

Chapter 173-566 WAC
STREAMFLOW RESTORATION FUNDING

NEW SECTION

WAC 173-566-010 Purpose. (1) In the adoption of the Streamflow Restoration Act, the legislature stated the intent to appropriate three hundred million dollars for projects to achieve the goals of the act until June 30, 2033. They further directed ecology to implement a program to restore and enhance streamflows by fulfilling obligations under the act to develop and implement plans to restore streamflows to levels necessary to support robust, healthy, and sustainable salmon populations.

(2) This chapter contains general rules for project grant eligibility, selection, issuance, and performance, and applies to projects statewide pursuant to and consistent with chapter 90.94 RCW to:

(a) Protect and enhance streamflows.

(b) Improve watershed functions that benefit instream fish and wildlife resources.

(c) Offset the consumptive use impacts from new domestic permit-exempt wells.

(d) Provide access to new water supplies when identified in a watershed plan adopted under RCW 90.94.020 or 90.94.030.

NEW SECTION

WAC 173-566-020 Relation to other laws and rules. (1) This chapter only applies to grants issued by ecology that are funded under chapter 90.94 RCW, Streamflow restoration.

(2) All grants shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grants.

(3) **State Environmental Policy Act.** State Environmental Policy Act (SEPA) review must be completed before ecology may sign a funding agreement for construction projects or before construction begins for combined design/construction projects.

(4) **Cultural resource review.** Many proposed projects have the potential to significantly impact traditional cultural properties or places, or historically significant locations or artifacts. Ecology staff coordinates with the Washington state department of archaeology and historic preservation (DAHP) to meet all state requirements regarding cultural and historic preservation.

(a) Grant recipients must follow the appropriate steps to work with DAHP and tribes, under ecology instruction, to determine if a site has the potential of disturbing or impacting cultural or historic resources, and to protect such resources.

(b) All activities associated with site assessments for historic properties are grant eligible.

(5) **Water quality.** All funded projects must protect water quality and comply with relevant water quality standards.

(6) **Permits.** Recipients must obtain and comply with all required permits.

(7) **Puget Sound action agenda.** Ecology may not fund projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

NEW SECTION

WAC 173-566-030 Definitions. Definitions provided only apply to this chapter.

"Agreement effective date" means the date on which the grant or loan agreement becomes effective, as specified in the grant agreement.

"Agreement expiration date" means the latest date eligible costs can be incurred, as specified in the grant agreement.

"Agreement signature date" means the date the grant agreement is signed by ecology.

"Applicant" means an entity that applies for a grant. See "eligible applicants" and "ineligible applicant."

"Biennium" means the twenty-four-month fiscal period extending from July 1st of odd-numbered years to June 30th of odd-numbered years.

"Budget" means, for the purpose of grant agreements, a breakdown of eligible costs by task.

"Consumptive use" means that portion of withdrawn groundwater that is lost from the water source, rather than returned through a septic system or other means.

"Ecology" means the Washington state department of ecology.

"Eligible applicants" includes Washington state agencies, local governments and quasi-governments within Washington state, an agency of the federal government, tribal governments with reservation lands or treaty rights within Washington, and nonprofit organizations.

"Eligible cost" means a cost that meets all criteria established in the agreement and grant program funding guidelines.

"Funding cycle" means the period between announcements of grant opportunities.

"Grant agreement" or "agreement" means the formal, written, contractual document that details the terms and conditions, scope of work, budget, and schedule of the grant, and that is signed by authorized signatories of the recipient and ecology.

"Grant" means an award of financial assistance given to a recipient to carry out work for a public purpose or public good authorized by law.

"Ineligible applicant" means a private citizen, for-profit business including, but not limited to, all forms of private partnerships, incorporated entities, LLCs, or any agents acting on behalf of such entities or foreign or out-of-state governments.

"Instream resources" for the purposes of this chapter means fish and related aquatic resources.

"Local government" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation.

"New domestic permit-exempt wells" means those wells used for indoor and outdoor residential purposes exempt from permitting under RCW 90.44.050, constructed between January 19, 2018, and January 18, 2038.

"Recipient" means an entity that has a grant agreement.

"Retroactive costs" means costs incurred before the agreement signature date.

"Scope of work" means the tasks and deliverables of the grant agreement.

"Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel or aircraft, or any area where project tasks take place.

"Watershed" means a geographic area draining to a stream or tributary.

"Watershed plan" means a plan under RCW 90.94.020 or 90.94.030.

"WRIA" means a water resource inventory area as established in chapter 173-500 WAC.

NEW SECTION

WAC 173-566-100 Grant award process. (1) Ecology will develop guidance to assist in implementing this chapter.

(2) Project solicitation. Ecology will provide notice of a new funding cycle, pursuant to WAC 173-566-110 at least once per biennium.

(3) Application. Grant applications must contain sufficient information to make the determinations in subsection (4) of this section.

(4) Project evaluation and ranking. Ecology will review projects and applications for completeness and to determine:

(a) Project eligibility under WAC 173-566-310;

(b) Project quality under WAC 173-566-140; and

(c) Funding priority under WAC 173-566-150.

(5) Agreement development. After deciding to fund an eligible project, ecology will negotiate with the applicant the scope of work and budget for the grant and develop the agreement.

NEW SECTION

WAC 173-566-110 Grant announcements. (1) Ecology will announce the availability of funding opportunities for competitive grants. The announcement will include, at a minimum, a description of:

(a) Purpose of the grants.

(b) Funding cycle for the grants.

(c) Amount of funding available or anticipated amount of funding available, if known.

(d) Eligibility criteria for the grant solicitation.

(e) Information about how to apply.

(f) Application deadlines.

(g) Ecology contact information.

(2) To publicize funding opportunities, ecology will issue a news release, post information on our web site, and may use other methods, including social media.

(3) **Unused funds.** Ecology may announce the availability of unused funds, or retain the funds for a future funding cycle or to cover future contingencies that meet the purposes and intent of this chapter and chapter 90.94 RCW.

NEW SECTION

WAC 173-566-120 Application. (1) All applicants must use the electronic system identified by ecology to apply for grants. Applicants without access to the electronic system must use a process approved by ecology.

(2) The applicant must complete the application process and provide all required information, including:

(a) Applicant information.

(b) Project location and description.

(c) Requested funding amount and budget for the project.

(d) Description of project benefit(s), including:

(i) Problem(s) or need(s) the project would address.

(ii) Timing, location, and extent that the project is expected to address the identified needs.

(iii) Applications for altered water management or infrastructure projects must estimate the volume of water that would be conserved or remanaged, and describe the method used to make the estimate.

(iv) Method(s) used to determine project benefits.

(v) How any monitoring, operations, maintenance, or other measures will be addressed to ensure benefits persist over time.

(vi) Metrics for project success, including quantitative metrics if available.

(e) Scope of work and tasks for the project.

(f) Source of project water, if applicable, and how water will be managed to ensure there will be no impairment to senior water rights.

(g) Identify permits that have been obtained and permits applied for to date.

(h) Address how aquatic species and water quality will be protected.

(i) Any other information required by ecology to evaluate the project.

(3) Ecology may require a feasibility study if the applicant cannot supply sufficient detail in the application. Applicants may apply for a grant to complete the feasibility study.

(4) The applicant must submit a complete application by the due date and time, if a due date and time are included in the announcement. Ecology may approve a later due date by posting notice of the extended application deadline on ecology's web site.

(5) Ecology may request additional information to assist in the application evaluation process. If the applicant fails to comply with the request, ecology may determine the application is incomplete and remove it from further consideration.

(6) Applicants may submit a new application for a project that was not funded for any reason in a prior funding cycle.

NEW SECTION

WAC 173-566-130 Phasing. (1) Applicants may choose to divide projects into phases, particularly when each phase can be shown to benefit streamflow or instream resources.

(2) Ecology reserves the right to divide a project into phases and fund initial project phase(s) due to funding availability and priorities, or other considerations.

(3) Funding for one or more phases of a project does not guarantee funding for subsequent phases.

NEW SECTION

WAC 173-566-140 Evaluation process. (1) Ecology will evaluate all complete applications submitted by the announced deadline.

(2) Ecology reviews applications to determine eligibility of the applicant under WAC 173-566-030, and whether the project meets the eligibility criteria.

(3) Those grant applications determined eligible, ecology will then evaluate for project quality. To complete this evaluation, ecology will consider:

(a) Benefits to streamflow and instream resources.

(b) Whether the application demonstrates all of the following:

(i) Appropriateness of the project to address the stated needs.

(ii) Feasibility of the project, including the likelihood of success and long-term sustainability.

(iii) Whether the project is an effective use of available funds, considering need, as well as costs and benefits.

(iv) Readiness to proceed.

(c) Information gathered from field visits that may be part of the evaluation.

(4) The funding priorities described in WAC 173-566-150, and related grant guidance and criteria for the current funding cycle, will be used to produce a final score. Total final scores of the eligible project applications, taking account of both project quality and funding priorities, will be used to determine relative ranking for awarding grants.

(5) Ecology may set a minimum score that an application has to receive for ecology to offer funds.

NEW SECTION

WAC 173-566-150 Funding priorities. In addition to the evaluation of project quality in WAC 173-566-140, ecology will prioritize projects under each of the following:

(1) Projects located in WRIAs planning under RCW 90.94.020 or 90.94.030, or in a metering pilot project area in RCW 90.94.040.

(2) Projects identified in a watershed plan adopted under RCW 90.94.020 or 90.94.030 consistent with project priority and sequencing identified in the plan.

(3) Although not the highest priority consideration for funding, projects not identified in watershed plans under RCW 90.94.020 or 90.94.030 that do the following:

(a) Improve streamflows, or enhance instream resources and watershed functions that support the recovery of threatened and endangered salmonids.

(b) Improve streamflows, or enhance instream resources and watershed functions that support other fish and related aquatic resources.

NEW SECTION

WAC 173-566-200 Water right acquisitions. (1) Acquisition of all or a portion of a water right is eligible for funding. The projects must include:

(a) Changing the purpose of use to instream flow under RCW 90.03.380.

(b) Permanent conveyance of the water right to ecology to be held in the trust water rights program.

(2) Funding may be provided for work related to preliminary assessment and price valuation when ecology determines that such work is necessary to complete a suitable water right acquisition.

(3) Applicants proposing water right acquisition projects must have a preapplication meeting with ecology.

NEW SECTION

WAC 173-566-210 Water storage. Water storage projects eligible for funding include above ground storage, below ground storage, within natural formations, or be man-made. Examples include off-channel surface water storage, managed aquifer recharge, infiltration galleries or ponds, and cisterns.

NEW SECTION

WAC 173-566-220 Altered water management or infrastructure. (1) Water management and infrastructure improvement projects eligible for funding involve changes in how and when water is diverted, withdrawn, conveyed, or used to benefit streamflows and instream resources and carry out chapter 90.94 RCW. Examples include conservation and efficiency projects such as diversion modifications, lining and piping, sprinkler conversion, and other irrigation efficiencies, as well as source switches, and streamflow retiming projects. Innovative methods will be considered.

(2) Projects must include sufficient provisions and protections so that completed projects will provide:

(a) Permanent streamflow improvement; or

(b) Access to new water supplies when identified in a watershed plan adopted under RCW 90.94.020 or 90.94.030.

(3) To meet subsection (2) of this section, conservation and water use efficiency projects must permanently convey the saved water to ecology to be held in the trust water rights program for instream flow purposes.

NEW SECTION

WAC 173-566-230 Riparian and fish habitat improvements. Riparian and fish habitat improvements that might not directly increase streamflow, but do benefit instream resources, may be funded through this chapter. Examples include, but are not limited to, in-channel habitat improvements, riparian restoration, strategic land acquisitions, levee modifications, floodplain modifications, fish passage, and beaver introduction.

NEW SECTION

WAC 173-566-240 Environmental monitoring. (1) Environmental monitoring equipment is eligible for funding, including equipment for stream gauging and groundwater monitoring directly related to restoring, maintaining, or enhancing streamflows or instream resources and values.

(2) Effectiveness monitoring for projects funded under this chapter is eligible for funding.

(3) Recipients must follow all grant requirements for submittal of environmental monitoring data, and standards when geographic information system (GIS) data are collected, processed, and submitted to ecology.

NEW SECTION

WAC 173-566-300 Fiscal controls.

Determining allocation of funding.

(1) For each funding cycle, ecology may allocate a percent of available funding to certain project types, which will be identified in the grant guidance. Funding allocation may be based on demonstrated need, previous funding awarded, or other criteria.

(2) Ecology may set aside a percentage of available funding each funding cycle for projects in each ecology region or other geographical areas. Ecology will update the funding guidance with set aside amounts prior to the beginning of the funding cycle.

(3) Ecology may set a ceiling amount to limit the amount of grant funding available to any one applicant per funding cycle. The ceiling amount will be included in the funding guidance.

Grant decisions.

(4) When awarding grants, ecology decisions are:

- (a) Consistent with all state laws and rules authorizing the funding and any specific direction by the legislature.
- (b) Subject to available funds.
- (c) Based on evaluations of grant applications submitted and other relevant information available.

Funding discretion.

- (5) Ecology retains the discretion to not provide a grant for an eligible project or to provide less funding for an eligible project than the amount requested.
- (6) Ecology has the discretion to:
 - (a) Hold funds:
 - (i) To cover cost overruns on funded projects; or
 - (ii) To use in later funding cycles.
 - (b) With the exception of fees collected under RCW 90.94.020 or 90.94.030, award unused funds to lower ranked projects, following the initial grant awards in the funding cycle.

Grant management.

- (7) Ongoing management of most aspects of grant projects is subject to the most recent edition of administrative requirements for ecology grants, such as *Administrative Requirements for Recipients of Ecology Grants Managed in EAGL*.
- (8) Retroactive costs. Any costs incurred before the agreement signature date are at the recipient's risk.
- (9) Ecology will establish reasonable costs for all grants, and require recipients to manage projects in a cost-effective manner. Ecology may require grant recipients to periodically update a spending plan for the grant.
- (10) Ecology may withdraw or modify a funding offer if the recipient makes a request to significantly change the scope of work after the award.
- (11) Ecology has the right to withdraw funding and not approve expenditures that do not follow appropriate contracting process.

NEW SECTION

WAC 173-566-310 Ineligible projects and costs. Costs that are ineligible to receive grant funding under this chapter include, but are not limited to:

- (1) Project elements previously funded by ecology.
- (2) Projects that are otherwise required under statute, rule, ordinance, or court order, except pursuant to this chapter and chapter 90.94 RCW.
- (3) Costs to meet an individual or general National Pollutant Discharge Elimination System (NPDES) permit.
- (4) Staff time is only eligible if directly related to the project.
- (5) Major and capital equipment purchases without preapproval from ecology.
- (6) Contaminated soils removal or remediation.
- (7) Projects that conflict with other ecology rules, projects, or guidance.
- (8) Aquatic plant control for aesthetic purposes, navigational improvements, or any other reason that does not provide increased

streamflow, nor benefit ecological functions or critical stream habitat.

(9) Bond costs for debt issuance.

(10) Operation and maintenance costs.

(11) Bonus or acceleration payments to contractors to meet contractual completion dates for construction.

(12) Compensation or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential.

(13) Dispute resolution under the grant agreement.

(14) Office furniture not included in the recipient's indirect rate.

(15) Operating expenses of local government, such as the salaries and expenses of a mayor, city councilmember, and city attorney.

(16) Overtime differential paid to employees of a public body to complete administrative or force account work.

(17) Permit fees not directly required for the completion of the project.

(18) Professional dues.

(19) Property purchases without prior approval from ecology.

(20) Refinance of existing debt.

NEW SECTION

WAC 173-566-320 Grant agreement. (1) Ecology works with the recipient to prepare the grant agreement.

(2) A grant agreement issued and managed in ecology's electronic system must include, at a minimum:

(a) Project description.

(b) Expected outcomes.

(c) Project budget and funding distribution.

(d) Agreement effective date and expiration date.

(e) Description of tasks and deliverables.

(f) Contact information for ecology and the recipient.

(g) Signatures of authorized signatories.

(h) General terms and conditions that specify requirements related, but not limited to:

(i) Amendments and modifications.

(ii) Assignment limits on transfer of rights or claims.

(iii) Inadvertent discovery plan for human remains and/or cultural resources.

(iv) Compliance with all laws.

(v) Conflict of interest.

(vi) Disputes.

(vii) Environmental data standards.

(viii) Governing law.

(ix) Indemnification.

(x) Independent status of the parties to the agreement.

(xi) Order of precedence for laws, rules, and the agreement.

(xii) Property rights, copyrights, and patents.

(xiii) Records, audits, and inspections.

(xiv) Recovery of funds.

(xv) Severability.

- (xvi) Suspension.
- (xvii) Sustainable practices.
- (xviii) Termination.
- (xix) Third-party beneficiary.
- (xx) Waiver of agreement provisions.
- (i) Special terms and conditions, if any.
- (j) Agreement-specific terms and conditions, if any.
- (k) Other items, if any, necessary to meet the goals of the grant program.

(3) All grant agreements under this chapter will include the latest version, as of the original agreement date, of ecology's grant general terms and conditions.

(4) Ecology may choose to extend a grant agreement at our sole discretion.

NEW SECTION

WAC 173-566-330 Amendments to the grant agreement. (1) A change to any of the following items requires an executed amendment to the agreement prior to the grantee being eligible for cost reimbursement due to such change:

- (a) Scope of work or the objectives of the project.
- (b) Total project budget, whether for an increase or decrease.
- (c) Grant funding, whether for an increase or decrease.
- (d) Redistributing costs among budget tasks that exceed ten percent deviation of the total eligible costs of the funding distribution.
- (e) Funding distributions.
- (f) Agreement effective or expiration date, whether to shorten or extend.
- (g) Special terms and conditions or agreement-specific terms and conditions.

(2) Administrative changes do not require an amendment. Examples of administrative changes include updates to contact names, addresses, and phone numbers.

(3) An amendment must be signed by all parties before it is effective.

NEW SECTION

WAC 173-566-340 Performance standards.

General provisions.

(1) Nothing in this chapter influences, affects, or modifies existing ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant.

(2) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant agreements and records.

(3) New ecology grant agreements signed after the effective date of this chapter must be managed using ecology's designated electronic system. A recipient who cannot access the electronic system to meet a

deadline or agreement requirements must use a process approved by ecology.

(4) ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

Recipient standards.

(5) Recipients must:

(a) Follow all applicable accounting and auditing laws and rules related to grants.

(b) Use funds according to the agreement.

(c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules.

(d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement.

(e) Obtain preapproval for equipment purchases over the amount specified in the agreement.

(6) As specified in the grant agreement, the recipient must submit the following to ecology:

(a) Progress reports.

(b) Payment requests.

(c) Equipment purchase reports.

(d) Documentation.

(e) A final closeout report.

(f) Any other required information.

Ecology standards.

(7) Ecology will:

(a) Follow all applicable accounting and auditing laws and rules related to grants.

(b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement.

(c) Confirm that ecology has received required documentation and the project is satisfactorily completed before approving final payment.

NEW SECTION

WAC 173-566-350 Closing out the agreement. (1) The recipient must follow the closeout requirements in the agreement.

(2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the time frames in the agreement.

(3) Ecology will close out the grant agreement when it determines the recipient has met the closeout requirements or when the agreement has been terminated (see WAC 173-566-360).

NEW SECTION

WAC 173-566-360 Termination of agreement. (1) Failure by the recipient to comply with a grant agreement may result in termination of the agreement.

(2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.

(3) Ecology's ability to make payments is contingent on availability of funding. In the event funding from state or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of the agreement, ecology, at its sole discretion, may elect to:

(a) Terminate the agreement, in whole or part;

(b) Renegotiate the agreement, subject to new funding limitations or conditions; or

(c) Suspend performance of the agreement until ecology determines the funding insufficiency is resolved.

(4) Ecology will document the termination of an agreement.

NEW SECTION

WAC 173-566-370 Appeals process. (1) Grant applicants and recipients may formally appeal a written decision by ecology. A recipient cannot bring a lawsuit to superior court unless the aggrieved party adheres to the following procedures. The procedures are intended to encourage the informal resolution of disputes.

(a) The applicant may seek review of an initial funding decision within thirty days of the decision. The applicant or recipient makes the request for review in writing to the water resources program manager.

(b) The program manager will consider the appeal information and will issue a written decision within thirty days from the date the appeal is received.

(c) If the applicant or recipient is not satisfied with the program manager's decision, the applicant or recipient has thirty days to submit a written request to ecology's deputy director for a review of the decision.

(d) Ecology's director or deputy director will consider the appeal information and will issue a written decision within thirty days from the date the request is received. This decision will be ecology's final decision.

(2) If the applicant or recipient is not satisfied with ecology's final decision, the applicant or recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), judicial review; see <http://app.leg.wa.gov/rcw/default.aspx?cite=34.05.570>.

(3) Unless all parties to such appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the funding program.