



# Whatcom Conservation District

6975 Hannegan Road, Lynden, WA 98264 Phone: (360) 354-2035 x 3 Fax: (360) 354-4678  
e-mail: wcd@whatcomcd.org

December 1, 2013

Via Email

Washington State Conservation Commission  
300 Desmond Drive SE  
Lacey, WA 98503

Re: Ag/Water Quality -- Northwest Indian Fisheries Commission letter to WSCC.

Honorable Commissioners:

At their last meeting my Board unanimously directed me to convey their perspective on the above referenced matter. They see this as an opportunity to "improve the campsite" as one of our Board members is fond of saying. More importantly, it is urgent that we do if we are to remain relevant in conserving this State's natural resources. Whatcom CD has some specific suggestions on how to accomplish this. We hope that you find them compelling such that are integrated into your response to the Northwest Indian Fisheries Commission ("NWIFC").

We (WACD, Conservation Commission and Districts) have not done a sufficient job documenting and communicating our level of commitment, actions and accomplishments in protecting and enhancing water quality and salmon habitat. Neither have we established and maintained the relationships necessary to foster trust among our many stakeholders such that they have confidence in the methodology of our work. This is most recently demonstrated in the NWIFC letter to Mark Clark dated September 25, 2013 requesting Conservation Commission action to protect treaty rights that detailed numerous perceived deficiencies in our efforts. It is essential that we take this opportunity to improve our performance so as to avoid the most likely serious implication, namely, the loss of our ability to effectively deliver conservation on the ground.

Perhaps the most challenging aspect of that letter reads, "...good stewardship should protect all of the treaty-reserved resources". Good stewardship in its fullest embodiment can indeed be demonstrated by clean water and bountiful salmonid stocks. However, not all of this is in the exclusive control of a single landowner, nor a county, nor the state, nor a sovereign tribal nation. Our reticence to embrace and adopt the pre-conditioning of all funding upon implementation of the NOAA buffer table is not a rejection of tribal treaty rights. Rather, it is an expression of the very real limitations of our influence upon landowner decision-making and it is our considered judgment that the strategy would be unsuccessful in achieving the expressed desired outcomes.

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Board of Supervisors: Joseph Heller Terry Lenssen Larry Davis Larry Helm Richard Yoder

Washington Conservation Commission

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The paramount reason for our existence is to assist landowners and managers to make wise use of land, not just to advance their own important interests (including economic), but to benefit the entire community now and for future generations. Our collective vision for the future is one in which farmers and fishers both survive and thrive as members of our communities, all dwelling in a healthy, prosperous and tranquil watershed. Our decades of experience lead us to the conviction that this cannot be advanced, let alone attained, by the unilateral imposition of expectations that are incongruent with social, technical and economic realities. Solutions must be site-specific and in the context of the watershed itself. These realities are recognized by two prominent NOAA National Marine Fisheries Service scientists, Philip Roni & Tim Beechie, who in their most recent book, Stream and Watershed Restoration: A Guide to Restoring Riverine Processes and Habitats, 2013, write at page 7:

"Throughout this book we emphasize the concept of process-based restoration ... which aims to address the root causes of habitat and ecosystem degradation. Our purpose in doing so is to help guide river and watershed restoration efforts toward actions that will have long-lasting positive effects ..., and to ensure that when habitat improvement is undertaken, the site potential and watershed processes are considered. We also emphasize the importance of recognizing socio-economic and political considerations involving landowners and other stakeholders, permit and land-use issues, and education and outreach to the general public to build support for restoration. Failure to consider these factors and involve stakeholders early on can prevent even the most worthwhile and feasible projects from being implemented." (Emphasis added)

Further, EPA's draft terms and conditions attached to National Estuary Program funding provide in part that:

"Local conditions and local circumstances matter, and may affect the choice of the riparian buffer most effective at achieving salmon recovery. Buffer widths may be less than specified in the table in cases where there is a scientific basis for doing so and all affected tribes in the watershed agree to deviations from the NMFS guidelines or where there are physical constraints on an individual parcel insert space (e.g. transportation corridors, structures, naturally occurring conditions." (Emphasis added)

The NWIFC letter can best serve as an opportunity to reflect on and consider how our future actions and allocation of resources can be more effective in achieving mutually held values and needs. Our current disagreement over the NOAA buffer table as a successful strategy to achieving a shared vision need not impede progress. We can build on our common perspectives that are evident in the passages above. Our collective response should reflect the conservation partnership (NRCS, WSCC, WACD, CD) way of doing business.

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Here is what NWIFC specifically asked the Commission to do:

- "... agree to support implementation of the riparian buffer recommendations for grant programs from the National Marine Fisheries Service (NMFS).
- "...provide appropriate guidance to conservation districts that is consistent with applicable state and federal obligations."
- "...join the effort (dramatically change from the business-as-usual habitat management] to turn the tide [of declining fish habitat] .
- "...communicate the importance of treaty right protection to conservation districts."
- "...ensure that grant programs are aligned with treaty-resource protection, implementation
- of water quality standards and alignment with salmon recovery ."

Implicit in this is that our conservation delivery system is uniquely situated to play a critical leading role in achieving the overarching goals of clean water and more high quality fish habitat on farm land. The Board of the Whatcom Conservation District urges the Commission to respond positively by committing to the following steps:

1. Convene and lead a Coordinated Resource Management process whereby key stakeholders, including the NWIFC, can present needs and collaborate on the most productive way forward towards the shared goal of clean water and healthy watersheds.
2. Work with FSA and Districts to adaptively manage the CREP program to better advance the goals of clean water and more, high quality salmon habitat. This would specifically include:
  - a. Reviewing whether or not projects were installed or are or being installed strategically, relative to priorities described in local salmon recovery plans.
  - b. Identify barriers to greater landowner participation in the program along high priority watercourses .
  - c. Identify ways to remove the barriers to greater landowner participation along high priority watercourses.
  - d. Conduct studies as to the performance of alternative vegetative prescriptions along agricultural watercourses, relative to water quality and salmonid habitat in lowland watercourses through agricultural lands.
  - e. Develop recommendations so that landowners along priority participate in the program and that the vegetative prescriptions are appropriate for local, site-specific conditions.
3. Work with NRCS and Districts to adaptively manage the EQIP, PSHIP and NWQI programs to better advance the two goals of clean water and more, high quality salmon habitat. This would specifically include:
  - a. Review recent past projects funded by these programs as to their efficacy in achieving these two goals'.
  - b. Review Local Work Group "Plans, Ranking Sheets, Eligible Practice and Payment Caps" to see whether funding is being effectively allocated to water quality and salmonid habitat project s.

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- c. Develop recommendations to Local Work Groups, as needed, to improve the allocation of these voluntary incentive program funds to most strategically achieve priority environmental benefits.
4. Explore with districts better ways to prioritize water quality and fish habitat enhancement projects, such that investments are consistent with and strategically advance local (Watershed, Shellfish Protection, Salmon Recovery, TMDL) plans.
5. Collaborate with districts on ways to better report accomplishments in terms of protecting water quality and enhancing fish habitat.
6. Work with NRCS and WADE to deliver training on tribal treaty rights and how districts can perhaps better incorporate tribal concerns into long range plans of work.
7. Request the NWIFC and NRCS to deliver training on non-tribal local, state and federal ordinances, laws, and rules and regulations and how sovereign tribal nations can perhaps better incorporate non-tribal local concerns into tribal long-range plans of work.
8. Engage NRCS , RCO and Office of Farmland Protection to redouble the effort to protect against the loss of farmland, because this is also a loss of potential fish habitat.
9. Refrain from linking or in any way conditioning the receipt of state grant or program funds upon installing specific vegetative prescriptions, unless either the legislature declares the intent to do so, or there is a statute or law specifically compelling that outcome. Urge NRCS to do the same.

We recognize that this is an ambitious path forward. However, we are confident that the conservation partnership can make the necessary changes that will improve our delivery system, the environment and establish trust that will lead to new relationships and broader partnerships. This will ultimately lead to healthier watersheds and healthier communities.

Whatcom CD board members will be attending your December meeting and will be available, along with myself, to answer questions. Please know that we are ready to assist you in any positive initiative that springs from this controversy to the extent of our available resources. Thank you for your kind consideration of our comments and suggestions.

Sincerely yours,



Executive Director

CC: Governor Jay Inslee  
Mike Grayum, NWIFC Executive Director  
Randy Kinley, Lummi Nation ESA/Harvest Policy Representative  
Bob Kelly, Nooksack Tribal Council Chair

Washington Conservation Commission

Re: Ag/Water Quality -- Northwest Indian Fisheries Commission letter to WSCC.

December 1, 2013

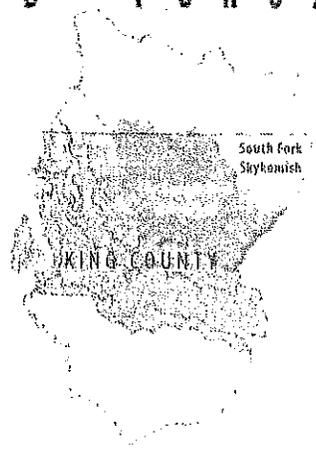
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Mark A. Clark, WSCC Executive Director  
Roylene Rides at the Door, Washington State Conservationist  
Will Stelle, NOAA West Coast Regional Administrator  
Dennis McLerran, US EPA R10 Administrator  
Maia Bellon, Washington Dept. of Ecology Director



# SNOQUALMIE WATERSHED FORUM

December 6, 2013



- Carnation
- Duvall
- King County
- North Bend
- Snoqualmie
- Snoqualmie Tribe

Maia Bellon  
 Washington State Department of Ecology  
 P.O. Box 47600  
 Olympia, WA 98504-7600

RE: New Riparian Buffer Guidance for Federal Grant Programs

Dear Maia Bellon:

The Snoqualmie Watershed Forum (Forum) offers the following comments regarding the new riparian buffer requirements proposed for grant programs receiving federal funding. While we support and appreciate the critical conservation funding your agency provides, we are very concerned that the new requirements are unrealistic and will potentially deter voluntary stewardship actions by private landowners.

Our Forum is a partnership of elected officials, citizens and representatives from conservation organizations supporting salmon recovery and ecological health in the Snoqualmie and South Fork Skykomish Watersheds in King County. Member governments include King County, the Snoqualmie Tribe, and the cities of Duvall, Carnation, North Bend and Snoqualmie. The Forum allocates nearly \$800,000 toward salmon recovery projects annually such as riparian buffer restoration projects constituting a critical matching source for state and federal grants.

We recently learned of the National Oceanic and Atmospheric Administration's (NOAA) riparian buffer guidance for grant programs utilizing federal funding. Department of Ecology (Ecology) in turn adopted this NOAA guidance in part by requiring a 100 foot minimum buffer on fish bearing streams and rivers. There is growing concern among restoration organizations that this minimum buffer size will limit the number of landowners able to undertake voluntary riparian planting projects. While the science supporting wide buffers is included in our Snohomish River Basin Salmon Conservation Plan (Snohomish Plan), the new requirements may stifle voluntary action critical for a successful salmon recovery effort in our watersheds.

Depending on vegetation quality and location in the watershed, various studies and best available science show that many water quality and ecological benefits are gained by smaller 35- 50 foot buffers and smaller buffers can be a landowner's critical first stewardship action leading later to larger projects. The Snohomish Plan calls for the use of "incentives and flexible approaches to encourage buffer protection." Flexibility is a key attribute of any successful grant program that provides funding to projects that take place on privately owned land. There are several factors grant agencies should incorporate into grant rules encouraging larger buffers:

1. Grant agencies such as Ecology and the Natural Resources Conservation Service (NRCS) should consider delaying the decision to implement minimum buffer sizes until agencies can conduct a more thorough review of policy implications, practicality, and effectiveness of this approach. Federal agencies should discuss this policy with project implementers, The Puget Sound Salmon Recovery Council, watershed lead entities as well as agriculture interests.
2. Consider overall parcel size and width as well as existing infrastructure to determine minimum buffers that would allow for continued economic uses of private lands. For example, small or narrow agricultural parcels could be allowed smaller buffers compared with larger wider parcels to accommodate continued agricultural production.

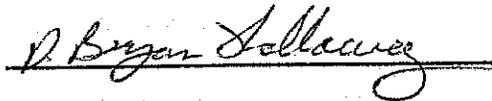
3. Consider adjacent public lands with large riparian buffers when determining buffers on neighboring private properties (i.e. buffer averaging).
4. We encourage you to consider a cost-share approach to funding buffers that are smaller than the required minimums. Landowners could utilize local and state funding to make up the difference.
5. From our preliminary discussion with the partners in the Forum, these large buffer requirements will be difficult to implement in King County's Agricultural Production Districts and especially where Farmland Preservation easements exist.
6. This policy will directly impact our local funding program and watershed restoration goals when landowners turn down federal funds due to large minimum buffer requirements and instead look for more flexible local funding sources.

We strongly encourage you to review the new requirements and their implications to our salmon recovery efforts. There may be more effective ways to encourage higher functioning buffers on our streams and rivers. If you have questions, please contact Perry Falcone, Forum Project Coordinator, at (206) 477-4689 or [perry.falcone@kingcounty.gov](mailto:perry.falcone@kingcounty.gov).

Sincerely,



Jason Walker - Forum Chair  
City of Duvall Councilmember



Bryan Holloway – Forum Vice-Chair  
City of Snoqualmie Councilmember

Cc:

Will Stelle, National Oceanic and Atmospheric Administration, Northwest Regional Administrator

Dennis McLerran, Environmental Protection Agency, Region 10 Administrator

Roylene Rides at the Door, Natural Resources Conservation Service, State Conservationist

Michael Grayum, Executive Director, Northwest Indian Fisheries Commission

Rick Parkin, Environmental Protection Agency

Dale Bambrick, National Oceanic and Atmospheric Administration

Kelly Susewind, Washington State Department of Ecology

Josh Baldi, Washington State Department of Ecology

Mark Isaacson, Director, King County Water and Land Resources Division



## Lincoln County Conservation District

P.O. Box 46 • Davenport, Washington 99122  
Phone: 509-725-4181 • FAX 509-725-4515

RECEIVED

DEC 16 2013

WSSC

December 11, 2013

Washington State Conservation Commission (WSSC)  
P.O. Box 47721  
Olympia, WA 98504-7721

Dear Commission Board;

The Lincoln County Conservation District does not support the Commission adopting the Northwest Indian Fisheries Commission (NWIFC) proposed Riparian Buffer Matrix. Numerous Districts spoke out at the December 5<sup>th</sup> Commission meeting with their concerns. Our district did not make a public comment but would like to submit this letter voicing our concern. WSSC Cost Share Assistance Policy #13-05 states "Cost Share Assistance provided shall only be for practices identified and installed on-the-ground as eligible NRCS practices." The full policy is attached.

Roylene Rides at the Door, NRCS State Conservationist, clearly stated at the December 5<sup>th</sup> meeting that the NRCS does not and cannot support the adoption of the proposed NWIFC buffer matrix in their NRCS practices. If NRCS doesn't support the Riparian Buffer Matrix then how can the Commission adopt the matrix? The NWIFC buffer adoption by the WSSC would clearly go against WSSC own policy. Does the Commission then rewrite its policy to state that all installed on-the-ground practices have to meet NRCS practices except Riparian Buffers then a District must follow the NWIFC Buffer Matrix? It sends a mixed message, WSSC supports the standards and specs of NRCS practice standards and design but not on riparian forest buffers.

Roylene Rides at the Door presented the proper channels needed to be taken if the Northwest Indian Fisheries Commission is interested in proposing a change to NRCS practices. The Lincoln County Conservation District does not support the WSSC adopting the NWIFC Riparian Buffer Matrix. The District supports following WSSC Policy #13-05 and the sound science practices that NRCS has in place. If this illegal matrix policy is passed by the WSSC then District requests that an economic study of impacts be reviewed before the proposed buffer matrix is implemented.

Finally the District recommends increased communication with federal and state agencies that are writing rules and regulations that have a potential major impact to our natural resources at the local level. Thank you for taking the time to read and take our concerns into consideration.

Sincerely,

Tom Schultz, Chairman



# Washington State Conservation Commission

RECEIVED

DEC 16 2013

WSSCC

**Policy #** 13-05 Cost Share Assistance Policy

**Applies to:** All Conservation Districts

**Effective Date:** March 21, 2013

## PURPOSE

This policy authorizes local conservation district boards to establish by resolution, cost-share ratios up to 100% in association with all WSSCC grant cost-share funding except CREP and Irrigation Efficiencies and other programmatically prescribed cost-share limitations.

## BACKGROUND

This policy is based upon resolution passed at the WACD Annual Meeting, November 28, 2012. This proposal recognizes the roles of local conservation district board of supervisors, local priorities in economic and natural resources issues, takes into consideration the ownership of the property, and is consistent with provisions of the state constitution (see page 4). This proposal enhances the ability for conservation districts to assist landowners in the development and installation of management practices and capitalizes upon the conservation district's ability to find and utilize the most appropriate methods and fund sources in achieving the desired outcome.

## POLICY

### Cost Share Assistance Rate of Reimbursement

- Cost Share Assistance projects on private property using SCC Funding are authorized to be reimbursed at up to a maximum of 100% of the total project costs.
- In no case shall the reimbursement exceed 100% of the total project costs, including any other source of funding for the project.

### NRCS Approved Practices

- Cost Share Assistance provided shall only be for practices identified and installed on-the-ground as eligible NRCS practices.

### Board of Supervisor's Resolution

- Beginning July 1, 2013 and annually thereafter, each conservation district must submit an approved board resolution to the Conservation Commission stating the rate of reimbursement for Conservation Commission funds for all NRCS practices. This will be kept on file at the Commission office and valid for 12 months.
- The board of supervisors may determine it would enhance landowner participation in a cost share eligible practice if the cost share rate for that practice is established in excess of 50-75%. This determination is to be made by resolution of the board, including a finding and description of the natural resource benefited from the cost share practice, the likelihood of increased participation, and the public benefit to be achieved should the practices be implemented.

- Conservation districts may adopt a lesser rate of reimbursement but may not exceed the Conservation Commission's authorized rate.
- The default rate if none supplied by the Board of Supervisors shall be 50%.

*WSSC recommends that district avoid a practice by practice listing of the rate. WSSC requests the district consider a district-wide rate to reduce the workload and confusion at the district level.*

#### **Programs Not Covered In This Policy**

- No board of supervisor's resolution stating the rate of reimbursement for Conservation Commission funds shall apply to CREP and Irrigation Efficiencies funding.
- If additional directives are issued by another entity for funds (legislature, agency) that is explicit in programmatic limitations, these directives shall supersede the board resolution.

#### **Cooperator Labor Rate**

- The landowner labor rate shall be set at a maximum of \$20.00 per hour. The landowner's minor labor <16 years of age shall be consistent with Washington's established minimum wage.
- Beginning July 1, 2013 and annually thereafter, each conservation district must submit an approved board resolution to the Conservation Commission stating the districts Cooperator labor rate, not to exceed \$20.00 per hour. This will be kept on file at the Commission office and valid for 12 months.

#### **Publicly-Owned Property Eligibility**

*Publicly-Owned Property Definition: Title to property is held by federal, tribal, state, or local government, special purpose districts, including public utilities.*

- Cost Share Assistance projects on publicly-owned property (federal, tribal, state, county, city) shall be presented to the Conservation Commission for approval prior to the accrual of any costs.
- If approved by the Conservation Commission, the rate of reimbursement shall not exceed 50%.

#### **Reimbursements Not To Exceed 100%**

- If cost sharing with other entities on the same project, the District must identify all funds used on the project and the costs being reimbursed by the other entities. This ensures the landowner will not be over-paid beyond the total project costs.

#### **Existing Policy**

- All other identified policies, procedures, and forms, for Conservation Commission funds used for Cost Share Assistance shall remain in effect. These policies and procedures are outlined within the State Conservation Commission Grants Procedure Manual.
  - Receipts outlining costs and landowner labor will continue to be required.
  - All cost share projects are required to be uploaded into the CPDS system along with before and after pictures, acres addressed, natural resource benefit, etc.
  - SCC Cost Share Assistance Agreements shall be printed from the CPDS system.

### **Random Audits**

- Conservation Commission financial staff will do random audits to validate compliance with the agency policy and legal requirements.

### **District Staff Working on Projects**

- Conservation district staff will be allowed to conduct project implementation work on the project but are prohibited from charging the same hours worked on multiple grants. These hours are to be reflected in the project breakdown, but are not to be used as part of the cost share reimbursement formula.
  - Conservation district personnel working in the field must have a current Compensation Rate Form on file with the Conservation Commission.
  - Conservation districts must ensure that any staff conducting work in the field and implementing projects have the correct Industrial Insurance codes and rates paid for those hours worked.

### **Landowner Authorization**

- Conservation districts shall secure written landowner authorization allowing conservation district staff and contractors access to the property to conduct the implementation of the identified conservation practice.
- This authorization shall identify:
  - liability release,
  - who will be conducting the work,
  - the daily start and finish time,
  - the number of people expected on the site,
  - who the site supervisor will be,
  - work commence date,
  - work finish date, and
  - identify materials, equipment, and labor, to be supplied by the landowner.
- This authorization shall be kept in the conservation district official property file and available for review upon request.

## Washington State Constitution Background and Support Documentation

The Washington Constitution, article VIII, sections 5 and 7<sup>1</sup> prohibits state and local governments from making gifts of public funds or property or lending their credit to private persons or entities. Exceptions to this rule generally include money or property to support the poor and infirm. Other exceptions are intergovernmental transactions or transfers to other government entities whose functions are wholly public.<sup>2</sup> The purpose of this provision in the state constitution is to prevent state funds from being used to benefit private interests without any benefit to the public.<sup>3</sup> Even if private interests benefit incidentally, the use of public funds is not unconstitutional if the public enjoys a substantial benefit.<sup>4</sup>

There is a presumption that the use of public funds is constitutional and the burden of proof is on the person challenging the presumption.<sup>5</sup> Washington courts have developed a two-prong analysis to determine whether there is an unconstitutional gift of public funds.<sup>6</sup> First, the court asks if the funds are being used to carry out a fundamental government purpose. If the answer to that question is yes, then no gift of public funds has been made. If the answer is no, and the gift is pursuant to the government's proprietary authority, then the court looks at the consideration received by the public and the donative intent of the governmental entity.<sup>7</sup>

A "fundamental governmental purpose" consists of an accepted and recognized fundamental, underlying function or purpose of government being served. Funds used for these purposes are not treated as gifts, because the public benefit is the consideration.<sup>8</sup> Courts have not explicitly defined "fundamental governmental purpose," but they have found that broad categories like police power, public safety, and environmental protection constitute fundamental governmental purposes.<sup>9</sup>

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<sup>1</sup> "The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation." Const. art. VIII, § 5.

<sup>2</sup> "No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation." Const. art. VIII, § 7.

<sup>3</sup> *Mount Spokane Skiing Corp. v. Spokane Cy.*, 86 Wn. App. 165, 176, 936 P.2d 1148 (1997), review denied, 133 Wn.2d 1021, 948 P.2d 389 (1997); *Anderson v. O'Brien*, 84 Wn.2d 64, 66-67, 524 P.2d 390 (1974).

<sup>4</sup> *Hudson v. City of Wenatchee*, 94 Wn. App. 990, 974 P.2d 342 (1999).

<sup>5</sup> *King Cy. v. Taxpayers of King Cy.*, 133 Wn.2d, 584, 596, 949 P.2d 1260 (1997); *Pub. Empl. Relations Comm'n v. City of Kennewick*, 99 Wn.2d 832, 664 P.2d 1240 (1983); *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 704-05, 743 P.2d 793 (1987).

<sup>6</sup> *Hudson*, 94 Wn. App. at 995.

<sup>7</sup> See *CLEAN*, 133 Wn.2d at 469.

<sup>8</sup> *CLEAN*, 133 Wn.2d at 469 (applying Const. art. VIII, § 7).

<sup>9</sup> *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 39, 785 P.2d 447 (1990).

<sup>10</sup> *Hudson*, 94 Wn. App. at 974; *Adult Entm't Center, Inc. v. Pierce Cy.*, 57 Wn. App. 435, 441, 788 P.2d 1102 (1990).



# Clallam Conservation District

228 W. First Street, Suite H Port Angeles, WA 98362 www.clallamcd.org 360-775-3747 Fax: 360-775-3749

December 13, 2013

VIA EMAIL

Mark Clark, Executive Director Washington State Conservation Commission

Re: Mandating Practice Implementation as a Condition for Funding

Dear Mr. Clark:

Clallam Conservation District opposes the conditioning of funds to conservation districts as proposed by the Northwest Indian Fisheries Commission. We fear that mandating the implementation of certain practices – in this case, NOAA riparian buffers – as a pre-requisite to receiving financial assistance to implement other practices on farmland, will not achieve our shared goal of water quality improvement and salmon habitat restoration. Like the tribes, we want to improve water quality and restore habitat, but we think the tribes' proposal will result in less participation in conservation programs, thus less conservation practice implementation.

It is the mission of the Clallam Conservation District to help land managers conserve the natural resources under their stewardship and to restore ecosystems degraded by past management activities. We understand that ultimately, it is up to each individual land manager to determine and carry out their stewardship behavior. We provide incentives in the form of technical and financial assistance to help them make the decisions and adopt the behaviors that will provide benefits for the greater society, including future generations.

In recent years it has become fashionable to talk of partnering; however, conservation districts have always recognized and valued the role of partners, none more so than that of private land managers. When it comes to conservation on private land, success can only be realized through a win-win approach – a win for the land manager and a win for the environment. Our decades of experience working with private land managers has taught us that anything short of win-win will ultimately fail.

We have partnered on the implementation of many outstanding projects over the years. All but a handful of the projects occurred on private property, and few, if any would have happened without the ability to provide financial incentives to the landowners. And had we required the landowners to install large riparian buffers as a condition for receiving cost-share assistance for other practices, we believe many would not have participated.

Largely due to the assistance we provided, water quality has improved in Dungeness Bay, opening up many acres of shellfish beds that were previously closed to commercial harvest. This has occurred despite the fact that the Department of Ecology continues to rely on data that are many years old for their list of impaired water bodies. Described below are a few particular noteworthy projects:

Cameron Farms Irrigation Efficiencies and Water Quality Project

Cameron Farms is a pioneer farming operation in the Dungeness Valley that today includes mostly beef cattle and hay production. A Dungeness Irrigation District irrigation ditch running through the middle of one of their main pasture operations was sampled as part of a Dungeness Bay TMDL study and tested high for fecal coliform bacteria. The ditch discharged tailwater into a small stream that drains to Dungeness Bay and shellfish growing areas. Clallam Conservation District worked with the Camerons to develop a conservation

plan. Fence installation to keep cattle out of the ditch was determined to be an impractical alternative due to the irrigation system layout and because the ditch was the only water source for the livestock. A 35-foot fence setback would have been out of the question. Working with the Camerons and the irrigation district, in 2008 we were able to obtain enough funding from multiple sources, including the Irrigation Efficiencies Program, NRCS Environmental Quality Incentives Program, and an EPA grant administered by the Jamestown S'Klallam Tribe, to pipe the ditch through the entire length of the farm. A gravity-fed water line was also installed to provide an alternative source of stock water.

#### Sadilek Farm Plan Implementation

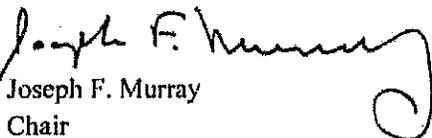
For over 30 years, Ken and Louise Sadilek raised cattle, cut hay and managed timber on their 200 plus acres in Clallam Bay. In 2002, they sought out the assistance of Clallam Conservation District to help them achieve their goal of leaving the land in better shape than it was when they acquired it. After helping them develop a conservation plan, they enrolled 15.6 acres along the Clallam River into the Conservation Reserve Enhancement Program (CREP). A restored riparian forest buffer averaging 113 feet in width was protected from livestock by a fence, and an alternative upland water source was developed for livestock watering. Roughly 1,000 linear feet of Clallam River riparian area were not enrolled into CREP due to streambank erosion; however, we partnered with the NRCS and Lower Elwha Klallam Tribe to secure technical and financial assistance for a streambank stabilization project that included Tribal crew-installed log jams, riparian vegetation, and fencing. The river had been the cattle's primary source of winter drinking water, so we provided assistance to install gutters and downspouts on the barns to collect roof water in a cistern that supplies a stock tank. In addition to providing an alternative source of stock water, this diverted roof water out of the winter feeding area, thus protecting water quality. The new stock watering systems also enabled the Sadileks to practice rotational grazing. And, through the Family Fish Forest Passage Program, we replaced a fish passage barrier on one of the logging roads, opening 0.37 miles of fish habitat.

#### Jimmycomelately Creek and Estuary Restoration Project

In 2000, Clallam Conservation District partnered with the Jamestown S'Klallam Tribe and numerous other agencies and organizations on a comprehensive restoration project on the lower mile of Jimmycomelately Creek and its estuary in Sequim Bay. Acknowledged as the most effective organization to work with private landowners, our role focused on the design and construction of a new, naturally meandering stream channel across private property. We also prepared the revegetation plans for tribal and private properties and enrolled the affected parties in CREP to help cover the costs of riparian restoration and maintenance. The efforts of our partners centered on construction of a new US 101 Highway bridge and estuary restoration, all of which occurred on property acquired by the Tribe and the Washington departments of Fish & Wildlife and Transportation. The Jimmycomelately Creek and Estuary Restoration Project is viewed by many as a model of interagency cooperation and ecosystem restoration.

If you have any questions or concerns, please do not hesitate to contact our manager Joe Holtrop at 360-775-3747 or [joe.holtrop@clallamcd.org](mailto:joe.holtrop@clallamcd.org).

Respectfully,

  
Joseph F. Murray  
Chair



# Washington Association of Wheat Growers

109 E. First Ave. • Ritzville, WA • 99169 • Phone (509) 659-0610 • Fax (509) 659-4302

December 3, 2013

Washington State Conservation Commission  
300 Desmond Drive SE  
Lacey, WA 98503

Mr. Clark, Chairman Peters and WSCC board members,

On behalf of the Washington Association of Wheat Growers, I strongly encourage you to oppose mandating specific practice implementation as a condition for landowner participation in incentive-based conservation programs.

We are concerned that these conditions will make it too costly and harmful for agricultural producers to participate in various conservation programs, leading to less benefit to the environment. WAWG is working to increase participation in conservation programs that benefit water and air quality. Mandating that extensive buffers be a condition for participation in these programs will be an extreme discouragement to farmers, especially in Eastern Washington where there is already limited access to watershed conservation funding.

WAWG opposes a federal or state agency requiring that a landowner install a prescribed practice on their land as a precondition to receiving any other federal or state cost share funding.

WAWG also encourages increased communication with federal and state agencies that are writing rules and regulations, standards and technical guidance that have a potential major impact to our natural resources at the local level.

The wheat growers of Washington look forward to being your partner in protecting water quality. We feel, however, that mandating extreme buffers as a condition to voluntary conservation programs makes no sense to improve water quality in our state.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Berg".

Nicole Berg  
WAWG President



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**Cowlitz County Soil and Water Conservation District**  
2125 8th Avenue - Longview, WA 98632 - Phone (360) 425-1880 - Fax (360) 578-0811

January 8, 2013

Washington State Conservation Commission  
Attn: Mark Clark, Executive Director  
PO Box 47721  
Olympia, WA 98504-7721

Dear Mr. Clark:

Cowlitz and Wahkiakum Conservation Districts have reviewed the letter authored by the Northwest Indian Fisheries Commission dated September 25, 2013 and the Washington Association of Conservation District resolution number 2013-23. We have been following the development and proposed utilization of the Nation Marine Fisheries Service interim buffer guidelines with respect to the Conservation Reserve Enhanced Program and the Salmon Recovery Funding Board. The buffer provisions are "interim" they are "guidelines" and they are being contested by many credible resource professionals and knowledgeable program administrators.

While we appreciate tribal treaty rights, we have reviewed all of the 1850's treaty documents and are appalled at the allegations, accusations, and self-sightedness of the letter as presented. As a sovereign government we encourage the tribes to work government to government to address resource concerns common to all inhabitants of this great nation including shared resources with tribal lands. Unfortunately, many of the 21<sup>st</sup> century resource concerns cannot simply be resolved to a 19<sup>th</sup> century conceived condition. We encourage that political agendas at least be grounded with some science.

Our conservation districts formed in the 1940's and both have enjoyed 65 years of assisting our local communities with resolution of their natural resource concerns in a voluntary, cooperative manner consistent with the authorities enumerated in RCW 89.08. We have long attempted to engage a wide range of interests in identifying, understanding, and managing our local resource concerns. This has led our districts from a first-come, first-serve, shotgun approach for resource management to a landscape approach in the form of "Community Watersheds". We trust you will find that the progress activities and accomplishments presented herein demonstrate effectiveness at addressing the broader scale resource concerns including water quality and salmon recovery.

The concept of "conditioned practices" should be a concern to any entity truly vested in resolving natural resource concerns. "Preconditioning" will impair a producer's willingness and ability to participate in programs. Based upon our experience, this will result in fewer landowners installing buffers and more importantly fewer landowners installing non-buffer practices. Does anyone truly believe that this action will promote use of incentive based programs and achieve desired results of improved fish habitat or water quality?

Most of rivers and streams in Cowlitz and Wahkiakum Counties are on the Department of Ecology / Environmental Protection Agency 303(d) water quality impaired list for stream temperature. Many of the listings are suspect at best as they were based on a single spot measurement without any quality assurance / quality control plan; most collected under extreme conditions during the heat of summer. Many samples were obtained at suspect locations such as in a tidewater reach. Limited historical data researched by our districts indicate that diurnal excursions above the state standard may be the norm during summer months in the Northwest. Our conservation districts attempted to proactively get ahead of the purported Total Maximum Daily Load process for stream temperature by conducting a stream temperature monitoring project in local watersheds. This project included deployment of recording thermographs with emphasis on exploring conditions through varying land use within our watersheds. On average, 5 stations were installed within each watershed and air temperature recorded at one location. Thermographs were deployed for 5 consecutive years in attempt to account for annual variability. The goal of the project was to examine the extent and magnitude of a perceived temperature problem and gain an understanding of watershed conditions and processes that may be contributing to a local concern.

In general stream temperature was within state standards as stream flow left the forested portion of the watersheds. When exposed to solar radiation within non-forested portions of the watershed, stream temperature tended to increase. Noticeable differences were observed amongst watersheds with respect to the magnitude of temperature increase and the rate of increase in a downstream direction through the non-forested reaches. Numerous factors contribute to differences observed including width: depth ratio, topography, general flow direction (east-west vs. north-south), potential ground water connectivity, and substrate composition. Diurnal excursions above the state standard were common during the heat of the day (about 4-5 hours per day) in the lower reaches of most watersheds for about a 2 week period typically in late August to early September. Most of the smaller forested tributary streams did not experience excursions above the state standard. In all watersheds, diurnal temperature was brought well below the state standard following the first fall freshet. The first fall freshet typically triggers migration of Fall Chinook into the watersheds. Coho tend to start migrating in after the second or third freshet. The concern for daily excursions above standard is primarily for resident fish and salmonids that elect to rear over in the stream. Cold water refuge in the form of tributary streams, groundwater inputs, and deep pool habitats may be equally, or more important than buffers with respect to salmon recovery strategy. Our data was submitted to the Department of Ecology database system in hopes of increasing the state of our knowledge regarding stream temperature. Unfortunately, the presence of data in the system appears to be simply interpreted as an impaired water body.

Numerous reports at the regional, state, and conservation district document a general trend in simplifying instream habitat. The major factors for declining include loss of large woody debris from direct removal or loss of recruitment. A common practice has been to clear wood from streams and to move and straighten creeks to increase contiguous agriculture ground. Our conservation districts conducted habitat surveys on all of the salmon bearing streams in our district with the expressed purpose of identifying local resource concerns and process concerns within each of our local watersheds. Our knowledge of our local watershed was instrumental in helping to draft the Lower Columbia Salmon Recovery and Fish and Wildlife Plan (LCFRB, 2004).

The intent of the background is to convey the importance of understanding that while natural resource concerns exist at the farm level they cannot be fully resolved at the farm level. The Cowlitz and Wahkiakum Conservation District Boards understand this and in the late 1980's began positioning themselves to work with our cooperators on a more comprehensive basis. Equally important is to

appreciate that each watershed is different, water resources are highly dynamic and fluid (no pun intended) within the drainage, and there are so many interrelated parameters that it is ludicrous to think a one size fits all should be applied equally, everywhere. This does not even begin to take into consideration landowner goals and objectives which primarily encompass economic viability.

We offer a review of our community watershed projects as a demonstration that a voluntary, collaborative approach to resource management can result in improvements to landscape level resource concerns. The focus of the discussion is with respect to riparian buffers. It should be noted that the district attempts to manage resource concerns from a watershed perspective and this effort translates to a total package at the farm level. This management takes into account landowner goals, objectives, and capabilities. The Forest Management Ecosystem Assessment Team (FEMAT, 1993) review of buffer widths and the cumulative effectiveness with respect to riparian functions provides the foundation for most deliberations on buffer widths. A comparison of the NMFS guideline versus what has been accomplished in our projects is provided.

#### Arkansas Creek Community Watershed

About 30,000 acres lying west of Castle Rock, WA in Cowlitz County, this was one of the first community watershed projects for the Cowlitz Conservation District funded through the Centennial Clean Water Fund Program. Numerous riparian restoration, fish passage, comprehensive nutrient management plans, forest management plans, and road improvement projects were completed during the period of time in which the Conservation District (District) was funded for the project. Forest industry, local government, and private non-industrial landowners were equally engaged in the project. A couple of key large landowners were identified in the agriculture community which participants in the project said would never be reached. As funding dwindled, activity in the watershed dwindled. Recent utilization of salmon recovery funding board funding has renewed interest amongst landowners by demonstrating the ability to effectively implement projects. There are currently two owners that were recently funded for project work through the Salmon Recovery Funding Board. These projects collectively include provisions for about 2 miles of stream to be buffered. The riparian restoration effort includes projects that have been implemented or funded that buffer about 3 miles (a 4<sup>th</sup> mile being planned) of the 6 miles of agriculture land in the Delameter Creek subbasin, 100% of the agriculture land in the Monahan Creek subbasin, and about 1 mile out of 1.5 miles of non-buffered stream in the Arkansas subbasin. Buffer widths range from about 35 feet to 100 feet with an average of about 50 feet. Just one of (about 2000 feet) these buffers barely meet the NMFS interim stream buffer guideline. This buffer barely meets the guideline because the farm field is barely wide enough to meet the buffer width requirement. This is a Conservation Reserve Enhanced Program buffer installed under the USDA Natural Resource Conservation Service Riparian Forest Buffer Standard. This standard provides enough flexibility fit a buffer to the landscape while meeting landowner goals and objectives. Why would you want to challenge a buffer standard that is getting results on the ground?

#### Abernathy Creek Riparian Restoration Project

This project was a collaborative effort between the District and Cowlitz County to demonstrate that conservation easements could be secured and riparian restoration implemented in agriculture dominated portions of a watershed. About 2.5 miles of the lower Abernathy Creek watershed was involved in the project downstream of a federal research hatchery with decades of fish return data. Forested riparian buffers were established on all of the non-buffered agriculture land use (about 1 mile of stream or 2 miles of streambank) and riparian buffers improved on forested land use (about 1.5 miles). Created buffers on agriculture land use ranged from 50-100 feet. On average buffer width was about 70 feet, which does not meet the NMFS Interim Guidelines. This initial riparian restoration effort has subsequently resulted in 3 project locations for in-stream habitat restoration. This project resulted

in buffers on all agriculture land that result in an average cumulative effectiveness of about 88% for shading. The NMFS 100 foot buffer is about 95% cumulative effectiveness according to the FEMAT Curve for shading. Mandating the 100 foot buffer would have equated to no buffers in agriculture land use. Exploring weighted values it would have taken 9781 feet of stream bank with a 100 foot buffer width to have a comparable shade equivalence of the 10560 feet of buffer at 70 feet width. The significance of 95% cumulative effectiveness versus 88% should be taken into account when one views buffer from the concept of 2 miles of buffer versus none.

#### Coweeman River Community Watershed Project

The Coweeman Community Watershed Project has resulted in several cost shared projects with the explicit purpose of addressing water quality (temperature) and salmon recovery in the watershed. The Coweeman River is unique with respect to stream temperature concerns. The legacy of splash damming results in completely different concerns when compared to other watersheds in the area. Efforts to date include correction of 7 fish passage issues providing access to about 10 miles of habitat; implementation of 4 stream restoration projects encompassing about 1.5 miles of mainstem and 1.2 miles of tributary habitat; three projects that create or improve riparian vegetation encompassing about 15 acres of riparian buffer. An invasive weed and riparian restoration project is underway that will treat knotweed on a watershed basis. In areas of dense knotweed riparian vegetation is proposed to reestablish native woody vegetation crowded out by knotweed. Three additional projects are currently funded that will implement instream restoration projects on about 2.5 miles of main stem and .75 mile of tributary habitat including about .75 miles of riparian buffer improvements. Had NMFS guidelines been required none of the riparian buffer projects would have been implemented. Buffer widths ranged from about 40 feet to 110 feet but averaged about 65 feet. In one case the landowner was simply unwilling to buffer the creek much more than 50 feet in all the other sites there simply was not 100 feet of plantable ground adjacent to the stream to afforest / reforest. In this case, a conditioned cost share or condition Salmon Recovery Funding Board project proposal would have resulted in these projects never occurring.

#### Skamokawa Creek Community Watershed

Wahkiakum Conservation District has been working in the Skamokawa Creek Community Watershed since 2004. This includes West Valley, Middle Valley, and East Valley Skamokawa Creeks. We have assisted 24 landowners with projects that include:

- Fish Passage: 2 culverts replaced with bridges
- Livestock exclusion fence: 23,000 feet of fence.
- Livestock Crossings: Three crossing that compliment livestock exclusion fencing
- Alternative livestock watering facility: 3 facilities plus 3000 feet of pipeline
- Instream Restoration: 9 projects consisting primarily of large woody debris placement to promote habitat diversity / quantity as the short term objective and establishment of forested riparian buffers as the long term objective encompassing 31298 feet of stream (5.9 miles). Project buffers have been implemented mostly through the CREP.
- Forested Riparian Buffer establishment: 3 CREP sites encompassing 15,905 feet (3 miles)
- Dike Modification Project: Historic Skamokawa Creek Project site that includes construction of freshwater intake structure, improved outlet tidegate structure, 2 culvert replacement projects and 12,000 feet of riparian restoration (2.3 miles).

The District has worked with landowners to install forested riparian buffers along 10,252 feet (1.95 miles) of West Valley Skamokawa Creek out of the 29,154 feet of fish bearing stream in agriculture land use (35%). This buffer was installed through the CREP program and meets the NMFS guidelines. The landowner in the West Valley is an absentee landowner that was seeking a means to generate revenue

from the property. The CREP offered an opportunity for resource restoration while realizing the farm some revenue.

The District has worked with landowners to install forested riparian buffers along 27,174 feet (5.15 miles) of Middle Valley Skamokawa out of the 39,665 feet of fish bearing stream in agriculture land use (69%). About 5,598 feet of the buffered 29,154 feet or 19% would meet the NMFS guidelines. The remaining 81% or 23, 614 feet has an average width of about 75 feet which provides about 90% of cumulative effectiveness of the riparian buffer at providing for shade according to the FEMAT curves (FEMAT, 1993). Again the NMFS guidelines of 100 feet provide for about 95% of the cumulative effectiveness for shading according to the FEMAT curves. Twenty-three thousand six hundred and fourteen feet (23,614) at 90% compared to zero (0) at 95% is not difficult math or a difficult concept to understand. Most of the landowners in Middle Valley are still working farms that must remain economically viable. The NMFS buffers would have simply taken away too much of their land base.

The District has worked with landowners to install forested riparian buffers along 9,777 feet (1.85 miles) of East Valley Skamokawa out of the 29,154 feet of fish bearing stream in agriculture land use (35%). About 2500 feet of the buffered 9,777 feet or 25% would meet the NMFS guidelines. The remaining 75% or 7,277 feet has an average width of about 50 feet which provides about 90% of cumulative effectiveness of the riparian buffer at providing for shade according to the FEMAT curves (FEMAT, 1993). Again the NMFS guidelines of 100 feet provide for about 95% of the cumulative effectiveness for shading according to the FEMAT curves. Seven thousand two hundred and seventy seven feet (7,277) at 90% compared to zero (0) at 95%. Again, it is easy to be critical of the argument that we need to condition practices. As with Middle Valley, these are working farms that cannot afford to give up a significant portion of their productive land base. If faced with an either / or mandate (extortion), no forested buffers will be installed.

Cowlitz and Wahkiakum Conservation Districts sees several fallacies with the notion of conditioned practices with the NMFS guidelines. We believe that our community watershed projects convey the ability to gain landowner confidence and participation in projects that address landscape level resource concerns. We further contend that it takes implementation on a watershed scale to make a difference in resource condition. Recent studies indicate that you must get about 70% of the area restored in a watershed to obtain a measureable change in condition with respect to salmon recovery. We have professional staff that is working with landowners in a win-win situation in an attempt to resolve resource concerns. When it comes to buffer widths a prescriptive approach is logically best. This prescription must take into account all variables for it to be effective and realized. One of the first is having a good handle on the resource concern and the processes influencing it within a particular landscape/watershed.

The concept of zero buffers versus considerable length of buffers at a lesser cumulative effectiveness (80% versus 95%) should be a simple concept to embrace. By not factoring in landowner viability into the equation, the loss of cost share assistance programs will likely aid in the loss of farmland to other uses. A staunch conservation supporter used to say, "The worst forestry/agriculture is better than the best development". According to the science, this is a true statement. Will development provide for better water quality and salmon recovery? Will a few buffers scattered around the state at 95% cumulative effectiveness ever equate to several miles of buffer within a single watershed at 70, 80, or 90% cumulative effectiveness.

The Districts' community watershed process is founded on inclusiveness of landowners, agencies, and local governments at defining the local resource concerns and the approach to address these concerns. Our process has typically engaged the field level individuals within the resource agencies because they

are the ones grounded in the science. Short sightedness and an agenda base tend to permeate agencies / entities as one attempts to collaborate at increasingly higher levels within a bureaucracy. We would welcome the opportunity to collaborate with the myriad of entities that have technical or financial resources that could assist in addressing local resource concerns. Unfortunately turf seems to impair common sense and interpretation of sound science.

We have been lobbying for years to either receive some monitoring funding or have state sanctioned monitoring conducted to assess the effectiveness of our efforts. We feel that most of our project watersheds are well suited for monitoring in that they have either have enough practices installed to influence water quality and salmon recovery or they are they have preexisting data (Abernathy fish hatchery) which may be used to assess influence of management activities. Our Districts intend to do what we can as resources allow to assess the effectiveness of our efforts. One goal is to re-assess stream temperature in the Skamokawa, Coweeman, Abernathy, and Arkansas Creek community watersheds once the riparian buffer practices have established and begin influencing stream shade.

Probably of greatest concern is what is exactly meant by conditioned practices. If it implies that to obtain cost share assistance to install gutters and downspouts one must install 100 foot riparian buffers, we are in trouble. Might as well shutdown voluntary conservation now and attempt to get regulations through the courts.

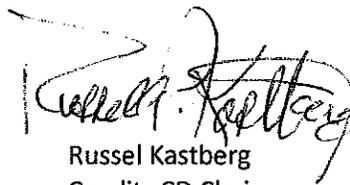
We believe we have demonstrated that district are capable of getting conservation on the ground through a wide variety of venues including Centennial Clean Water Funds, Salmon Recovery Funding Board Funds, Family Forest Fish Passage Program Funds, Washington State Conservation Commission cost share funds, and a range of farm bill cost share programs. Imagine what we could get done if we did not have to spend an inordinate amount of time attempting to assemble and obtain bits and pieces from wide array of funding pots. Imagine if you can, what a conservation district could accomplished if funded adequately. Perhaps all the pettiness could be put aside and the wasted dollars realigned, imagine!

We offer this as a draft in order to meet the Washington State Conservation Commission meeting schedule. The Cowlitz and Wahkiakum Conservation District boards will meet to finalize the draft and intend to present it at the January 16, 2014 meeting. We welcome the opportunity to schedule a field tour with any and all interested in observing the accomplishments we have realized under a voluntary non-conditioned approach.

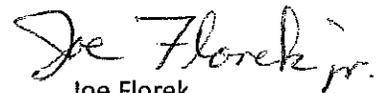
Respectfully,



Darin B. Houpt  
District Manager / Forest Hydrologist



Russel Kastberg  
Cowlitz CD Chair



Joe Florek  
Wahkiakum CD Chair

Cc: Dave Vogel, Washington Association of Conservation District



1 inch equals 5,000 feet

- Legend
- Knotweed Project
- Stream Buffers
- Completed
- 2014
- Planning
- Landowner
- Project Status
- Implemented
- 2014
- Planning
- Expressed Interest
- Assessors Data
- Parcels

10N 7W

10N 6W

9N 7W

9N 6W