

Port Gamble S'Klallam Tribe (Claire Newman)

Good morning, uh, Claire Newman, attorney for the Port Gamble S'klallam Tribe, I'm gonna leave my video off, um, because it's been interfering with my Wi-Fi.

My comments here today will be in addition to written comments that are submitted.

The tribes reservation and a portion of its treaty reserved usual and custom fishing area are located in WRIA 15.

The Tribe's reservation confirms its Federal Reserve water rights necessary to fulfill the purpose of the reservation as a permanent homeland for the S'klallam people.

The tribe was a member of the WRIA 15 Watershed Restoration and Enhancement Committee, and offered comments at multiple stages of the planning process.

These comments repeatedly express concerns that the WRIA 15 streamflow restoration Enhancement Plan would be ineffective at offsetting impacts to in-stream flows for permit-exempt wells that it did not fully comply with RCW 90.93.030, and other statutes governing surface and groundwater diversion. And that it would threaten the tribes' Federal Reserve water rights and treaty fishing rights.

The current rulemaking process does not reflect the tribes' myriad concerns or recommendations.

My comments here today and the, uh, comments that will be submitted incorporate my reference the tribe's prior comments on the WRIA 15 streamflow Restoration Act enhancement plan, and those were submitted through letters from the Port Gamble- S'klallam Tribe, Dated May 3rd, 2021, October 13th, 2023, November 18th, 2024, and April 28th, 2025.

And these letters all raised very similar concerns repeatedly about the, uh, very shallow aquifers and small streams that are particularly vulnerable to dewatering and high temperatures and other threats to habitat that are located in WRIA 15, um, where the tribe has its usual and custom fishing areas.

An important framing to this rulemaking is that we are here discussing permit-exempt wells because there's not enough water for all of the new water permits that are requested for development.

Permit-exempt wells have always been, uh, very poor band-aid to a really large problem.

Um, like other, uh, comments, um, that have been made already, um, by Thurston County and DERT, ecology did not consult with the tribe prior to adopting the plan, even though the tribe was one of the entities that dissented from the plan, um, in the WREC and this is contrary to, um, good, um, tribal-state relations and government-to-government relations, um, that the state, uh, knows all too well it must follow.

The plan does not ensure that the, um, that, first, that there is, adequate, uh, supplies of water in the aquifers before perm-exempt wells are allowed to be drilled,

It does not, uh, ensure that mitigation projects are feasible, that they will be funded, that they will be built before the new permit-exempt wells come online, or that they'll be built at all.

in fact, uh, during our meetings with the director, she, acknowledged that, um, once the streamflow plan is enacted, um, that ecology washes its hands of it and is not involved in implementation whatsoever.

Um, ecology was charged in its... by its own policy, to examine and evaluate the streamflow restoration plan, um, but that's not what Ecology did. It adopted the plan verbatim.

Um, and when the Tribe has asked for a red line showing the differences in the plan that was submitted to Ecology,

And the one that it promulgated, the tribe has not received a response. In the tribal state meetings, uh, leading up to this rulemaking, ecology has conceded that it has not done any accounting of the

amount of funds that it expects to receive from the fee collection, to put

towards mitigation projects, but that it knows that these fees will not come anywhere close to covering actual costs. Nor has ecology gone to the legislature to request additional funding for mitigation projects.

And you have counties and tribes begging ecology to raise these fees. But ecology refuses to even engage in a substantive discussion about this problem.

This leads to the reasonable person to the conclusion that ecology doesn't really care whether or not the mitigation is built.

I would just add that, um, every year, the, uh, ecology is required to report back to the legislature on its progress, um, protecting in-stream flows, um, and every single year, its statement to the legislature includes almost the same paragraph that says, no in-stream rules, our plan for WRIAs, not covered by chapter 90.94, uh, that recent decisions, such as Postema, Kittitas, Swinomish,

and Foster continue to make it challenging for ecology to adopt new in-stream flow rules. While these cases do not directly restrict ecology's authority to adopt in-stream flow protection and rule. They limit available tools to balance water needs of diverse users.

I want to emphasize, um, that this statement that ecology makes annually to the legislature, um, really, falls far short of ecology's obligation to Protecting stream flows as water rights. and it acknowledges that, um, it's not for lack of authorization, um, but for lack of, uh, creativity and effort to find new ways of protecting in-stream flows, and that the streamflow restoration plans have,

um, tools built into them that could have been, that could be...realized, but that ecology really seems uninterested in actually supporting local jurisdictions in, um, in, supporting those, those efforts.

So, those are the tribe's comments for now. We will submit additional comments later. Thank you so much.