

CITY OF



PORT ANGELES

WASHINGTON, U. S. A.

CITY COUNCIL

April 7, 2004

Clallam County Commissioners
Clallam County Courthouse
Port Angeles, WA 98362

Re: Approval of the WRIA 18 Watershed Management Plan

Dear County Commissioners:

Attached is the Resolution of the Port Angeles City Council approving the Water Resources Inventory Area No. 18 Watershed Management Plan. Although we are still waiting for final copies of the Plan, the final drafts reviewed by the City's representatives to the WRIA 18 Planning Unit were in substantial agreement with the language that had received the consensus approval of the Planning Unit members. A number of issues that have yet to be resolved may be included in the Appendices. The City of Port Angeles will provide a representative and alternate to the proposed Western WRIA 18 Watershed Council when it is formed by the County and other initiating governments of WRIA 18.

Sincerely,

Richard A. Headrick,
Mayor

Attachment: Resolution No. 6-04

G:\EXCHANGE\CITYMGR\watershed plan.ltr.wpd

RESOLUTION NO. 6-04

- A RESOLUTION of the City Council of the City of Port Angeles, Washington, resolving to work under the policies of the Water Resources Inventory Area 18 (WRIA 18) Watershed Management Plan.

WHEREAS, the WRIA 18 Watershed Management Plan was prepared through the joint effort of the City of Port Angeles, Clallam County, Jamestown S'Klallam Tribe, Lower Elwha Klallam Tribe, and the Agnew Irrigation District in order to comply with the requirements of the **State Watershed Management Act (Bill 2514)**;

WHEREAS, upon adoption by the Clallam County Commissioners, the City will be obligated to work under the policies of the WRIA 18 Watershed Management Plan that have not been vetoed by the various participating agencies; and

WHEREAS, the City's concerns have been satisfactorily addressed in the Watershed Management Plan;

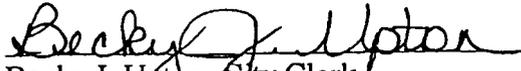
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Port Angeles as follows:

Section 1. The City resolves to work under the policies of the WRIA 18 Watershed Management Plan adopted by the Clallam County Commissioners subject to the issues vetoed by the participating agencies;

PASSED by the City Council of the City of Port Angeles at a regular meeting of said Council held on the 6th day of April, 2004.



ATTEST:


Becky J. Upton, City Clerk

APPROVED AS TO FORM:



Acting City Attorney

G:\Legal_Backup\ORDINANCES&RESOLUTIONS\RV2004-5.wpd
March 30, 2004



LOWER ELWHA KLALLAM TRIBE

ᑲᑲᑲᑲᑲᑲ ᑲᑲᑲᑲᑲᑲᑲᑲ "Strong People"

2851 Lower Elwha Road
Port Angeles WA 98363

(360) 452-8471
Fax: (360) 452-3428

February 4, 2004

Attn: Mr. Mike Doherty
Mr. Mike Chapman
Mr. Steve Tharinger
Clallam County Board of Commissioners
223 East 4th Street
Port Angeles, WA 98362

RECEIVED
CLALLAM CO. COMMISSIONERS

FEB - 5 2004

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Dear Gentlemen,

The Lower Elwha Klallam Tribe has, since 1998, actively participated as a member of the Coordinating Council and as a concurring governmental entity within the Elwha-Morse Planning Unit in the State sponsored Watershed Planning process established through ESHB 2514. Planning activities began on October 20, 1998 with the signing of the "Intergovernmental Agreement Regarding Local Watershed Planning for the Elwha-Dungeness Basins (WRIA 18)".

The Tribe supports the recommendations developed by the Elwha-Dungeness Planning Team for Water Quantity, Water Quality, Habitat, and Instream Flows within the state Water Resource Inventory Area (WRIA) 18. The Tribe, however, wishes to abstain from voting on the recommendation to pursue the development of a Groundwater Reserve (section 3.1.4) because it creates obligations that the Tribe is unwilling to accept. This should not preclude other interested parties from entering into such an agreement, as it may promote the responsible use of water limited resources within the Dungeness River watershed.

The watershed plan includes, among others, several key recommendations that contribute to the long-term protection of water resources and fisheries within WRIA 18 and the Usual and Accustomed Fishing Areas used by the Tribe. These recommendations include:

1. limiting the use and distribution of Elwha River water under existing water rights to the eastern boundary of the Morse Creek watershed (Chapter 3.9.1).
2. the establishment of minimum instream flows for Morse Creek which protect critical salmonid life history stages in each month (Chapters 3.4).
3. minimizing the proliferation of exempt wells in WRIA 18 and administratively (by legislative action) reducing the volume of water under the exemption to a more reasonable level, such as 500 gpd (3.1.4 C (8)).

C. Boell
DUP

4. Ecology will withhold action on new water rights on the Elwha River until an instream flow rule can be established. Minimum instream flows will be developed following the dam removal process using legally defensible flow methods in consultation with affected Tribes (Chapter 3.9.1).
5. The city will incorporate fish triggers into the water conservation stages of their Water Shortage Response Plan by ordinance. The city and tribe will work to identify specific flow triggers that are protective of critical salmonid life history stages during periods of low instream flows. Other purveyors of Elwha River water will adopt similar triggers to conserve water (3.9.1).

Several issues of concern to the Tribe remain unresolved or were addressed in the plan as recommendations to pursue further agreements. The Tribe remains concerned with the implications of failing to adequately address these issues. These issues include:

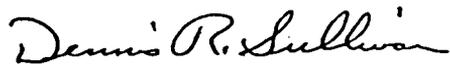
1. the proliferation of exempt wells throughout WRIA 18 and the large volume of water (5000 gpd) allowed for withdrawal under this exemption.
2. the current lack of a mechanism to protect instream flows in the Elwha River during critical low flow periods. Minimum instream flows will not be developed for the river until after the river morphology has reached an equilibrium following the removal of the Elwha dams. In the interim, out-of-stream water users, particularly large water purveyors, should assume some responsibility for implementing water conservation measures that minimize impacts to flows during these periods. The use of instream flow-based "fish triggers" to initiate water conservation efforts by all Elwha River water purveyors will help protect salmon populations already imperiled by the presence of the Elwha dams.
3. the cumulative impacts of using existing water rights on the Elwha River would be sufficient to dewater the river during late summer in most years and significantly limit availability of habitat for salmon spawning and rearing for several months of the year.
4. the lack of a concerted effort among governments, agencies, and industries to address the comprehensive cleanup of Port Angeles harbor. The presence of wood waste and chemical contaminants continue to inhibit the restoration of fisheries within the harbor and limits the potential finfish and shellfish resources available for harvest.

On February 2, 2004 the Lower Elwha Klallam Tribe formally adopted the Elwha-Dungeness Watershed Management Plan for WRIA 18 by Resolution (# 55-03). The Lower Elwha Klallam Tribe is committed to implementing this plan in a manner that protects water resources, fisheries, and tribal Treaty rights without waiving sovereign immunity. The approval of this plan, and the recommendations stated therein, in no way expressly or implicitly waives the sovereign immunity of the Tribe.

The Tribe genuinely hopes that all parties to this agreement will work toward carrying out the provisions and recommendations of this plan in the spirit to which it was drafted. We also encourage the Washington State Department of Ecology to implement by rule, or other administrative mechanism, the instream flow recommendations, modifications to exempt well water use volumes, and other elements of the plan for which their action is required.

We sincerely thank all of the governments and caucuses and their representatives for the many hours of work exerted in developing this plan over the last several years.

Respectfully,



Dennis R. Sullivan
Tribal Chair



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

April 16, 2004

Clallam County Board of Commissioners
223 East 4th Street
Port Angeles, WA 98362

RE: Cover letter for the WRIA 18 Elwha-Dungeness Watershed Plan

Dear Clallam County Board of Commissioners

The Jamestown S'Klallam Tribe (Tribe), linked to the Dungeness watershed and its important cultural and natural resources through thousands of years of history, maintains treaty-reserved fishing, hunting, and shell-fishing rights within the Dungeness watershed planning area. Protecting the cultural and natural resources of the watershed and sustaining the Tribe's historical ceremonial, subsistence and commercial needs via our treaty-reserved rights is a top priority for the Tribe.

As such, the Tribe has taken an active and cooperative approach to watershed planning, especially over the past 15 years. This has resulted in unique Tribal partnerships with Clallam County, the irrigation community, property owners, and state and federal agencies in an effort to restore critical habitat and threatened and critical species of Dungeness River salmon. Collaboration has centered both on watershed planning (as with the Dungeness River Management Team and the technical Dungeness River Restoration Work Group) and on implementation of habitat restoration and water conservation projects.

In 1990, the Jamestown S'Klallam Tribal Council (Council) adopted a resolution supporting cooperative planning of water resources with the State of Washington on a government-to-government basis. The Council's resolution also declared support for the development of the *Dungeness-Quilcene Water Resources Management Plan* (DQ Plan) (1994), a successful planning process for which the Tribe served as the coordinating government.

In 1998, the Jamestown S'Klallam Tribe was invited by Clallam County to participate as an initiating government in the ESHB 2514 planning process, through which this WRIA 18 Elwha Dungeness Watershed Plan (Plan) was developed. Recognizing the benefits of cooperative watershed planning, and; with the expectation that the ESHB 2514 planning process would update previous planning processes (including the DQ planning process) and more thoroughly

address linked Dungeness watershed problems including habitat, water quality, and in-stream flows (in addition to water quantity), and; under the conditions laid out in the 1998 *Intergovernmental Agreement Regarding Local Watershed Planning for the Elwha-Dungeness Basins (WRIA18)*, the Tribe agreed to participate in the ESHB 2514 planning process. In doing so, the Tribe also anticipated that recommendations in the Plan related to improving in-stream flows, habitat and water quality would be eligible for implementation funding.

After participating (with the above understanding) in the completion of Phases I, II and III of the ESHB 2514 planning process, the Jamestown S'Klallam Tribe now resolves to support recommendations that reached consensus by the initiating governments in the Plan, under the following conditions:

- Any instream flows set under this Plan are for state law purposes only and are not intended to define or identify a specific quantity of water that constitutes the Jamestown S'Klallam Tribe's treaty or other legal water rights. The Tribe reserves their treaty right to any and all waters required to produce a harvestable number of fish sufficient to meet ceremonial, subsistence, and commercial needs in order to carry out its treaty fishing right reserved under the Treaty of Point No Point. Further, the Tribe reserves their Treaty, judicial, statutory, and equitable rights to any and all waters sufficient to meet the changing needs of our tribal members in fulfilling the purpose of the Jamestown S'Klallam Reservation and all lands within the jurisdiction or owned by or held in Trust for the Tribe and/or its members. Nothing in the Plan acts to or is intended to quantify the Tribe's Treaty or other water rights nor acts to define, limit, interpret, waive, diminish or abrogate them. Nothing in the Plan prevents the Tribe from commenting on or opposing and/or challenging any existing or future state application, permit, certificate and/or any other state or federal action to the fullest extent allowed under applicable law. Nothing in the Plan shall prevent the Tribe from opposing any state or federal action or water permit or certificate which may be mentioned, discussed or proposed in the Plan if, in the Tribe's opinion, it interferes with or impairs its Treaty rights or the fish runs or instream flow in any stream.
- Again, and as agreed to in an intergovernmental agreement signed by the WRIA 18 Initiating Governments at the beginning of the planning process, nothing in this Plan or resulting from this planning process, including any "estimates" or any contents misinterpreted as "estimates", shall impair any treaty, water, or other right of any Indian tribe or its members under any applicable law or any water right of another entity or person under any applicable law. Furthermore, the Plan, or any activity resulting from the Plan, shall not impose any obligation on the Tribe within the meaning of RCW 90.82.130(4).
- No discussions, plans, drafts, proposed agreements or material and documents, written or oral, and whether in electronic or hard copy, produced pursuant to ESHB 2514 or this Plan, or any proceeding under this Plan, will be admissible as evidence in any court or administrative proceedings and the parties to the Plan agree to not offer such information as evidence and to oppose the admission of such evidence in any forum. The Tribe's intent in participating in the ESHB 2514 planning process was solely to update the Dungeness-Quilcene Water Resources Management Plan, and not to overturn the consensus

recommendations that came (after considerable effort) from the Regional Planning Group for that process.

- The Tribe reserves the right to comment on or reject for inclusion in the final Plan any conditions proposed by other parties to this planning process.

The Jamestown S'Klallam Tribe commends all planning unit members for their shared dedication toward completing this Plan. The Tribe commits to continued cooperative management and natural resource protection within the Dungeness watershed planning area, and looks forward to working with the initiating governments during the implementation phase (Phase IV) of the ESHB 2514 planning process.

Sincerely,

A handwritten signature in black ink that reads "W. Ron Allen". The signature is fluid and cursive, with the first name "W." and last name "Allen" clearly legible.

W. Ron Allen
Tribal Chairman/Executive Director



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

RESOLUTION #16-04

WHEREAS, the Jamestown S'Klallam Indian Tribe (herein after referred to as "the Tribe") has been Federally acknowledged by the Secretary of the Interior of the United States of America on February 10, 1981; and

WHEREAS, the Jamestown S'Klallam Tribal Council (herein after referred to as "the Council") is the governing body of the Jamestown S'Klallam Tribe in accordance with its Constitution adopted on November 19, 1983, and conducted by the Bureau of Indian Affairs following Part 81 of the Code of Federal Regulations; and

WHEREAS, the health, safety, welfare, education, and regulation of treaty fishing, hunting, and gathering practices of the Indian people of the Tribe is the responsibility of the Council; and

WHEREAS, the Council previously adopted Resolution #21-90 on May 4, 1990, supporting cooperative planning of water resources with the State of Washington on a government-to-government basis, and Resolution #32-94 on June 2, 1994 supporting the *Dungeness-Quilcene Water Resources Management Plan* and committing to work toward plan implementation; and

WHEREAS, the 1998 Washington State Legislature adopted ESHB 2514 (Watershed Planning Act) which provides for watershed planning at the level of a Water Resource Inventory Area (WRIA), and representatives from the initiating governments in WRIA 18 (Jamestown S'Klallam Tribe, Lower Elwha Klallam Tribe, Clallam County, City of Port Angeles, and Agnew Irrigation District) prepared an intergovernmental agreement to specify the organization of and scope for the WRIA 18 watershed planning process; and

WHEREAS, the Council previously adopted Resolution #52-98 (under the four conditions listed in that resolution) on October 9, 1998, accepting an invitation from WRIA 18 to participate in watershed planning as an initiating government for WRIA 18 and approving the *"Intergovernmental Agreement Regarding Local Watershed Planning for the Elwha-Dungeness Basins (WRIA 18)"* with the other initiating governments; and

WHEREAS, the initiating governments and planning units approved during comprehensive planning meetings in 2003 and early 2004: Chapter 1 (Introduction and Planning Framework); Chapter 2 (Watershed Characterization); and, section by section, Chapter 3 (Recommendations, with the exception of section 3.6.6 Forest Lands Management, which was moved to an unresolved issue appendix as a result) of the *Draft WRIA 18 Elwha-Dungeness Watershed Plan*, which provides recommendations for the management of watershed resources throughout WRIA 18 (and the westernmost portions of WRIA 17) and incorporates all optional elements (water quality, riparian and aquatic habitat, and instream flows) in addition to the required element (water quantity, encompassing current and future water use and water supply) according to the Watershed Planning Act; and

WHEREAS, nothing in the Plan acts to or is intended to quantify the Tribe's Treaty or other water rights nor acts to define, limit, interpret, waive, diminish or abrogate them; and nothing in the Plan prevents the Tribe from commenting on or opposing and/or challenging any existing or future state application, permit, certificate and/or any other state or federal action to the fullest extent allowed under applicable law; and nothing in the Plan shall prevent the Tribe from opposing any state or federal action or water permit or certificate which may be mentioned, discussed or proposed in the Plan if, in the Tribe's opinion, it interferes with or impairs its Treaty rights or the fish runs or instream flow in any stream;

NOW THEREFORE BE IT RESOLVED, that the Council hereby states its support for the *WRIA 18 Elwha-Dungeness Watershed Plan* under the following conditions:

1. Any instream flows set as a result of this Plan are for state law purposes only and are not intended to define or identify a specific quantity of water that constitutes the Jamestown S'Klallam Tribe's treaty or other legal water rights.
2. As agreed to in the *Intergovernmental Agreement Regarding Local Watershed Planning for the Elwha-Dungeness Basins (WRIA 18)* signed by the WRIA 18 initiating governments at the beginning of the planning process, nothing in this Plan or resulting from this planning process, including any "estimates" or any contents misconstrued as "estimates", shall impair any treaty, water, or other right of any Indian tribe or its members under any applicable law or any water right of another entity or person under any applicable law. Furthermore, the Plan, or any activity resulting from the Plan, shall not impose any obligation on the Tribe within the meaning of RCW 90.82.130(4).
3. No discussions, plans, drafts, proposed agreements or material and documents, written or oral, and whether in electronic or hard copy, produced pursuant to ESHB 2514 or this Plan, or any proceeding under this Plan, will be admissible as evidence in any court or administrative proceedings and the parties to the Plan agree to not offer such information as evidence and to oppose the admission of such evidence in any forum. The Tribe's intent in participating in the ESHB 2514 planning process was solely to update the Dungeness-Quilcene Water Resources Management Plan, and not to overturn the consensus recommendations that came (after considerable effort) from the Regional Planning Group for that process.
4. The Tribe reserves the right to comment on or reject for inclusion in the final Plan any conditions proposed by other parties to this planning process.

BE IT FURTHER RESOLVED that the Tribe reserves their treaty right to any and all waters required to produce a harvestable number of fish sufficient to meet ceremonial, subsistence, and commercial needs in order to carry out its treaty fishing right reserved under the Treaty of Point No Point. Further, the Tribe reserves their Treaty, judicial, statutory, and

equitable rights to any and all waters sufficient to meet the changing needs of our tribal members in fulfilling the purpose of the Jamestown S'Klallam Reservation and all lands within the jurisdiction or owned by or held in Trust for the Tribe and/or its members; and

BE IT FURTHER RESOLVED that the Council pledges its commitment to work towards implementation of this Plan; and

BE IT FURTHER RESOLVED that the Council authorizes W. Ron Allen, or in his absence Liz Mueller or, in her absence, staff representatives Scott Chitwood, Natural Resources Director, or Shawn Hines, Watershed Planner, to sign the Plan and recommendations to be forwarded to Clallam County for public review.



W. Ron Allen, Tribal Chairman

Certification

I, Marlene Shaw, Secretary of the Jamestown S'Klallam Council of the Jamestown S'Klallam Tribe, do hereby certify that the foregoing amended resolution was formally adopted by a phone poll held on the 6th of April 2004, at the Tribal office in Blyn, Washington, and where a quorum approved the resolution by a vote of 4 FOR and 0 AGAINST with 0 ABSTAINING, and will be formally approved at a meeting of the Jamestown S'Klallam Tribal Council to be held on the 20th day of April 2004.



Marlene Shaw, Tribal Council Secretary

Agnew Irrigation District

Serving the Dungeness Valley since 1918

Fred Spring: Chairman Charles Dryke: Director Jerry Schmidt: Director

Myla Reid: Secretary Mike Jeldness: Manager

Billing: P.O. Box 340, Carlsborg, WA 98324

Operations: 4850 Lost Mountain Road, Sequim, WA 98382

Phone: (360) 683-4331 Fax: (360) 582-3116

E-mail: jeldness@olympen.com

December 9, 2003

To: Clallam County Board of Commissioners
223 E. 4th Street
Port Angeles, WA 98362

From: Mike Jeldness, Manager
Agnew Irrigation District

Subject: Cover Letter, WRIA 18 Watershed Plan

Greetings Clallam County Commissioners,

Agnew Irrigation District initially agreed to participate in the WRIA 18 Watershed Planning process under terms of the ESHB 2514 Watershed Management Act primarily because our participation as the largest purveyor/distributor of water within WRIA 18 was required under terms of the Act. We had concerns as to the value of further planning work within our service area in east WRIA 18. We previously participated in the Dungeness-Quilcene Water Resources Management Plan process and felt that in our area it was time for available funds to be used for implementation rather than further planning. Over the past several years in developing the WRIA 18 Watershed Plan it became evident that The Dungeness-Quilcene Plan was in need of updating and now feel that our participation in the 2514 Plan was very much worthwhile. We have come to realize that water resource management plans, to be most useful, must essentially remain living documents in order to incorporate and use knowledge gained from future development and refinement in "best science" and new available/affordable technology.

We expect to use the WRIA 18 Watershed Plan primarily by reference for support in acquiring funds for implementation of projects outlined in the Dungeness River Agricultural Water Users Association Comprehensive Water Conservation Plan and our Comprehensive Irrigation District Management Plan currently under final development.

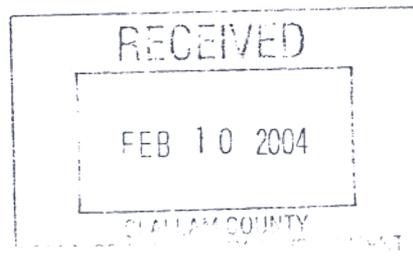
We look forward to working with the Initiating Governments and our WRIA 18 east end planning unit, the Dungeness River Management Team, in building a Phase 4 WRIA 18 Watershed Plan Implementation document and the ongoing review of our Watershed Plan to incorporate results of further studies and new science and technology as it becomes available.

In closing we would like to emphasize what we have learned over the past decade of watershed planning experience. That being, no plan is ever "permanently" complete unless resource managers choose to reject new knowledge, tools and technological resources. We would like to see the WRIA 18 Watershed Management Plan completed within time and budget constraints with those issues irresolvable within those constraints included in the Plan as such.

Sincerely,



Mike Jeldness, Manager
Agnew Irrigation District





STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

April 15, 2004

The Honorable Steve Tharinger
The Honorable Mike Chapman
The Honorable Mike Doherty
Clallam County Commissioners
223 East 4th Street
Port Angeles, WA 98362

Dear Commissioners:

Re: Elwha Dungeness Watershed Plan

Ecology endorses the plan as approved by the planning unit and recommends its approval by the Clallam County Commissioners. We commend members of the Dungeness River Management Team, the Elwha Morse Management Team and the WRIA 18 coordinating council for their many months of diligent work to develop the Plan. We appreciate the breadth of the Plan's scope and especially the work in developing strategies for water management and recommended instream flow levels for rulemaking. The resulting plan shows strong local commitment and leadership in its innovative recommendations on many water-related issues.

The watershed planning process provided the opportunity for participants from a diverse set of watersheds to further their understanding of one another's respective water concerns and issues. We realize the difficulties inherent in melding the work of two planning teams into a single plan and believe the final product has great merit. Team members ought to be proud of working together to devise creative solutions to significant and difficult topics and being among the first of the state's completed plans.

Ecology is pleased to have supported and participated in this effort. As expressed during the process, fulfilling many of the obligations agreed to by the state will depend on availability of staff and funds. We note that several important discussions are still before us, including public review during rule-making. We reiterate our commitment to putting the plan into action and to making every effort to secure the means to achieve state and local implementation.



We appreciate our good relationships with Clallam County, the Jamestown S’Klallam and Lower Elwha Klallam Tribes, the Dungeness River Management and Elwha Morse Management Teams and others and look forward to working with all of you on the details required to put the recommendations into practice. We are pleased to endorse the Plan and recommend its approval by the Clallam County Commissioners.

Sincerely,



Gordon White, Program Manager
Shorelands and Environmental Assistance Program

cc: Dick Wallace, Special Assistant to the Director for Watershed Management
Cynthia Nelson, Watershed Lead, Elwha Dungeness Watershed Planning