



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

August 23, 2007

Mr. David Holland, Department of Ecology
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902-3452

Re: Wenatchee Watershed Rule Comments

Mr. Holland:

The Center for Environmental Law & Policy (CELP) is a public interest membership organization working to defend and develop ecologically and socially responsible water laws and policies. CELP speaks for the overall public interest in the public's water; its mission is to leave a legacy of clean, flowing water for Washington.

CELP was very involved with the Planning Unit in WRIA 45 and is proud of the work that was accomplished. The WRIA 45 Plan and Rule brought together many stakeholders and worked to make a strong and scientifically defensible plan. CELP believes the instream flows established in the rule are backed by sound science; unfortunately the flows themselves are subjugated to second class status.

CELP is further troubled by the allowance of habitat loss, absence of climate change considerations, and failure to require universal metering. The cumulative impact of these three categories imperils not only adequate instream flows, but existing and future water users. Lastly, there are several sections, or parts of sections, of the rule itself which CELP finds to be inadequate or could be bolstered.

The details of our comments are below.

General Comments

Habitat Loss:

As mentioned below, the reservation of water for future out-of-stream uses decreases the likelihood of meeting the new instream flows. Furthermore, the amount of water set aside for the reservation will also negatively impact fish habitat. The watershed plan allows for as much as a

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2% loss of habitat under certain conditions. While this total may seem relatively small, it is not when consideration of historical habitat loss is accounted for and how restoration of an endangered species can occur with dwindling habitat. If any, restoration of a species requires creation of additional habitat. Moreover, as more and more watersheds in the area finalize plans with reserves of water, the overall impact to the habitat range of the species is magnified. The idea that fish populations can be protected and restored at the same time instream flows are not being met and habitat is receding is illusory and once again creates the false assumption that these plans are protective of endangered species and riparian values.

Climate Change:

The rule does not discuss or provide for future loss of natural water supply caused by rising temperatures, which will lead to reduced winter snowpack and summer time flows. Not only is climate change an accepted ecological reality, Ecology has an entire section dedicated to studying and planning for it. However, the rule does not consider how climate change may impact the water resources in the basin in the future. This is a glaring oversight and one that may render this rule irrelevant in the near future. Until planning units begin to consider and plan for different hydrologic cycles the plans and their companion rules will suffer glaring omissions.

Metering:

Proper management of any resource requires a proper accounting of the amount of resource available and the amount being used. Water use is easily accounted for by using meters. Universal metering of all water users would provide invaluable data which could be used in various ways. Unfortunately, the rule does not require universal metering. The sources of largest potential illegal water use, permit-exempt wells, are not required to meter their use. This makes managing water within the basin merely guess work. Universal metering may seem like a daunting task but it is crucial. The rule had an opportunity to at the very least require new permit-exempt wells to meter. That is the logical starting point. Unfortunately the rule passed on this option. Real water resource management cannot be done in the absence of data.

Comments on Specific Rule Provisions

Section -030 (Definitions)

The Planning Unit should be applauded for drafting definitions that are inclusive and protective of environmental values. The rule's definitions for consumptive use (includes diminishment in quality of water) and stock water (excludes feedlots) should be mandatory language in every watershed rule.

Section -040 (Stream Management Units)

The rule outlines at least eight stream management units. This appears to be an adequate number considering the size of the basin and should be capable of tracking impacts to surface waters in the watershed.

Section -050 (Instream Flows Established on June 3, 1983)

The rule disappointingly lowers previously established instream flows for the last week of May and all of June. In fact, the 1983 flow level for the first week of June at Icicle Creek near Leavenworth has been reduced by 550 cubic feet per second. This means less protection for fish and instream values during a critical period of the year.

Section -060 (Instream Flows Based on Watershed Planning)

CELP is pleased with the science and deliberation used to establish the new instream flows for the basin. However, even the most scientifically defensible instream flows are of little good if they remain junior to all the other rights in the basin, including any new out of stream uses that are part of the reservation. This likely assures that these flows will rarely be met. Until instream flows are given protection through seniority to all other rights the instream values will always suffer.

Section -090 (Reservation of Water for Certain Future Uses)

CELP understands the Planning Unit needs to account for future out-of-stream uses; however, future water needs should first be addressed via efficiency and conservation measures instead of further impacts to instream flows. As mentioned above, the reservation is senior to instream flows and includes permit-exempt uses for domestic, irrigation for a residence, as well as municipal, commercial, and industrial purposes, and stock watering. While water used from the reservation must "implement water use efficiency and conservation practices", the rule falls short detailing what these terms mean. The only requirement is they are "consistent with the watershed plan." Without specific practices and measures in place, those using water from the reservation will have a low threshold to meet the standard.

Section -130 (Compliance and Enforcement)

Compounding the impact to instream flows and values due to the low priority of the instream flows to other rights in the basin, is the inadequate compliance and enforcement provision. The theory behind having penalties for illegal water use is to prevent illegal water use from occurring. When the public is put on notice that Ecology will not tolerate water use violations a deterrent effect will follow. Conversely, when the public knows Ecology will be very reluctant to enforce against illegal water users it removes the deterrent effect. Unfortunately the new rule codifies Ecology's reluctance to deal with illegal water use. CELP understands staffing and budgeting are hindrances to widespread enforcement, but even when Ecology knows of illegal use this rule does little to give them the tools necessary to be effective. Compliance and enforcement are crucial to protecting not only instream flows but other existing rights as well.

Until Ecology begins to regulate illegal water use aggressively most water users in the basin may be subject to impairment due to illegal water use.

Thank you for the opportunity to comment on the rule and for your thoughtful consideration of them.

Sincerely,

M. Patrick Williams

Patrick Williams
Staff Attorney