

June 27, 2024

Harrison Ashby
Department of Ecology
Climate Pollution Reduction Program
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Re: Climate Commitment Act Funds Reporting

Thank you for the opportunity to provide input on the proposed Climate Commitment Act (CCA) funding reporting rules in Chapter 173-446B WAC. The Puget Sound Partnership recognizes the importance of reporting and understanding how state investments are benefiting climate action and environmental justice and appreciate the Department of Ecology's leadership in creating the proposed rules. The Partnership submits the following comments and recommendations on the proposed rules.

- 1. Ecology should revise the proposed rules to provide clear reporting guidance for state programmatic appropriations that provided partial funding from the Climate Commitment Act accounts and partial funding from another state source, such as capital bonds.**

In the 2023-25 biennial budget, the Washington State legislature used CCA funds to supplement base appropriations for several programs. The Puget Sound Acquisition and Restoration Program—co-managed by PSP and the Recreation and Conservation Office—is one example, but many others exist. In the case of PSAR, the Washington State legislature provided \$49.050 million from the State Building Construction Account-State and \$10.115 million from the Natural Climate Solutions Account-State. The screenshot below is an excerpt from page 123 of [ESSB 5200 \(2023\)](#).

15	<u>NEW SECTION.</u>	Sec. 3063.	FOR THE RECREATION AND CONSERVATION
16	FUNDING BOARD		
17	2023-25 Puget Sound Acquisition and Restoration (40000061)		
18	The appropriations in this section are subject to the following		
19	conditions and limitations: The appropriations in this section are		
20	provided solely for projects approved by the legislature, as		
21	identified in LEAP capital document No. RCO-2-2023, developed April		
22	10, 2023.		
23	Appropriation:		
24	Natural Climate Solutions Account—State.	\$10,115,000	
25	State Building Construction Account—State.	\$49,050,000	
26	Subtotal Appropriation.	\$59,165,000	
27	Prior Biennia (Expenditures).	\$0	
28	Future Biennia (Projected Costs).	\$236,660,000	
29	TOTAL.	\$295,825,000	

The current draft of rules for Chapter 173-446B WAC does not include sufficient guidance for reporting on appropriations that include an additional fund source other than CCA funds. The definition of “appropriation” should be revised to include scenarios where a single appropriation in a budget is partly from CCA and partly from another non-CCA source. The definition of expenditure may also need to be revised. One example of an amended definition for appropriation is included below:

- (1) "Appropriation" means a single line-item of funding provided by the Washington state legislature to a state agency or other entity, as set forth in an enacted omnibus operating, omnibus capital, or omnibus transportation appropriations act, where such funding is distributed from one of the Climate Commitment Act accounts. For the purposes of the reporting required by this chapter, “appropriation” means only the portion of a programmatic appropriation distributed from one or more of the Climate Commitment Act accounts where the appropriation provided by the Washington state legislature includes both funding distributed from one of the Climate Commitment Act accounts and funding distributed from another state funding source.

In scenarios where an appropriation contains multiple fund sources, the reporting requirements in 173-446B-050 are not clear as to whether the reporting should cover all portions of the appropriation or only those funded by the CCA accounts. The Puget Sound Partnership suggests the reporting should only be required for the portion of the appropriation funded by the CCA accounts.

If the above change to definitions is made, then the rules may provide the necessary clarity. If the definition is not changed, the reporting requirements in 173-446B-050 need additional clarity.

This could be accomplished by amending subsections 1(c), 1(f), 1(g), 1(h), and 1(i) to include the language “from the CCA accounts” as a qualifier. Examples follow:

(c) What is the geographic location of the appropriation from the CCA accounts (if not reported under subsection (2) of this section)? If the appropriation from the CCA accounts is spent directly by the recipient in multiple locations, provide each location and the amount spent at each location.

(f) How much of the appropriation from the CCA accounts was expended

(g) How much and what percent of the expenditure from the CCA accounts provided direct and meaningful benefits...”

Similar changes may be necessary to subrecipient reporting in sub (2) and job reporting in (5).

2. Ecology should revise the proposed rules to ensure that reporting will track and understand how investments are benefiting Tribal treaty resources.

WAC 173-446B-050(1)(g) and (2)(g) require recipients of appropriations to provide information on how the expenditures provide direct and meaningful benefits to vulnerable populations within the boundaries of an overburdened community (hereafter “direct and meaningful benefits”). Subsection 050(3) then requires recipients to provide the methods and justifications for reporting on direct and meaningful benefits. The Partnership understands the goal of tracking this information is to articulate how state investments are addressing environmental injustices in specific locations and communities, to illuminate potential gaps in state investments, and to assess compliance with state requirements to invest at least 35% of CCA expenditures in providing direct and meaningful benefits. RCW 70A.65.030.

Since passage of the Climate Commitment Act and Healthy Environment for All Act, Puget Sound Partnership staff have engaged in many conversations, generally about the meaning and intent of these requirements and specifically how they apply to Puget Sound recovery actions. A key feature of the Partnership’s engagement on this topic is consideration of the extent to which investments that benefit salmon, shellfish, and other Tribal treaty resources should be considered as providing direct and meaningful benefits to vulnerable populations within the boundaries of an overburdened community. The Partnership acknowledges that conversations about defining terminology, updating mapping tools, and more are ongoing in many coordination forums, including the Environmental Justice Council and the HEAL Interagency Work Group.

The Partnership’s comments on this proposed rulemaking are guided by Northwest Indian Fisheries Commission Chairperson Lorraine Loomis, who wrote in an October 2020 letter to Governor Inslee (see full letter attached):

Justice for Indian tribes starts with acknowledgment of the treaties between the tribes and the United State as the supreme law of the land and for those principles

to be imbedded in the state’s regulatory framework and policies. The treaty-reserved right to harvest fish presumes that there will remain fish to harvest, and that the fish will be safe to eat. Any state and local policy decisions that adversely affect those reserved rights and resources – whether locally or throughout the region – may disproportionately impact one or more tribes whose cultural, economic, spiritual and nutritional well-being is dependent upon those resources. Therefore, environmental justice reviews need to consider both the direct environmental health impacts to tribal geographies and region-wide impacts to treaty-reserved resources. Opportunities to better incorporate acknowledgement and protection of tribal rights and resources are many...

Therefore, as it relates to this proposed rulemaking, Puget Sound Partnership reiterates our previously held position that investments that benefit Tribal treaty resources are providing direct and meaningful benefits and therefore contribute to the minimum 35% requirement and to the state’s overall understanding of investments in environmental justice.

The Puget Sound Partnership is concerned, however, that current geographic parameters and reporting mechanisms required in the proposed rule will provide an incomplete picture of actual benefits to Tribal treaty resources and will exclude an important avenue through which Washington State is investing in environmental justice. Investments that provide direct and meaningful benefits to Tribal treaty resources frequently occur in treaty affirmed Usual and Accustomed areas, outside the currently mapped boundaries of reserved Tribal lands, overburdened communities, and vulnerable populations, to which the proposed rule defers. These investments may also not be formally supported by a Tribal resolution.

Currently, the proposed rulemaking does not provide a method to show how investments benefit Tribal treaty resources. While conversations are ongoing on this issue, the proposed rule should be revised to include a pathway for reporting on investments that benefit Tribal treaty resources regardless of the project location. Developing such a pathway should be pursued through government-to-government consultation with tribes.

In addition to providing a standalone mechanism to track investments that benefit Tribal treaty resources, a recent document from the Office of Governor Jay Inslee¹—outlining a uniform pathway for prioritizing and tracking the state’s environmental funding in overburdened communities—provides additional replicable guidance for considering all investments that provide direct and meaningful benefits. While continuing to rely primarily on existing maps of overburdened communities, the Governor’s uniform approach articulates an “exception” on page 5 that states:

¹ *Uniform approach for identifying overburdened communities and vulnerable populations to direct and track investments under the Healthy Environment for All and Climate Commitment Acts*, OFFICE OF GOVERNOR JAY INSLEE, June 26, 2024, available at https://ofm.wa.gov/sites/default/files/public/budget/info/Approach_for_IdentifyingOBCs_JUNE26.pdf

Any project applicant or project proponent that indicates their project area as an overburdened community and provides rationale for how the project will create environmental benefits for vulnerable populations, regardless of whether the project is located in an area identified on the mapping tool, shall be counted as such.

The Partnership supports including a similar provision in the proposed rule to capture investments that are not located in an area identified in the mapping tool but nevertheless create environmental benefits for vulnerable populations.

In the future, if Ecology confirms that projects benefitting Tribal treaty rights are being captured by the statutory and accepted definitions of “overburdened communities” and “vulnerable populations” then any duplicative reporting requirements can be reconciled. Puget Sound Partnership staff welcome further conversation on this topic as needed.

3. Ecology should revise the proposed rules to clarify that natural climate solutions investments are not required to report on “verifiable reductions in greenhouse gas emissions.” Alternatively, Ecology should begin outreach as soon as possible to clarify how natural climate solutions investments will be expected to report.

WAC 173-446B-050 states that for each appropriation, recipients must report on the verifiable reduction in greenhouse gas emissions or other long-term impact to emissions (hereafter “verifiable reductions”). WAC 173-446B-040(1) provides a general requirement that recipients must report verifiable reductions if Ecology has approved a methodology and calculator tool. WAC 173-446B-040(2) then provides a list of expenditure categories that are exempt from the general requirement.

Puget Sound Partnership does not interpret any of the proposed exemptions in 040(2) as covering investments from the Natural Climate Solutions Account as defined in RCW 70A.65.270. Example investments from this account include ecosystem restoration, fish passage barrier removal, stormwater management, and forest health improvement. Puget Sound Partnership is also not aware of an approved methodology and calculator tool for determining verifiable reductions from these kinds of investments.

Rule language indicates that Ecology will either develop or adapt an existing methodology for different categories of expenditures. Existing methodologies may be those listed by the [California Air Resources Board approved methodologies](#). Puget Sound Partnership staff have not spent enough time reviewing the CARB approved methodologies to understand how to apply these methodologies or how applicable they may be to natural climate solutions investments being made in Washington State. Ecology should as soon as possible begin to provide information to recipients on when and how Ecology will work with recipients to identify and adapt CARB methodologies or to develop new methodologies. As it relates to reporting on the Puget Sound Acquisition and Restoration (PSAR) program, Puget Sound Partnership request a joint engagement with Ecology and the Recreation and Conservation Office to begin to clarify reporting expectations for the PSAR program.

Alternatively, if an approved methodology and calculator tools for natural climate solutions investments are not available and will not be made available in the near future, Puget Sound Partnership suggests revising the proposed WAC 173-446B-040 to exempt additional categories of investments from the required reporting of verifiable reductions or to provide a blanket exemption for all investments made from the Natural Climate Solutions Account.

One example is amending WAC 173-446B-040(2) as follows:

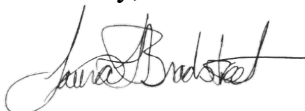
(2) Expenditures that are not required to report whether the funding will produce any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions may include, but are not limited to, those that involve only:

- (a) Building awareness in or educating a community.
- (b) Clean energy workforce development.
- (c) Conducting administrative appeals.
- (d) Conducting outreach in communities.
- (e) Conducting research.
- (f) Creating plans for future activities.
- (g) Enhancing a recipient's or other entity's capacity to fulfill its mission.
- (h) Enhancing or maintaining emergency response systems or procedures.
- (i) Hiring agency staff.
- (j) Providing technical assistance.
- (k) Training new employees, sharing knowledge among staff, or building employees' skills.

(l) Investments from the Natural Climate Solutions Account that support climate resilience as defined in RCW 70A.65.270.

Thank you again for your leadership in developing the proposed rules and for providing the opportunity to comment on this rulemaking. Please contact me for any follow up on these comments.

Sincerely,



Laura L. Bradstreet
Executive Director

Enclosure



Northwest Indian Fisheries Commission

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October 30, 2020

The Honorable Jay Inslee
Governor of Washington
P.O. Box 40002
Olympia, WA 98504-0002

Re: Tribal Involvement in the Washington Environmental Justice Task Force

Dear Governor Inslee:

The Northwest Indian Fisheries Commission (NWIFC) writes to encourage further advancements from the state of Washington regarding environmental justice, and consultation on a government-to-government basis with the tribes on these developments. We understand that the legislative directive for you to assign a tribal leader to the Washington Environmental Justice Task Force (Task Force) was unsuccessful. Of course, your office and state agencies are welcome to contact NWIFC for suggestions on tribal engagement, and we write today to recommend engagement strategies and to illustrate shortcomings in the Task Force processes.

I. Concerns about Task Force Processes

The legislation establishing the Task Force required four regional meetings. Nothing precluded the Department of Health from convening additional meetings with tribal leaders. Perhaps in doing so, the Department could have recruited the requisite tribal Task Force member and executed government-to-government consultations.

The Task Force was directed by the legislature to identify “best practices for increasing public participation and engagement by providing meaningful opportunities for involvement for all people, taking into account barriers to participation that may arise due to race, color, ethnicity, religion, income, or education level.” Best practices for tribal engagement include treating federally recognized tribes as sovereign governments rather than as a stakeholder group, which we recognize the final Task Force acknowledges. The legislative goal for model “policies for prioritizing highly impacted communities and vulnerable populations for the purpose of reducing environmental health disparities and advancing a healthy environment for all residents” should start with the same premise of sovereignty for federally recognized Indian tribes.

Although the legislature should have clearly acknowledged the sovereignty of tribal nations in crafting the proviso and setting up the Task Force, implementation of this law should have also

ensured government-to-government consultation early and often, and included tribal membership in the Task Force. However, it's important to note, that a single tribal seat cannot represent all 29 sovereign nations in Washington, and thus government-to-government consultation must be completed, at a minimum, before the completion of the report. We recommend that future revisions of the Task Force report include a chapter on treaty rights, tribal sovereignty, environmental health disparities of tribes, and best practices for agencies and future task forces regarding consultation with tribes.

II. Environmental Justice for Indian Tribes

Justice for Indian tribes starts with acknowledgment of the treaties between the tribes and the United State as the supreme law of the land and for those principles to be imbedded in the state's regulatory framework and policies. The treaty-reserved right to harvest fish presumes that there will remain fish to harvest, and that the fish will be safe to eat. Any state and local policy decisions that adversely affect those reserved rights and resources – whether locally or throughout the region – may disproportionately impact one or more tribes whose cultural, economic, spiritual and nutritional well-being is dependent upon those resources. Therefore, environmental justice reviews need to consider both the direct environmental health impacts to tribal geographies and region-wide impacts to treaty-reserved resources. Opportunities to better incorporate acknowledgement and protection of tribal rights and resources are many, with two recent examples in the areas of human health and water quality.

The Washington Department of Health acknowledges both the health benefits of fish consumption,¹ and the risks of toxins in fish.² We appreciate Washington's current opposition to a new federal rule to weaken Washington's human health water quality criteria, which would weaken criteria for 76 toxins and carcinogens. We trust that you will continue to hold the line to prevent any further erosion of Washington's water quality criteria. Doing so will reduce the level of toxins in Washington's waters and fish.

We also know that wastewater treatment plants, using all known and reasonable technology, have the capacity to remove both nutrients and other chemicals of emerging concern from discharges, a priority identified by the Southern Resident Killer Whale Task Force final recommendations for the health of the Salish Sea. Addressing these water quality concerns, as well continued work on riparian buffer protection and restoration, can help restore critical habitat elements for salmon recovery,³ an environmental justice priority for tribes.

III. Conclusion

¹<https://www.doh.wa.gov/communityandenvironment/food/fish/healthbenefits#:~:text=Fish%20is%20filled%20with%20omega,part%20of%20a%20healthy%20diet>.

²<https://www.doh.wa.gov/CommunityandEnvironment/Food/Fish/ContaminantsinFish>

³ For a current version of the NWIFC Habitat Strategy, see: <https://nwtreatytribes.org/habitatstrategy/>

Environmental justice for Indian tribes includes broad public health concerns and maintaining direct communication with individual sovereigns to understand and respond to these issues is essential. In addition, tribal consortiums exist that can be resources to the Department of Health and its environmental justice programs.⁴ Please also engage the NWIFC as a resource for environmental justice concerns as we intersect with the protection of our tribal treaty-reserved rights and the management of the resources for which we rely on. If you have any questions, please contact Justin Parker, NWIFC Executive Director at jparker@nwifc.org or (360) 438-1180. Thank you for your support of these tribal priorities.

Sincerely,



Lorraine Loomis
Chairperson

cc: David Postman, Chief of Staff, Office of the Governor
Keith Phillips, Policy Director, Office of the Governor
JT Austin, Senior Policy Advisor - Natural Resources and Environment, Office of the Governor
Molly Voris, Senior Policy Advisor - Public Health and Health Care, Office of the Governor
John Wiesman, Secretary, Washington Department of Health
Esmael Lopez, Community Engagement Coordinator, Washington Department of Health
Elise Rasmussen, Task Force Manager, Washington Department of Health
Craig Bill, Director, Governor's Office of Indian Affairs

⁴ See: <https://aihc-wa.com/>