEREAS, the 676-square mile Kitsap Watershed (WRIA 15) is within Kitsap, Mason, Pierce, and King counties and is primarily drained by hundreds of relatively small lowland stream and river systems directly into the surrounding marine waters and Hood Canal; and the Port Gamble S'Klallam Tribe Reservation occupies over 1,700 acres within the Kitsap Watershed;

IX.

WHEREAS, the Kitsap Watershed supports anadromous salmon, as well as other fish species, and aquatic life and minimum streamflow regulations were established in Kitsap County by the State Department of Ecology in 1981;

X.

WHEREAS, on January 18, 2018, the Washington State Legislature passed Engrossed Substitute Senate Bill (ESSB 6091), codified as the Streamflow Restoration Act (RCW 90.94); and the Streamflow Restoration Act directed the Washington State Department of Ecology (Ecology) to establish a committee to draft a Watershed Restoration and Enhancement Plan ("Plan") for the Kitsap Watershed with a deadline of June 30, 2021;

XI.

WHEREAS, the WRIA 15 Watershed Restoration and Enhancement Committee met on a regular basis between October 2018 and January 2021 to develop a plan intended to meet the requirements of State law, and the Port Gamble S'Klallam Tribe sat on the Committee, participated in good faith to ensure that the final WRIA 15 Plan would protect the Tribe's treaty-reserved water and fishing rights, and acknowledges and appreciates the hard work that each of the Committee members and their staff put into the WRIA 15 Plan process;

XII.

WHEREAS, the Committee members worked together to develop estimates of the number, distribution and consumptive use of new permit exempt wells over the

20 year plan horizon and identified projects for inclusion in the plan to meet the consumptive use offset quantity required by law; and

XIII

WHEREAS, the Tribe's Natural Resources staff and attorneys reviewed the Plan and determined that the plan did not achieve the higher offset goal, did not achieve offsets by subbasin, and did not identify projects with a high degree of success certainty.

XIV.

NOW THEREFORE BE IT RESOLVED, the Tribal Council finds that the Plan provides little certainty that impacts to streamflows by permit exempt well withdrawals will be adequately mitigated and streamflows will not be impaired by said groundwater withdrawals;

XV.

BE IT FURTHER RESOLVED, the Tribal Council finds that the Plan, as drafted, does not sufficiently protect the Tribe's treaty-reserved water and fishing rights and therefore is not in the long-term best interests of the Port Gamble S'Klallam Tribe; and

XVI.

BE IT FINALLY RESOLVED, that the Tribal Council hereby disapproves of the final adoption of the WRIA 15 Watershed Restoration and Enhancement Plan and grants authority to the Tribe's representative on the Watershed Restoration and Enhancement Committee to convey this disapproval to all interested parties.

CERTIFICATION

WE HEREBY CERTIFY that on this date there was a X regular special meeting held of the Port Gamble S'Klallam Tribal Council on the Port Gamble S'Klallam Indian Reservation, at which time a quorum was present;

WE FURTHER CERTIFY, that the above numbered resolution, was at said meeting, introduced, evaluated, and was passed by a vote of 5 FOR, 0 AGAINST, 0 ABSTAIN dated this 12 day of April, 2021.



Jeromy Sullivan
Chairperson



Attest:
Council Member