WASHINGTON WATER TRUST
Working to restore our state's rivers and streams.

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Rebecca Inman
Rulemaking Lead
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Lacey WA
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Re: Comments of the Washington Water Trust on Final Rule Language for WAC Chap. 173-566 Streamflow Restoration Funding.

Dear Ms. Inman:

Washington Water Trust (WWT[1]) thanks Ecology for opportunity to comment on the final rule for Streamflow Restoration Funding. WWT strongly supports Ecology's dual-pronged efforts through the Streamflow Restoration Act (SRA), Chap. 90.94 RCW, to protect, restore, and enhance streamflow, and to mitigate impacts of future permit exempt wells on instream flows.

However, as expressed herein and in WWT's comments on the draft language for Chap. 173-566 WAC[2], WWT is deeply concerned by the final rule's strategy of largely restricting SRA funds to shovel-ready mitigation projects. Neither the funding strategy in the final rule nor other sources of Ecology funding begin to address the underlying data gaps in many SRA watersheds or support the feasibility studies necessary to develop and assess potential mitigation/restoration projects that will achieve net ecological benefit.

In the absence of other significant funding sources, Ecology is putting the cart before the horse in exclusively devoting SRA funds to shovel-ready projects without first ensuring that the agency and planning units have

[1] WWT is a nonregulatory, nonprofit which for over 20 years has used voluntary, market-based transactions, and cooperative partnerships to improve stream flows and protect water quality throughout Washington state. We lease and buy water from water rights holders, temporarily or permanently to leave instream, to improve and protect flows, especially during periods that are critical to the survival of imperiled salmon and steelhead.

[2] *See* Comments of the Washington Water Trust on the Draft Language for Chapter 173-566 WAC—Streamflow Restoration Funding (October 28, 2018). WWT applauds DOE for making a significant improvement in the final rule: clearly providing that SRA funding is available for extent and validity assessments in connection with water right acquisitions. However, since Ecology did make all the changes WWT requested on the draft rule, WWT now incorporates its unadopted comments by reference in these final comments.

the basin assessments and other studies necessary to identify where future impacts from permit exempt wells will occur and what projects will best address them. WWT thanks Ecology for endeavoring to provide some technical study funding out of Planning and Participation Grants and other sources in its operating budget[3]. But realistically, whatever funds will be available for technical studies will be relatively small. The Planning and Participation Grants will primarily backfill staff costs incurred by tribes and counties participating in one or more watershed planning process. WWT understands that Ecology has also allocated up to $300,000 for technical work in the Section 030 watersheds—which is an excellent first step, but without any prospect of further funding, a likely inadequate amount for technical studies. The competition between section 030 watersheds for technical gap funding is guaranteed to be keen—with many significant gaps likely to be denied funding simply because the money ran out.

The Chehalis basin exemplifies this point. As DOE knows well, the Upper and Lower Chehalis are among the section 020 watersheds[4] which engaged in an earlier watershed planning process pursuant to Chap. 90.82 RCW. Many of the section 020 watershed plans identified critical data gaps—data gaps that currently remain unaddressed. The Chehalis Basin Watershed Management Plan of 2006 recommended as a second action item that a groundwater study be conducted to answer questions such as whether "an individual water right application [might] impact stream flows."[5] To date, no such study has occurred—yet the need is even greater now as water resources have become scarcer due to increased population and more unpredictable due to climate change. Other watersheds similarly have unplugged technical gaps that were identified in watershed plans from the mid-2000s.

As deficient as technical information may be for some of the Section 202 watersheds, it is much worse in the section 030 watersheds which did not successfully generate watershed plans during the RCW 90.82 planning process.

Ecology certainly recognizes the importance of basin assessments and other technical assessments like hydrogeologic studies in conjunction with implementing the SRA. In its Preliminary Regulatory Analyses for the Streamflow Restoration Funding Rule, the agency quite rightly points out that such studies are "important precursors to developing effective projects that will result in meaningful environmental benefit."[6] Yet, despite the looming, inevitable shortfall in funds for these important precursor studies, Ecology

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[3] WWT has asked several SRA staff and Ecology staff to identify how much technical funding (rather than local government or tribal staff reimbursement funding) is available to SRA watersheds. WWT has not received consistent answers as there appears to be considerable confusion and uncertainty as to what technical support funds are available and their source in the budget.

[4] Section 020 and section 030 watersheds, as used herein, refer to watersheds planning under RCW 90.94.020 and 90.94.030 respectively.

[5] *See* Chehalis Basin Watershed Management Plan at 19.

[6] See Ecology's Preliminary Regulatory Analyses for the Streamflow Restoration Funding Rule at Section 6.3.4 Feasibility Studies and Assessments (quoted below).

> 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 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.

appears to be plowing ahead without seeking additional funding for them. Moreover, additional funding is needed for feasibility studies that quantitatively assess potential mitigation projects in both the 020 and 030 watersheds.[7] WWT is concerned that this strategy will ultimately put Ecology in the difficult position of choosing which mitigation projects for future permit exempt wells to fund, without sufficient quantitative analysis for those projects, and without the important precursor studies that describe the current scientific and planning landscape and provide the basis for calculating the measures necessary to offset future consumptive uses.

This strategy runs afoul of common sense and quite possibly the SRA itself. WWT strongly encourages Ecology both to revise the final rule to use SRA funds more flexibly.

The language of the SRA is more flexible than how Ecology has defined permissible funding in the final rule…and better grounded in common sense. The SRA states as to section 020 watersheds that updated plans contain "recommendations for projects and **actions that will measure**, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids." RCW 90.94.020(4)(a)(emphasis added). The SRA contains a parallel mandate for section 030 watersheds. RCW 90.94.030(3)(a). These twin directives clearly indicate the Legislature's intent to use SRA funds to measure and assess actions and projects. Those projects and actions could include a wide spectrum of studies from total water supply to hydrogeology to water quality—as long as they serve the statute's purpose of measuring, protecting, enhancing instream resources and improving watershed functions.

This reading of the SRA also squares with RCW 90.94.080 (2), which states that expenditures from the bond account may be used to "assess, plan, and develop projects" that include a wide variety of acquisition and measurement projects. The final rule, accordingly, should be changed to allow bond funds for feasibility and quantitative studies for mitigation and restoration projects proposed by section 020 and 030 watersheds. Moreover, Ecology should modify the final rule to make it clear that bond funds are available not just to assess a particular project, but also to assess the broader watershed to determine which of several potential projects will best project to undertake to mitigate for future consumptive uses.[8] It is illogical to do

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[7] The Nisqually Planning Unit submitted potential mitigation projects in its recent update to its watershed plan that the unit believes requires further feasibility and quantitative analysis—yet it is without funding to do so. In its assessment of update, Ecology ranked some of the projects poorly for lack of feasibility analysis which underscores the conundrum.

[8] WWT applauds Ecology for making a significant change to the final rule from the draft. The final rule now provides that SRA money can be used to pay for monitoring the effectiveness of SRA projects funded. WAC 173-566-240. But as discussed above, it would be a profound misuse of taxpayer dollars if SRA funds can be used to assess a project's effectiveness but NOT for the assessments necessary to figure out if the project would be worthwhile in the first place.

otherwise. And, as previously noted, the need for assessments is particularly acute in the section 030 basins without previously approved watershed plans.

WWT strongly encourages Ecology to revise the final rule to use SRA funds more flexibly as the statute permits. In addition, WWT respectfully requests Ecology to seek, with the support of WWT and other participants in SRA planning, additional funding from the Legislature, as needed now and in the future, to fill the identified technical gaps. SRA planning will determine watershed management in the SRA watersheds for the next decades. Water management in the SRA watersheds (and throughout the state) is inextricably intertwined with salmon recovery, culvert removal, the plight of the orca, water quality, sustainable water supply for human needs, and climate change.[9] Good water management depends upon good science. WWT urges Ecology to view SRA implementation in the larger ecological, political, and legal context. WWT will fully support Ecology in seeking the resources necessary to ensure that we employ the best available science to guide future water management in the SRA watersheds and the state at large.

Thank you again for the opportunity to submit comments in this rulemaking process. We look forward to working with you in implementing the SRA.

Very Truly Yours,

Suzanne Skinner

Suzanne Skinner
Senior Advisor/Board Member

[9] All but three of the SRA watersheds border Puget Sound and are therefore critical to the survival of Puget Sound resident orca.