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Washington State Department of Ecology
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-6872

Re: Comment letter for Streamflow Restoration Grants Rules

Submitted online

Ms. Inman:

This letter is submitted on behalf of the Tulalip Tribes.

The Tulalip Tribes reserved the right to take fish in their usual and accustomed fishing places pursuant to the Treaty of Point Elliot of January 22, 1855 (12 Stat. 927). These usual and accustomed treaty fishing areas include the freshwater areas of the Snohomish-Snoqualmie-Skykomish river basins and certain marine waters of the Puget Sound through which fish propagated in such basins pass. *U.S. v. Washington*, 459 F. Supp. 1020, 1038 (W.D. Wash. 1978); *U.S. v. Washington*, 626 F. Supp. 1405, 1527 (W.D. Wash. 1985), *Aff'd*, 841 F.2d 317 (9th Cir. 1988). The Tulalip Tribes are co-managers of fisheries and fish habitat with the federal government and Washington State.

Water rights of appropriate quality and quantity to support habitat for continuation and enhancement of fish runs is essential to the Tribes' treaty fishing rights.

This letter incorporates by reference the comments submitted by the Tulalip Tribes on October 29, 2018 regarding the Interim Funding Guidelines.

WAC 173-566-020: Relation to other laws and rules:

This section appropriately recognizes that many other laws and rules are in place to protect streamflows and environmental health. Section (7) of this proposed rule states that "Ecology may not fund projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310."

This is a confusing statement. Many of the proposed projects in the WRIA's that border the Puget Sound will in some way "impact" the Puget Sound. Does Ecology consider that projects in these WRIAs will "address the restoration of the Puget Sound" by default; as improvements to streamflow and habitat will necessarily aid in restoration of the Puget Sound. Additionally, how will Ecology make a determination if a project is in conflict with the action agenda?

WAC 173-566-030 Definitions:

Why is Ecology creating a new definition for consumptive use?

The definition of "Consumptive Use" is contrary to the definition found in WAC 173-500 (Water Resources Management Program). The definition found in WAC 173-500-050(5) states that "Consumptive Use" is "use of water whereby there is a diminishment of the water source."

While it is true that some groundwater that is withdrawn eventually returns to the system the timing and amount can vary widely and is often based on assumptions that may incorrectly estimate the return flows. If the goal is to fund projects "to restore and enhance streamflows...and implement plans to restore streamflows to levels necessary to support robust, healthy, and sustainable salmon populations" it is essential that all consumptive use from exempt well use be offset in amount and in time. By reducing the estimated consumptive use of exempt wells, Ecology may unintentionally reduce the estimated amount of water necessary to restore and enhance streamflows.

WAC 173-566-130 Phasing:

Subsection (3) states that approval of one phase of a project does not guarantee funding for later phases of the project. There is concern that if an initial project meets the criteria for funding it could become orphaned if the subsequent phases are not funded. If an applicant is proposing a phased project it should still be complete enough that Ecology can fund the entire project. It is a waste of time, money, and prolonged impacts to streamflows if a phased project is allowed to die. Ecology should also only fund individual phases if each discrete phase provides benefits to streamflow and has restoration benefits as a stand-alone project.

WAC 173-566-140 Evaluation Process:

Will there be an additional explanation as to how Ecology will utilize and define some of the terms found in this section? For example, 3(a) states that Ecology will evaluate the "benefits to streamflow and instream resources". How exactly will this be determined? Will this be solely based on Net Ecological Benefits analysis?

WAC 173-566-210 Water Storage:

This section should include language that states funding for water storage projects must be used on proposals that will benefit streamflows and instream resources.

WAC 173-566-230 Riparian and Fish Habitat Improvements:

This is a lower priority in the funding criteria and it should be mentioned again here. Also, it appears that some of the examples listed in this section might benefit streamflows, including levee modifications and beaver introduction.

WAC 173-566-240 Environmental Monitoring:

Ecology should include language in this section that ensures that data gathered as a result of funding provided by the Streamflow Restoration Fund is available to Ecology and the public.

Conclusion:

Finally, the Tulalip Tribes would like to reiterate that having the best possible data is essential to Ecology making an informed decision regarding project funding. It does not appear from these rules that funding is available for data collection and management. The speed with which ESSB 6091 requires project application and approval creates a situation where Ecology is trying to determine if projects will adequately offset exempt well use for the next 20 years in perpetuity. Making these decisions with insufficient data could lead to the waste of millions of dollars and ongoing impacts to streamflows and instream resources.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Williams", written over a horizontal line.

Patrick Williams
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206-724-2282

Cc: Tim Brewer
Anne Savery
Daryl Williams