King County Department of Natural Resources and Parks

King County Department of Natural Resources and Parks comments are contained in the attached letter.

King County
Department of Natural Resources and Parks
Director's Office
King Street Center
201 S Jackson St, Suite 700
Seattle, WA 98104-3855

September 6, 2019

Rebecca Inman
Department of Ecology
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: King County Comments on Streamflow Restoration Competitive Grants – Guidance for Project Applicants

Dear Ms. Inman:

Thank you for the opportunity to comment on the Washington State Department of Ecology's (Ecology) *Streamflow Restoration Competitive Grants – Guidance for Project Applicants*. King County (County) welcomes the opportunity to seek funding for streamflow restoration projects. Such projects should readily integrate with the County Executive's Clean Water, Healthy Habitat Agenda. We offer the following comments.

Chapter 1 – Overview/Critical Grant Funding Considerations

Duty to Protect and Enhance the Quality of the Natural Environment:
Ecology should add guidance in this section that affirms and strengthens the fundamental value of natural watercourses (*i.e.* waters of the state) as a public trust resource. The legislature, by the terms of RCW 90.54.020, authorized and directed Ecology to protect these public trust resources. Whenever the waters of the state are subject to "utilization and management", Ecology must take action to protect, and where possible, enhance "the quality of the natural environment."[1] Ecology must also take action to preserve and protect the "high quality" of the water itself.[2] And, Ecology must take further action to ensure that sufficient flows are retained in rivers and streams in order to preserve "wildlife, fish, scenic, aesthetic and other environmental values, and navigational values."[3] These obligations are recognized in Ecology's relevant regulations[4] regarding

[1] RCW 90.54.020(3)
[2] RCW 90.54.020(3)(b); *see also* WAC 173-566-020(5)
[3] RCW 90.54.020(3)(a)
[4] WAC 173-566-140(3)(a)

streamflow restoration grants which require Ecology to consider project quality in relation to "[b]enefits to streamflow and instream resources." Ecology should affirm and strengthen these fundamental concepts in its critical grant funding considerations by stating with clarity that Ecology will only prioritize projects that protect, preserve, enhance, and restore natural streamflow processes and the instream resources that depend on such processes and will not prioritize projects that disrupt, disconnect, or diminish such natural streamflow processes and related instream resources.

Net Ecological Benefit:
Related to the above comment, Ecology should also add a statement to the critical grant funding considerations that highlights the requirement for actions taken pursuant to a watershed restoration and enhancement plan to "result in a net ecological benefit to instream resources within the water resource inventory area."[5] This requirement for yielding net ecological benefit reflects and affirms the fundamental values described above regarding how projects funded by Ecology must protect and enhance the quality of the natural environment. Ecology should make clear that the requirement for net ecological benefit applies comprehensively across the grant program, including at the individual project level.

Relation to Other Environmental and Land Use Planning Laws:
The County has worked diligently to preserve urban growth area (UGA) boundaries in order to honor the intent of state and regional growth management laws and policies. One perverse outcome that may be facilitated by Ecology's streamflow restoration program is the funding of projects that offset future development and water use in unincorporated areas in ways that violate the intent of state and regional growth management laws and policies.[6] For example, an upgradient jurisdiction might faithfully implement its UGA boundaries, work to decommission permit exempt wells that are located outside of the UGA, and connect the former well users to local public water system in order to restore groundwater only to see that restored groundwater subsequently be deemed available for withdrawal in a downgradient jurisdiction that either fails to maintain its UGA boundaries or allows unsustainable development outside of the UGA boundary. Ecology should address this potential perverse outcome conceptually within the critical grant funding considerations by adding a statement to the effect that Ecology will expect applicants to exercise due diligence for developing only project applications that conform with the intent of the Growth Management Act, the Shoreline Management Act, and other comprehensive planning laws, regulations, and policies.

Meaning of "Local Potential":
Ecology stipulates that "[p]rojects must tailor restoration actions to local potential." It would be helpful to have added description regarding the scope of meaning for the term "local potential". The County interprets "local potential" to refer to potential natural ecological and streamflow

[5] RCW 90.94.030(3)(c)
[6] *e.g.* RCW 36.70A and allocation of population targets through agencies such as Puget Sound Regional Council.

conditions existing on or nearby the site which would be the subject of the restoration actions. The County does not interpret it to include consideration of local social, economic, or political conditions. The County recommends that Ecology insert "local ecological and streamflow potential" as adjectives to describe the scope of meaning for this term.

Chapter 2 – Application Consideration for Project Types

Water Storage:
Ecology's guidance construes the meaning of "water storage"[7] much too narrowly by depicting potential projects to consist of only man-made actively-managed structures that artificially recharge groundwater as opposed to naturally-formed passively-managed systems that naturally recharge groundwater. Restoration of natural stream, hyporheic, and riparian systems can result in quantifiable in situ water storage benefits.[8] Accordingly, stream restoration must be considered as a viable storage alternative to new water storage infrastructure and Ecology, in this section, should therefore expressly identify and recognize stream restoration as a type of project that is potentially eligible for funding.

Ecology should go further and specifically recognize natural processes that contribute prominently to stream restoration, including but not limited to: upland forest retention, wetland retention, beaver dam/pond retention, riparian storage, floodplain reconnection, and hyporheic reconnection as projects that are potentially eligible for funding. The hydrologic processes that occur when streams are altered by these natural processes serve to: connect main channels with side channels and oxbows; reduce high flows during flooding; maintain low flows during dry periods; lower water temperatures; control erosion and sediments; improve water quality; and provide spatial structure for habitat that is critically important for biodiversity and the survival of endangered species. Ecology must embrace these processes as proven methods for stream restoration and water storage.

Conversely, Ecology should make clear that any instream water storage project that involves a new man-made dam or other impoundment is not intended to be included hereunder as a potential project. The overwhelmingly negative impacts to streamflow and instream resources caused by such dams and impoundments are well established.[9] No such structure could meet

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[7] WAC 173-566-210

[8] Stream Restoration as a Viable Alternative to New Water Storage Infrastructure in the Upper Columbia Basin, Dickerson-Lange *et al*, July 17, 2017; Mission Creek, Phase I Assessment, Dickerson-Lange *et al*, May 12, 2017; http://naturaldes.com/

[9] In addition to the direct impacts on hydrograph, streamflow, stream habitat, and water temperature, instream dams and impoundments have recently been shown to also have negative indirect impacts to stream chemistry and greenhouse gas emissions (see e.g., Deemer, Bridget R., et. al. Greenhouse Gas Emissions from Reservoir Water Surfaces: A New Global Synthesis. In BioScience, Volume 66, Issue 11, 1 November 2016, Pages 949–964.)

Ecology's statutory requirements to protect and enhance the quality of the natural environment[10] or to yield net ecological benefit.[11]

Watershed Function, Riparian and Fish Habitat Improvement:
Ecology asserts that the projects included in this "[watershed function, riparian and fish habitat improvement] type generally do not increase streamflow." We respectfully disagree. Our knowledge of natural history informs us that natural stream, hyporheic, riparian zone, and floodplain systems provided robust spatial structures that sustained water storage and streamflow throughout time. All of the potential project types identified by Ecology in the guidance are ultimately human attempts to emulate these natural hydrologic storage systems. Functionally, all of the potential project types are intended to result in enhanced storage and delayed release of precipitation. However, because of limitations in our scientific understanding and monitoring methods some potential project types are more subject to measurement and quantification than others. Accordingly, Ecology should correct its characterization of watershed function/habitat projects by stating that the storage and streamflow functions that are enhanced by projects of this type have not yet been sufficiently studied so that we can provide quantifiable measures of benefit with the same level of certainty as we can from other types.

Environmental Monitoring:
Ecology identifies "stream gauging and groundwater monitoring" as two monitoring types that are eligible for funding. Although these references impliedly include the monitoring of interaction amongst and between these two water bodies, Ecology should add an express reference regarding monitoring of stream-groundwater interactions to assure that such monitoring is eligible for funding. The County has found that a more robust analysis of stream-groundwater interaction can help determine where groundwater levels are substantially depressed as a result of groundwater pumping. From this determination the County could run scenarios for how best to turn "losing" reaches of streams (where surface flows seep out of the channel, exacerbating low instream flows) into "gaining" reaches (where groundwater is supplementing instream flows). Development of three-dimensional groundwater-surface water models could enable the County to better identify and locate the specific joint management actions that would be needed to resolve low flow conditions amongst the various land managers who implement watershed protection, flow regulation, surface water withdrawal, groundwater pumping, and floodplain restoration functions.

Chapter 3 – Applying for Funding

Generally:
The County finds Ecology's evaluative structure and scoring criteria to reasonably and appropriately reflect the intentions of ESSB 6091 and to provide a rational and comprehensive

[10] RCW 90.54.020(3)
[11] RCW 90.94.030(3)(c)

approach for evaluating potential streamflow restoration projects. However, on review of the draft, the County found several items that would benefit from adjustment, clarification, and added detail.

The County found that the distribution of priority points between the seven Scoring Criteria sections is in need of adjustment. Scoring Criteria 3, 5, and 7 are overweighed. Scoring Criteria 2 is significantly under weighed. Each of Criteria 3 – Project Budget, 5 – Project Scope, and 7 – Additional Considerations are approximately 10% of the total weight individually and 30% collectively. Criteria 2 – Project Benefits is approximately 12% of the total weight. The County thinks Criteria 2 – Project Benefits should be emphasized and have approximately the same weight as the three other criteria combined. Accordingly, five points should be deducted from each of Criteria 3, 5, and 7 and the 15 points that are set off should all be added to Criteria 2. We believe increasing the weight or value of Project Benefit Criteria, will prioritize projects that deliver wet water, and will better reflect the statutory directives in chapter 90.94 RCW.

The County's further detailed proposals for clarification and addition are provided below.

Scoring Criteria – 1. Funding Priorities:
Criterion 1.1 awards priority points for projects that are either "identified in an RCW 90.94.020 or 90.94.030 WRIA plan that has been adopted by Ecology" or identified "through a rulemaking process to meet the requirements of RCW 90.94.020 or 90.94.030." The process of either adoption of a plan or rule-making are unlikely to occur earlier than mid-2021 and very likely 12 to 24 months later than that in the five WRIAs in the County. As a result, projects in all five County WRIAs cannot be awarded points under Criterion 1.1 for the next 2-4 years. Ecology should provide a provisional rule to allow for award of priority points under Criterion 1.1 during the interim period when WRIA plans are being developed and related rules are being promulgated with special attention paid to any project that is reflected in a salmon recovery plan or other adopted County plan.

Scoring Criteria – 2. Project Benefits:
Criterion 2.1 prioritizes funding based on a finding of "need" for a project. The County is concerned by the generic depiction of a "local problem" being the basis for finding "need". These generic references leave open the prospect of prioritizing *de facto* mitigation projects that would enable local planning jurisdictions to chronically allow or incentivize growth in areas located outside of its designated UGA which would likely include establishment of permit exempt wells as the water source. The County urges Ecology to develop some additional language or guidance for Criterion 2.1 that makes it clear that the determination of "need" must not be self-induced by a planning jurisdiction so as to serve to enable irresponsible comprehensive planning that simply transfers and extends today's problem into the future. Such a process would serve to perpetuate the historic mistakes that have created the need for this streamflow restoration process in the first place and would only delay us from resolving our problem thus placing the burden for resolving the problem onto future generations. Ecology must

avoid allowing the determination of "need" to prioritize projects that ultimately induce local jurisdictions to engage in chronic irresponsible planning.

Criterion 2.2 prioritizes projects that align with watershed and community planning processes. Although this approach implies that such processes are aligned with the requirements of the Growth Management Act and Shorelines Management Act, different planning jurisdictions apply those statutory requirements differently. As a result, there can be divergent plans between two jurisdictions that occupy one watershed with one or more integrated streamflow subbasins. The community planning rules of a less restrictive jurisdiction should not be given priority for a project that could incentivize development and permit exempt well drilling in locations outside of the UGA. Award of such priority would be particularly perverse if it ultimately resulted in perpetuation of low streamflows or dewatering of robust streamflows in stream segments located in a more restrictive neighboring jurisdiction. Accordingly, when evaluating Criterion 2.2, Ecology must interpret "community planning" to include the plans of all planning jurisdictions within a watershed and not just those of a less restrictive jurisdiction.

Scoring Criteria – 3. Project Budget:
Criterion 3.2 measures whether a proposed project is cost effective. This measurement is based on evidence of either "low", "reasonable", or "high" "relative cost". No guidance is provided, however, regarding either the source or nature of the comparative values that Ecology will utilize to determine "relative cost". The County is concerned that Ecology will utilize statewide cost/benefit criterion that doesn't take into account the higher costs of implementation in urban watersheds. In response to this concern, the County requests that Ecology take into account the unique characteristics of each watershed because governments with highly urbanized watersheds have different challenges, different opportunities, and different cost structures than those with less developed watersheds. "Relative cost" should be evaluated against other projects that are similarly situated with regard to urban v. rural cost criterion.

Criterion 3.2 references "benefits" without discussing the principles or methods regarding how such benefits will be assessed. Natural resource restoration assessment methods commonly assess benefits based on a baseline measure of historic or contemporary conditions. Such methods routinely ignore or underestimate the benefit of avoidance, minimization, and preservation actions. The amount of underestimation is pronounced in areas subject to intense and rapid growth and development. In order to avoid underestimating the benefit of habitat and streamflow preservation actions, Ecology should develop interpretive guidance for this Criterion that recognizes and takes into account the benefits preserved by avoiding and minimizing imminent development actions, with particular focus on areas that include critical habitat for endangered species.

Scoring Criteria – 4. Project Durability and Resiliency:
Ecology should expressly recognize Ecology's statutory obligation to protect and enhance the natural environment[12] by adjusting the parenthetical reference to "affected natural process" included in subpart 4.1 from being only an example of one way to "tailor" benefits to a location, to instead being a required standard for such "tailoring". To accomplish this simple but important adjustment, Ecology should recharacterize the parenthetical by deleting ~~*e.g.*~~ and inserting *i.e.* in its place.

Ecology prioritizes applicant planning for "uncertainties and risks" at Criterion 4.4. Ecology determines award of priority points based on evidence that the "uncertainties have been adequately identified and evaluated". This standard is incomplete. The standard should be extended to require that uncertainties must be not only "identified and evaluated", but also "addressed". And, within the context of project durability and resiliency, Ecology should develop interpretive guidance for this Criterion that finds proven natural processes (*e.g.* forest retention, wetland retention, beaver dam/pond retention, riparian storage, floodplain reconnection, and hyporheic reconnection, *etc.*) meet the standard for "addressing" uncertainties and risks.

Ecology prioritizes project resiliency at Criterion 4.5 and presents this concept within the context of climate change. Ecology determines award of priority points based on evidence that the applicant "considered climate change and drought resilience." This standard is simultaneously weak and ambiguous. The standard should be strengthened and clarified by requiring that the design either implement proven strategies or implement strategies that have endured rigorous scientific and engineering review. And, in the context of climate change, Ecology should interpret its revised standard to include natural processes (*e.g.* forest retention, wetland retention, beaver dam/pond retention, riparian storage, floodplain reconnection, and hyporheic reconnection, *etc.*) that have proven over time to be resilient to drought and other extreme climatic conditions.

Scoring Criteria – 6. Applicant Readiness to Proceed, and Project Monitoring:
Ecology incorporates a vague evidentiary standard into Criterion 6.3 that needs clarification. In order to receive priority scoring for Criterion 6.3, the applicant must not have "concerns on file" with Ecology. This evidentiary standard (*i.e.* "concerns on file") is completely undefined. Thus, it is completely at the discretion of Ecology to determine what constitutes a "concern on file" and there is no process provided to the applicant for seeking notice or redress regarding Ecology's determination. To remedy this defect, Ecology must either provide some clarification regarding the scope and nature what constitutes a "concern on file" or provide notice and an opportunity to be heard for applicants who Ecology determines to have such a "concern on file."

[12] *Infra; see also* RCW 90.54.020(3)

Scoring Criteria – 7. Additional Project Considerations:
Ecology obliquely addresses future costs and long-term cost-effectiveness of projects at Criterion 4.3. The sustainability function evaluated at Criterion 4.3 does not, however, expressly include evaluation of future maintenance costs. As one outcome then, the sustainability of a project that relies on intensive and expensive future maintenance could be deemed equal in priority with a project that is naturally self-sustaining (in alignment with natural streamflow and floodplain processes). Ecology should address this potential inefficiency by: (a) including long-term passive maintenance as a sub-criteria within Criterion 4.3; and/or (b) including long-term maintenance cost is a consideration within Criterion 7.1.

The County looks forward to working with Ecology to implement the final guidance for project applicants in order to develop project proposals and secure funding awards to restore and enhance flows in County streams. If you have any questions about these comments, please contact Joe Hovenkotter, Tribal Liaison, at (206) 477-4985, or by email at jhovenkotter@kingcounty.gov.

Sincerely,

Christie True
Director

cc: April Putney, Director of Government Relations, King County Executive Office
Lauren Smith, Director of Regional Planning, King Cou8nty Executive Office
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