



Department of Ecology Response to SHB 2157, Section 7

Purpose of This Document

The purpose of this document is to respond to SHB 2157, Section 7, which required the Department of Ecology (Ecology) to provide recommendations to the Legislature on grant programs related to restoration and protection of water quality. Specifically, this part of SHB 2157 asks Ecology to examine its grant programs that fund projects that increase, augment, or conserve water quantity supplies. It asks Ecology to explore whether these grants may be more effectively and efficiently funded through the Salmon Recovery Funding Board (SRFB). Ecology's recommendations should include ways to integrate salmon recovery data into reporting of watershed health.

The following analysis includes a discussion of five Ecology grant programs and a description of the proposed watershed health indicators.

The document makes several recommendations about the five grant programs.

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Background

The 2009 Legislature passed SHB 2157 - NEW SECTION - Sec. 7, which says:

- (1) By December 1, 2009, the Department of Ecology must provide recommendations to the Legislature on grant programs related to restoration and protection of water quality and for increases, augmentation, or conservation of water quantity supplies that may be more effectively and efficiently funded through the salmon recovery funding board. The recommendations should include ways to integrate salmon recovery data into reporting of watershed health.

Ecology determined that five grant programs meet the specifications in the bill. They are:

- Watershed Planning Act Operating Grants Program.
- Watershed Plan Implementation and Flow Achievement Grant Program.
- Columbia River Basin Water Supply Development Program.
- 319 Grant Program.
- Centennial Clean Water Grant and Loan Program.

As directed by the legislation, Ecology reviewed the operations of the five programs and examined whether each one could be managed as efficiently and effectively if transferred to the Salmon Recovery Funding Board (SRFB).

Ecology and SRFB grant programs similarities and distinctions

Watershed Planning Act: Local grant funding provided through the Watershed Planning Act and SRFB have several parallels. Both programs rely on a combination of local and state agency staff. In both cases, SRFB and watershed planning activities serve about 30 local groups (with some differences in geography). Both programs deploy about ten field staff each as watershed liaisons from Washington Department of Fish and Wildlife (WDFW) or watershed leads from Ecology. Another three FTEs are dedicated to Ecology's direct program grant management, long-range strategy, policy and planning, and supervisory roles at headquarters and regional offices. The Recreation and Conservation Office, which manages functions of the SRFB, has a staff complement of about 11 FTEs.

Both programs are founded in watershed-level plans. In both programs, engagement of knowledgeable state agency staff has been critical to the success of these watershed-based efforts. The Endangered Species Act (ESA) based Salmon Recovery Plans are designed at the watershed level, with local, tribal, non-governmental organization (NGO), and state agency engagement. Approval comes from the federal agencies responsible for implementing the ESA. Watershed plans are also developed at the basin level and with the same types of stakeholder groups as seen for Salmon Recovery plans. Instead of federal agency approval, watershed plans are formally adopted by the county-elected officials within the watershed planning area. The local plans can obligate Ecology or other state agencies to specific actions only if the agency with the obligation concurs. Ecology leads the effort to obtain state agency concurrence with locally identified action plans.

However, grant management is handled differently in the two programs. At Ecology, the local Watershed Planning Act (WPA) grants are managed by Ecology's watershed leads. We have found it most effective that state staff with the greatest understanding of local plans, especially with respect to

the state's surface and groundwater codes, are watershed leads who are directly involved as WPA watershed grant managers.

In contrast, SRFB grants divide the local support and grant management functions between two separate sets of staff – the WDFW watershed stewards are the local liaisons, and SRFB staff provide grant management. This arrangement may have some advantages in focusing the assignments of staff to technical support and fiscal management. However, Ecology assures quality fiscal management of complex grant projects through regular watershed lead staff meetings and through ready access to the grants administrative staff and watershed planning manager at headquarters.

Water quality improvement: The 319 program was established in the federal Clean Water Act and is intended to address nonpoint sources of water pollution. The Centennial fund has a similar purpose, providing funds for water pollution control facilities and for nonpoint activities to achieve compliance with state and federal water pollution control laws. Compliance with state and federal water quality laws is the primary goal for these two programs. It is important to recognize that there is a difference between compliance with the Endangered Species Act (ESA), which is the focus of the SRFB, and compliance with the Clean Water Act (CWA). Although the purposes of the two acts are complementary, a project that is in compliance with the ESA is not necessarily in compliance with the CWA. It is often much more difficult to achieve compliance with the CWA.

Ecology's Water Quality Program, which administers the 319 and Centennial programs, uses the funds to ensure that compliance with state and federal water quality laws is achieved. When the agency must take enforcement actions, funds can be used to pay for much of the cost of resolving a violation. The Water Quality Program is also careful to ensure that grant funds are used only for projects that will actually achieve compliance. This is accomplished by providing thorough engineering review of all facility projects, on-going technical assistance for all non-facility projects, and by providing funds only for those management practices that are proven to be most effective at solving pollution problems and are cost-effective.

To make the application process easier, the funding applications and funding cycles for the 319 Program, Centennial Program, and the Water Quality State Revolving Loan Fund have been combined. In addition to simplifying the process for applicants, this allows Ecology to offer a combination of funds from all three programs when this will make projects more affordable.

Water quantity management: The Watershed Planning Act Operating Grants Program and the Watershed Plan Implementation and Flow Achievement Grant Program focus on water quantity management. These programs are found in Ecology's authority and responsibility to manage the state's water resources. The Watershed Planning Act gave local groups authority to develop watershed plans to improve management of water resources. All projects funded by the Watershed Plan Implementation and Flow Achievement Grant Program must improve water supply and help achieve instream flows. These two objectives cannot be met without understanding the applicant's water rights and without the ability to approve new water rights or to change existing water rights.

The Columbia River Basin Water Supply Development Program makes the water rights issue even more complicated, since its purpose is to create new water supplies to benefit both instream and out of stream uses. Creating new water supplies means making difficult decisions about how that new water will be allocated and creating new water rights to implement those allocations.

Ecology's management of these five funding programs is effective because the agency has the authority and expertise to ensure that funded projects achieve compliance with state and federal laws. The programs are efficient because there are clear economies of money and effort when water quality and quantity funds are managed by the same agency that oversees water policy.

There is clearly a need to continue dialogue between all agencies that sponsor and provide support to watershed-based natural resource management efforts. These programs include the salmon recovery lead entities, watershed planning lead agencies, local salmon enhancement groups supported by WDFW, and Puget Sound Partnership salmon recovery planning area groups.

Integrating salmon recovery data into reporting of watershed health

The Monitoring Forum has proposed five high-level indicators of watershed health:

- Water quality
- Stream flow
- Habitat quality (in-stream and riparian)
- Biological health
- Land use/land cover

Ecology will continue to work with the monitoring forum as the indicators are finalized, and will share any of this data that is collected by its grant programs with the Salmon Recovery Funding Board.

Recommendations

Ecology recommends that administration of the five grant programs remain at Ecology.

Ecology also recommends:

- Closer coordination with the SRFB to clarify the differences between the goals of Ecology's programs and theirs, and to create opportunities for all the grant programs to work together.
- Consider using a similar application process, synchronizing application periods, using similar rating criteria to make the process easier for applicants.
- Consider developing a joint set of management practices and/or projects that meet the objectives of both Ecology and the SRFB. Proposals for these kinds of projects could conceivably score highest in all grant programs.

The following pages contain more detailed information about each of the five grant programs.

Watershed Planning Act Operating Grants Program

How was the program established?

In 1998, the Washington State Legislature passed the Watershed Planning Act (WPA) - Chapter 90.82.RCW, which states: "The Legislature finds that the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests." Watershed plans are required to address water quantity issues. The watershed planning group may also address water quality and salmon recovery, but this is not mandatory.

Are there legal limitations to moving the program out of Ecology?

The WPA specifies that Ecology will manage this grant program. Ecology is the logical manager because watershed plans are primarily about water quantity and sometimes about water quality, two areas in which Ecology has both technical expertise and regulatory authority. For instance, Ecology has several legal authorities that are essential to implement an adopted plan's recommendations and obligations:

- Set and regulate instream flows.
- Manage and implement trust water, water exchange, and water banking initiatives.
- Participate in discussions about and fund surface or groundwater storage projects.
- Analyze requests for and issue water right permits or certificates.
- Enforce state surface water appropriations and groundwater withdrawals for the benefit of water rights holders.
- Enforce the state Water Pollution Control Act and set Total Maximum Daily Loads (TMDLs) for state waters.

Moving the program to another agency would also require that agency to assume responsibility for a great deal of coordination with other state agencies. The watershed plan approval process includes a requirement that Ecology and any other state agencies must approve of and formally agree to any obligations created for them in the locally developed plan. Formal agreement to those obligations must occur before the approved plan goes to county boards within the planning area for formal adoption.

Are there financial limitations to moving the program out of Ecology?

There are no financial limitations, assuming the Legislature simply shifts the biennial appropriation of funds in the operating budget from Ecology to the Recreation and Conservation Office for the SRFB to offer as grants. The current law would allow the RCO to use up to 1 percent of allocated funds to defray administrative costs. The WPA Operating Grants program has very strict appropriation and expenditure guidelines since it is funded from the State General Fund operating budget. SRFB grants come out of the capital budget and other fund sources. Consequently, grant solicitation, application and review/award decision-making processes may be driven more by the state's fiscal model than by any other single factor.

Does managing the program require expertise only Ecology has?

Ecology assigns a watershed planning lead to each watershed that receives a grant. These leads work directly with the watershed planning committee to produce and implement the watershed plan. Ecology watershed leads also work with local partners and consultants during plan development and

implementation meetings. They are skilled at developing planning documents, helping groups reach consensus, and project management. They also work closely with other Ecology staff experts at water quantity management and water quality issues. A significant amount of knowledge transfer and on-going coordination would be required between the RCO and Ecology to maintain the level of service that Ecology presently provides and to ensure that plans are consistent with water resources and water quality law.

Could the program be managed as efficiently or more efficiently if moved out of Ecology?

If the RCO and Ecology establish good coordination, it is possible that the program could be managed as well. However, since many of the staff with expertise necessary to ensure that watershed planning is successful will continue to work at Ecology, it is unlikely that the program could be managed better elsewhere.

Watershed Plan Implementation and Flow Achievement Grant Program

How was the program established?

The program was established from individual capital appropriation to resolve water quantity issues through the Family, Farm, and Fish process during Governor Locke's administration. Established during that time were the water right acquisition program, meeting the metering requirements in the surface and groundwater right code (Chapter 90.03 RCW and Chapter 90.44 RCW), studies for the development of small-scale surface and groundwater storage, infrastructure projects that improve instream conditions, and continuation of public agriculture water supply conservation projects. As watershed planning was initiating the implementation phase, these capital activities were consolidated into one capital budget item to help watershed-planning units implement the water quantity identified in the watershed plans. Funding for the majority of the water acquisition and metering activities are not part of the competitive grant program.

Are there legal limitations to moving the program out of Ecology?

The Watershed Planning Act designated Ecology as the lead agency. The activities funded through the grant program require a review of the existing water rights, which is an Ecology permitting function. Net water savings derived from the project is to be protected for instream purposes in the State Trust Water Program.

Are there financial limitations to moving the program out of Ecology?

All projects must meet two objectives to improve water supply and help achieve instream flows. Currently, applications are reviewed and scored by Ecology and the state Department of Fish and Wildlife (WDFW) to find eligible projects that meet both objectives. Moving the program out of Ecology may require a longer time to coordinate the review, resulting in the water rights delaying project start time.

Are there other limitations?

All the activities funded through this grant program require the applicant to work within the limits of the applicant's water rights and the state Water Code. Ecology is the only state agency authorized to approve new, or changes to water rights.

Does managing the program require expertise that only Ecology has?

Ecology is the only state agency with the necessary expertise in the Washington Water Rights Code.

Could the program be managed as efficiently if moved out of Ecology?

No other agency has the water rights expertise necessary to manage the program. The Legislature has provided, in Ecology's operating budget, funding for the WDFW to provide expertise to Ecology on setting and achieving instream flows. All the activities and expertise necessary to manage the grant program currently reside in Ecology or are funded to other agencies by Ecology.

Columbia River Basin Water Supply Development

How was the program established?

In 2006, the Legislature, by way of Chapter 90.90 RCW, directed the Department of Ecology to “aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses.” Chapter 90.90 RCW also established the Columbia River basin water supply development account and authorized \$200 million of state bonds to develop new water supplies in the Columbia River Basin. Expenditures from this account may be used to “assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects or any other actions designed to provide access to new water supplies within the Columbia River Basin.” As one of the tools to accomplish this work, Ecology’s Office of Columbia River created the Columbia River Grant Program. The grant program was designed to provide transparent access and competition to the monies in the Columbia River Account. The grant framework was designed with input from a policy advisory group and includes an external volunteer technical review each cycle.

Are there legal limitations to moving the program out of Ecology?

The legislation specifically directs the Department of Ecology to aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses. It also requires Ecology to place any net water savings into the State Trust Water Right Program. Out-of-stream water supplies developed will be allocated for alternatives to ground water for agriculture users in the Odessa subarea aquifer, sources of water supply for pending water right applications, a new uninterrupted supply of water for the holders of interruptible rights on the Columbia river mainstem, and new municipal, domestic, industrial, and irrigation water needs within the Columbia River Basin.

RCW 90.90 directs that two-thirds of the new water, developed through storage, to be available for appropriation for out-of-stream uses. Ecology is the state agency with the legal authority to issue new water rights or to make the “appropriation for out-of-stream uses.” RCW 90.90 goes on to state that “one-third of active storage shall be available to augment instream flows and shall be managed by the Department of Ecology. The trust water program is the statutory mechanism through which Ecology manages water it holds for instream flow purposes, and Ecology is the state agency with the legal authority to create trust water rights.

To accomplish the mandates of RCW 90.90, Ecology utilizes the grant program as one tool to locate and fund various project types that will conserve water or otherwise make water more available when needed for both instream and out-of-stream uses. In some cases, grants are “paired” so that the dual goals of the program can be met, such as funding a “fish-only” project in conjunction with a separate project designed to provide new water rights. The grant program directly incorporates various criteria such as the quantity of water to be trusted or stored as part of the selection criteria. Without the legal authority and associated intimate knowledge of state water law, operation of the grant program by another entity would be severely handicapped. Statutory changes to RCW 90.90 would also be necessary in order for another agency to manage the Columbia River Account.

Are there financial limitations to moving the program out of Ecology?

Ecology was directed by the legislation to manage the account with two-thirds for development of new water storage and one-third for other purposes. Development of water storage must be done in

accordance with existing water right laws. Net water savings from projects are to be placed in the state Trust Water Right Program for instream flow purposes. The state Trust Water Right Program is managed by Ecology.

The competitive grant program is a small percentage (~10-15%) of the overall expenditures from the account. Grant program expenditures by an entity other than Ecology would still require Ecology oversight as fiscal responsibility for the account is expressly assigned to Ecology in RCW 90.90.010.

Are there other limitations?

Water supplies developed under the program needs to be matched with how the water rights need to be allocated. This requires a review of the proposal and an understanding of Water Right laws to assure developed water can be allocated to the pending water rights applications and satisfy the interruptible water rights issued by Ecology. Water law is a highly specialized field. For example, conservation savings for a project based on a water right claim must be considered differently than similar savings based on a certificate based on a ruling by the Supreme Court.

Does managing the program require expertise that only Ecology has?

All water storage developed or conserved by the grant program requires an expertise in water right laws, water quality permitting, SEPA, and other environmental permits. Only Ecology can issue water rights for the developed water storage or place net water savings into the state Trust Water Right Program. Only Ecology can issue many of the environmental permits such as water quality discharge permits. Only Ecology has the expertise and ability to “aggressively develop new water supplies.”

Could the program be managed as efficiently if moved out of Ecology?

No, the program needs to have Ecology’s water right and other environmental permitting expertise to successfully develop new water supplies and manage their allocation between in-stream and out-of stream uses. For example, on any given project, Ecology coordinates with the state, federal, tribal, and other entities on how and when water storage developed by the project should be managed to meet the objectives of the Columbia River Program. Should another entity manage the grant portion of this program, Ecology would still be at the table as the decision-maker responsible for the overall Columbia River Program, including responsibility for the associated water supply development account.

319 Grant Program

How was the program established?

Section 319 was added to the Clean Water Act in 1987 to establish a national program to address nonpoint sources of water pollution. Section 319(h) specifically authorizes EPA to award grants to states with approved Nonpoint Source Assessment Reports and Nonpoint Source Management Programs. The funds are to be used to implement programs and projects designed to reduce nonpoint source pollution. As required by Section 319(h), the state's Nonpoint Source Management Program, created and administered by the Department of Ecology, describes the state program for nonpoint source management and serves as the basis for how funds are spent.

Are there legal limitations to moving the program out of Ecology?

The Clean Water Act requires EPA to award Section 319(h) funds to the state nonpoint agency to implement its approved Nonpoint Source Management Program. Ecology is the state nonpoint agency. Ecology is also the state agency directed to implement Washington's Water Pollution Control Act, Chapter 90.48 RCW.

There are also legal limitations regarding how funds are spent. All 319 funds must:

1. Implement actions identified in the state's nonpoint plan; and
2. All funded projects must meet EPA's nine key planning elements.

Are there financial limitations to moving the program out of Ecology?

- 60 percent of the grant from EPA is awarded by Ecology to sub-recipients through a competitive application and rating process to implement nonpoint projects statewide.
- 40 percent of the grant is used for Ecology nonpoint staff who work on a variety of nonpoint issues including forestry, non-dairy agricultural practices, nonpoint TMDL production and implementation, and managing sub-recipient grants.
- EPA requires that the state provide a 40 percent match for the 319 grant. Ecology does this by using Centennial Clean Water Program nonpoint projects as match. The projects chosen for match must meet the requirements for receiving 319 funds. For this reason, Ecology has combined the funding cycles for the 319 and Centennial programs and has made the application and eligibility requirements the same for both.
- Ecology has also combined the funding cycle for the State Revolving Fund with 319 and Centennial. This allows the agency to use the most logical combination of funds from all three sources to make projects affordable for applicants.
- Moving the 319 program out of Ecology would end most of the agency's nonpoint work because we would lose funding for our nonpoint staff working on agriculture, forestry, and other nonpoint pollution issues, and we would lose our ability to target nonpoint grant funds to solve the most serious nonpoint problems.

Are there other limitations?

The state's EPA-approved Nonpoint Source Management Program and Nonpoint Source Management Plan were created and are managed by Ecology. Section 319 grants must implement the state's

nonpoint plan, so the planning and administrative responsibilities required by Section 319 should logically stay with the agency that receives the 319 grant from EPA.

The Section 319 Grant Program is an important component of Ecology's Water Quality Program because it funds the Program's goals of achieving clean water through nonpoint TMDL implementation, stream and habitat restoration, and use of best management practices.

Does managing the program require expertise that only Ecology has?

At the present time, only Ecology has the familiarity with federal requirements and the water quality expertise to successfully manage the program.

Could the program be managed as efficiently or more efficiently if moved out of Ecology?

No other agency has the nonpoint focus that makes Ecology's management of the grant program successful. For example, the Salmon Recovery Funding Board, while having similar objectives, does not deal specifically with the state Water Pollution Control Act or the federal Clean Water Act, nor does it administer a nonpoint program or conduct nonpoint planning. EPA requires that all 319 data be entered in a federal data base and also has very stringent monitoring and reporting requirements. These added responsibilities would be required of any agency that takes on 319 grant responsibilities.

Centennial Clean Water Grant and Loan Program

How was the program established?

The program was established by the Washington Legislature in 1986 and codified in RCW 70.146. The purpose of the Centennial program is “to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state’s waters.” Eligible projects include comprehensive sewer or stormwater planning, construction of water pollution control facilities, related land acquisition, new sewer systems to eliminate failed or failing on-site septic systems, planning and design for water pollution control facilities, and a variety of nonpoint source pollution control projects. In general, two-thirds of the fund is used for facility projects and one-third for nonpoint projects. The fund is primarily a grant program, but it also provides loans. Some types of projects are only eligible for loans.

Are there legal limitations to moving the program out of Ecology?

Ecology is designated as the administrator of the fund in Chapter 70.146 RCW, *Water Pollution Control Facilities Financing*. Chapter 173-95A WAC, *Uses and Limitations of Centennial Clean Water Funds*, also presumes that the fund will be administered by Ecology.

Are there financial limitations to moving the program out of Ecology?

The Centennial program should logically reside in the same agency that administers the Clean Water Act Section 319 Fund and the State Revolving Fund loan program. A 40 percent state match is required for the 319 Fund, and Ecology provides the match by identifying eligible nonpoint projects funded by the Centennial Program. Although this could still happen if the funds were administered in separate agencies, it would be much more ungainly.

Ecology often combines a State Revolving Fund loan and a Centennial grant to help make wastewater facility projects more affordable for small communities. This would also be more difficult to do if the State Revolving Fund and Centennial programs were administered by different agencies.

Are there other limitations?

The Centennial program is an important component of Ecology’s Water Quality Program because it funds projects designed to implement the program’s goal of achieving clean water for Washington. This focus could be lost if the fund was moved to another agency. The goals of salmon recovery and achieving compliance with state water quality standards are complementary goals, but clean water is about much more than salmon.

Does managing the program require expertise that only Ecology has?

The Centennial program funds point source facilities, such as wastewater treatment plants, as well as nonpoint projects. Ecology has highly skilled technical and engineering staff who ensure that water pollution control facilities are cost-effective and are constructed to achieve compliance with water quality standards. These staff provide a high level of oversight for every facility project. Ecology also has experienced technical staff skilled at addressing water quality issues and solving nonpoint pollution problems. The mix of staff and expertise available at Ecology ensure that federal and state

water quality regulatory requirements are met and that grant and loan funding is focused on meeting the highest priority water quality and environmental protection needs statewide.

Could the program be managed as efficiently or more efficiently if moved out of Ecology?

No other agency has the specific goal of achieving compliance with state water quality standards or the long history of using state and federal grant and loan funds to achieve this goal. The Salmon Recovery Funding Board, while having some similar objectives, does not deal specifically with meeting the requirements established in the state Water Pollution Control Act or the federal Clean Water Act. Narrowing the focus of the Centennial program to simply salmon recovery would not achieve the state's overall goal of cleaning up all of Washington's waters. To achieve that goal, any agency would have to take the same broad view about water quality as Ecology presently does.