



3/19/2017

Re: "Waters of the United States" rulemaking

To Whom It May Concern:

The Snoqualmie Tribe—sduk<sup>w</sup>albix<sup>w</sup> in our Native language—consists of a group of Coast Salish Native American peoples from the Puget Sound region of Washington State.

We have been in the Puget Sound region and the Snoqualmie Valley since time immemorial. sq<sup>w</sup>ed (Snoqualmie Falls) is the birthplace of the sduk<sup>w</sup>albix<sup>w</sup>. We had more than 90 long houses along the Snoqualmie River and its tributaries. These rivers and streams were the highways used to travel from village to village and connected all the ?aciltal<sup>w</sup>bix<sup>w</sup> (Natives). The fish, game, trees and roots provided us with everything we need to live. All of this was given to us by duk<sup>w</sup>ibel (Transformer) in the ancient times when all of the animals could talk and before things were what they are now.

Long before the early explorers came to the Pacific Northwest, our people hunted deer and elk, fished for salmon, and gathered berries and wild plants for food and medicine. Today, many of our members live in the communities of Snoqualmie, North Bend, Fall City, Carnation, Issaquah, Mercer Island and Monroe.

Our Tribe was a signatory of the Point Elliott Treaty with the Washington territory in 1855. At that time, our people were one of the largest tribes in the Puget Sound region totaling around 4,000. We lost federal recognition in 1953, but after much battle, we regained federal recognition in October of 1999 by the Bureau of Indian Affairs. Today, the Snoqualmie Tribe is made up of approximately 650 members. The Snoqualmie Tribe is governed by an elected Council and our Tribal Constitution.

We believe that a Scalia-inspired approach may be too narrow and would leave many important resources without federal protections. We support the 2015 WCA Rules in its approach to tributaries and adjacent wetlands. The 2015 decision was based on an extensive scientific analysis and the new rulemaking process foregoes the expert analysis and provides no further discussion on the science while pushing the issue as a matter of policy.

Tribal waters are not limited to the waters on the Reservation. Tribal waters include all the waters in our historical homelands, those covered by treaties, and those that affect our cultural lifeways. These lands were ceded through treaty rights and the tribal waters protected by treaty rights are still in place even if these waters are not on a reservation. Agreements were made by the United States to protect fisheries and historical waters that belonged to the Snoqualmie Tribe since time immemorial. The US government has taken on the responsibilities of managing these waters and the WOTUS designation and the protections this designation gives to these waters have been one of the primary tools used to meet this obligation. Any policy that degrades or removes these protections also has a potential of harming the inherited responsibilities for managing these waters, which the US formally agreed to when it took over the governing of these lands.

The connectivity of groundwater and river systems to the larger hydrosphere is well demonstrated, and redefining the definition of various waters' legal definitions will not change the fact that the same waters that



flow through WOTUS start off in tributaries, wetlands, and groundwater. This water along with all accumulated pollutants will flow into the main channel. Reducing the regulatory responsibility that the federal government has for these waters will have deleterious effects to the ecological function of the system as a whole, irrespective of which flow path the water takes.

Changes in the WOTUS definition that cause perennial streams, ditches, wetlands, pools, and minor tributaries to lose protections has the potential to cause major disturbances in rivers important to the life cycles of juvenile salmonids in the Pacific Northwest and also has the potential to harm the ongoing recovery of ESA-listed Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*) and steelhead (*O. mykiss*). Salmon are important to the Snoqualmie people's way of life. Chinook are already imperiled due to loss of habitat, rising water temperatures, and PCB's and PBDE's. Contaminant concentrations found in the fishery are already at levels high enough to cause health impairment from adverse effects in up to a third of the population. The level of contamination within the fishery is already unsustainable and each year salmon returns continue to diminish, to the point where it is even affecting the ESA-listed Orca population that predates the salmon. Removing existing protections on tributaries, wetlands, and side channels will cause degradation of the waters of the system as a whole, have an undue effect on the contamination concentrations in our fisheries, and hurt ongoing salmon recovery efforts as well as the other ecosystem inhabitants that are dependent on these fisheries. Loss of current WOTUS protections will lead to a loss of fish and diminish the cultures of those that depend on their fisheries.

The definition of jurisdictional waters should be based in science, not by an arbitrary flow regime. Rivers are a continuum, and while we create classifications for them, each river system is unique in its function. Seasonal flow should not be the barometer of what makes a river. The timing, quantity, of quality of the flow are not warranted considerations over what constitutes WOTUS. A river is more than just water; bed load and drainage basin form a larger network of rivers. A river's health is a reflection of the health of the watershed as a whole. While some portions of the drainage basin might have a larger influence, the sum total of the quality of the water is the sum total of the water's interactions with the land. Non-apparent connections and ground water interaction, while legally distinct, in reality encompass all the same waters. Creating a non-apparent classification for regional variation of seasonal flow of surface waters simply to find additional exclusions in the federal government's requirement to manage waters should not be a primary driver of policy.

Wetlands, and intermittent and ephemeral streams play vital ecosystem functions, pertaining to water quality. Wetlands protection is extremely important to the Snoqualmie Tribe, and wetlands in our traditional lands are under threat. Wetlands are increasingly important in this era of a changing climate. With storms becoming more severe in magnitude and duration, wetlands help to reduce flood risk to both the natural and the built environment by holding water on the landscape in a beneficial manner before releasing it to flow downstream after the peak of the flood has passed. Wetlands are also often part of a broad system that stores water for release into streams during critical low-flow periods. These low-flow periods are becoming longer and more severe in the Snoqualmie Tribe's traditional lands as well. Wetlands also have historically served as producers of other traditional tribal resources of food, fiber and medicine.

To these ends, we request that wetlands protections not be weakened for the sake of development. Doing so would be short-sighted, inasmuch that irreplaceable services provided by wetlands would be lost and would ultimately pose a significant cost to society, which would in turn have to invest in expensive engineered



solutions in an attempt to replicate the benefits that wetlands provide to us for free. These important ecosystem services provided by wetlands will exist only if we let wetlands themselves continue to persist across the landscape.

One problem with adopting a soils definition for jurisdictional wetlands and rivers is that previously impacted areas that are being reestablished will lose protections allowing for rivers removed from protections to take on more disturbance. This will prevent a previously protected system from healing, losing the river's function permanently. Likewise, it would allow for rivers to be removed from WOTUS protections due to soil degradation. Water systems exist in a state of dynamic equilibrium and are constantly being developed and eroded. People should not be allowed to degrade rivers so they lose WOTUS definition. Disturbing an area to the point that the surface connection is broken, but the groundwater connection is not, should not be enough to cut federal protections and remove a water body from being considered a WOTUS. It allows local governments and those who undertake illegal disturbance and degradation the power to remove federal holdings or their protections from the people of the United States.

The definition of WOTUS should be all-encompassing, science-based, and not arbitrary. It should be crafted in such a way so as not to degrade our shared natural resources. The WOTUS designation offers additional protections to these waters and removing or reducing them will only increase costs to society as the quality of our waters suffer.

Thank you for the opportunity to provide comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Baerwalde", followed by a long horizontal line extending to the right.

Matt Baerwalde  
Water Quality Manager  
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