



Merle Jefferson Sr., Director
Natural Resources Department
Lummi Indian Business Council
2665 Kwina Road
Bellingham, WA 98226

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Rebecca Inman
Water Resources Program
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Rebecca.inman@ecy.wa.gov

Subject: Comments on Proposed Rule—Chapter 173-566 Washington Administrative Code, Streamflow Restoration Funding

Dear Ms. Inman,

I am writing to provide comments on the proposed Streamflow Restoration Funding rule (Washington Administrative Code 173-566). The comments are based on reviewing the rule making package, discussions with Maia Bellon (Director, Washington Department of Ecology [Ecology]) and Mary Verner (Water Resources Program Manager, Ecology), and an email exchange between one of my staff and yourself. Our emphasis is to ensure that streamflow and instream resources are restored, of which monitoring and evaluation are critical components.

1. WAC 173-566-240(1). This section should be expanded to explicitly include monitoring of instream resources. One cannot know if instream resources are improving, or not, if they are not monitored—it is a fundamental component of any effort to restore, maintain, or enhance instream resources. Existing monitoring of instream resources is too limited to sufficiently address the scope of RCW 90.94.
2. WAC 173-566-240(1). Limiting monitoring to that which is “directly related to restoring, maintaining, or enhancing streamflows or instream resources and values” is too narrow and will likely lead to monitoring that is only associated with the effectiveness of individual streamflow or instream resources projects. While project effectiveness monitoring is important, that alone will not provide the information necessary to know if there is an overall ecological benefit to the larger system. Baseline monitoring at representative locations that are not associated with a specific streamflow or instream resource project would more accurately indicate if the system—not just the parts—are being degraded, maintained, or enhanced. The language needs to be expanded to address this issue.

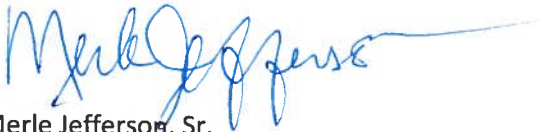
- a. Related, Section 6.3.4 of the Preliminary Regulatory Analysis (Ecology Publication 19-11-063) states that streamflow restoration funds will not be used to fund feasibility studies and basin assessments. This position should be modified to at least allow funding of basin assessments. While monitoring that is larger than individual projects may not be a basin assessment, the term “basin” is a scalable term and could easily be used restrictively. In addition, basin assessments are excellent tools to evaluate the health of a system and are critical to knowing if instream flows and resources are supporting “robust, healthy, and sustainable salmon populations” [WAC 173-566-010(1)] and if not, why not.
3. WAC 173-566-240(1). Funding should not be limited to “environmental monitoring equipment.” Eligible funding should be expanded to include personnel time for study design, deployment and utilization of equipment; and conducting data collection, data analysis; and reporting. Limiting funding to equipment is not sufficient and will likely result in haphazard data collection efforts and archived data that is not effectively utilized.
4. WAC 173-566-120 and 140. As these two sections are written (application and evaluation), environmental monitoring (i.e., surface water, groundwater, instream resources) will likely not be funded as the “benefits” of monitoring will not be an increase in streamflow or improvement of instream resources. Language should be added to both sections to address that disconnect, and/or “benefit” could be defined in the definitions section (WAC 173-566-030) including language that explicitly includes monitoring (“benefit” is not currently defined).
5. WAC 173-566-150. Broadening the scope for funding priorities beyond that described in “Streamflow Restoration Grants Fiscal Year 2019 Interim Funding Guidance” is good. However, the lower priority assigned to projects that are not part of a watershed plan under RCW 90.94 Sections 020 or 030 is problematic. Given the range of timelines and outcomes:
 - a. “Planning” under paragraph (1) should be expanded to include rule making. For example, WRIA 1 was “planning” until Feb. 1, 2019, and Ecology is now undertaking a rule making for WRIA 1 to comply with RCW 90.94 with an anticipated completion date of June 2020. In this example, WRIA 1 should not be made a lower priority because it is neither “planning” nor has a watershed plan. Perhaps “planning” could be defined in the Definitions section to include the rule making process.
 - b. Related, paragraph (3) requires modification as it could end up lowering the priority of high priority projects identified under paragraph (1) for WRIAs where a plan has not been completed, regardless of whether planning or rule making is occurring. Paragraph (3) appears to contradict paragraph (1).
 - c. Paragraph (2) should be expanded to include projects listed, identified, or otherwise addressed or referenced in a rule adopted by Ecology under RCW 90.94.020(7). The reason for the broad language regarding projects in the last sentence is because it is not yet clear how Ecology will address or identify projects where Ecology adopts a rule, such as will occur in WRIA 1. This issue could also be addressed by expanding the definition of “Watershed Plan” in Section 030 to include rules adopted by Ecology under RCW 90.94.020.

6. WAC 173-566-100. Paragraph (1) states that Ecology will develop guidance for implementing the Streamflow Restoration Funding rule. When and how that guidance is developed should be specified in the rule and should not be strictly an internal-to-Ecology process. At a minimum, fisheries co-managers should participate in the development of the guidance, particularly given the scope of the rule as described in Section 010(1).
7. WAC 173-566-310. Paragraph (10) states that operations and maintenance (M&O) costs are not eligible for funding. Ecology should reconsider this position. Projects funded under this rule will require M&O to provide a permanent benefit. Perhaps strictly administrative projects (e.g., possibly the transfer of water rights to Ecology's trust water rights program where compliance would be covered under an existing program/budget) would not need funding to maintain the benefit, but all others will require M&O funding.
8. WAC 173-566-120. Paragraph (3) indicates that Ecology may require a feasibility study and that the required feasibility study may be funded by Ecology. Section 6.3.4 of the Preliminary Regulatory Analysis (Ecology Publication 19-11-063) indicates that feasibility studies will not be funded. Clarification is needed: Will Ecology feasibility funding come from a different funding source? Is there a threshold for when Streamflow Restoration Funds can be used for feasibility studies?

In closing, the ability to monitor and evaluate the condition of instream resources, surface water flow and ground water is critical to implementing the goals of RCW 90.94. Offset and enhancement projects are also important, and that importance can only be known through evaluation and monitoring. Further, the fisheries co-managers need to be involved with the evaluation and assessment of instream resources and the associated streamflows.

Thank you for your time and consideration of these comments. If you have any questions about the comments, please contact me at (360) 312-2328 or Kara Kuhlman of my staff at karak@lummi-nsn.gov.

Sincerely,



Merle Jefferson, Sr.

Cc: Jay Julius, Chairman, LIBC
George Swanaset, Director, Natural Resources, Nooksack Indian Tribe
Maia Bellon, Director, Ecology
Mary Verner, Water Resources Program Manager, Ecology
Kasey Cykler, RCW 90.94 WRIA 1 Lead, Ecology