King County

Department of Natural Resources and Parks
Wastewater Treatment Division
King Street Center, KSC-NR-5501
201 South Jackson Street
Seattle, WA 98104-3855

August 14, 2024

William Weaver
Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

RE: Draft Financial Capability Assessment Guidance – King County Comments

Dear Mr. Weaver:

Thank you for the opportunity to comment on the Washington State Department of Ecology's (Ecology) Draft Interim Financial Capability Assessment (FCA) Guidance (from now on "Ecology's Guidance" or "Guidance"). King County appreciates the two amendments made by Ecology to the US Environmental Protection Agency's (EPA) 2023 FCA: the use of state baselines instead of national and the incorporation of the Lowest Quintile Residential Indicator as an official reported metric. This comment letter addresses King County's remaining concerns with the FCA and provides suggestions to mitigate those concerns and further improve the Guidance.

King County has closely monitored the evolution of EPA's FCA methodology in the last few years. CSO Consent Decree negotiations with Ecology, the EPA, and the US Department of Justice began in 2019 and King County started preparing its FCA submission with the 2020 Proposed, the 2021 "pre-published" (later retracted), 2022 Proposed, and 2023 Final Guidance versions. King County submitted a comment letter (attached) during the EPA's FCA revision process that outlines county and clean water sector concerns about the EPA approach. These same concerns are relevant to Ecology's current development of Financial Capability Assessment Guidance for the nutrient general permit.

Summary of Concerns

1. **Expanded Financial Capability Assessment Matrix:**
    a. The Residential Indicator is the only metric that incorporates the cost of regulatory compliance and its financial impact to ratepayers, and yet it represents only a fourth of the total final score. In practice, this means that *even Residential Indicators above 100% can produce a "Low Impact" result in the final matrix*. Recommendation: Increase the weight of the Residential Indicator in the final score or make the Lowest Quintile Residential Indicator an explicit part of the final matrix.
    b. Ecology's Guidance makes a significant improvement to the Lowest Quintile Poverty Indicator (LQPI) by replacing national comparisons with state comparisons. This

improvement could go even further if it adjusted the income-related indicators (LQPI #1, LQPI #2, and LQPI #3) by cost-of-living differentials within state service areas. In high cost of living areas, the poor, as defined by federal poverty income, are poorer and the poverty prevalence measure is understated. For example, at a single poverty income level, the financial burden of meeting essential living expenses in Seattle is not comparable to what the same income can provide in Yakima. Recommendation: Use local price indices (rent data is widely available and can serve as a proxy) to adjust incomes based on their actual purchasing power.

2. **Financial Alternatives Analysis ("Checklist"):**

    a. Ecology's Guidance suggests that Customer Assistance Programs (CAPs) can address the impacts to low-income households. Unfortunately, experience with these programs has shown that they are still far from being a meaningful response to upward pressures on utility rates. Due to strict qualification criteria and difficulty to reach most renters, the access and effectiveness of these programs are severely limited.

    b. Similarly, rate structure recommendations included in the Guidance imply that rate structures are a tool to provide bill relief. In practice, the main rate structure decision for sewer utilities is whether to use fixed or variable charges (based on volume). Variable charges are assumed to benefit low-income households by giving them more control over their bills. However, this assumes without evidence that low-income households have fewer members, or that those households could or should limit essential indoor water use—which is not necessarily feasible nor desirable. In the Guidance there are also references to drinking water rate structures, which is not something that applies to sewer utilities. The inclusion of rate structures that are not applicable to sewer utilities should be removed from the Guidance.

3. **Assistance and Funding Sources.** The Guidance's funding section paints an overly optimistic picture of available funding and assistance programs.

    a. State Revolving Fund (SRF) regular allocations to the states are increasingly being redirected for Congressionally directed expenditures. Even if SRF funding remains unchanged, it is not an ideal mechanism to alleviate affordability challenges since SRF loans are ultimately repaid by all ratepayers including low-income households.
    b. Infrastructure Investment and Jobs Act (IIJA) funds are highly prescriptive and not all agencies are eligible for their forgivable loans. Income measures that average data over an entire city, county, or service area obscure the presence of smaller populations facing greater financial or other hardships.

    c. The Low Income Household Water Assistance Program (LIHWAP) is only available to clear arrearages (existing utility debt balances) to either restore service or avoid water shut-off, not "to supplement utility payments" as stated in the Guidance. The 2021 LIHWAP provides pay-off resources after late payments, interest, and penalties accrue, and does not provide any ongoing bill relief or discount related to the misalignment of low income and high sewer rates. Moreover, the LIHWAP was a temporary COVID-related program that has already expired. King County fully supports making this program permanent at the state or federal level.

Expanded Financial Capability Assessment Matrix

Ecology's Guidance summarizes three criteria the FCA seeks to evaluate: "…the feasibility of the permittee to take on the financial costs of the project by considering factors such as debt capacity of a community, affordability of wastewater utility rate increases to impacted households, and disproportionate impacts to low income and impoverished populations." These criteria are reflected in the three components of the evaluation matrices:

- Financial Capability Indicator (FCI): the ability of the agency to finance the cost of the regulation under evaluation
- Residential Indicator (RI): the sewer rate impact to the median household
- Lowest Quintile Poverty Indicator (LQPI): the current economic demographics of the community as a way to assess poverty prevalence and severity

The matrix tool adopted from the EPA results in a 50% weighting of the LQPI (which does not reflect cost impacts of potential regulation, nor reflect cost of living), 25% weighting of the FCI, and only 25% weighting of the RI, the only criterion that reflects the cost impact of the potential regulation.

The first of the two matrices is called the "Financial Capability Matrix" and combines the FCI with the RI to place the agency in one of three impact levels: low, medium, or high. The way in which the matrix "blends" both indicators together implies that the better the financial health of the agency, the lesser the financial impact to individual households. According to this logic, in a financially strong agency there is no bill impact that would produce a "high impact" result. In reality, besides slightly lower borrowing costs, there is no relationship between an agency's financial capability and its ratepayers' ability to afford higher sewer bills.

The second and final matrix is called "Expanded Financial Capability Assessment Matrix" and combines the outcome from the first matrix with the LQPI. This step gives the LQPI a 50% weight in the final outcome and means that an initial Residential Indicator considered "high impact" can still place an agency in the "low impact" category in this final step. In a very welcome move, Ecology has added the Lowest Quintile Residential Indicator to its evaluation tool, but it is not incorporated to either matrix or to the final scores. If this metric will be evaluated as an independent outcome, we would suggest the other indicators (RI, FCI, and LQPI) are independently evaluated too.

A utility could have a residential indicator of 100% and still not be classified as High Impact.

Financial Capability Matrix

FINANCIAL CAPABILITY INDICATORS SCORE	RESIDENTIAL INDICATOR SCORE		
	LOW IMPACT (BELOW 1.0%)	MID RANGE (1.0% TO 2.0%)	HIGH IMPACT (ABOVE 2.0%)
Strong (Above 2.5)	Low Impact	Low Impact	Medium Impact
Mid-Range (1.5 to 2.5)	Low Impact	Medium Impact	High Impact
Weak (Below 1.5)	Medium Impact	High Impact	High Impact

Expanded Financial Capability Assessment Matrix

FCA SCORE (RI AND FCI)	LOWEST QUINTILE POVERTY INDICATOR SCORE		
	LOW IMPACT	MEDIUM IMPACT	HIGH IMPACT
Low Impact	Low Impact	Low Impact	Medium Impact
Medium Impact	Low Impact	Medium Impact	High Impact
High Impact	Medium Impact	High Impact	High Impact

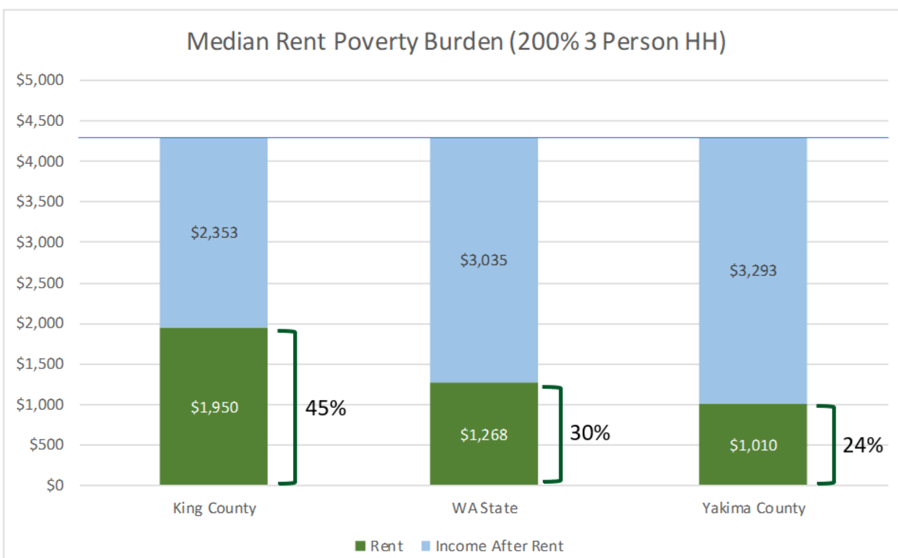
Cost-of-Living Adjustments

Ecology's Guidance states that "Here, most communities would generally appear strong against national baselines. However, because of unique state characteristics—chief among them a higher cost of living—results using national baselines may not accurately capture actual local hardship." (Page 15 sections 3.1 and 3.2). King County strongly agrees with this statement.

We also recommend that Ecology apply this same logic to income levels and poverty thresholds in the LQPI to have an apples-to-apples comparison between agencies. The Bureau of Economic Analysis of the U.S. Department of Commerce recognizes the need to make cost-of-living adjustments when comparing personal incomes between different states and metro areas, and they produce a Regional Price Parities index every year.[1] The purpose is to "better compare the buying power of personal incomes across the 50 states and the District of Columbia, or from one metropolitan statistical area to another." These data are available at the metro area level, but not at the census tract level as most of the other data that is used in the FCA Guidance. Fortunately, there are other data available at the census tract level that can be used to estimate cost of living.

The most meaningful measure to benchmark cost of living is housing. Where housing costs are higher than average, other essential costs such as food and childcare are higher as well.[2] The median rent census data can be used to make a meaningful, cost of living adjusted metric for median income, lowest quintile income, or poverty measures.

King County rent is 54% higher than the State average and 93% higher than Yakima County (highlighted as it occupies the lowest position of Regional Price Parity Metropolitan Statistical Areas in WA state). Rent data indicate the cost of living in King County is much higher than in Yakima County where the same income level is used to measure poverty. Poverty measures that are based on a single threshold are highly problematic in comparison across geographic areas unless an adjustment is made to factor the relative cost of living realities.



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[1] https://www.bea.gov/data/prices-inflation/regional-price-parities-state-and-metro-area

[2] "We find that child care expenditures for all types of care is about half the national median mortgage payment and nearly 80% of the national median rent." https://www.freddiemac.com/research/insight/20200107-family-budget-burdens

Lower income households likely select lower than median rent units when available – the Census only provides the median data for rent – the chart highlights the **relative impact of housing costs by location.*

Customer Assistance Programs (CAPs)

The guidance notes that a 2016 Ecology survey found that 116 of 295 agencies offered a discounted rate based on criteria determined by the agency. However, the Guidance should note that many of those agencies restrict assistance to seniors and/or disability status households—by far the most common qualification criteria. Of the 34 agencies served by King County all but two have some type of CAP, though 28 of them restrict assistance to seniors/disabled persons. Only six of the 34 agencies provide low-income ongoing bill discounts (not restricted to age or disability status) and only one of them has a pathway to assist multi-family residential low-income households.

King County has done extensive research to better understand the options for rate-relief and to evaluate the effectiveness of the CAPs currently in use. At best, these programs can offer relief to a segment of the intended households; at worst they can be a costly way to redistribute burdens between low-income households. These are some of the common limitations that King County has identified among CAPs within its service area, offered by our local sewer agency (LSA) partners:

- Most LSAs have a CAP, but the amount of assistance and criteria to qualify vary
  - A majority of them are only available to seniors and individuals with disabilities.
  - Almost all specifically exclude King County's wastewater treatment charge from their discount
- With few exceptions, agencies are unable to offer assistance to multi-family residential households since they have billing relationships with landlords but not with the low-income households
- CAPs tend to have low subscription rates (beneficiaries as a share of eligible households) and high administrative costs
  - If there is no external funding, these are funded by higher rates for all, including low-income households that do not participate in the program
- As independent cities and special purpose districts, the LSAs do not share resources. Smaller, poorer agencies must fund CAPs from rates paid by their own constituents. In other words, there are no cross-subsidies between agencies

There are also significant barriers related to "hard-to-reach" customers, i.e., renters, as illustrated by the following graphic.

Hard-to-Reach Customers

Customer assistance programs have historically missed multi-family households since buildings do not meter water use at the unit level, and utility accounts are held by landlords who pass the cost through either rent or a separate allocated billing to residents.

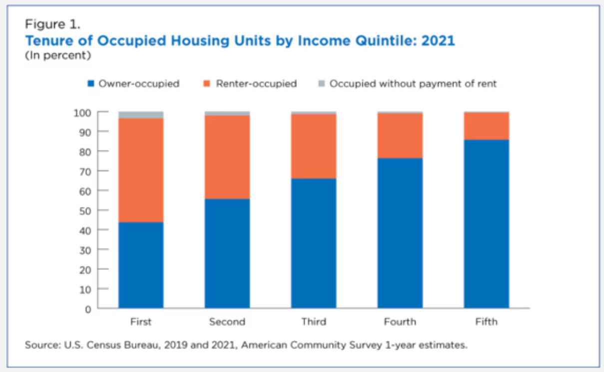
If multi-unit housing is unreached, nearly half of King County households would be excluded from the distribution of customer assistance funds.

Types of structure (Table B25024) View table

Column	King County			
Single unit	55.5%	±0.9%	557,425	±8,944.9
Multi-unit	42.9%	±1.1%	430,766	±11,268
Mobile home	1.6%†	±0.2%	15,642	±2,186
Boat, RV, van, etc.	0.1%†	±0.1%	909	±550

King County, WA - Profile data - Census Reporter

Nationwide, lower income households are more likely to rent than own a home, and there is a growing differential as you move up or down the income spectrum. Programs that do not reach multi-family renters are excluding a large portion of the lowest income households and advantaging those that hold a significant asset in their home.



Low-Income Renters Spent Larger Share of Income on Rent in 2021 (census.gov)

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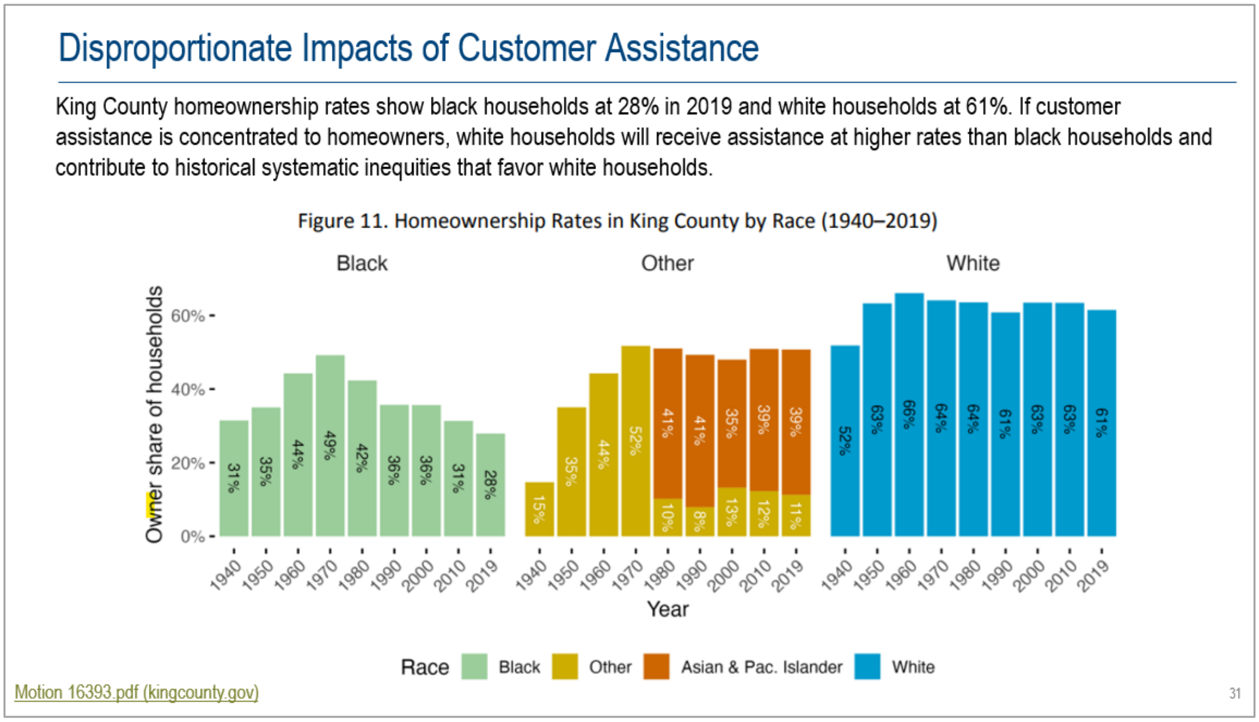
The Guidance highlights the importance to take into consideration environmental justice and disadvantaged community impacts. Existing CAPs potentially perpetuate disproportionate impacts resulting from racially restrictive covenants, redlining, and other historical race-based practices that have led to differential homeownership rates in our state and across the nation. Simply put, when CAPs are applied to owners and not renters, they disproportionately exclude people of color.



Nationwide, even the most effective CAP programs struggle with low participation rates and high administrative costs. Asking all these separate agencies to design and staff costly programs, for potentially limited impact, is not in line with economies of scale, efficiencies of piggy backing channels from existing programs (LIHEAP), or creating equitable access for low-income Washington state households. Both the state and the federal government are better positioned to create water bill assistance programs. It is encouraging that the Washington State Legislature recently approved a water affordability study to evaluate a state-wide low-income assistance program.

Funding Sources

Section 4 of the Guidance communicates an optimistic and partially misleading view of the resources that might be available to communities to fund potential compliance costs. “With a single application to Water Quality Combined Fund, Ecology can identify water quality-related opportunities, and create packages *that meet the financial needs of project applicants*.” (Page 18, emphasis added).

Concerns regarding the characterization of the three identified resources are as follows:

(1) While “prepare and plan” dollars in the Puget Sound Nutrient Reduction Grants program are important to defray the planning costs, there is no funding identified to address the potentially costly compliance investments that would follow regulation, which is the very reason for a financial capability assessment.
(2) The SRF program has been severely depleted, with a communicated expectation that the 2026 funding cycle will make available less than half of what has been available in the last three or four years. Earmarks are becoming a substantial factor in CWSRF funding since 2021 and reducing access to CWSRF in Washington state. They were suspended after 2010 and reinstated with the IIJA and 2022 funding. The new level of earmarks is substantial and severely impacting the state SRF regular

appropriations at "…just over half ($1.41 billion) of the combined SRF regular appropriations ($2.76 billion)." The May 15 Congressional Research Report, The Role of Earmarks in SRF Appropriations in the 118th Congress notes that reductions have been offset in part by IIJA funds (though IIJA is largely dedicated to specific uses, i.e., CECs, lead service lines, small and disadvantaged communities).[3]

(3) The Guidance states that LIHWAP is available "to supplement utility payments for qualified individuals." This is misleading. Not only was the program a 2021 single appropriation rather than a permanent program, but *it does not reduce the customer bill to low-income households.* The program was initiated to respond to the COVID-19 pandemic and water service shut-offs due to financial impacts related to the pandemic economic conditions. Income qualification and Community Action Agency channels were patterned after LIHEAP, but LIHEAP assists low-income customers before they accumulate utility debt. LIHWAP, in turn, provides funds to utility accounts that have arrearages for the purposes of restoring service or avoiding water shut off. It should be clear, this is not a customer assistance program as they are understood to help with the ongoing affordability of a utility bill, or misalignment of income to the bill burden. Only ongoing assistance is relevant to the challenge of bill impacts driven by regulatory costs—a one-time adjustment out of utility debt does not address long-term affordability. This reference should be removed from the Guidance.

Furthermore, even an *unlimited amount of low-interest loans* would not by itself prevent higher sewer bills from overburdening low-income households. Cheap borrowing will always be better than expensive borrowing, but it is still borrowing and needs to be paid back by keeping sewer rates higher for all ratepayers for a longer period of time.

Recommendations

1. Increase the relative weight of metrics that reflect the cost impacts to households (RI, LQRI, or others).
2. Make cost-of-living adjustments to any metric that:
    a. Compares absolute levels of household income between different service areas.
    b. Compares local household incomes against absolute income thresholds.
    c. Measures poverty based on fixed national standards.
3. Acknowledge the existing limitations to:
    a. Effectively mitigate the impact of high sewer rates to low-impact household through customer assistance programs or rate design.
    b. Meaningfully lower large utilities' cost burden from regulatory capital investments through grants and low-interest loans.

[3] https://crsreports.congress.gov/product/pdf/R/R48066

We appreciate Ecology's consideration of these comments and would welcome the opportunity to further discuss this important work. Courtney Black, Finance & Administration Manager for WTD, can be reached at coublack@kingcounty.gov or (206) 263-0524.

Sincerely,

Signed by:

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Kamuron Gurol, Division Director
Wastewater Treatment Division
King County Department of Natural Resources and Parks

Attachment