

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: Draft Final Guidance for Determining Net Ecological Benefit, May 6, 2019

Dear Ms. Verner,

Thank you for the opportunity to comment on the Draft Final NEB Guidance document. 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 evaluation of NEB determinations in watershed plans under RCW 90.94.030 and in the review of pilot projects under RCW 90.94.090. Our comments are shown below for your consideration, but at this time, we are not able to provide comments on the Appendices to the document.

3.1 Definitions

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. Perhaps changing them to "Plan Action" and "Plan Impact" or something similar to separate them from their generally applied definitions would be helpful.

3.2.2 Minimum Geographic, Hydrologic, and Temporal Requirements

We recommend adding the word "subbasin" to the first sentence: "NEB determinations will be conducted at the WRIA <u>and subbasin</u> scale ". For example, in WRIA's 8, 9, and 10, the consumptive use estimate from permit exempt well is likely to be a small number in terms of volume, and it may be difficult to quantify on such a large scale as the WRIA.

3.2.3.2 Delineate Subbasins

Planning at the subbasin scale to determine impacts that adversely affect instream resources with a documented presence of <u>only</u> ESA listed salmonid species is not adequate. For example, coho salmon utilize tributaries and are not listed but have declined and are an important species to the

Tribe. Additionally, documented presence is too low of a bar for restoration purposes. Restoration to historically presence and numbers should be the goal. In the context of the Culvert Case, the bar is not fish presence or fish-bearing, due to the blocking of streams by culverts or other impediments like temperature. Habitat restoration potential to support salmon populations should be the criteria.

3.2.3.4 Evaluate Impacts from New Consumptive Water Use

The first paragraph refers to the term "steady state" for planning groups to use to base their new consumptive use impacts on. We believe it is also necessary to consider timing as well. For example, depending on many factors, a well or wells could impact streamflow on a much shorter time scale and at a higher magnitude than occurs during steady state. After all, we don't know how long a well extraction could take to impact a surface water body and certainly don't advocate for conducting transient groundwater modeling for this effort. Therefore, a conservative approach in terms of resource protection should be undertaken where applicable.

The second paragraph also mentions fish presence as an important factor. As stated above, it is important to consider salmon habitat restoration potential rather than existing presence.

3.2.3.5 A. Project Description

Bullet #5 should also include the performance goals and measures expected for the long term.

3.2.3.5 B. Examples of Projects-Other Water Offsets Projects

We caution against promoting managed aquifer projects without also considering the uncertainties associated with this type of project. In the Puget Sound Region, glacial activity has resulted in complex hydrogeological conditions. Water that is diverted from a stream and infiltrated in uplands may or may not return to the same stream or reach expected. The timing is also an issue. There is no guarantee it will return to the stream when desired or expected. Also we would like to discourage the idea that any flow above a statistically line, like the 10% duration exceedance, is "excess", available water". Those flow events could provide flow to side channel or bars that provide overwintering refuge for juveniles. High, redd scour producing events can be detrimental, but they cannot always be accurately predicted to be a regulation tool or to base expensive infrastructure structures on. We don't agree with assertions that high flows are necessarily "hydrologically excess" and are especially concerned about the opening of closed streams and rivers and establishment of an instream flow; particularly using the updated Toe-Width method as has been suggested. Managing high flow for aquifer recharge or other possible uses needs to be carefully considered and evaluated and uncertainties taken into account.

Sec. 101 (2) of ESSB 6091 amending RCW 19.27.097, specifies that a county or city may impose a requirement on building permits to connect to an existing public system. We believe that where this is applied in a watershed plan and depending on factors associated with the certainty of implementation and the public water supply source, that it could be considered as a water offset project.

3.2.3.5 B. Examples of Projects- Non-Water Offset Projects

These projects should also be focused on achieving NEB on all important salmonid species, not

just threatened or endangered species.

Land acquisition should also be considered as Non-Water Offset Project, depending on the situation, along with the purchase of development rights, or easements. In the Tribe's heavily urbanized watersheds, any remaining undeveloped or forested lands should be protected to maintain the functioning hydrology of the basin. Strategic land acquisition falls within the category of "other approaches to manage water resources" as specified in 90.94.03(3) (f)(iii). Additionally, most streamside restoration projects will involve land acquisition.

3.2.4.1 General NEB Methods and Considerations

We are concerned that in the Tribe's WRIAs, which are heavily impacted and urbanized as well as generally "built-out" in terms of permit exempt wells,; projects could be valued lower than others statewide because of the likely small number of new wells. We believe that the selection criteria for projects to be approved by Ecology in watershed plans take this into account and perhaps weigh them more heavily because of the existing degraded condition and the importance of increasing even a small amount of habitat. Also, projects that help increase prey for the Southern Resident Killer Whale population should also be highly valued. For example, this Orca population has demonstrated a preference for Green River Chinook.

3.2.4.2 Specific Elements of an NEB Evaluation

We agree with the approach of planning groups applying a safety factor to address uncertainties, and are heartened by Ecology supporting this approach.

We appreciate all the effort that Ecology has done in drafted this Guidance and look forward to continuing to work with you in the planning effort. Please feel free to contact me at 253-876-3127 or <u>Carla.carlson@muckleshoot.nsn.us</u> for further clarification or questions.

Sincerely,

Carla Carlo

Carla Carlson Water Resources Analyst

Cc: Annie Sawabini, Dept. of Ecology