

East Orcas Water Supply Minority Report

Submitted by Sandy Taylor, Olga WA

This “minority report” is submitted to indicate where publicly available data, documents or records do not agree with the report adopted by the committee, or where significant available facts have not been included in the report.

Salmon and Sea-Run Cutthroat

Attachment (A) is a letter from the Dept. of Fisheries, March 1992 states the lower reach of Cascade Creek: “has a good population of naturally occurring coho salmon and sea-run cutthroat trout.” The DFW letter includes first hand observations by the Regional Habitat Manager of “at least 6 redds” (natural spawning). He concludes with: “As far as I have been able to determine, this is the only stream in the San Juan Islands that still supports a viable run of salmon and has, by far, the largest population of sea-run cutthroat in the islands.” Fisheries is now part of the Dept. of Fish and Wildlife (DFW)

Attachment (B) is a letter from the Dept. of Ecology NW regional habitat manager (ECY, March 1992) recommending that OWU's 1978 water right application be denied, citing the salmon, cutthroat, steelhead, other fish and low instream flow.

A short DVD of salmon spawning in Cascade Creek is enclosed. This home video was taken before we put in our first 5000 chum eggs. The video was taken to share the joy of living in this pristine habitat. (copies of the video are available upon request.) Several still pictures are on the web, including local high school students studying the habitat.

Cascade Creek is a small stream with low summer flow, salmon or not, it has been clear for more than a decade that new consumptive water rights were highly unlikely. We should be proud of our habitat and the wildlife it supports. A year round flow is critical to maintaining the unique and critical estuarine wetlands and near shore habitat in and around Buck Bay.

The wildlife in this watershed, including Buck Bay is extraordinary The salmon and habitat pages are consistently the most popular on the Olga Water Users' web site. They have received praise from our membership, many other residents of Orcas Island, visiting tourists and web surfers from as far away as Japan. The support of community reflects their appreciation of the pristine habitat. This enhances the tourist industry.

Accepting the DF&W and Ecology reports that this is a salmon habitat would **open up avenues to funding to assist in the expensive repairs** planned for the culvert as the creek passes under the county road into Buck Bay. We should proactively keep the county road works involved with our activities, so that they have access to key information, such as instream flow (including peak) studies which would substantially affect the design constraints.

Every effort should be made collectively to gather as much relevant information as we can, review it, and **make it available on the internet for the benefit of all who are interested**. Many references are available from the county, state, the web and other sources, *just for the asking*. But without a current list, how do you ask for what you may not know exists?

Projected needs of Rosario/Eastsound vs. Current Water Right Applications:

The WRIA 2 Surface Water Storage Assessment states an annual water supply goal of 100 million gallons (about 307 acre ft.) The applications by Rosario and EWUA attempt to convert **well over 3000 acre ft.** Clearly they are laying the foundation for something much larger than the requirements described in the WRIA 2 report. **The proposed changes would to dry up Cascade Creek for about half of the year,** and have other devastating impacts on the habitat in Cascade Creek and Buck Bay.

The community should be notified of the potential long term impact of the proposed change in use of water belonging to the people of the State of Washington.

The ongoing instream flow studies on the Mountain Lake Watershed continue to double count the majority of the water reported as diverted from Cascade Creek at the Rosario diversion. Assuming 100.0% utilization of the allowed water right, 365 days per year without any accurate means of measuring is not credible. The analysis of the data does not take into account very substantial return flow(s) from the diversion. (pictures available)

I have discussed with Fish and Wildlife a set of tests that would quantify these observations. They are willing to review a written description of the proposal to ensure they are properly designed. Steve Boessow (DFW) stated that the time required to accurately study the flow regime in Cascade Creek is short compared to the long term impact of the proposed modifications. If agreement can be reached on the scientific validity of the tests, I would be willing make the resources available to conduct the tests, in coordination with all involved and with independent observations of all steps and measurements, then ask DFW hydrogeologists to assist and validate the interpretation of the results.

Sustainable Discharge from Mountain Lake:

Four years of detailed records of the water level in Mountain Lake are available, thanks to the State Parks participation in the Mountain Lake Management agreement. Analysis of the rate at which Mountain Lake drops when it is not raining can indicate the rate of discharge from the lake. Taking into account the change in lake level from 1993 to 1994 indicates that the sustainable discharge during that season was about 580 acre ft./yr. (1 acre ft. = 325,850 gal). Daily rainfall records for the past century are available from NOAA for a small fee. If the county would obtain this data and make it available, the value of the historical levels of the lake, and current studies of instream flows would be **far more valuable**. The rainfall data would also assist all purveyors on the island with water system planning.

A technical review of the source data, calculations and modeling is invited. Please contact me for more details and copies of the raw data.

The monitoring of the levels of Mountain Lake and Cascade Lakes should be performed with real time data available on the web. The technology is simple and comparable in cost to the conventional data loggers, or cheaper when the labor costs are included. But **the results are far more valuable** when they are available in real time to all parties. Critical anomalies such as unusually rapid drops in lake level could be detected in real time. The Cascade Lake source has limits on withdrawals based on the depth. Real time monitoring would allow advance warnings and alarms to be set up early in the onset of a potential drought. The parks and OWU have indicated interest in looking into this further. A demonstration should be available this spring.

Mountain Lake Conservation Plan

Using our pristine waters of Mountain Lake and Cascade Lake to run a private hydroelectric generator on an island during a statewide drought should prompt us to consider alternatives that would provide mutual conservation, while providing the best use of the water owned by the citizen's of Washington. A detailed plan was presented to Rosario that offered to increase protection of their water rights, and compensate them financially, while providing:

- An full year's supply of water reserve during an extended drought
- Higher water levels in Mountain Lake for recreational use during the summer
- Improved habitat in Mountain Lake
- Earlier spill over the dam and higher initial flow for the salmon run
- Rosario's Cascade Creek water rights would be protected from relinquishment.

Attachment C is the response from Laurie Cameron (representing the owners of Rosario Resort) offering some short term benefits, but it lays a clear foundation for long term massive consumption. I am very grateful for the time and attention she gave the proposal, but we were unable to find a common ground since there was no compromise on converting the entire 1204 acre ft diversion from Cascade Creek to municipal use.

The offer was made inviting Rosario's voluntarily participation. I am disappointed that they have declined the opportunity.

The Eastsound Aquifer and Sources of Water

Decisions affecting the widespread community should involve extensive public participation.

Activities to limit exempt wells by saying there is insufficient water in the aquifer for an exempt well, but there is enough water from the same aquifer if EWUA pumps it can lead to the perception that there is more interest in protecting financial interests of EWUA than studying static well levels.

There is very significant potential for using properly treated effluent to recharge the aquifer using “engineered wetlands”, or underground irrigation of sports fields, or even just to create a hydro buffer between the sea water and the Eastsound aquifer. The feasibility and cost information should be shared and open to constructive discussion.

There are some alternatives that have technical merit that should be considered, if we can get past some “foregone conclusions” in order to impartially consider the benefits to the community of some of the ideas based on their technical merit, not how polished or professional the presentations are. For example, the USGS study shows huge volumes of water on the West side of the island.

Island County's policies on exempt wells appear to have on sound hydrological basis that precludes the appearance of bias.

Doug Kelly's recent presentation to the BOCC about sea water intrusion should be publicly available on a county sanctioned web site along with all other material for the East Orcas Water Supply Committee.

Issues With Meeting Protocol

The greater public interest to be served demands that public participation should be invited throughout this watershed planning process, by timely meeting announcements, including key agenda items published in the Sounder. Emails announcing meetings were usually sent out to a small list of people, one week before each meeting, precluding publication in the Sounder. I disagree with the position that publishing meeting notices and agendas would be disruptive.

On the contrary, one of the few members of the general public to participate, Sharon, attended her first meeting because I called her to let her know about some of the agenda items. I am pleased to report this led to the successful sale of her well to EWUA. Her gratitude for the invitation, and the sale of her wells is shown in the email , attachment (D).

The minutes should accurately reflect issues addressed. If a consensus is not reached, minority opinions should be included with comments as to why it was not supported.

The internet provides a powerful and economical way to gather and distribute information. An offer was made to host a web site to post agendas, minutes, documents and references. It is disappointing that this offer to share information with the public was not supported by the committee. further information is available at: www.olgawater.com/info.html

Thank you for your time and consideration.

Sandy Taylor, Olga

Attachment (A) Letter from Regional Habitat Manager, Wa Dept of Fisheries, March 1992

JOSEPH R. BULLM
Director



STATE OF WASHINGTON
DEPARTMENT OF FISHERIES

333 E. Blackburn Road • Mount Vernon, Washington 98273-9006 • (206) 428-1568

March 6, 1992

Department of Ecology
Northwest Regional Office
3190 160th Avenue S.E.
Bellevue, WA. 98008-5452
ATTN: Steve West

SUBJECT: Cascade Creek Water Right Applications; Orcas Island;
WRIA 02.0057; San Juan County.

Dear Mr. West:

As per our phone conversation today I am sending this request to have a low flow set for the above creek. I recently responded to a Water Right Application (# SI-26308) from Victor Prescott and asked that it be denied. You mentioned to me that there were other applications for the same water source and that I should document the fish usage in this stream. This letter will address our concern.

Cascade Creek is a perennial stream which flows out of Mountain Lake, in Moran State Park, through a well-timbered and heavily vegetated buffer of natural understory. It flows into one of the most natural estuaries in the Puget Sound region, one that displays a multitude of intertidal habitats, which, in turn support a wide variety of the known species of intertidal invertebrates found in this region. Its seaward journey causes it to flow over a series of beautiful rock out-croppings, forming waterfalls, pools, and cascades. The low-gradient sections of this stream have a plentiful supply of gravel which, in combination with the excellent riparian vegetation, support an abundance of aquatic insect life and spawning salmon and trout.

The lower ~~part~~ ~~of~~ ~~the~~ ~~stream~~, from Buck Bay upstream to the first impassable waterfall, has a good population of naturally occurring coho salmon and sea-run cutthroat trout. There are also small numbers of eastern-brook trout which must have dropped out of the lake from earlier plants, as these are not native fish. Eastern brook are found throughout the channel upstream of the first anadromous barrier. There may also be native steelhead, but this has not been verified. Locals remember that coho were originally introduced to this stream many years ago, but the character of the stream and the presence of native sea-run cutthroat would indicate that coho were originally native to the stream.

Steve West
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March 6, 1992

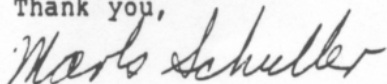
For the past 6 years I have taught a fisheries class at Moran State Park, during the last week of July, to the Washington State Junior Sportsmen-Conservation Council. I have electro-shocked the above fish with the group and used this stream as an example of one of the most natural stream systems to be found anywhere in Washington. I have only once been there in the winter to verify the presence of adult salmon and missed the peak of spawning, observing several carcasses and at least 6 redds.

This creek has no development or recent logging in the watershed to create stream impacts normally associated with such disturbances. The only source of pollution comes from the several small areas where the creek crosses under the county road (several tires and some old refuse that was probably thrown out of cars). There is currently a proposal from the only resident on the creek, a Mr. Joseph Lawlor, to start a commercial oyster growing farm in the bay (he evidently owns most of the estuary). Such an aquaculture project will require that the creek remain un-polluted and have a continual supply of fresh water. The rate that we are losing our shellfish beds from pollution is alarming. All necessary measures to protect this bay should be taken as soon as possible.

As far as I have been able to determine, this is the only stream in the San Juan Islands that still supports a viable run of salmon and has, by far, the largest population of sea-run cutthroat trout in the islands.

Other than logging and development, the only impact that would seriously harm this stream, in its present state, would be an increase in the amount of water that is presently withdrawn for domestic use. I request that this stream be ~~protected~~ for any more Water Right Permits.

Thank you,



Mark Schuller
Regional Habitat Manager
(206) 428-1520

cc: WDF, Deusen

Attachment (B) is a letter from the Dept. of Ecology NW regional habitat manager

COPY

NW Region _____

Date: 3-4-92

Department of Ecology
3190-160th AVE. S.E.
Bellevue, WA 98008-5452

Gentlemen:

Water Right Application # 51-26308
Applied for by Victor Prescott

The Department of Fisheries has reviewed the above-referenced Water Right Application and would like to submit the following recommendations.

Denied: See attached. Cascade Creek supports Eastern Brook cutthroat, steelhead, coho - Already has low summer flows.
 No dam shall be allowed.

Low Flow: All diversion shall cease when the flow of _____ falls to _____ cfs as measured at _____

_____(Screening Criteria)

- Screening:
- Hydraulic Project Approval required.
- Other: See attached.
- No Comments.

Thank you for the opportunity to review and comment.

Sincerely,

Mark Schuller

509-542-1520

Habitat Manager

cc: Water Right File

Attachment C. Email from Laurie Cameron

Hi Sandy,

> As promised, I forwarded on to our counsel handling our water rights the
> information you shared with me at our recent meeting. He has much
> experience with these issues and we had a good conversation about approach
> and process.

> As I understand it, you have an interest in allowing our water rights to
> be kept in Mountain Lake for fish rather than diverted for hydropower
> usage. I am advised that until our water rights are changed to municipal
> purposes, this will not be possible without either our agreement to
> voluntarily put these water rights into the Trust Water Rights Program or
> Ecology's decision changing our water rights to municipal purposes.

> Currently, the Resort's hydropower water rights are subject to
> relinquishment or forfeiture if they are not used fully at least once in
> every five years. As you know, the relinquishment laws and Ecology's
> policies in regard to relinquishment make it very important for water
> rights holders to fully utilize their water rights or risk losing them,
> piecemeal, in each successive five-year period. In practice, this
> requires that we utilize our hydropower rights to the maximum extent of
> their availability, or else we would risk losing these valuable property
> rights. While voluntary enrollment in the Trust Water Rights Program
> would exempt the water rights from relinquishment through non use, I don't
> believe the State has any legal authority, even in the context of a water
> rights change application, to compel a water rights owner to take such
> action according to statute.

> Once changed to municipal purposes, water rights are no longer subject to
> relinquishment for non use. This would give Rosario Water System the
> flexibility to leave significant portions of the water rights in the
> natural system, until such time as they are needed for new domestic
> connections to the water system. It is conceivable that much of the water
> rights currently used for hydropower by the Resort could be voluntarily
> "rested" for many years, provided there is an adequate and mutually
> beneficial means to compensate the Resort and/or the water utility for the
> loss of revenue or energy savings from the current hydropower use. We
> would be willing to work with you and the Department of Ecology to
> identify public funding sources to make this possible. Of course, much of
> the future need for this water for municipal drinking water supply depends
> on future plans by the County and utilities in the Eastsound area. It is
> possible that at least partial resting of the municipal water rights could
> continue indefinitely.

> As you know, we have filed applications to change the purpose of use of
> the Rosario Resort hydropower water rights to municipal. We believe these
> changes will give the Resort and the Rosario Water System the flexibility
> to meet your objectives, as we discussed. We would be happy to discuss
> with you the means to obtain both short- and long-term commitment of these
> water resources for instream flows and we encourage your support as we
> pursue our transfer so that we have the flexibility to negotiate with or
> assist you in future efforts to rest these water rights for instream flow
> purposes. I hope this makes our position clear to you, and that we will
> be able to work together to accomplish our goals with regard to these
> water rights.

>

> Laurie Cameron, Managing Director, Olympus Real Estate Partners

(See Chris Vierthaler for contact information)

Attachment (D) Emails from Sharon Greer:

Dear Sandy,

I appreciate that you made Ed Sutton aware of our wells and water systems. Ed followed through and we negotiated with Eastsound Water Users resulting in their purchase of both wells and the two water systems. I attended their Annual Meeting where their recent and planned acquisitions were discussed. They made their members aware that the Association would be able to add a substantial number of memberships.

Thanks again for your help.

Sharon Greer

Subject: Re: [Fwd: WRMC, special meeting next week]

Date: Thu, 1 Apr 2004 20:43:34 EST

From: <address deleted>

To: cmos@rockisland.com

Sandy;

Thanks for the information. Is this meeting open to the public? It sounds worthwhile -- but I won't know until next week if I can get away for a day. I would also like to attend the planned Water Forum discussion to be held sometime in the near future. Your article to the Sounder was very informative and raised issues that need to be discussed. I'm glad someone with an analytical eye is watching over the ESWUsers shoulder.

Sharon

HPA required for work in Rosario diversion.

Email from from:
Steve Boessow, Water Rights Biologist
Department of Fish & Wildlife
Habitat Program

Sandy,

As you know, Cascade Creek is inhabited by resident and anadromous fish (trout and salmon). Regulations are established to protect fish resources by protecting the habitat they rely upon (water). Like many small streams, water is the primary limiting factor for fish in Cascade Creek. Additional diversion of water or changes to existing diversions that reduces the flow of Cascade Creek could be very detrimental to fish health, especially during low flow seasons. Having all applicable permits in hand prior to starting any work on or near the water should prevent unintended negative consequences of the work.

I have attached a document containing WAC language relevant to Hydraulic Permit Approvals (HPA) in water withdrawals. There are, of course, many RCW and WAC's that regulate HPA applications and issuance. I believe that, since the return flow of the diversion ditch provides water in Cascade Creek, it clearly "change[s] the natural flow or bed of... fresh waters of the state". That language from WAC 220-110-010 and 220-110-190 pretty clearly establishes the need for an HPA. In addition WAC 220-110-190 states that "Any hydraulic project activity related to a change in the manner or location of water diversion will require an HPA modification." I would think that changing the nature of an established diversion, especially one that partially utilizes natural drainage features of the watershed, would require an HPA.

Changes to diversions and work that effects the bed or flow of waters of the state often require SEPA review. To avoid being out of compliance with state rules a SEPA checklist should be part of any work plan for the diversion.

Please feel free to share this email with any interested persons. Information on HPA and SEPA are readily available on many government websites, including the Department of Fish & Wildlife at <http://wdfw.wa.gov/habitat.htm> .

If you have any questions please feel free to contact me.

Sincerely,

Steve Boessow, Water Rights Biologist
Department of Fish & Wildlife
Habitat Program
(360) 902-2410 voice
(360) 902-2946 FAX
boesssnb@dfw.wa.gov

Email about suggestion from Fish and Wildlife on how to clean out Olga and Rosario diversions.

Subject: moving gravel over dam

Date: Thu, 08 Sep 2005 09:35:02 -0700

From: Sandy Taylor <cmos@rockisland.com>

To: Chris Vierthaler <address deleted>, Tom Welch <address deleted>

Chris

I have am tracking down documentation on how we could maintain our respective diversions by moving the gravel over the small dams, rather than removal. Everyone I am trying to reach seems to be running around concerned about drought issues, but the phone tag messages say they are interested and there are examples where perpetual hydrology permits are issued where we would simply have to inform the local DOE biologist of the planned activity. This should be good for both of our systems. Of course we should work out a schedule so we do not dump a load of gravel down the stream, just after you clean out yours. I expect more information over the next 2 weeks. I'll keep you posted.

Sandy

From the **Dept. of Ecology's Water Resource** web page:
<http://www.ecy.wa.gov/programs/wr/rights/water-right-home.html>

The waters of Washington State collectively belong to the public and cannot be owned by any one individual or group. Instead, individuals or groups may be granted rights to use them. A water right is a legal authorization to use a predefined quantity of public water for a designated purpose. This purpose must qualify as a beneficial use. **Beneficial use involves the application of a reasonable quantity of water to a non-wasteful use**, such as irrigation, domestic water supply, or power generation, to name a few.

<emphasis added>

Comments:

While water used from Cascade Lake for hydroelectric use is beneficial, any water diverted from Cascade Creek that actually makes it to Cascade Lake often arrives during the rainy season when Cascade Lake is already overflowing from natural sources. The water diverted into a lake that is already overflowing is clearly not being put to a beneficial use, and in fact is detracting from storage in Mountain Lake, and the natural fish habitat.

During the rainy season several intermittent small streams and surface runoff water are intercepted by the diversion, that are not authorized by the water right. Most of this would otherwise supply Cascade Creek, below the authorized point of diversion.