**Snohomish Basin Instream Flow Rule interpretation as applied to the Black Canyon Hydropower Project (North Fork of the Snoqualmie River)**

**The Question**, as raised during a meeting with interested parties during a Black Canyon hydropower project meeting:

*If flow is taken out of the river to produce power but put back in upstream of the control gage (as described in WAC 173-507-020) such that the flows established in the rule were met, would that meet the letter of the rule*?

**Background:**

The rule, WAC 173-507 is meant to be one of the tools for the Department of Ecology uses to assist in deciding water use permit applications and conditioning water rights. Other factors are also taken into account when establishing instream flows for a hydropower facility.

**Discussion:**

WAC 173-507-020 can be interpreted to mean that if the project diverted all the water for power production, but returned it back to the river so as to meet minimum flows at the control gage, compliance with the instream flow regulation under the Snohomish Basin Instream Flow Rule, WAC 173-507, would be achieved.  However, Ecology is presently considering whether, based on the overall context and objectives of the entire rule, WAC 173-507 should be interpreted to require that the specified minimum instream flows also must be maintained above the control gage.  Ecology will consider all legal arguments and deliberate on the proper interpretation of the rule in advance of issuing its decision on the project’s application for a water right permit for hydropower purposes.

In order to obtain a license from FERC to produce power, the project proponent will have to obtain both a water right permit and a Clean Water Act Section 401 certification from Ecology.  Even if Ecology ultimately interprets WAC 173-507-020 to only require compliance with the instream flow regulation at the point of control as described in the rule, flow factors will be carefully considered during the application process.

* This is because Ecology will apply the four-part test for a permit application under the Water Code in making its application decision.  For example, consideration of whether the proposed hydropower use would be contrary to the public interest, which includes instream values, will be an essential part of this review.
* Ecology understands that this stretch of the river has value for recreational use -- and dewatering a stream has never been found to be in the public interest.
* It is neither the agency’s long-standing policy nor its practice to authorize the dewatering of streams.
* In addition, through the Section 401 certification process, when necessary to meet state water quality standards, Ecology can require the maintenance of instream flows and other appropriate measures.

Bottom-line: Ecology recognizes the significance of the proposed Black Canyon hydropower project and will fully deliberate on the project in light of our regulatory and permitting authorities.