

October 26, 2018

Sent by Electronic Mail to Annie.Sawabini@ecy.wa.gov

Annie Sawabini, Planner
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Comments Regarding Net Ecology Benefit Guidance

Dear Ms. Sawabini:

I am submitting this comment letter on behalf of the Stevens County Board of County Commissioners. The Board wishes to provide comments on Ecology's guidance document for determining Net Ecological Benefit (NEB) under Chapter 90.94 RCW. Ecology has not made a draft final NEB guidance available for review, so the Board's comments are relatively general in nature. The Board urges Ecology to develop a final NEB guidance that is: (1) consistent with RCW 90.94.020; (2) focuses on local conditions and available technical data; and (3) relies on the recommendations of citizens, local, state, federal and tribal governments with experience in the watershed. We submit these written comments in addition to Stevens County's comments provided in the October 4, 2018, public meeting in Spokane.

Ecology's guidance needs to focus on the plain meaning of the term "net ecological benefit" and be consistent with the standard established in RCW 90.94.020. RCW 90.94.020(4)(c) states that:

Prior to adoption of the updated watershed plan, the department must determine that actions identified in the watershed plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area.

Specifically, Ecology must consider whether the watershed plan update, with implementation of a number of projects identified, will provide anticipated benefits to instream resources that exceed projected impacts from future permit-exempt domestic water uses "within the water resources inventory area."

Ecology must recognize that not all actions or projects need to be accomplished in the first year of implementation because the impact will occur over a twenty-year period. The planning units will need time to secure funding and develop projects. Ecology's grant funding will be available over a fifteen-year period, so it will naturally take many years to secure the necessary funding for projects.

Ecology's review should focus on the specific conditions of the watershed and employ a reasonable scientific standard. Ecology needs to rely on available data. In the Colville River Basin, the planning unit has collected extensive technical data, prepared a water storage study, analysis of available water resources, two instream flow studies and a water bank feasibility report. The planning unit and Ecology should rely on those resources in considering the watershed plan update. Ecology should not require planning units to develop complicated groundwater models or extensive feasibility studies to meet NEB because there are not sufficient resources or time to meet the Legislature's deadline.

Ecology's review needs to consider the recommendations of citizens, local, state, federal and tribal governments in the development of the watershed plan update. There are many Stevens County citizens that will devote countless hours to developing an effective watershed plan update for their community. Additionally, there are many representatives from local, state, federal and tribal governments with extensive local knowledge that will contribute to the development of the watershed plan update. Ecology needs to recognize and give deference to the local knowledge base.

Ecology's review must rely on generally accepted scientific principles. A reference to a scientist study or text book should be enough to show NEB to any individual project in Ecology's review. Since many times there are conflicting scientific studies, those studies that are site specific, or peer reviewed should be given more weight. Further, if in review of NEB, Ecology wants to deny or challenge the resources or determination of the watershed plan and/or group, Ecology shall first engage in discussions with the group prior to any denial or recommended changes.

In closing, Ecology must review NEB based on the local needs and circumstances. Furthermore, Ecology must be transparent in its NEB standards, process and timelines.

Sincerely,

MENTOR LAW GROUP, PLLC



JESSICA C. KUCHAN

CC: STEVENS COUNTY BOARD OF COUNTY COMMISSIONERS
ERIK JOHANSEN, DIRECTOR, STEVENS COUNTY LAND SERVICES