



June 7, 2019

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Re: Comments on the Draft Final Guidance for Determining Net Ecological Benefits under the 2016 Hirst Decision

Thank you for the opportunity to provide some comments on the Draft Guidance. Trout Unlimited is providing the following comments for your review and consideration.

**General Comments:**

1. The guidance does not address how DOE will expect NEB to be implemented once the plans are adopted. This should be addressed. At a minimum, DOE needs to set expectations that the specific projects DOE reviews and approves to determine that a plan will “pass” DOE’s NEB review will actually get implemented. DOE needs to set expectations that these projects will have some sort of performance monitoring because the goal of this effort should be to achieve instream outcomes.
2. The guidance outlines how planning units can define/calculate NEB, but it does not clearly describe how DOE will evaluate the planning unit’s NEB determination. More clarity on this should be included.
3. Increased withdrawals by many wells during short periods (summer and fall months) may produce a pulse of impacts that could be additive at the sub-basin scale. Critical low-flow periods and the potential for withdrawals to exert a disproportionate impact during them should be highlighted as an important consideration during the evaluation of impacts from new consumptive water use.
4. The language under Section **3.2.3.5 Describe and Evaluate Projects for their Offset Potential** appears to discourage mitigation measures beyond those minimally stated within the statute. Planning groups should be encouraged to at least contemplate incorporating watershed enhancements that may address ecological issues exacerbated by domestic permit-exempt well impacts and potentially mitigate for impacts beyond those stated by RCW 90.94 and provide additional assurance that streamflows and ecological integrity will be maintained.

## Monitoring

1. The guidance points out multiple limitations in regards to monitoring on pg. 25 of the document. This ends up coming across as discouraging efforts to monitor outcomes. In addition to describing limitations, the guidance should provide instruction on ways monitoring could be successfully done. Showing net ecological benefits prior to or during project completion (short- and long-terms) will require significant monitoring. The policy guidance should provide direction on asking project proponents about performance monitoring.
2. NEB guidance implies monitoring impacts from wells or benefits from offset projects is not technically feasible and should not necessarily concern planning groups. Ecology (as the administrator of water rights) should lead and require that, at the least, the project benefits (e.g. seasonal streamflows) are able to be realized and protectable even if impacts from exempt wells are not easily identifiable, temporally or spatially.
3. The NEB guidance uses the term “reasonable” or “reasonably” in multiple locations. Ecology may provide an example of what they will consider “reasonable” in the given context.
4. Due to the large degree of uncertainty in predicting and offsetting domestic permit-exempt well impacts, and the limited timeframe to develop viable projects, adaptive management and monitoring is needed to ensure the projects actually are helping mitigate.

## Climate Change Impacts

1. NEB guidance falls short because it does not provide for explicit climate change considerations. Given Ecology’s involvement in efforts designed to address climate uncertainty in Washington State, the guidance should provide direction on how NEB should be considered under a generally accepted climate model for a given WRIA. The NEB guidance should suggest that planning groups, in consultation with local experts, consider climate change models and impacts as part of their NEB determination.

Please contact us if you have any questions,

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

Lisa Pelly, Director, Trout Unlimited, Washington Water Project