



Kasey Cykler
Department of Ecology
Water Resources Program
PO Box 47600
Olympia, WA 98504-7600

June 6, 2019

RE: Draft Streamflow Restoration Policy Statement

Dear Kasey:

CELP appreciates the opportunity to provide comments on Ecology's Draft Streamflow Restoration Policy Statement (POL-2094). For the most part this document appears to be a straightforward explanation of the watershed restoration process under RCW 90.94. However, there are two specific points that we feel should be addressed.

First, in the discussion of Ecology's rulemaking authority (see p. 10), the draft states that "[p]lanning groups can recommend changes to instream flow levels . . ." While technically the watershed planning groups can make a wide variety of recommendations, the statute does not expressly provide for changes in instream flows. We urge Ecology not to invite such proposals. Changing (which would almost certainly mean reducing) instream flows as part of the streamflow restoration process, which is designed to offset any impacts of new permit-exempt water uses and thereby *avoid* reductions in streamflows, would be akin to treating a hangnail by amputating the patient's foot.

Second, the discussion of rulemaking where the watershed group cannot agree raises an important question. The draft policy statement includes the following (see p. 10):

If a plan or plan update has not been adopted by the prescribed deadline, Ecology is required to commence a rulemaking process under RCW 90.94.020 or 90.94.030.

- Ecology will not write a plan update for WRIAs identified in RCW 90.94.020. Ecology will initiate rulemaking (as required under law) and develop rule supporting documents that meet the intent and requirements of RCW 90.94.020. At a minimum, the rule supporting documents will include: a WRIA-wide estimate of consumptive use from new permit-exempt wells over 20 years, a list of projects and actions that Ecology is reasonably assured could be completed to offset the consumptive use, and a NEB determination.

It is unclear what force “rule supporting documents” would have, and whether there are any assurances that projects or actions specified in the rule supporting documents would actually be carried out. As a Rule adopted by Ecology in this circumstance would be the primary means of assuring that new water uses were offset and that a Net Ecological Benefit would be achieved in the WRIA, is it critical that the projects/actions proposed are actually done.

Further, we believe that RCW 90.90.020 requires that the Rule itself contain such assurances. RCW 90.94.020(7)(c) provides that “[t]he department must adopt rules that meet the requirements of this section for any of the following water resource inventory areas that do not adopt a watershed plan that meets the requirements of this section by February 1, 2021: 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).” The “requirements of this section” that the rules must meet include offsetting impacts of new permit-exempt water use, and other projects that will, as a whole, achieve a Net Ecological Benefit. A “supporting document” is neither rule, statute, nor policy. If the rule only makes reference to a “supporting document” that carries no legal force, there can be no assurances that the requirements of RCW 90.04.020 would be met.

The Streamflow Restoration Policy, as well as any Rules adopted by Ecology as part of this process, must contain provisions that will ensure water offset projects are actually carried out.

Please don’t hesitate to contact CELP if you have questions about the above or would like any clarifications. Thank you.

Best Regards,

A handwritten signature in black ink, appearing to read "Trish Rolfe". The signature is fluid and cursive, with the first name "Trish" and last name "Rolfe" clearly distinguishable.

Trish Rolfe
Executive Director