



MUCKLESHOOT INDIAN TRIBE

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March 15, 2019

Rebecca Inman
Department of Ecology
Water Resources Program
PO Box 47600
Olympia WA 98504-7600

RE: Proposed Rule Chapter 173-566 WAC Streamflow Restoration Funding

Dear Ms. Inman,

Thank you for the opportunity to review and submit comments on the Rule Proposal for the Streamflow Restoration Funding for projects implemented according to RCW 90.94. We also provided comments on the prior Preliminary Draft language last October. We continue to have concerns with the rule language as explained below.

WAC 173-566-010 Purpose

(2) This chapter contains general rules for project grant eligibility, selection, issuance, and performance, and applies to projects statewide pursuant to and consistent with chapter 90.94 RCW to: (a) Protect and enhance streamflows. (b) Improve and/or protect watershed functions that benefit instream fish and wildlife resources. (c) Offset the consumptive use impacts from new domestic permit-exempt wells. See comment below (d) ~~Provide access to new water supplies when identified in a watershed plan adopted under RCW 90.94.020 or 90.94.030~~ assess, plan, and develop projects that include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, projects such as floodplain restoration, off-channel storage, and aquifer recharge, or other actions designed to provide access to new water supplies with priority given to projects in watersheds developing plans as directed by RCW 90.94.020 and 90.94.030 watersheds participating in the pilot project in RCW 90.94.040.

Statement (b) should include the protection of watershed functions that lead to protecting streamflows.

Statement (c). We have believe that WREC committees have the flexibility to do more than offset consumptive impacts from domestic permit-exempt wells with proposed projects.

Statement (d) is taken out of context from the language in 90.94.070 where it is included at the end of a long list of possible projects. Furthermore, by placing it under the Purpose section, Ecology is raising the priority of such projects above others that better meet the intent of the funding. Such projects could likely not receive funding or score low even though they clearly meet the legislative intent. We strongly recommend that this language be deleted from the Purpose. Accessing new water supplies is not a stand-alone project as (d) implies, but is suggested in context along with other possible projects. If Ecology insists on including “access to new water supplies” as a primary purpose for funding, then include the other projects listed in 90.94.070(2).

WAC 173-566-030 Definitions

"Consumptive use" means that portion of withdrawn groundwater that is lost from the water source, ~~rather than returned through a septic system or other means.~~

We remain concerned with the definition of consumptive use as it implies that septic effluent is always non-consumptive even if it returns to a different source aquifer, at a much slower rate and a much lower water quality. Also, building site preparation, soil removal, road construction, stormwater and utility infrastructure installation can greatly change hydrologic flow pathways in the soils and subsoils of a site. A simple and clear definition is preferred.

“Domestic use” should be defined to clarify the status of outdoor watering which is considered to be an “irrigation use” by case law.

WAC 173-566-200 Water right acquisitions

We assume that no inchoate rights will be transferred into trust. Is that correct?

WAC 173-566-220 Altered water management or infrastructure

(1) Water management and infrastructure improvement projects eligible for funding involve changes in how and when water is diverted, withdrawn, conveyed, or used to benefit streamflows and instream resources and carry out chapter 90.94 RCW. Examples include conservation and efficiency projects such as diversion modifications, ~~lining and piping leakage reduction??~~, sprinkler conversion, and other irrigation efficiencies, as well as source ~~switches exchanges??~~, and ~~streamflow retiming??~~ ~~We are concerned with the use of this phrase as it is not defined and is not a standard hydrologic term~~ projects. Innovative methods will be considered.

(2) Projects must include sufficient provisions and protections so that completed projects will provide: (a) Permanent streamflow improvement; ~~or ??~~ (b) ~~Access to new water supplies when identified in a watershed plan adopted under RCW 90.94.020 or 90.94.030.~~ Again, we are concerned with the emphasis on new water supplies especially when it is implied that projects will improve streamflow OR access new supplies which could be a contradiction. Other projects listed in 90.94.070(2) could also involve altered water management or infrastructure. (3) To meet subsection (2) of this section, conservation and water use efficiency projects must permanently convey the saved water to ecology to be held in the trust water rights program for instream flow purposes.

| WAC 173-566-230 Watershed, Riparian and fish habitat improvements

| Watershed, Riparian and fish habitat improvements that might not directly increase streamflow, but do benefit instream resources, may be funded through this chapter. Examples include, but are not limited to, in-channel habitat improvements, riparian restoration, strategic land acquisitions, levee modifications, floodplain modifications, fish passage, and beaver introduction.

This section should have the word “watershed” added to meet legislative intent to protect watershed functions.

Thank you for reviewing and considering these comments and suggested revisions. Please contact me at 253-876-3127 if you have any questions.

Sincerely,



Carla Carlson
Water Resources Analyst/Hydrologist

Cc: Mary Verner, Department of Ecology