

Compendium to the WRIA 9 Watershed Restoration and Enhancement Plan

Introduction

The materials in this compendium are not part of the WRIA 9 watershed plan, which was fully approved by the WRIA 9 Committee. This compendium provides supplemental materials provided by WRIA 9 Committee members.

The documents in this compendium may provide insights on, or qualifications to, an entity's vote to approve the plan. However, these documents do not change the outcome of a vote by the WRIA 9 Committee to approve the plan.

The WRIA 9 Committee did not discuss all the documents included, and WRIA 9 Committee members did not attempt to reach consensus on the content of these materials. Any opinions expressed in the documents are solely those of the submitting entity and may not reflect the perspective or position of other members of the WRIA 9 Committee.

Contents

The documents in this compendium include:

1. Supplemental Document: Project Tracking for WRE Plans, provided by the Washington Department of Fish and Wildlife.
2. Resolution from Covington Water District
3. Resolution from City of Enumclaw
4. Letter from City of Seattle
5. Letter from Center for Environmental Law and Policy
6. Letter from Washington Department of Fish and Wildlife

A Framework for Tracking Projects and New Permit-Exempt Wells using
Salmon Recovery Portal

This document describes the elements required to track projects from a conceptual stage through completion and monitor new permit-exempt domestic well construction. Project and well tracking are an essential component of implementation monitoring and adaptive management procedures. Therefore, it is recommended that projects be tracked through planning and implementation phases to enhance the Committee's ability to conduct implementation monitoring at the sub-basin and WRIA scale, monitor grant funding, identify plan successes and deficiencies, and streamline project development.

The Committee recommends a pilot program using the Salmon Recovery Portal (SRP; <https://srp.rco.wa.gov/about>) to conduct project tracking for the streamflow restoration effort under 90.94.030 RCW. As a statewide salmon recovery tracking tool, the capacity for the SRP to allow for goal setting, hierarchical project tiers, supplemental information, and printing of automated reports makes it well-suited for tracking projects associated with streamflow restoration and salmon recovery efforts. As a statewide tool administered by the Recreation and Conservation Office (RCO) and in partnership with salmon recovery Lead Entities (LE), the SRP provides a dynamic platform to track project development, funding, and offsets.

Tracking of projects will consist of two primary phases: (1) uploading required project information from all projects included in this plan into the SRP, and (2) uploading and updating all funded projects, project reports, and completed projects into the SRP database on an annual basis. Phase 1 will be coordinated and funded by the Washington Department of Fish and Wildlife (WDFW) and implemented by trained University of Washington (UW) data stewards in collaboration with RCO staff and Washington Department of Ecology (Ecology) staff. Phase 2 project uploads will be implemented by UW data stewards in consultation with Ecology grant management, RCO, and WDFW staff. To improve harmonization of streamflow restoration efforts with ongoing salmon recovery activities, local salmon recovery LE Coordinators shall be consulted prior to initial data uploads. While input and oversight is welcomed, no commitment of additional work is required from LE Coordinators. Streamflow restoration projects not funded through the streamflow restoration grant program, will be updated by data stewards during any grant reporting to Ecology or RCO. Primary quality control measures will be performed by data stewards. Funds to support initial and ongoing costs of data steward data entry (Phases 1 and 2) will be provided by WDFW.

The Committee recommends, at minimum, the following data fields for streamflow tracking: WRIA, sub-basin, project description, funding source, estimated cost, project spatial boundaries or coordinates, project sponsor (if applicable), estimated water offset or habitat benefits (using Pacific Salmon Recovery Fund (PCSRF) metrics or reference to the PCSRF list), and target project start date. Projects with sensitive locations can be made private or those with

undetermined locations can be entered as a project boundary or defined at the sub-basin scale. New domestic permit-exempt well location data will be drawn from the Ecology Washington State Well Report database¹. Well location data will be incorporated into the SRP using point coordinates, or at the section or sub-basin scale to support implementation monitoring and adaptive management goals.

To support the implementation of the above program for tracking projects under 90.94.030 RCW, WDFW has initiated pilot projects in two 90.94.020 RCW basins: the Nisqually River Basin (WRIA 11) and the Chehalis River Basin (WRIAs 22/23). These pilots are coordinated by WDFW in conjunction with RCO, Ecology, local LE Coordinators, and the Planning Units. Intended as a proof of concept, these pilots are examining the capacity and effectiveness of the SRP to track streamflow restoration projects.

¹ <https://apps.wr.ecology.wa.gov/wellconstruction/map/WCLSWebMap/default.aspx>

**COVINGTON WATER DISTRICT
KING COUNTY, WASHINGTON
RESOLUTION NO. 4459**

A RESOLUTION moving forward with accepting the Final Draft Watershed Restoration and Enhancement Plan WRIA 9 - Duwamish–Green Watershed, November 2020 (watershed plan).

WHEREAS, the Covington Water District was part of the Watershed Restoration and Enhancement Committee that was comprised of invited representatives including tribal governments, county governments, cities, Department of Fish and Wildlife, largest non-municipal water purveyor, and interest groups;

WHEREAS, the watershed plan complies with planning requirements under RCW 90.94.030 and defined by the Final Net Ecological Benefit Guidance (Ecology 2019); and

WHEREAS, the WRIA 9 watershed plan is developed to offset the impacts of permit-exempt domestic wells to streamflows; and

NOW, THEREFORE, BE IT RESOLVED that the Covington Water District Board of Commissioners:

Adopts in its entirety, the Final Draft Watershed Restoration and Enhancement Plan WRIA 9 – Duwamish – Green Watershed, November 2020 that will allow the General Manager to vote approval for Ecology’s Final Watershed Restoration and Enhancement Plan WRIA 9 – Duwamish -Green Watershed on February 23, 2021.

ADOPTED at a meeting of the Board of Water Commissioners held this 9th day of February, 2021.

Covington Water District
Board of Commissioners

DocuSigned by:

Alan Eades

91133FA5FE354B2

Alan Eades, President

OPPOSED

Brad Lake, Secretary

DocuSigned by:

Kevin Fuhrer

D178A4B142F6496

Kevin Fuhrer

DocuSigned by:

David B. Roselle

48E92D7411964F2...

David B. Roselle

DocuSigned by:

Tal Weberg

D8244ECB2DE14E1...

Tal Weberg

RESOLUTION NO. 1705

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENUMCLAW, KING COUNTY, WASHINGTON APPROVING THE WATER RESOURCE INVENTORY AREAS 9 AND 10 (GREEN AND PUYALLUP) WATERSHED RESTORATION AND ENHANCEMENT PLANS

Whereas, in response to the Supreme Court Hurst decision that determined even an exempt well for a residence would be an impairment to instream flows, the state legislature passed a law (RCW 90.94) that created Watershed Restoration and Enhancement Committees (WREC) to develop plans that identify projects to offset impacts from future permit exempt domestic wells and provide a net ecological benefit (NEB) for the eight watersheds included in the law, and

Whereas, since December 2018, staff has been participating as a member of the WRECs in Water Resource Inventory Areas (WIRA) 9 and 10 (Green and Puyallup watersheds), and

Whereas, RCW 90.94 requires unanimous approval of the plans by all WREC members in order for the plans to be adopted and forwarded directly to the state Department of Ecology for their review, and

Whereas, draft plans for WRIAs 9 and 10 have been developed and are ready for formal review and approval by WREC member governing boards, and

Whereas, the draft plans represent significant actions to be taken in light of conservatively estimated adverse impacts and which can and should be modified in the future based upon actual quantities withdrawn from the aquifers, and

Whereas, upon approval of the plans by the WREC members, Ecology will conduct a SEPA public comment period and review the plans for adoption, and

Whereas, city staff has reviewed the plan and recommend that it be approved as set forth in this resolution.

Now, therefore, the City Council of the City of Enumclaw, King County, Washington do hereby resolve as follows:

Section 1: The Watershed Restoration and Enhancement Plans for Water Resource Inventory Areas 9 and 10 are hereby approved.

Section 2: The plans reflect a very conservative approach to ensuring that NEB is achieved. The estimated consumption use target used in the plans is over twice that calculated based a careful analysis of water use that would result from the projected number of new wells. The actual calculated consumption use estimated should be used as the target water offset.

Section 3: The habitat projects added to the plan and deemed needed to achieve Net Ecological Benefit (NEB) is very subjective and not easily quantifiable or measured. Ecology should conduct a reevaluation as to what is needed for NEB and significantly reduce the number of habitat projects.

Section 4. The adaptation measures called for in the plans should also be used to trim down the list of identified projects if the number of new wells ends up being less than originally estimated.

Section 5. Proposed habitat projects and adaption measures should be reviewed based on best available science to insure that they directly benefit instream flows in accordance with the intent of the plans and the law.

Resolution No.: 1705

Draft #2 Date: February 3, 2021

Resolution Requested By: Public Works Director

Page 2

Section 6: If any provision of this Resolution is determined to be invalid or unenforceable for any reason, the remaining provisions of the Resolution shall remain in force and effect.


RESOLVED IN REGULAR AND OPEN SESSION this 8th day of February 2021.



Mayor Jan Molinaro


Introduced: 2/8/21
Passed: 2/8/21
Approved: 2/9/21

ATTESTED:



Maureen Burwell
City Clerk

APPROVED AS TO FORM:



Michael J. Reynolds
City Attorney



February 19, 2021

Mary Verner
Water Resources Program Manager
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Dear Ms. Verner,

I am writing to note Seattle's general support of the Watershed Restoration and Enhancement Plans for Water Resource Inventory Areas (WRIA) 8 and 9. We appreciated membership on the Watershed Restoration and Enhancement committees for these WRIs, and *ex-officio* status in WRIA 7. We found the discussions with our watershed partners regarding streamflow restoration to be thought-provoking and timely, as climate change poses greater threats to our rivers and streams.

While the plans formed for each of the WRIs may help offset water used by new permit-exempt wells and provide net ecological benefit, large barriers to effectively reducing the impact of permit-exempt water use remain. Seattle encourages the following steps be considered in future efforts to improve hydrologic processes in our region, many of which were outlined in Chapter 6 of the WRIA 8 Watershed Restoration and Enhancement Plan:

- *Increase available funding for projects and policy implementation.* At current funding levels, a very small proportion of the statewide projects will be constructed within the 20-year planning timeframe. Funding for Ecology staff to work with the legislature on statewide water policies related to permit-exempt wells would also be beneficial to getting this important work done.
- *Track plan effectiveness through funded and science-based adaptive management monitoring programs for water offset and habitat projects in this program.* This work could be accomplished by funding dedicated Ecology staff to develop a plan to track projects.
- *Work to create statewide policies that protect streamflow throughout the state.* Beneficial, state-wide actions may include: upgrading the tracking database for permit-exempt wells, encouraging connections to public water sources, initiating permit-exempt well metering, delivering water conservation education in non-urban areas, and implementing mandatory water conservation measures for permit-exempt well users during statewide drought events.
- *Include a broader group of stakeholders and technical experts in the Streamflow Restoration Competitive Grant review process.* One model for this may be found in the WRIA 8 Salmon Recovery Council's Project Subcommittee.

Thank you for the opportunity to join in improving hydrologic and aquatic health in our watersheds through developing the Watershed Restoration and Enhancement Plans. Seattle extends compliments to the Ecology staff who facilitated this process. Despite the challenges of the tight timeline, the pandemic-caused transition to virtual meetings and achieving consensus within the committees, Ecology managed the programs with professionalism and openness.

Seattle looks forward to continued collaboration with Ecology as we all work on our shared values of clean water, healthy aquatic systems and a legacy for generations to come.

Sincerely,

Paul Faulds

Paul Faulds (Feb 17, 2021 12:50 PST)

Paul Faulds, Interim Director, Water Planning and Program Management Division

CC: Stephanie Potts, Streamflow Restoration Implementation Lead – WRIAs 8 & 9
Ingria Jones, Streamflow Restoration Lead - WRIA 7
Kate Engel, Science Policy Manager, Environment, Land and Licensing Business Unit, Seattle City
Light
Susan Saffery, Government Relations Director, Seattle Public Utilities



Mary Verner
mave461@ECY.WA.GOV
Stephanie Potts
step461@ECY.WA.GOV

Washington Department of Ecology

via email only

February 22, 2021

Dear Mary and Stephanie:

This letter is to express our concerns over implementation of the Streamflow Restoration Act (Chapter 90.94 RCW) as it relates to providing offset water for new permit-exempt water use. As you know, the Watershed Restoration and Enhancement Planning process is now coming to completion and the watershed plans are being approved. Both stakeholder groups and Ecology staff expended an extraordinary amount of time and effort developing watershed restoration plans or plan updates for the WRIs identified in the legislation. As contemplated by the statute, these plans will make recommendations for projects that would provide water in-stream to compensate for the projected impacts of new permit-exempt water use over the next 20 years. It is critically important that these recommendations be followed, and that future decisions regarding funding of projects be made based on the priorities of the legislation, if the goals of the program are to be realized. CELP has significant concerns relating to how funding for projects is being allocated and would like to stress the importance of prioritizing work that actually improves streamflows going forward.

After the Washington Supreme Court's 2016 *Whatcom County v. Western Washington Growth Management Hearings Board* ("Hirst") decision, which required nothing more than that existing law and principles of prior appropriations be followed in allowing water withdrawals for rural development, political pressure led the Legislature to pass the Streamflow Restoration Act ("SRA"). Somewhat ironically, the SRA *excuses* out-of-priority impacts of permit-exempt wells on instream flows with no regard to the location or timing of such impacts.¹ In an attempt to mitigate the damage to instream flows, river ecosystems, and fish that will be caused by the uncontrolled proliferation of wells, the SRA also requires that watershed planning groups draft restoration plans that would identify projects to provide offset water, restore habitat, and generate a "Net Ecological Benefit" in each WRIA. The SRA provided funding (\$300 million over 15 years) for these projects. Unfortunately, both the language and implementation of the SRA has fallen short of assuring that adequate water to offset the new impacts will be provided.

¹ This is an extraordinary departure from prior appropriations principles and represents a *de facto* priority for domestic water use over all other in- or out-of-stream users. When such an extraordinary privilege is granted by the Legislature, it is critical that equal attention be paid to the compensatory provisions of the statute.

Projects that provide bona fide water offsets have not been prioritized.

The Streamflow Restoration Act requires watershed planning units or watershed restoration and enhancement committees (“planning groups”) to identify projects that will provide water to offset new permit-exempt use in the 15 WRIAs referenced by the statute, or (as a lower priority) protect or enhance habitat without providing offset water. Both RCW 90.94.020 and RCW 90.94.030 contain the following language:

The *highest priority recommendations* must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that the planning unit determines to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

The legislative intent that providing actual replacement water to offset new permit-exempt wells is the highest priority is clear. The statute also clearly requires that projects that do not provide water must be funded only *in addition* to those that do, rather than in lieu of replacement water.

While requiring that the planning groups make recommendations, the statute does not empower them to ensure that water use will *actually* be offset; that role falls solely to Ecology. Planning groups cannot require that their recommendations be funded or carried out. Success of the plans (and of the watershed restoration process) depends not only on appropriate projects being recommended by the planning groups but also on Ecology funding those projects (and projects proposed in future years) with the appropriate priorities.

Ecology has received proposals both for water offset projects that are reasonably certain to provide actual water (such as water right acquisitions) and for those that are significantly less certain to be successful (i.e., beaver dam analogs or aquifer recharge projects that are largely conceptual in nature). It is critical that Ecology prioritize funding of the projects that would actually provide water offsets, and that are reasonably certain to do so. To do otherwise would be to act in contravention of the statute’s purpose and would open Ecology to challenges under the APA. See RCW 34.05.570(4).

Unfortunately, priority for offsetting impacts of wells in the appropriate subbasins has not been fully reflected in the projects funded to date. In the 2020 funding round, Ecology funded 21 projects for a total of approximately \$22M. Five of the 21 projects, representing 40% of the funding (\$8.45M) are not located in the 15 WRIAs covered by the legislation. In 2019, three of the 16 projects funded, which requested a total of \$14.9M, were located outside of the prioritized watersheds. CELP in no way suggests that these are not worthwhile or appropriate projects. However, by definition, such projects cannot meet the legislation’s goal of offsetting new permit-exempt water use in the covered WRIAs.

Many funded projects also do not represent actual offset water in the streams. One of the projects funded in 2020 (the Lower Ohop Creek Protection project) is expressly designed for purposes other than supplying offset water. Per the SRA, this project should be given a lower priority than those that provide actual offset water. Several others involve work that may or may not be successful in

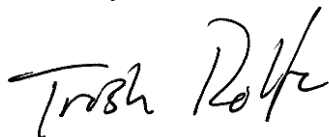
augmenting streamflow at times when it is needed (it is difficult to predict in advance what the effect of channel restoration, floodplain restoration, or beaver dam analog projects will be on streamflows). Here, too, CELP does not suggest that such projects are not worth doing or that they will not have environmental benefits. However, projects that will demonstrably provide replacement water in the impacted subbasins and with the appropriate timing *must* be given the highest priority.

Appropriately prioritizing projects will be an ongoing requirement. Under the RCW 90.94 framework, funding for new projects and decisions about which projects to fund will continue for the next 13 years. In that time, our changing climate will affect water use and the success of measures to offset permit-exempt well use in ways that are not yet fully understood. It is therefore difficult to draft a plan that fully accomplishes its goals without including the capacity to adapt to changing conditions. Because of this it is essential that an adaptive management process be in place to make course corrections as needed. This could be accomplished in part by periodically assessing whether the goal of offsetting new water use is being achieved in each WRIA, and basing decisions as to which projects will be funded in future rounds on where more offset water is needed. See, for example, the adaptive management provisions of the Final Draft Watershed Restoration and Enhancement Plan for WRIA 8 (pp. 72-77).

In most cases, the planning groups' involvement will essentially be completed as of their votes to approve the watershed restoration plan. From discussions at the planning group level (in particular, we speak from our experience with WREC8 and WREC 9), it will be difficult to maintain participation by the members of many planning groups over a time frame of years.² This will likely leave Ecology to prioritize *bona fide* water offset projects in future rounds of funding, and to monitor the effectiveness of those projects that are funded.

For these reasons, we urge Ecology to rigorously prioritize funding of projects that will offset water use over those that are uncertain or speculative, to focus funding in the watersheds where the Legislature intended to offset new water use from permit-exempt wells, and to adopt meaningful adaptive management policies for future administration of the RCW 90.94 program as recommended by the planning groups. Please don't hesitate to contact me if you would like any further information or wish to discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Trish Rolfe". The signature is fluid and cursive, with the first name "Trish" and last name "Rolfe" clearly distinguishable.

Trish Rolfe, Executive Director

² This may not be the case in all watersheds. For example, the Plan approved by the planning group for the Chehalis River specifically requests that Ecology fund ongoing participation by Committee members. CELP believes that this is a farsighted approach and worthy of general consideration. We also note that the adaptive management provisions of the Final Draft plan for WRIA 8 allow members to request that Ecology adjust the watershed plan, or that the group reconvene, although participation would not be obligatory.



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: PO Box 43200, Olympia, WA 98504-3200 · 360 902-2200 · TDD 360 902-2207
Main Office Location: Natural Resources Building, 1111 Washington Street, Olympia, WA

February 23, 2021

Via Electronic Submission

WRIA 9 WREC
Attn: Stephanie Potts
Department of Ecology
3190 160th Ave SE,
Bellevue, WA 98008

Re: Duwamish-Green Watershed Restoration and Enhancement Plan Approval

Dear Chair Potts:

The Washington Department of Fish and Wildlife (WDFW) is pleased to vote in support of the Duwamish-Green Watershed Restoration and Enhancement Plan. The Streamflow Restoration law, primarily codified under RCW 90.94, presents both novel opportunities and challenges with respect to the management of limited water resources in Washington watersheds. Our vote in support of this watershed plan is imbued with an optimism that the opportunities provided by the law, and embraced by this plan, will be realized through the implementation of the plan's components. Our vote is likewise grounded in an expectation that an adaptive management process will effectuate the plan's purpose of restoring and enhancing streamflows and creating a Net Ecological Benefit in perpetuity.

The elements of this plan we feel are essential to its success include:

- A suite of water replacement projects that are highly certain to provide tangible streamflow benefits to offset the consumptive use impacts of future permit-exempt wells at the WRIA-scale.
- Diverse projects and actions across the most affected sub-basins, capable of providing tangible streamflow benefits and habitat improvements.
- An actionable adaptive management framework that informs restoration priorities and project designs.

WDFW looks forward to continued engagement with Duwamish-Green stakeholders as we work toward protecting, restoring, and enhancing streamflows and improving watershed function.

Sincerely,

A handwritten signature in blue ink, reading "Megan Kernan".

Megan Kernan
Water Policy Section Manager