



November 9, 2018
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Dear Annie:

Thank you for the opportunity to review the *Interim Guidance for Determining Net Ecological Benefit for streamflow restoration planning and water permit mitigation pilots under the 2018 Streamflow Restoration Act*. Please accept these comments as you prepare to issue the final guidance document.

Washington's counties are an important partner in managing our state's water resources. Counties play the leading role in local planning for creating and implementing strategies that protect surface and ground water resources through comprehensive plans and development regulations as mandated by Washington's Growth Management Act. The 2018 Streamflow Restoration Act included requirements for certain counties within existing water resource inventory areas (WRIA) to update watershed plans, or to create and implement watershed restoration and enhancement plans that will produce a Net Ecological Benefit (NEB). As counties play a central role in the work required to protect the state's water resources and to assure that the required plans included the NEB that Ecology must determine, we naturally have a high interest in the issuance of a final guidance document.

At the outset, we'd like to thank Ecology for working to provide counties and other stakeholders with guidance on how the agency will determine whether an NEB will result when adopting and approving watershed plan updates and watershed restoration and enhancement plans. We believe that communication between government agencies at the state and local level, and between other various stakeholders who will be participating in the development of the required planning, will be critical to meeting the mandated deadlines and for developing useful and successful strategies.

We have the following remarks regarding specific sections of the draft guidance document:

1. **NEB evaluation of plans under Sections 202 and 203 of ESSB 6091:** It should be made clear under this heading that the potential impacts being considered for determining NEB are the consumptive portion of the water that is actually withdrawn from permit-exempt wells for domestic use only, not what could be withdrawn. As efforts move forward to meet the requirements of RCW 90.94, there is ongoing debate as to whether the consumptive use requirement to be offset for the next twenty years is the consumptive portion of the actual withdrawal or if it should be based upon the maximum withdrawal limits allowed in RCW 90.94.020 or 90.90.030. It should be stated clearly in this section that NEB determinations made by Ecology will be based on the consumptive portion of the actual withdrawals. This statement would by no means limit or prevent a plan from adopting strategies to provide mitigation for more consumptive use. It would only clearly define what the NEB determination would require.

There are several areas within this section and the overall guidance document where the terms "new

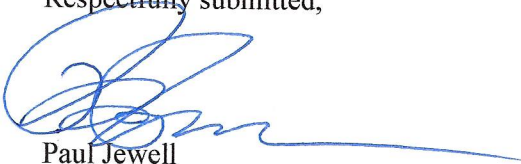
domestic water use” or “permit-exempt water use” are utilized in describing what impacts must be considered in determining NEB. However, according to the legislation, it is only the consumptive portion of that water use that is required to be quantified and used as a basis for offsetting strategies that determine NEB. While it is stated in other portions of the document that the consumptive use portion, and not the total withdrawal, is what needs to be considered, the inconsistency in use of the terms may lead to confusion. We recommend adding the word “consumptive” in every case where water use that is the subject of the NEB determination is described. Examples of this include within item 1 on page 4 of this section and in the bold description under the next sub-heading “Element 1”.

2. **Element 1:** Within the 2nd paragraph of this section, first sentence, it states that “...the consumptive impact of new domestic permit-exempt water use should be calculated for discreet areas” (emphasis added). The next sentence further states “This approach requires partitioning the WRIA in suitably-sized sub-basins or sections of sub-basins” (emphasis added). However, there is no further description or reference to which the document points that can be relied upon for determining what the standards are for “discreet” and/or “suitably-sized”. It may be difficult for planning groups to determine what these terms mean without additional guidance.

The third paragraph describes the challenges that may be faced in estimating impacts to individual river or stream reaches. It then goes on to state that the intent of Sections 202 and 203 of the legislation are to improve ecological benefits on a WRIA-scale basis and that analysis may provide generalized information about affected reaches. This is confusing and seems contradictory to previous statements within this section about defining discreet areas for making calculations and partitioning the WRIA. It also appears to contradict much of the discussion in Ecology’s document titled “*ESSB 6091 – Recommendations for Water Use Estimates*”, also referenced in the first paragraph of this section. In that document is clearly states, on page 2, after the sub-heading “Subbasins”, “ESSB 6091 is written in the context of Water Resources Inventory Area (WRIA)-wide mitigation, so Ecology interpret the words “same basin or tributary” to refer to subareas or subbasins as opposed to entire “WRIA’s”. How then will NEB be measured – on a WRIA scale, on a sub-basin scale, or both?

Thank you again for the opportunity to review the interim guidance document and to provide feedback. We hope our comments will be useful as you move forward to issuing a final document. Please keep us informed regarding any decision or future opportunities to participate.

Respectfully submitted,



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