use of the water within the area described in the application. Attached to this report are preliminary figures and engineering plans depicting options for the diversion, processing, and delivery of the water. The second report is the Lake Tapps Reservoir Water Management Plan, which describes how the diversion and storage of water will be managed to enhance instream flows in the White and Puyallup Rivers.

Please do not hesitate to call if you have any questions.

Very truly yours,

for Tom McDonald

TM:no

Enclosures

cc: Sue Mauermann
Mark Quehrn
Ed Schild
Jill Walsh

MUCKLESHOOT INDIAN TRIBE

FISHERIES DEPARTMENT

August 25, 2000

Sent Via Facsimile

J. Mike Harris
Washington Department of Ecology
Southwest Regional Office
P. O. Box 47775
Olympia, Washington 98504-7775

RE: Puget Sound Energy Water Right Application #S2-29921

Dear Mr. Harris,

The Muckleshoot Indian Tribe is in receipt of a water right application submitted by Puget Sound Energy (PSE) for the consumptive appropriation of water from the White River. Requested quantities are 2,000 cfs instantaneous rate and 72,400 acre-feet/year annual rate with an average annual rate of 100 cfs. The Tribe was notified of this application on June 28, 2000, based on the envelope postmark.

The Tribe is concerned further consumptive appropriations of surface water will adversely impact fisheries resources. Instream flow depletion in the White and Puyallup rivers could impair salmonid habitat and interfere with tribal reserved treaty fishing rights having a priority date of time immemorial.

Furthermore, the White River and its tributaries are closed to further appropriations per Ch. 173-510 WAC. The June 20, 2000 letter accompanying the PSE application refers to additional materials, including the development of a water management plan, to "assure that there will be a beneficial or neutral impact on the White and Puyallup Rivers during the low flow periods to be described in the permit". Materials referenced are assumed to provide justification as to why a segment of the White River should be opened administratively to further consumptive appropriations and why PSE's request would be a "beneficial or neutral impact" to instream flows. The Tribe believes that such information should be provided before PSE's water right application is determined by Ecology to be complete. Evaluation of potential impacts from PSE's application is not possible without additional information on the proposed future operation and management of PSE's White River diversion and Lake Tapps storage. The Tribe cannot

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provide substantial comments regarding the application until we have had access to and adequate review time to evaluate the application in its entirety.

Therefore, as the PSE application is incomplete, we do not believe the 60-day comment period per Water Resources Program Policy 1105 is in effect. We reserve the right to comment on or protest PSE's completed water right application #S2-29921 at a future date. We would like to work cooperatively with you on determining an appropriate comment deadline.

Thank you for your attention to this issue and please feel free to call me at (253) 939-3319 ext. 127 with questions or if you would like to this discuss this matter further.

Sincerely,

Carla Carlson

Carla Carlson
Water Resource Planner

cc: Char Naylor, Puyallup Indian Tribe
Keith Phillips, Washington Department of Ecology
Jill Walsh, Washington Department of Ecology

S

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
P.O. Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

September 18, 2000

Carla Carlson
Muckleshoot Indian Tribe
39015 172nd Avenue Southeast
Auburn, WA 98092

Dear Ms. Carlson:

Re: Water Application No. S2-2992~~1~~0

Your letter formally advising the Department of Ecology of the Tribe's concerns in respect to Puget Sound Energy's application for water right is acknowledged and made a matter of record.

We are aware that the Tribe is interested in participating in the decision making process of all applications in the White River Watershed, and we will make every effort to ensure that you are kept informed as to the status of this particular project.

This application hasn't been advertised yet, and as you are aware, it is the date of public notice that formally triggers the statutory comment period on a pending application. While we will accept comments from the Tribe at any stage in the process regardless of the date, I understand that you wish to ensure your comments are submitted within the 30-day public protest period. I will make a note in the file that you be contacted when the public notice is prepared and sent to PSE for publication.

I agree that the information that you currently have regarding the PSE\Lake Tapps project is not going to be adequate for you to base any meaningful comments on. Just today we received some additional information that is intended to supplement the originally filed application, so I will go ahead and forward it to you now.

Sincerely,

Jill E Walsh

Jill Walsh
Water Resources Program
Southwest Regional Office

JW:th (protestant.doc)

PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)

Petitioner's Name (please print) Puget Sound Energy Telephone (425) 462-3022

Address PO Box City State Zip Code

P.O. Box 97034 Mail Stop OBC-14N Bellevue WA 98009-9734

Agency Responsible for Administering the Rule, If Known:

The Department of Ecology

Check all that apply below and explain on the back of this form with examples. Whenever possible, attach suggested language. You may attach other pages, if needed.

☐ **1. NEW: I am requesting that a new WAC be developed.**

I believe that a new rule should be developed.

- ☐ The subject of this rule is:
- ☐ The rule will affect the following people:
- ☐ The need for this rule is:

☒ **2. AMEND: I am requesting that a change to existing *WAC 173-510.***

☐ **3. REPEAL: I am requesting existing WAC_____ be removed.**

I believe this rule should be changed or repealed because (check one or more):

- ☐ It does not do what it was intended to do.
- ☐ It imposes unreasonable costs.
- ☐ It is applied differently to public and private parties.
- ☐ It is not clear.
- ☐ It is no longer needed.
- ☐ It is not authorized. The agency has no authority to make this rule.
- ☐ It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if know:
- ☐ It duplicates another federal, state or local law or rule. Please list number of the duplicate law or rule, if known:
- ☒ Other (please explain): *The current rule closing streams from further appropriations unnecessarily restricts Ecology' authority to consider water right applications for projects that will meet the intent of stream "closures" and will otherwise be in the public interest.* ***See Attachment A.***

Petitioner's Signature: [signature] Date: 9/14/2000

Original forwarded to Jerry thielen on 9/18/00 J Walsh

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Attachment A

The Petition to amend WAC 173.510 is being filed to allow the Lake Tapps reservoir to be developed as a source of municipal and public water supply. The rule change is necessary to allow an application for a much needed regional resource of water to be considered by the Washington State Department of Ecology ("Ecology"). This petition is being filed to reflect the significant changes that are occurring in the White River Basin and is supported and offered pursuant to the specific language of the existing rule that provides:

> The Department of Ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. WAC 173-510-100.

In 1980, Ecology adopted the Puyallup River Basin Instream Flow Management Plan that provided for the allocation and management of water in the Puyallup River Basin. WAC 173-510. The Puyallup River Basin has been designated Water Resource Inventory Area (WRIA) 10. WAC 173-500. Based on the information at the time the rule was adopted Ecology determined minimum levels of instream flows for the rivers and streams in WRIA 10. These flows were established by Ecology to protect, as it saw appropriate, these instream flow values.

Having decided that many of the streams were experiencing such low flows, Ecology decided to simply "close" these streams from further appropriations. Specifically, the rule states:

> The Department, having determined that further consumptive or appropriations would harmfully impact instream values, closes the following streams and lakes in WRIA 10 to further consumptive appropriations. WAC 173-510-040(3).

The White River is "closed" under the rule.

Since the early 1900's PSE has exercised a pre-code water right to divert up to 2000 cubic feet per second (cfs) of water from the White River, store water in the Lake Tapps reservoir, and eventually run the water through a power house, and return the water back into the White River. Between the point of diversion and the point of discharge back to the White River, there exists a "by-pass" reach of the river of over 20 miles. It has been Ecology's position that this by-pass reach has insufficient flow to allow further appropriation.

A FERC license was issued in December of 1997 for the Project, a license which PSE has not accepted. Among other things, the license would require PSE to adjust its diversion, and provide more flows in the by-pass reach. These flows will, according to

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federal and state resource agencies, enhance the fishery resource and the instream flow values. This change also creates circumstances justifying consideration of amending the rule related to the White River.

The petition does not however request that the closure on the White River be repealed, although this is an option. Rather, this petition requests a rule change that would allow for Ecology to consider water right applications for the use of water in "closed basins" if the applicant can support the application with evidence that the proposed project would provide substantial environmental enhancement to the Basin or support a comprehensive regional public water supply, and under no circumstances would cause additional impairment to the river during times that the flows are currently known not to meet the minimum flows established for the Puyallup River. This rule amendment will therefore recognize the purpose of the rules and meet the intent of a "closure" in the Puyallup River Basin, and will also provide Ecology with the flexibility to consider applications that, while not causing additional impairment to the instream flows during low flow times, will provide enhancement of the environmental resources or support a regional public water supply. Processing applications under this standard is consistent with the Basin planning adopted by the legislature in Chapter 90.54 RCW. See RCW 90.54.020(2), (3), (5) and (7).

The petitioner's suggest the following amendment to Chapter 173-510.

Insert at WAC 173-510-040 the following:

> **(4) Notwithstanding the closures set forth in subsections (2) and (3) of this section, the department shall process applications for the appropriation of water from surface waters and ground waters affected by such closures if the applications propose a project and use of water that: (a) will not cause any additional impact to the instream flows established for the Puyallup River at a time when the Puyallup River is not meeting the minimum flows set forth in subsection (1) of this section; and (b) will substantially enhance the quality of the natural environment or will result in providing public water supplies to meet the general needs of the public for regional areas.**

We believe that the standards set forth in the proposed amendment are consistent with the criteria that Ecology has included in current rules that allow for expediting applications. See WAC 173-152 (the Hillis Rule) and WAC 173-532 (the Walla Walla Rule). Both of these rules have allowed Ecology the flexibility to prioritize the processing of competing applications if the project would "substantially enhance or protect the quality of the natural environment" or "would result in providing public water supplies to meet the general needs of the public for regional areas." See WAC 173-152-050(3).

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State of
Washington
House of
Representatives

HAND DELIVERED

August 16, 2000

AUG 2 2 2000

OFFICE OF THE GOVERNOR

Gary Locke
Governor
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Dear Governor Locke,

In late February 1999, the citizens of the Lake Tapps community began to work to find a solution to a real threat to their homes and businesses - the draining of the Lake Tapps reservior. Faced with high costs and the difficult renewal of their FERC license for the White River Hydroelectric Project, Puget Sound Energy was working through the difficult decision of closing this facility, allowing the reservior to drain. Understanding the huge impact this would have on the surrounding community, community groups, homeowners, Native American tribes, elected officials, and Puget Sound Energy have been working together to find an effective, positive solution to this challenge; over fifty individuals in total.

We have been honored to be a part of this collective effort, and extremely pleased with the progress we have made so far. In July of 1999, the Federal Energy Regulatory Commission granted a temporary stay of the license re-issuance proceedings, allowing all the involved parties additional time to work for a viable, long-term solution to this impending issue. A number of proposals have been suggested, and we are pursuing different options, understanding that resolution will come only through a combination of ideas.

One idea has risen in its significance, and may prove a key solution : Puget Sound Energy's Potable Water Right Application. Approval of this water right would allow Puget Sound Energy to provide water to a region in need for the next several decades. The proposal would enhance instream flows, including those in the White and Puyallup rivers, ideals supported by the Endangered Species Act. In addition, it would allow the existing lake to remain, retaining a valuable resource for local industries and ecosystems which rely on it. This proposal is a key element to the salmon restoration program and can be implemented at no cost to taxpayers.

Members of the Task Force, representatives from Puget Sound Energy, Department of Ecology staff, and other, interested parties have worked for almost a year to develop the enclosed proposal. At the heart is a request is an amendment to an agency rule (WRIA 10) which addresses the Puyallup river basin; and a new water right. These changes will allow this proposal to move forward for further consideration. Without these changes we will be unable to pursue this option, inhibiting the opportunity to place more water in the rivers, preserve a now established ecosystem with Lake Tapps, and potentially decimate the value of property and industry which surrounds the Lake. Elimination of the lake would also dramatically impact local schools and fire districts within the community which rely on current levy levels for construction and maintenance of their systems.

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Citizen
Response
Tracking
Log: 380402

Office of the Governor

Mail Stop: 40002
(360) 753-6780

8/24/00
4:31 pm
Page 1

RECEIVED
AUG 28 2000
DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

REFERRAL DIRECTIONS*

Referred To: **Department of Ecology**

Action: **For Governor's signature**

CC's: Governor
Bob Nichols
Chief of Staff
Director of Legislative Affairs

Comments: Requesting the Governor's support on a local task force's proposal to DOE to protect the Lake Tapps Reservoir from being drained.

Referral Date: 8/24/2000

DUE BACK: 9/7/2000

Return To: Lan Nguyen SMTP:lan.nguyen@gov.wa.gov

* FOR COMPLETE DIRECTIONS REFER TO CITIZEN RESPONSE TEAM GUIDELINES.

CONTACT INFORMATION

From: The Honorable Christopher Hurst
The Honorable Mike Stensen
31st District Representatives
House of Representatives
335 Legislative Building
PO Box 40600
Olympia, WA 98504-0600

Contact Date: 8/22/2000
Contact Type: Hand Delivered
Constituent Type: VIP Correspondence

Phone(s): Business 1 (360) 786-7866
Business 2 439-3830

Categories:	ENV	
Batch: 0	WATER	Log: 380402

LTN

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

RECEIVED
00 AUG 22 A9:55
SW REGIONAL OFFICE

August 22, 2000

Ms. Carla Carlson
Muckleshoot Indian Tribe
39015 172nd Avenue SE
Auburn, WA 98092

RE: Public Disclosure Request Regarding WRIA 10

Dear Ms. Carlson:

This letter acknowledges that the Washington State Department of Ecology is in receipt of your request for public records date stamped August 22, 2000. If we are the custodians of the information in question it will be provided to you per RCW 42.17. Please be advised we charge fifteen cents per page for the duplication of records but they may be viewed free of charge. Also, the requested documents must be identifiable.

I will forward your inquiry to Ms. Sherri Greenup, Public Disclosure Coordinator for the Southwest Regional Office. If documents are located you will be contacted in approximately the next three weeks. If you have any questions regarding your request you may contact Ms. Greenup at 360-407-6365, or myself, at 360-407-6040 and we will be happy to assist you.

Sincerely,

Nancy J. Bolton
Public Disclosure Officer

CC: Sherri Greenup

We are requesting your support of these modifications. The enclosed materials will provide you with more detailed information on this proposal, and how it will positively impact those involved. We look forward to meeting with you and your staff shortly to discuss this proposal in more detail; please contact us directly if you have any additional questions.

Respectfully,

Christopher Hurst
31st District Representative

Mike Stensen
31st District Representative

cc. Joe Dear, Chief of Staff; Office of the Governor
Curt Smitch; Office of the Governor
Tom Fitzsimmons; Department of Ecology
Doug Sutherland, Jan Shabro; Pierce County
Ed Shield, Associates; Puget Sound Energy

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

RECEIVED
AUG 18 P1:49
SW REGIONAL OFFICE

August 18, 2000

Ms. Char Naylor
Puyallup Tribe of Indians
2002 East 28th St.
Tacoma, WA 98404

Re: Public Disclosure Request Regarding WRIA 10

Dear Ms. Naylor:

This letter acknowledges that the Washington State Department of Ecology is in receipt of your request for public records date stamped August 18, 2000. If we are the custodians of the information in question it will be provided to you per RCW 42.17. Please be advised we charge fifteen cents per page for the duplication of records but they may be viewed free of charge. Also, the requested documents must be identifiable.

I will forward your inquiry to Ms. Sherri Greenup, Public Disclosure Coordinator for the Southwest Regional Office. If documents are located you will be contacted in approximately the next three weeks. If you have any questions regarding your request you may contact Ms. Greenup at 360-407-6365, or myself, at 360-407-6040 and we will be happy to assist you.

Sincerely,

Nancy J. Bolton
Public Disclosure Officer

CC: Sherri Greenup

MUCKLESHOOT INDIAN TRIBE

FISHERIES DEPARTMENT

'00 A 7:57

August 16, 2000

Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Request for Public Records

Dear Sir or Madam:

Pursuant to Ch. 42.17 RCW, the Muckleshoot Indian Tribe requests from the Washington Department of Ecology ("WDOE") copies of the following public records:

All records (including draft and final documents, correspondence, meeting notes, telephone logs, and e-mail) received or generated by WDOE since 1990 from Puget Sound Energy ("PSE") in which there is reference to application for any water appropriation within Watershed Resource Inventory Area ("WRIA") 10.

The Tribe is in receipt of an application dated 6/19/00 by PSE for appropriation of surface water. The Tribe requests all records (including draft and final documents, correspondence meeting notes, telephone logs, and e-mail) received or generated by WDOE that pertain specifically to this application, including any later-submitted supporting documentation from PSE. The Tribe also requests all records that purport to indicate the status of this application from WDOE's perspective, including whether it is a complete or incomplete application, including requests or requirements made by WDOE of PSE for completion of the application or WDOE processing of the application.

All records (including draft and final documents, correspondence, meeting notes, telephone logs, and e-mail) received or generated by WDOE in which there is any reference to an amendment to WAC 173-510-100.

All records (including draft and final documents, correspondence, meeting notes, telephone logs,

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e-mail) received by or generated by WDOE in which there is any reference to any basin planning process within WRIA 10.

Please consider this a formal request under Chapter 42.17 RCW. We understand and agree to the obligation to pay photocopying costs for documents provided. The Puyallup Tribe of Indians is also submitting a similar request for records. We would like to coordinate our record inspection with representatives from the Puyallup Tribe. Please contact me at (253)939-3319 ext. 127 when the records are available for inspection. Thank you for your consideration of this request.

Sincerely,

Dhyan Story for Carla Carlson

Carla Carlson
Water Resources Planner

cc: Office of the Tribal Attorney
Puyallup Tribe of Indians, Environmental Division

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Puyallup Tribe of Indians

August 15, 2000

Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Request for Public Records

Dear Sir or Madam:

Pursuant to Chapter 42.17 RCW, the Puyallup Tribe of Indians requests from the Washington Department of Ecology ("WDOE") copies of the following public records:

All records (including draft and final documents, correspondence, meeting notes, telephone logs, and e-mail) received or generated by WDOE since 1990 from Puget Sound Energy ("PSE") in which there is reference to application for any water appropriation within Watershed Resource Inventory Area ("WRIA") 10.

The Tribe is in receipt of an application dated June 19, 2000 by PSE for appropriation of surface water. The Tribe requests all records (including draft and final documents, correspondence-meeting notes, telephone logs, and e-mails) received or generated by WDOE that pertain specifically to this application, including any later-submitted supporting documentation from PSE. The Tribe also requests all records that purport to indicate the status of this application from WDOE's perspective, including whether it is a complete or incomplete application, including requests or requirements made by WDOE of PSE for completion of the application or WDOE processing of the application.

All records (including draft and final documents, correspondence, meeting notes, telephone logs, and e-mail) received or generated by WDOE in which there is any reference to an amendment to WAC 173-510-100.

All records (including draft and final documents, correspondence, meeting notes, telephone logs, e-mail) received by or generated by WDOE in which there is any reference to any basin planning process within WRIA 10.

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2002 East 28th Street • Tacoma, Washington 98404 • 253/597-6200

Please consider this a formal request under Chapter 42.17 RCW. We understand and agree to the obligation to pay photocopying costs for documents provided. Please contact me at (253) 573-7851 when the records are available for inspection. We plan to coordinate review of these records with the Muckleshoot Tribe. Thank you for your consideration of this request.

Sincerely,

Char Naylor

Char Naylor, Manager
Tribal Water Program

Cc: Office of the Tribal Attorney

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FILE COPY

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 14, 2000

Tom McDonald
Perkins Coie, LLP
1110 Capitol Way South, Suite 405
Olympia, WA 98501

Dear ~~Mr. McDonald:~~ Tom

I am writing to request that you send the Department of Ecology, Water Resources Program information referenced your letter of June 20, 2000. As you noted in your letter, the department needs these supporting documents to assess Puget Sound Energy's application(s) for a water right in connection with the proposed Lake Tapps project.

It is my understanding that PSE intends to submit two additional applications – one that addresses the storage of water for public supply in the Lake Tapps reservoir, and the second, to reflect the withdrawal out of the lake for public water supply. Until we receive a complete package of applications and supporting documentation the department cannot take further action.

If you have any other questions, please contact Kitty Gillespie at (360) 407-6862 or Jill Walsh at (360) 407-0274. I look forward to talking with you about this soon.

Sincerely,

J. Mike Harris
Section Supervisor
Water Resources Program
Southwest Regional Office

JMH:KG:th

cc: Ed Schild, Puget Sound Energy
Mark Quehrn, Perkins Coie
Sue Mauermann, Regional Director, SWRO, Department of Ecology