



## SQUAXIN ISLAND TRIBE

October 17, 2025

Danielle Gallatin  
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Washington State Department of Ecology  
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Re: Amendment to Instream Resources Protection Program rules for WRIAs 13, 14, and 15

Dear Ms. Gallatin,

Thank you for the opportunity to comment on Amendment to Instream Resources Protection Program rules for WRIAs 7, 8, 13, 14, and 15. In this comment letter, we focus on the lack of rulemaking for WRIA 13, the Deschutes Watershed, which has long-standing cultural and spiritual significance to the Squaxin Island Tribe (“Squaxin” or the “Tribe”). The WRIA 13 instream flow rule (WAC Ch. 173-513), is forty-five years old, outdated and ineffective. The rule does not name or protect several salmon streams, nor does it adequately address late summer flows of the Deschutes River, which are in decline. WAC Ch. 173-513 needs to be amended in order to effectively protect salmon habitat.

The Squaxin Island Tribe is a federally recognized Indian tribe located in Southern Puget Sound in Mason County, Washington with treaty rights to harvest fish and shellfish “at their usual and accustomed fishing places in the shallow bays, estuaries, inlets and open Sound of Southern Puget Sound and in the freshwater streams and creeks draining into those inlets.”<sup>1</sup> The Tribe’s cultural and economic well-being depends upon sufficient water to support abundant and sustainable fisheries. Watershed planning is of the utmost importance to the Squaxin Island Tribe, as restoring and protecting ever-diminishing instream flows and salmon populations is critical to maintaining the Tribe’s traditional lifeways and the exercise of its federal Treaty rights.

By focusing on WRIA 13, the Tribe does not mean to suggest that aspects of the WRIA 14 and 15 plans do not also present cause for concern. The Tribe has been a full participant in the watershed planning processes for WRIAs 13, 14, and 15. During this process, the Tribe submitted many documents into the agency record that support the need for effective watershed plans and WRIA rules. These documents, many of which are provided as attachments to this letter, should be taken into consideration during any decision-making related to rulemaking.

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<sup>1</sup> See generally *United States v. Washington*, 384 F.Supp. 312, 378 (W.D. Wash. 1974); *United States v. Washington*, 459 F.Supp. 1020 (W.D. Wash. 1978).

## **I. Climate Change and the Status of the WRIA 13 Watershed**

With the increasing effects of climate change, we are seeing longer and drier dry periods and a shorter wet season during the winter months. The dry season is extending into the fall, which limits the ability of adult spawning salmon to access freshwater streams. Rearing freshwater juvenile salmon also experience diminished habitat during the more extreme low flows. These changing weather patterns have a compounding effect on the historically declining dry season flows of the Deschutes River. This longstanding decline in flows is statistically significant, and independent of changes in precipitation, indicating that groundwater extraction and land use changes could be driving the decline.<sup>2</sup>

## **II. Ecology removed necessary rulemaking from the Final Draft Plan (March 2021)**

The Final Draft Plan (March 18, 2021) included Chapter 6, entitled “Policy Recommendations, Adaptive Management, and Implementation.” This chapter was one reason that Squaxin gave for approving the Plan. (Squaxin’s April 16, 2021 letter). Chapter 6 included a recommendation for revising the outdated WRIA 13 rule, as well as other important actions for restoring and protecting instream flows – the latter of which were notably approved by the County and all other committee members.

Subchapter 6.1 of the Final Draft Plan, Policy and Regulatory Recommendations, includes recommendations “that both supported the goal of streamflow restoration and had the support of the full Committee.” Included in these recommendations is Rule-Making Recommendation Item 7, entitled “Instream Flow Rules.” It recommends the following, with the stated purpose of “Greater protection of aquatic resources, streamflows, Tribal Treaty water rights, and senior water rights from future water demands”:

“Investigate the WRIA 13 salmon streams and determine needed revisions to the WRIA 13 Instream Flow (ISF) Rule (WAC 173-513). Streams under review for instream flow revisions will be clearly represented to the public through maps in an accessible manner. Consider need to close streams in WRIA 13 with summer salmonid habitat (which could include: Upper Deschutes River, Middle Deschutes River, Lower Deschutes River, McLane Creek, Green Cove, Woodland Creek, Woodard Creek, Percival Creek, Adams Creek, and other associated tributaries and small coastal streams with salmonid habitat) annually in the low flow season (typically from June through October) and what effect it would have on growth in the watershed. This would apply to water rights that have a priority date after any changes made to the instream flow rule.” (WRIA 13 Final Draft Plan, March 18, 2021, p. 66)

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<sup>2</sup> Flow Indicator Methodology, Paul Pickett, Washington State Department of Ecology, October 24, 2010. See also, Washington State Department of Ecology. 2018. Summer Low Flow Indicator 1975-2017. <https://data.wa.gov/Natural-Resources-Environment/Summer-Low-Flow-Indicator-1975-2017/f6st-whvb>. Lacey, Washington State, U.S.A. See also, Analysis of discharge data for the Deschutes River (1950-2016) and an assessment of long-term trends, Report for the Squaxin Island Tribe, Robert Conrad and Oliver Miler, Northwest Indian Fisheries Commission, September 14, 2020.

This consensus recommendation was later removed from the plan passed by Ecology in December 2024 (Publication: 22-11-015) and inserted in Appendix F – Policy, Regulatory, and Adaptive Management Recommendations Proposed by the WRIA 13 Committee. Ecology conveyed in a footnote that,

“Ecology believes this rulemaking recommendation seeks amendments to the WRIA 13 instream flow rule that go above and beyond changes that are feasible within the two year rule adoption requirement of RCW 90.94.030(3)(h). Therefore, Ecology will coordinate with partner governments and stakeholders in the WRIA to explore options, if any, with regard to this recommendation.” (Publication 22-11-015, Appendix F, p. F-7)

It is the Tribe’s understanding, based on a meeting with Ecology staff, that the Tribe is free to request rulemaking, but Ecology will not move forward with the request.

### **III. The importance of updating WRIA instream flow rules**

An update to the WRIA 13 instream flow rule is necessary. To the extent that Ecology adopts watershed plans that fail to guarantee mandatory offsets and Net Ecological Benefit (“NEB”), Ecology must engage in rulemaking to achieve these outcomes. The Tribe is quite concerned that the WRIA 13 plan, without streamflow rulemaking, falls far short of the mandates of the Water Resources Act (the “Act”) and other state laws, and violates the Tribe’s federally-reserved water rights. The plain language of the Act requires more than noncommittal statements about offsetting twenty years of domestic permit-exempt wells. These plans, along with the necessary rulemaking, must actually restore and enhance stream flows. In some basins, creeks are currently diminished by existing permit exempt wells, especially during low flow times that are critical for fish spawning and rearing. In other places, water systems growing into inchoate state water rights will diminish fish-bearing streams. These harms are compounded by the predicted water scarcity that accompanies climate change in Western Washington.

While the Tribe does not object to the current rulemaking, this comment letter constitutes a formal request that Ecology undertake further rulemaking, including but not limited to, updates to Instream Resources Protection Programs found in WAC 173-513, 173-514, and 173-515.

Sincerely,



Erica Marbet  
Water Resources Biologist  
Squaxin Island Tribe