



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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May 10, 2019

Via Electronic Submission

Ms. Annie Sawabini
Department of Ecology
Water Resources Program
PO Box 47600
Olympia, WA 98504-760

Re: WDFW Comments on Preliminary Draft Rule Language and Rule Supporting Document for WAC 173-501

Dear Ms. Sawabini:

The Washington State Department of Fish and Wildlife (WDFW) appreciates the opportunity to comment on the preliminary draft rule language and rule supporting document for the proposed amendment to Chapter 173-501 of the Washington Administrative Code. WDFW's mission is to preserve, protect and perpetuate fish, wildlife, and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities. In furtherance of that mission, one of our agency's priorities is to maintain the functions and values of fish and wildlife habitat within Washington State. We hope these comments will be helpful to the Department of Ecology's efforts to ensure that streamflows are maintained at, or restored to levels necessary to support robust, healthy, and sustainable salmon populations.

The Nooksack Watershed, or Water Resource Inventory Area (WRIA) 1, is a watershed of critical importance to the State's fishery resources, as well as the biotic communities and economies that depend on the survival and recovery of those resources. With that in mind, it is our objective to ensure planning outcomes are protective of fish and wildlife and the many significant investments WDFW and others have made in the watershed in the continued effort to restore salmonid populations.

Comments on the Preliminary Rule Language

1. Enforcement. WDFW is concerned that the reduced domestic permit-exempt withdrawal limits may not have the desired effect of reducing future impacts on surface waters because the rule lacks an explicit enforcement mechanism. Ecology's instream flow rule in the Dungeness Watershed (WAC 173-518) contains an enforcement provision. The insertion of a similar provision into this rule amendment would help ensure that the withdrawal limits are adhered to.

2. Opening previously closed waterbodies to future appropriations. Allowing new interruptible uses for streams regulated under WAC 173-501-040 may have negative consequences for fish by reducing ecologically significant high flows. Many of the closed basins were closed through the Surface Water Source Limitation process, in part to protect small streams (< 5 cfs). It is WDFW policy to "discourage diversions from small streams. This applies to streams of less than 5 cubic feet per second MAF or less than 5 feet between toes of banks."¹ In addition, potential groundwater withdrawals made available by this exemption may create delayed impacts that will further diminish flows during critical periods.
3. Monitoring and Adaptive Management. Ensuring that future domestic permit-exempt groundwater withdrawals are adequately offset by projects is essential to the restoration of streamflows and will require implementation monitoring. Monitoring and adaptive management requirements should be contained directly in the rule, or at least incorporated elsewhere, but referenced within the rule.

General Comments on the Rule Supporting Document

1. Characterizing habitat restoration projects as having the ability of offset future groundwater withdrawals "in-kind". Numerous habitat restoration and conservation projects are characterized as having streamflow benefits commensurate with in-kind projects. It may be possible for some habitat restoration projects to beneficially impact streamflows in a given area; however, the uncertainties inherent with these kinds of projects make it difficult to accurately quantify those benefits.

The Nooksack is an important watershed to salmonids protected under the Endangered Species Act. These fish require adequate quantities of cool water, something that is already scarce in many years because of climate change, habitat degradation, and competing uses of the resource. Reversing habitat degradation can play an important role in improving flow and temperature issues, but allowing additional withdrawals from the watershed without certainty that those withdrawals will be offset in-kind may jeopardize the recovery of these important fish populations.

Water offset requirements in WRIA 1 (as calculated by Ecology) are already met by in-kind proposed projects; therefore, it is unnecessary to open the door to greater uncertainty by characterizing out-of-kind projects with possible streamflow benefits as having quantified in-kind benefits.

2. More projects are needed to ensure consumptive impacts from domestic permit-exempt withdrawals are offset and a net ecological benefit is achieved. Currently, the rule supporting document identifies 13 projects that will be implemented for the specific purpose of offsetting future domestic permit-exempt impacts and provide a net ecological

¹ WDFW Policy 5204.

benefit. During the WRIA 1 planning process, the watershed was delineated into sub-basins for the purpose of assessing the adequacy of the project list as compared to projected impacts. As it is currently configured, certain sub-basins have projected impacts but have no projects to offset those impacts. While we understand that RCW 90.94 allows impacts to be offset out-of-place, there should be projects identified and/or goals set for offsetting those projected impacts at the sub-basin level.

3. Adaptive management. Adaptive management within the rule supporting document is limited in scope and does not provide a clear framework for adaptive protocols beyond basic implementation reporting/monitoring. Additional clarifications should be made on how to incorporate new water or non-water projects into the plan, address project failure, and develop/adapt project monitoring protocols. As mentioned above, reference to implementation monitoring and adaptive management within the actual rule language would best ensure adherence to those requirements.

Specific Comments on the Rule Supporting Document

Page	Location	Comment
20	second paragraph	Exceeding minimum instream flows is different from surplus high flows. The minimums are just that. We would need some standard for “surplus high flows”.
21	5.1	What was the basis for selecting 10 years? This length of time likely won't capture enough variability to accurately represent the hydrologic record. 20 years would more closely represent regional climactic datasets.
21	5.1	Why not cite the Instream Flow Guidelines that reference appropriate habitat study types? https://fortress.wa.gov/ecy/publications/SummaryPages/0411007.html
21	5.1	A list of potential negative impacts of flow retiming and contingencies for such issues should be included as a data requirement for project plans.
22	first paragraph	The way that WAC 173-501-070 is referenced makes it seem as though Ecology’s interpretation of this law has changed, but 90.94 is limited to rural growth and permit exempt wells.
22	5.2	The bullet reading: “Instream flow (WAC 173-501-030(2)) or low flow condition (WAC 173-501-040))”, should add “ is met ” to the end of the sentence.
25	table	Within the table, there is no indication of what units of water you have represented or what types of projects these are (water replacement vs non-water replacement).
32	7.1	List “a” under Annual Reporting could include a fourth item that would specify steps to address any challenges identified in list item three.

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WDFW looks forward to future opportunities to provide input on draft rule language, project proposals, and other activities that will help restore streamflows and improve watershed functions that support the recovery of threatened and endangered salmonids. Thank you for considering these comments, we hope they are useful to you as you prepare your rule for proposal.

Sincerely,

A handwritten signature in blue ink that reads "Megan Kernan". The signature is written in a cursive, flowing style.

Megan Kernan
Streamflow Restoration Coordinator