



MUCKLESHOOT INDIAN TRIBE

Fisheries Division

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June 7, 2019

Mary Verner
Manager
Water Resources Program
Washington Department of Ecology
PO Box 47600
Olympia WA 98504-7600

RE: POL-2094 Draft - Streamflow Restoration Policy and Interpretive Statement

Dear Ms. Verner,

Thank you for the opportunity to comment on this Policy pertaining to ESSB 6091 as codified in RCW 19.27.097 and RCW 90.94. We appreciate all the hard work and effort the Ecology team has put into this document to clarify your agency's position on this legislation. We urge Ecology to keep in mind the co-management relationship between the State and the Muckleshoot Tribe and to protect tribal treaty rights in the adoption of this policy as well as the watershed plans. Our comments and suggested edits on POL-2094 are shown below for your consideration.

Definitions, p. 2

The definitions are helpful, but we caution against including Action and Impact in the list. These are ubiquitous words and attempting to define them within the context of 90.94 will only lead to confusion as well as making it quite difficult for the author of the plans. For example the word "Impact" as defined here makes interpretation of the statements under Foster pilot projects on p. 10 and 11 of the policy quite confounding when applying the proposed definition to them..

Applicability, p. 4

The paragraph at the bottom of the page that starts with "If an applicant . . ." referring to an applicant not having to comply with the requirements of 90.94; requires a citation and explanation of how Ecology determined this.

The next paragraph starting with “Chapter 90.94 RCW supersedes existing case law and rules pertaining to the issuance of building permits and new domestic permit-exempt well water use” is of concern. Which rules and case law are superseded besides the Hirst decision? Contrary to this statement, *Ecology v. Campbell and Gwinn* is mentioned on p.6 as still applying. Further clarification and justification of Ecology’s view of the legal scope of 90.94 RCW is needed.

Local Government Obligations, p.5

We believe that Sec. 101 (2) of ESSB 6091 amending RCW 19.27.097 should be included here as well; i.e., that a county or city may impose a requirement on building permits to connect to an existing public system.

Chapter 90.94.203(4) (vi) (C) requiring an applicant to manage stormwater runoff on-site to the extent practicable by maximizing infiltration by considering LID techniques, should also be added here.

Perhaps these two bullets could be included elsewhere in the POL-2094 if they are not considered to be obligations; however, they are important considerations for local governments and for watershed plans and are not mentioned in the draft policy.

Planning under RCW 90.94.02 and 90.94.03, p. 6

The Minimum plan/plan update requirements section should also include or reference all the subsections under 90.90.03(3) (f) that may be included in a plan so committees don’t lose sight of them. For example, (f) (iii) allows for specific conservation requirements and (f) (iv) mentions “other approaches to manage water resources”.

Please feel free to contact me at 253-876-3127 or Carla.carlson@muckleshoot.nsn.us for further clarification or questions.

Sincerely,



Carla Carlson
Water Resources Analyst

Cc: Kasey Cykler, Department of Ecology