

Stevens County

Please see the attached comments. Thank you

June 4, 2019

Comments Submitted Online Through Ecology's Public Comment Form

Annie Sawabini
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Comments Draft Final Guidance for Determining Net Ecological Benefit

Dear Ms. Sawabini:

We are submitting this comment letter because we have concerns about Ecology's Preliminary Draft Final Guidance for Determining Net Ecological Benefit ("Draft Final Guidance").

Stevens County includes land within the Little Spokane Watershed (WRIA 55) and Colville River Watershed (WRIA 59). Under RCW 90.94.020, Stevens County, as a local government in coordination with other interested entities, is required to develop a Watershed Plan Addendum to offset potential impacts to instream flows associated with permit-exempt domestic water use in WRIAs 55 and 59. Stevens County is actively participating in the development of Watershed Plans in WRIAs 55 and 59. The WRIA 59 Watershed Management Partnership, of which Stevens County is a member, requested review of the WRIA 59 Watershed Plan Addendum under Ecology's Interim Guidance on Net Ecological Benefit. On April 4, 2019, Ecology recognized that due to the progress of the WRIA 59 process, Ecology would review the Watershed Plan Addendum under the Interim Guidance so long as the Addendum is submitted by December 31, 2019. The WRIA 55 process will likely continue through 2020 and be evaluated under the Final Guidance for Determining Net Ecological Benefit.

We submit this comment letter because we believe the Final Draft Guidance is inconsistent with the Legislature's intent and fails to recognize time and budget constraints.

I. The Draft Final Guidance must be consistent with RCW 90.94.020.

Ecology cannot exceed its authority under RCW 90.94.020. We respectfully offer a number of needed changes to align the Final Draft Guidance with the statute. Specifically, the Draft Final Guidance needs to be amended to remove the adaptive management obligations and avoid an overly prescriptive planning unit process.

Planning units are required to update the Watershed Plan to offset potential impacts from permit-exempt water uses and do not have funding for ongoing actions. In RCW 90.94.020(2), the Legislature required "initiating governments and the planning units" to review watershed plans "to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to

improve watershed health . . .” The Legislature consistently used the term “identify” as the planning unit’s task. The Draft Final Guidance includes a provision for an adaptive management element to “bolster[] the plan’s reasonable assurances.” Sec. 3.2.3.5.E. RCW 90.94.020(4)(b) requires a Watershed Plan Addendum to include “those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use.” The statute does not require an adaptive management plan nor does it provide funding for implementation of an adaptive management plan. Therefore Section 3.2.3.5.E of the Draft Final Guidance should be removed.

Planning units are required to invite and collaborate with Tribes with usual and accustomed harvest area in the WRIA to develop the Watershed Plan Addendum, not initiate consultation. RCW 90.94.020(3) states, in pertinent part, that “the lead agency shall invite a representative from each federally recognized Indian tribe that has a usual and accustomed harvest area within the water resource inventory area to participate as part of the planning unit.” However, the Draft Final Guidance seems to confuse the process and state that a planning unit “should consult with local tribal and WDFW biologists to determine the critical low flow period in those reaches under the planning group’s evaluation.” Sec. 3.2.3.5.C. Consultation with Tribes is a formalized process and is not required under RCW 90.94.020. The Legislature directs planning units to invite participation not to initiate a formal consultation process. Therefore, Section 3.2.3.5.C of the Draft Final Guidance should be revised to remove the term “consult.”

Planning units are required to identify projects to improve watershed health, not provide a ranked list. The statute provides that there are “highest priority” and “lower priority projects” for planning units to consider. RCW 90.94.020(4)(b). Ecology’s Draft Final Guidance prescribes that “Watershed plans will organize projects into a list of projects ranked in order of most to least project benefit contributing to achieving NEB.” Sec. 3.2.3.5.D. Ecology’s Draft Final Guidance is overly prescriptive because it limits the planning unit from discussing how different types of projects provide benefits to the watershed. For example, coupling a water acquisition project with a habitat project to provide an overall net ecological benefit. Requiring planning units to rank all projects limits discussions of how different projects coupled together can provide effective offsets.

II. Draft Final Guidance Needs to Recognize that Not All Watersheds Have the Same Salmon Recovery Planning Obligations.

Ecology’s Draft Final Guidance focuses on salmon recovery without recognizing that not all watersheds are similarly situated on anadromous salmon recovery obligations. Stevens County encourages Ecology to include additional language in the Draft Final Guidance recognizing that some watersheds planning under RCW 90.94.020 do not have anadromous salmon recovery obligations. The Colville River, for instance, has a natural barrier for migrating anadromous fish at Meyers Falls. Therefore, Ecology should include “as applicable” language in the Draft Final Guidance to differentiate the obligations of watersheds.

III. The Draft Final Guidance Needs to Recognize Time and Budget Constraints.

Ecology’s Draft Final Guidance must include language recognizing the time and cost constraints of developing a Watershed Plan Addendum. Under RCW 90.94.020, the planning unit must develop, approve and submit the Addendum and Ecology must complete its net ecological benefit review by February 1, 2021. . The Draft Final Guidance, issued 18-months into a three-year process, fails to encourage planning units to rely on existing data and tailor the time and scope of additional analysis. Ecology’s Draft Final

Guidance should encourage the planning units to rely on the technical reports developed through the watershed planning process.

IV. Conclusion

Stevens County is actively working to comply with the obligations under RCW 90.94.020 and the Growth Management Act. Stevens County has a unique perspective in complying with RCW 90.94.020, and encourages Ecology to undertake a collaborative approach that recognizes the Legislature's intent, time and funding. We look forward to working with Ecology to meet the obligations of Chapter 90.94 RCW in both the Little Spokane River Watershed and Colville River Watershed.