



# SQUAXIN ISLAND TRIBE

## SENT BY ELECTRONIC MAIL

April 16, 2021

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Water Resources Program  
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Re: Squaxin Island Tribe's approval of Watershed Restoration and Enhancement Plan WRIA  
13 – Deschutes Watershed (Final Draft Plan, March 18, 2021)

Dear Mary:

By this letter, the Squaxin Island Tribe ("Tribe") informs you that the Tribal Council has approved the above WRIA 13 Watershed Restoration and Enhancement Plan ("Plan"). The Tribe now looks to Ecology to adopt the Plan and fully commit to its implementation. This letter discusses our reasons for supporting the Plan as well as our concerns. In light of the uncertainties going forward, we also feel it necessary to reserve and not waive certain rights.

The Tribe acknowledges and greatly appreciates the hard work that went into this Plan by Committee members and Ecology staff and consultants. The Committee's engagement in the consensus process resulted in specific elements of the Plan that the Tribe fully supports:

- Using a "higher" permit exempt well growth estimate that accounts for future uncertainty;
- Inclusion of policy recommendations that, when implemented, should support streamflow restoration.
- Scientifically supported projects that may benefit flows and fisheries, with identified sponsors;
- Thurston County's commitments to projects and implementation;
- Thurston County's support for updating the WRIA 13 instream flow rules;

- Committee members' broad commitment for a Deschutes Watershed Council to guide implementation; and
- The Plan's acknowledgement of the importance of restoring streamflows.

The Tribe believes these positive aspects of the Plan outweigh some remaining flaws that include:

- The poor geographical distribution of projects. The Plan provides insufficient projects to restore streamflows in locations where impacts are likely to occur and harm salmon streams;
- A focus on the "moderate" permit-exempt well growth estimate and a weaker commitment to offset the higher estimate. Permit-exempt well growth may be faster than expected, and we can expect a hotter, dryer future with climate change. Providing offset projects to meet the moderate estimate may be insufficient to prevent future impacts to streamflows and protect Tribal rights; and
- Committee members' commitments to plan Implementation could be stronger. In particular, Ecology was unwilling to make firm commitments to Plan implementation, including establishing clear consequences if implementation fails to develop sufficient projects to offset higher permit-exempt well growth estimates across the WRIA.

Please understand that while the Tribe has approved the WRIA 13 Plan, it continues to have reservations about the state's process, which include a lack of assurance that streamflow restoration will actually occur and that protection of the Tribe's federally-reserved water rights. We expressed these and other concerns in our letter to you dated December 7, 2020.<sup>1</sup> Moreover, even if the Committee unanimously approves the Plan, we face significant uncertainty going forward, including Ecology action or inaction with regard to rulemaking, local government efforts, funding and implementation of projects and actions, and the accuracy of underlying Plan assumptions.

With that in mind, the Tribe feels it necessary to reserve and expressly not waive any rights including its right:

- (1) To assert an interpretation of state laws, including ESSB 6091, that differs from that presented in the Plan or elsewhere;
- (2) To take any legal action against any party if new evidence indicates that assumptions underlying the Plan are erroneous to the detriment of instream flows and fisheries;
- (3) To take any legal action to protect its interests against any party if, after a reasonable amount of time has passed, projects and actions identified in the Plan to offset impacts are not implemented; and/or
- (4) To bring any legal action against any party to seek any and all amendments of administrative rules or to oppose proposed amendments, including the WRIA 13 rule;

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<sup>1</sup> This letter and the Tribe's other correspondence with Ecology is incorporated by reference.

In the event that the WRIA 13 Plan is not unanimously approved by the committee, the Tribe reserves all rights and does not waive any rights.

Additionally, the Tribe takes the position that neither the Plan, nor its approval of the Plan, nor its participation in the planning process:

- (5) Has any legal effect on its approval or disapproval of other watershed plans in the RCW Ch. 90.94 process;
- (6) Affects the existence, amount or enforceability of the Tribe's federally-reserved water rights, or its right to have them adjudicated; and/or
- (7) Has any effect on its right to take any legal action against any party to protect its interests.

During this process, the Tribe submitted many documents into the agency record that support the need for an effective Plan and WRIA rule. Ecology should take these documents into consideration during any decision-making relating to developing a watershed Plan and/or rule-making; and should maintain them in the agency record for the long term, particularly in light of the operative statutes' forward-looking elements.

To conclude, the Tribe looks forward to participating in constructive partnerships that implement the Plan and restore and enhance streamflows. We encourage Committee members to continue to improve water management in the South Sound through collaborative dialogue and relationships, and demonstration of a firm commitment through actions and investments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andy Whitener".

Andy Whitener, Director

Squaxin Island Natural Resources Department