



SQUAXIN ISLAND TRIBE

March 14, 2019

Rebecca Inman
Department of Ecology
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600
Filed in <http://ws.ecology.commentinput.com/?id=bJBti>

Re: Squaxin Island Tribe's comments on Draft Restoration Funding Rule, Chapter 173-566 WAC

Dear Ms. Inman:

The Squaxin Island Tribe ("Tribe") respectfully submits these comments on the above draft rule.

I. Background

The Tribe's usual and accustomed fishing area ("U&A") overlaps with most of the Water Resource Inventory Area ("WRIAs") listed in RCW 90.94.030 – i.e., WRIAs 12 through 15 – all of which lack adopted watershed plans. The Tribe also has U&A in WRIA 11, which has a watershed plan update that Ecology recently adopted under RCW 90.94.020. The Tribe therefore has a significant stake in the Watershed Restoration Act ("Act") planning process that is currently unfolding, including in how Ecology interprets and implements the Act's funding provisions.

II. Funding to ensure that watershed plans and projects are scientifically-based and effective

A key area of concern remains Ecology's discouragement, and apparent prohibition, on funding data-gathering, assessments and feasibility studies (collectively, "studies").¹ Ecology's Preliminary Regulatory Analysis for the rule says that it will not use the grant money to fund feasibility studies and basin assessments:

Fund feasibility studies and assessments. Feasibility studies and basin assessments are important precursors to developing effective projects that will result in meaningful environmental benefit. However, Ecology chose not to fund these through this grants program. Instead, entities engaged in planning efforts established under RCW 90.94.020 and 90.94.030 are eligible for funding for these purposes through Planning and

¹ The Tribe voiced these concerns in letters dated October 15 and 26 (attached).

Participation Grants, which are funded using money from the state's operating budget. Projects funded under the proposed rule, on the other hand, are funded using money from the state's capital budget. Funding feasibility studies and assessments with operating funds is consistent with standard budget and accounting principles, and therefore allows us to better meet the goals and objectives of the statute. (§ 6.3.4)

While Ecology's draft rule does not expressly prohibit awarding grants for these purposes, it does so indirectly by requiring submissions that seem only to apply to shovel-ready projects. *See, e.g.,* WAC 173-566-120(2) ("Application"); -130(1) ("Phasing"); -140(3) ("Evaluation Process").²

While we understand the need for practicality and the short timeframes that the Act imposes, the reality is that these kind of studies are critical precursors to funding projects that will restore and enhance South Sound streams with closures and/or unmet instream flows. As described in our earlier letters, we are still missing fundamental information that was identified in the unapproved watershed plans. In many cases, more than guesswork is required before we can propose scientifically-supported shovel ready projects that will actually restore and enhance these streams.

There are several reasons that Ecology should reconsider its approach. First, the components of watershed plans that the Act requires, and the findings that Ecology must make, cannot be accomplished without critical data such as: (1) the amount of water needed to restore depleted streamflows; (2) the amount needed to offset permit-exempt wells; (2) when and where that water is needed; and (3) inventories and assessments of sources of that water, including water rights that may be acquired and reclaimed water.

Second, the Act anticipates that the money will be spent this way.³ Third, Ecology's Planning and Participation Grants are insufficient for developing studies that are critical in certain subbasins. Participation funds are only \$15,000 per WRIA. In comparison, the Tribe's WRIA 14 grant sought \$240,000 for basic data-gathering and analyses.

The Tribe stands ready to work with the Committees created by the Act to identify and prioritize critical data gaps that need to be filled in order to identify shovel-ready projects. We urge Ecology to fund the necessary studies with the grant money or from other sources, and/or supply the technical assistance with Ecology and other state agency staff such as the Washington Department of Fish & Wildlife. Like Ecology, WDFW sits on the watershed committees and has a

² Ecology rejected the Tribe's application to fund the collection and analysis of basic data in WRIA 14.

³ *See, e.g.,* RCW 90.94.060(1) (account expenditures may be used only to administer the Act, including implementing watershed planning projects under RCW 90.94.020 and watershed restoration and enhancement projects under RCW 90.94.030, and collecting data and completing studies necessary to develop, implement, and evaluate watershed restoration and enhancement projects. . . ."); .070(2) (taxable bond account expenditures may be used to assess, plan, and develop projects. . . ."); .080(2) (bond account expenditures may be used to assess, plan, and develop projects . . ."). (Emphases added.)

mandate to protect and restore fisheries. State law requires this kind of inter-agency cooperative effort in watershed planning.⁴

Section-by-Section comments

The Tribe offers the following additional section-by-section comments:

WAC 173-566-010(2)(c) (“Purpose”): RCW 90.04.030(b) describes offsetting domestic permit-exempt wells, not only “new” domestic permit-exempt wells as described in the rule. The rule’s language should stay true to the governing statute.

WAC 173-566-030 (“Definitions”): The rule defines “consumptive use” as that portion of withdrawn groundwater that is lost from the water source, rather than returned through a septic system or other means. This definition lacks clarity and should be subject to further review.

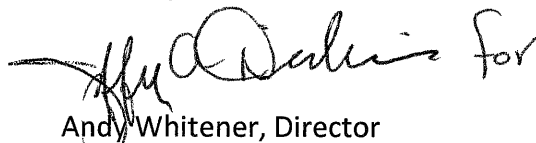
WAC 173-566-120(2) (“Application”): For reasons described above and in our previous letters, Ecology’s application requirements discourage applying for data collection, assessments and feasibility studies that are precursors to shovel-ready projects.

WAC 173-566-130(1) (“Phasing”): Same comment as above.

WAC 173-566-140(3) (“Evaluation Process”): Same comment as above.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Whitener for". The signature is written in a cursive, flowing style.

Andy Whitener, Director
Squaxin Island Natural Resources Department

⁴ See, e.g., RCW 90.54.010(1) (“Efforts should be made to coordinate and consolidate into one resource data system all relevant information developed by [Ecology] and other agencies relating to the use, protection, and management of the state's water resources.”); RCW 90.54.010(2) (declaring the Legislature’s intent “to work closely with the executive branch, Indian tribes, local government, and interested parties to ensure that water resources of the state are wisely managed.”); RCW 90.54.020(4) (Ecology, other state agencies, local governments, and planning units . . . shall evaluate the potential for the development of new storage projects . . . , and improving streamflow regimes for fisheries and other instream uses.”); RCW 90.54.060(2) (directing other state agencies to fully participate to ensure that Ecology considers their interests; and directing Ecology, when funds are available, to provide assistance grants to other state agencies); RCW 90.54.090 (“All agencies of state and local government, including counties and municipal and public corporations, shall, whenever possible, carry out powers vested in them in manners which are consistent with the provisions of [1971 Water Resources Act]”).

cc: Mary Verner, Director, Department of Water Resources, mary.verner@ecy.wa.gov
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Attachments