



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

June 6, 2019

Via Electronic Submission

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

Re: WDFW Comments on Draft Streamflow Restoration Policy Interpretive Statement

Dear Ms. Cykler:

The Washington State Department of Fish and Wildlife (WDFW) appreciates the opportunity to comment on the draft Streamflow Restoration Policy Interpretive Statement. 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.

Our agencies have worked closely together to help develop and refine the concept of Net Ecological Benefit (NEB). The comments contained in this letter are not related to that process and are specific to the interpretation of RCW 90.94 and the policy implications underlying that interpretation.

A primary objective of RCW 90.94 is to provide a mechanism for either the initiation or continuation of a planning process whereby the projected impacts of new domestic, permit-exempt groundwater withdrawals are offset by projects that replace water and additional projects are proposed to provide a NEB.¹ We believe that the correct interpretation of the law is one that recognizes the distinction made between the offsetting of impacts by the direct replacement of water and the realization of NEB. Therefore, we find it essential that projects to offset impacts be treated separately from projects that otherwise provide an ecological benefit without the tangible replacement of water.

The law clearly identifies three distinct categories of projects that may be included within a watershed plan: high priority projects that offset impacts; lower priority projects that offset

¹ RCW 90.94.020 and RCW 90.94.030.

impacts; and those projects that do not replace the consumptive quantity of water, but otherwise protect or improve instream resources.² We interpret the language “The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that the planning unit determines to be necessary to offset potential consumptive impacts”³ to mean that impacts may only be offset through the direct replacement of water. We therefore disagree with an interpretation of the law that envisions “non-water offsets” and believe this phrase should be removed from the interpretation document.

We respectfully suggest the following changes related to the usage of the term “offset”:

Page	Comment
2	The definition of the term “action” should be revised to remove the distinction made between water offset and non-water offset.
3	The policy interpretation document defines the term “offset” as a verb, but then employs it as a noun. RCW 90.94 uses the term only as a verb and we feel that a new usage of the term (i.e., employing offset as a noun) unnecessarily creates confusion and should be avoided. Please revise the definition of the term “offset” and ensure the term is consistently used.
3	Please revise the definition of the term “project” to remove the reference to “non-water offset projects. It seems that the definition of project includes actions, but the definition of action includes projects. Please clarify.

These suggestions may seem trivial or excruciatingly semantical, but they have important ecological implications. By allowing impacts to surface waters protected by rule, and relied on by fish, to be offset with anything other than water, would put salmonids around the state at risk of further habitat degradation—a result contrary to the underlying goal of RCW 90.94.

WDFW looks forward to future opportunities to provide input on policy interpretations, 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 continue to refine your interpretation of RCW 90.94.

Sincerely,



² RCW 90.94.020(4)(b) and RCW 90.94.030(3)(b).

³ Ibid.