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Comments on Streamflow Restoration Policy and Interpretive Statement dated May 6, 2019

- 1) 3. Definitions. "Unless otherwise noted, Ecology does not apply these definitions to the interpretation of other statutes". What is the purpose of different definitions for these statutes, eg, chapter 90.94 RCW? One would expect universal definitions regardless of the statute.
- 2) 3. Definitions "Domestic Use". Ecology has inappropriately defined "Domestic Use" as indoor and outdoor household uses and watering of lawn and noncommercial garden up to ½ acre in size. Department of Ecology does not have the authority to redefine the existing definition of "Domestic Use" for chapter 90.94 RCW only. Additionally, what is the definition of the newly created "domestic outdoor household use" and "domestic indoor household use"?
- 3) 3. Definitions "Net Ecological Benefit (NEB) Determination". Please clarify that the local planning group does not determine NEB prior to local approval of the watershed plan.
- 4) 3. Definitions "Net Ecological Benefit Evaluation". Please clarify "demonstration" and "achieved NEB". Since Ecology determines NEB, what is the purpose of evaluation and what criteria must the local planning group use to demonstrate it?
- 5) 3. Definitions "New Consumptive Water Use". Please explain Transpired included in this definition when domestic use is separate from watering of a lawn or noncommercial garden.
- 6) 4. Applicability. Page 4. "The requirements in RCW 90.94.020 and 90.94.030 only pertain to domestic permit-exempt withdrawals that require a new building permit and do not affect other uses exempt from permitting under RCW 90.44.050." The exemptions in RCW 90.44.050 are stated: "... EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section..." Please add these exemptions to the document so it is clear what is exempt. Additionally, please clarify when a new building permit would not apply to a domestic permit-exempt withdrawal. For example, a remodel of a house on a permit-exempt well would not be expected to have a withdrawal change, but most likely would require a building permit.
- 7) 4. Applicability Page 4. "If an applicant for a building permit or subdivision provides technical evidence that demonstrate a new domestic permit-exempt well will not cause impairment...". Please provide a further definition of "technical evidence"; it is not clear what is required.
- 8) 5. Local Governments Page 5, second bullet. Please clarify when the title has water use restrictions recorded. Is it when the permit is approved or after the final buildout?
- 9) 5. Local Governments Page 5, third bullet. When is the title to be updated with drought restrictions? It is not clear and what, if any, recording fees are required.
- 10) 6. Water Use Limits under RCW 90.94.020 and 90.94.030. First paragraph. It is incorrectly stated that "water use limits under chapter 90.94 RCW further restrict the limits identified in RCW 90.44.050 for domestic water use and watering of a non-commercial lawn or garden." Chapter 90.94 RCW only further restricts the water use limits identified in RCW 90.44.050 for "single or group domestic uses". Chapter 90.94 RCW does not further restrict "watering of a lawn or of a noncommercial garden not exceeding one-half acre in area" per ESSB 6091.
- 11) 6. Water Use Limits under RCW 90.94.20 and 90.94.030. First Bullet. Ecology is redefining the definition of "domestic Use" for RCW 90.94 ONLY with this statement "In the context of chapter 90.94 RCW, "domestic use" and the GDP withdrawal limits include both indoor and outdoor household uses, and watering of a lawn and noncommercial garden up to one-half acre in size."

Ecology does not have the authority to redefine RCW 90.94 and RCW 90.44.050. (see prior comments)

12) 6. Water Use Limits under RCW 90.94.20 and 90.94.030. Second Bullet. Please define "home's water use". There has been discussion on consumptive use versus withdrawals and this is not clear which is being referenced.

13) 6. Water Use Limits under RCW 90.94.20 and 90.94.030. Third Bullet. The first sentence "Homeowners are still limited to using no more than 5,000 GPD for domestic use and one-half acre..." Please delete "and one-half acre" from this sentence as RCW 90.94 is for domestic use.

14) 7. Planning under RCW 90.94.020 and 90.94.030. Footnote 7. The Final Guidance for Determining NEB is due July 2019. Since the WRIA1 rule making is expected June 2020 (earlier than the August 2020 deadline), Ecology could use the Final instead of the Interim. This would be preferable due to any perceived differences between the two.

15) 7. Planning under RCW 90.94.020 and 90.94.030. Bullet 1. Disagree with Ecology recommendation that "consumptive use as a surrogate for consumptive impact to eliminate the need for detailed hydrogeologic modeling...". Regardless of cost, best available science is needed to substantiate findings.

16) 7. Planning under RCW 90.94.020 and 90.94.030. Bullet 2. "RCW 90.94.020 and 90.94.030 have various references to how plans and plan updates are to project, offset or account for "water use". Ecology interprets these subsections... to relate to the consumptive water use of new permit-exempt domestic groundwater withdrawals that come on line during the twenty-year planning horizon." Please clarify what a new withdrawal is.

17) 7. Planning under RCW 90.94.020 and 90.94.030. SEPA. Please provide the law cite for the non-project SEPA analysis requirement for Ecology to adopt a plan or plan update.

18) 7. Planning under RCW 90.94.020 and 90.94.030 Acceptable projects. In other locations in this document there is reference to new water use, not specific to new permit-exempt wells. Please clarify.

19) 7. Planning under RCW 90.94.020 and 90.94.030. Plan approval, review and adoption. For plan/plan update review: Bullet 2. "Ecology will not consider a draft plan or draft plan update or portions thereof which were not approved by the planning group." Please clarify. WRIA1 Planning Unit approved Technical Documents and portions of the Plan Update. These documents should be considered by Ecology although the above statement indicates Ecology will not, even though reputable firms produced the technical documents at some cost. This seems wasteful of taxpayer dollars and shortsighted.

20) 7. Planning under RCW 90.94.020 and 90.94.030. Plan approval, review and adoption. For plan/plan update adoption: Bullet 3 and 5. Please provide the definition of "reasonable time" in the sentence regarding Ecology time for actions. Please clarify that Ecology NEB determination occurs after approval of the plan/plan update locally.

21) 7. Planning under RCW 90.94.020 and 90.94.030. Plan approval, review and adoption. For plan/plan update adoption. Bullet 6. Please cite what authority allows "Planning groups may at their discretion opt to identify projects in their plans that offset water use and anticipated effects beyond those associated with new consumptive water use initiated over the next 20 years". This direction goes beyond ESSB6091 and the RCW.

22) 8. Rulemaking under RCW 90.94.020 and 90.94.030 Bullet 4. "Ecology will not write a plan update for WRIAs identified in RCW 90.94.020." Will the local WRIA planning groups be required to update their Watershed plans since Ecology is not doing it? If so, would it be done after Rulemaking is completed?

23) 9. Foster pilot projects. Third paragraph. "...Ecology will assess whether the applicants have properly followed the established mitigation sequence, rather than applying the traditional test for

impairment and availability of water subject to senior instream flow water rights and closures." Please cite authority for using mitigation sequence to assess rather than the traditional test. In using a different approach than standard, assessments of different projects will not be comparable, and possibly may raise questions on the assessment itself.