



Swinomish Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

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News Release News Release News Release News Release

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Swinomish Tribe Challenges Ecology Instream Flow Rule Amendments

Swinomish Indian Reservation, Fidalgo Island – The Swinomish Indian Tribal Community announced today that it filed a legal challenge to the Skagit River Instream Flow Rule amendments adopted in 2006 by the Washington Department of Ecology. The case challenges the process through which Ecology adopted the Amendments and contends that substantive provisions of the Amendments violate State law.

“Ecology trashed years of collaborative work to cut a bad deal with Skagit County. Sadly, we’re forced to go back to court to protect our rights and the water that salmon need to survive. It’s very frustrating,” said Swinomish Tribal Chairman Brian Cladoosby.

The 2006 amendments radically changed Ecology’s original Rule, which was just adopted in 2001. The 2001 Skagit Instream Flow Rule was the first such rule adopted by the State of Washington in sixteen years. The Rule established minimum flows for the Skagit River and several important tributaries to protect fish and other instream uses of water. It also provided for water withdrawals from the river to meet the needs for residential use as well as for industrial and agricultural activity.

In 2004, Skagit County sued the Department of Ecology challenging the Rule. Multiparty discussions ensued as the Swinomish and other tribes, water purveyors, and the State tried to resolve the County’s complaints. Eventually, Ecology and the County settled the County’s lawsuit without consulting any of the other parties to the negotiation.

Cladoosby explained the reasons for filing the challenge: “We spent years collaborating on the 2001 Instream Flow Rule with the City of Anacortes, the Public Utility District, Skagit County, Upper Skagit and Sauk-Suiattle Tribes and the State of Washington. The result of those efforts was a good rule based on sound science that balanced the needs of fish and of people. One indication of the success of that Rule is that no one challenged the substance of the Rule before it was enacted. Our collective agreement provided certainty for agriculture, for the cities, the County and for the tribes for decades to come, but it proved to be too good to be true.”

“I thought back room deals done in secret were more the stuff of legend than reality,” continued Cladoosby. “But, here we were months into negotiations and all of a sudden the County and Ecology snuck off to a temporary judge to get their secret deal blessed. The “Secret Deal” was the beginning of the problems with the amendments to the Skagit Instream Flow Rule.”

Tribal concerns about illegality of the Skagit Instream Flow Rule Amendments are described in the Tribe’s petition for review. Those concerns include that the Amendments allow more out-of-stream uses of water even though the minimum instream flow levels established in the Rule are frequently not being met. The Tribe’s Petition describes numerous procedural and substantive flaws in the Amendments. For example, procedurally, Ecology did not prepare an Environmental Impact Statement prior to adopting the Amendments to the Rule, in violation of the State Environmental Policy Act. Substantively, among other problems, Ecology created reservations of water for additional out of stream uses in violation of state law and its own policies and biologists’ expert opinions and concocted a credit for groundwater recharge from septic systems without supporting evidence.

State law requires that procedural challenges to the Amendments to the Rule be filed within two years of their adoption. “We would have preferred to work together to find a solution to everyone’s water needs, as we did prior to the original Rule,” observed Cladoosby, “But, Ecology chose to go it alone with the County and, we were left without any option other than calling the problems with the Amendments to the attention of a court. If we don’t act now, the stream flows needed to support our diminishing salmon stocks will be further impacted.”

Cladoosby concluded, “Even though we are taking legal action now as we must, it's still not too late for Ecology to sit down with the Tribe and other parties to find collaborative solutions. But it is too late for empty promises. Unless Ecology lives up to its obligations under Washington law to protect instream water needs as well as out of stream uses, the Tribe will be forced to use all the tools available to it to preserve for future generations our Treaty right to harvest fish, and to preserve the habitat needed by those fish.”

The Swinomish Indian Tribal Community is a federally recognized Indian Tribe with approximately 800 members. Swinomish is a signatory to the 1855 Treaty of Point Elliott and is the legal successor in interest to the Samish, Kikialus, Lower Skagit and

Swinomish aboriginal bands. Its 10,000 acre reservation is located 65 miles North of Seattle, Washington on Fidalgo Island and includes approximately 3000 acres of tidelands.

Resources:

Petition for Judicial Review Attached

§173-503 Washington Administrative Code (2006 Amendments to 2001 Rule) Attached

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