



# NOOKSACK INDIAN TRIBE

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Mayor of Bellingham  
City Hall  
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Bellingham, WA 98225

384 4258

## RECEIVED

AUG 10 1998

MORISSET, SCHLOSSER, AYER & JOZWIAK  
SEATTLE OFFICE  
[ ] OVERNIGHT [X] MAIL [ ] HAND DELIVERED

RE: Participation in ESHB 2514 Watershed Planning

Gentlemen:

The Nooksack Tribal Council has received the May 18, 1998 invitation from the County and other participating entities in WRIA 1 for the Nooksack River system, which requests that the Nooksack Indian Tribe participate in watershed planning pursuant to ESHB 2514. We accept that invitation on the terms stated in this letter. We request that this statement be made part of the assessment of water supply made pursuant to section 3 of that legislation and the plan prepared pursuant to section 9.

The requirement of unanimity among the initiating governments that is imposed by certain provisions of ESHB 2514 must be clear from the outset. By dictionary definition, and by agreement of the parties, all should understand that the term "consensus" as used in ESHB 2514 means unanimous agreement. The parties must agree to use this definition throughout their planning effort.

The Nooksack Tribe believes that lack of adequate funding will preclude accomplishing some of the ambitious requirements and goals of ESHB 2514. Instream flows cannot be determined or redetermined within the limits of the financial resources made available by the Act. The Nooksack Tribe will not agree to establish or redetermine instream flows in this WRIA. Such a determination would be a prohibited obligation under section 9(4) of ESHB 2514.

The Nooksack Tribe will fully participate in watershed planning with the other initiating governments, but some limitations on that process must be kept in mind. We will not be able to agree that any surface or groundwaters are available in the WRIA within the meaning of section 3(1)(b). Second, we will not agree to estimate federally reserved rights in the WRIA. The water quantity component under section 3 of ESHB 2514 will not estimate treaty or federally reserved rights to water for fish or for other purposes. Third, because we believe no water is available during at least some portion of the year, the plan will not estimate the water available for further appropriation within the meaning of section 3(1)(g).

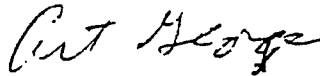
Whatcom County Council  
July 7, 1998  
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Agreement on a variety of matters is more likely if the parties can freely discuss alternatives and hypotheticals without prejudice to positions they may take in legal proceedings. Therefore, no discussion, plan, proposal, agreement, offer of compromise, concession, statement, or document, regardless of format, made by or on behalf of the Tribe in furtherance of the planning process shall be admissible in any legal or administrative proceeding.

The Nooksack Tribe has established a fixed procedure for tribal participation and input. In any accompanying resolution, we will provide you the names of the persons authorized to participate in watershed planning issues and the limitations on those persons' authority.

Thank you for your consideration.

NOOKSACK INDIAN TRIBAL COUNCIL



Art George, Chairman

cc: Sue Black,  
Whatcom County Planning and Development Services

THE NOOKSACK INDIAN TRIBE

RESOLUTION NO.: 98- 22  
DATE APPROVED: 7/7/98  
SUBJECT: WATERSHED PLANNING PROCEDURES

WHEREAS: the Nooksack Tribal Council is the governing body of the Nooksack Indian Tribe; and

WHEREAS: The State of Washington has adopted and authorized appropriations to carry out ESHB 2514, legislation authorizing Watershed Planning; and

WHEREAS: Whatcom County has expressed an interest in pursuing funding under ESHB 2514 with an intent to initiate watershed planning in WRIA 1, the Nooksack River watershed, and

WHEREAS: Whatcom County has extended an invitation to the Nooksack Indian Tribe to participate in the aforementioned funding request and planning effort; and

WHEREAS: It is the goal of the Nooksack Indian Tribe of Washington to preserve, protect, and restore salmon and their habitat; and

WHEREAS: The Nooksack Indian Tribe strives to protect the long term culture of the Tribe and its members and their treaty reserved and other legal rights,

NOW THEREFORE BE IT RESOLVED THAT the Nooksack Indian Tribe will not define or identify a specific quantity of water that constitutes the Tribe's treaty or legal water rights. The Nooksack Indian Tribe reserves its treaty right to any and all waters 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 Elliot. Further, the Nooksack Indian Tribe reserves its judicial, statutory, and equitable rights to any and all waters sufficient to meet the changing needs of its tribal members in fulfilling the purposes of its Reservation.

BE IT FURTHER RESOLVED THAT the Nooksack Indian Tribe of Washington reserves any and all rights and defenses that they may have with respect to their treaty reserved, judicial, statutory, or equitable water rights pertaining to any other participant in this process, including any such participants' claim to or allocation of water in the Nooksack Basin.

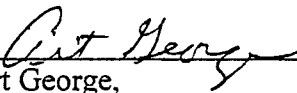
BE IT FURTHER RESOLVED THAT the Nooksack Indian Tribe authorizes the Chairman and the Director of the Natural Resources Department, or such Director's designee, to enter into watershed planning discussions on behalf of the Nooksack Indian Tribe within the parameters outlined in this Resolution and the attached letter regarding Participating in

Watershed Planning.

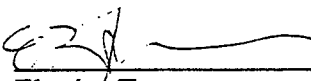
BE IT FURTHER RESOLVED THAT no negotiations seeking to define, alter, or otherwise affect the treaty reserved or legal water rights of the Nooksack Indian Tribe of Washington may be adopted without the express approval of the Nooksack Tribal Council and its General Membership.

**CERTIFICATION**

We, the undersigned, certify that the above resolution was approved at a regular meeting of the Nooksack Tribal Council on July 7<sup>th</sup> 1998 at which time a quorum was present by a vote of 4 For, 0 Against and 0 Abstentions.

  
\_\_\_\_\_  
Art George,  
Chairman

ATTESTED:

  
\_\_\_\_\_  
Elouise Tom,  
Secretary

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