



Chapter 173-566 WAC
Streamflow Restoration Funding

**Preliminary Draft Rule Language
For Public Comment**

September 25 – October 28, 2018

1 Chapter 173-566 WAC – STREAMFLOW RESTORATION FUNDING

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173-566-010 - Purpose

This chapter contains general rules for grant issuance and performance, and applies to projects pursuant to, and consistent with, chapter 90.94 RCW, to:

- (1) Protect and enhance streamflows.
- (2) Improve watershed functions that benefit instream fish and wildlife resources.
- (3) Offset permit-exempt domestic well impacts.
- (4) Investigate project feasibility or collect data as part of a qualifying project.
- (5) Provide access to new water supplies.

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, 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 significantly 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.

1 [173-566-030 – Definitions.](#)

2 Definitions provided here only apply to this chapter.

3 “Agreement effective date” means the date on which the grant or loan agreement becomes effective, as
4 specified in the grant agreement.

5 “Agreement expiration date” means the latest date eligible costs can be incurred, as specified in the
6 grant agreement.

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

8 "Applicant" means an entity that applies for a grant. See “ineligible applicant.”

9 “Basin” or “subbasin” means a geographic area draining to a stream or tributary within a watershed.

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

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

13 “Consumptive use” means that portion of withdrawn groundwater that is lost from the water source,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

15 “Ecology” means the Washington State Department of Ecology.

16 “Eligible cost” means a cost that meets all criteria established in the agreement and grant program
17 funding guidelines.

18 “Funding cycle” means the period between announcements of grant opportunities.

19 “Grant agreement” or “agreement” means the formal, written, contractual document that details the
20 terms and conditions, scope of work, budget, and schedule of the grant, and that is signed by authorized
21 signatories of the recipient and Ecology.

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

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

27 “Instream resources” for the purposes of this chapter means fish and related aquatic resources.

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

30 “New domestic permit-exempt wells” means those wells used for indoor and outdoor residential
31 purposes constructed between January 19, 2018 and January 18, 2038.

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

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

- 1 "Scope of work" means the tasks and deliverables of the grant agreement.
- 2 "Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a
- 3 sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage
- 4 container, motor vehicle, rolling stock, vessel, or aircraft; or any area where project tasks take place.
- 5 "Watershed" means a water resource inventory area as established in chapter 173-500 WAC.
- 6 "Watershed plan" means a plan made under RCW 90.94.020 or 90.94.030 that identifies projects to
- 7 offset the projected instream impacts of 20 years of future new permit-exempt domestic uses.
- 8

9 [173-566-100 – Grant award process.](#)

- 10 (1) Ecology may develop and update guidance documents to assist in implementation of this chapter.
- 11 (2) Project solicitation. Ecology will provide notice of a new funding cycle, pursuant to WAC 173-566-110
- 12 at least once per biennium.
- 13 (3) Application. Grant applications must contain sufficient information to make the determinations in
- 14 subsection (3) below.
- 15 (4) Project evaluation and ranking. Ecology will review project projects and applications for
- 16 completeness and to determine:
 - 17 (a) Project eligibility under WAC 173-566-310;
 - 18 (b) Project quality under WAC 173-566-140; and
 - 19 (c) Funding priority under WAC 173-566-150.
- 20 (5) Agreement development. After deciding to fund an eligible project, Ecology will negotiate with the
- 21 applicant the scope of work and budget for the grant and develop the agreement.
- 22

23 [173-566-110 – Grant announcements.](#)

- 24 (1) Ecology will announce the availability of funding opportunities for competitive grants. The
- 25 announcement will include, at a minimum, a description of:
 - 26 (a) Purpose of the grants.
 - 27 (b) Funding cycle for the grants.
 - 28 (c) Amount of funding available or anticipated amount of funding available, if known.
 - 29 (d) Eligibility criteria for the grant solicitation.
 - 30 (e) Information about how to apply.
 - 31 (f) Application deadlines.

1 (g) Ecology contact information.

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

4 [Unused funds](#)

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

8

9 [173-566-120 - Application.](#)

10 (1) All applicants must use the electronic system identified by Ecology to apply for grants. Applicants
11 without access to the electronic system must use a process approved by Ecology.

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

13 (a) Applicant information.

14 (b) Project location and description.

15 (c) Scope of work and tasks for the project.

16 (d) Requested funding amount and budget for the project.

17 (e) Any other information required by Ecology to evaluate the project.

18 (3) The applicant must submit the application by the due date and time, if a due date and time are
19 included in the announcement. Ecology may approve a later due date by posting notice of the extended
20 application deadline on Ecology's website.

21 (4) Ecology may request additional information to assist in the application evaluation process. If the
22 applicant fails to comply with the request, Ecology may drop the application from further consideration.

23 (5) If after the application deadline, Ecology determines that an application is not complete, the
24 department will notify the applicant of Ecology's decision to:

25 (i) Reject the application;

26 (ii) Allow the applicant to provide the missing information within a specific time limit; or

27 (iii) Extend the application deadline, as described in (3) above.

28 (6) Applicants must file a new application to resubmit a project that was unfunded for any reason in a
29 prior funding cycle.

30

1 [173-566-130 – Phasing.](#)

2 (1) Applicants may choose to divide large, expensive, or complex projects into phases, particularly when
3 each phase can be shown to benefit streamflow or instream resources.

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

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

7

8 [173-566-140 - Evaluation process.](#)

9 (1) Ecology will evaluate all complete applications submitted by the announced deadline.

10 (2) Ecology reviews applications to determine eligibility of the applicant and whether the project meets
11 the eligibility criteria.

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

14 (a) Benefits to streamflow and instream resources.

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

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

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

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

20 (iv) Readiness to proceed.

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

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

26 [173-566-150 - Funding priorities.](#)

27 In addition to the evaluation of project quality in WAC 173-566-140, Ecology will use the following
28 independent sets of priorities in scoring eligible grant applications:

29 (1) [Priority of location.](#)

30 (a) High priority: Within watersheds developing watershed plans or metering pilot project areas
31 described in RCW 90.94.040.

- 1 (b) Moderate priority: Outside high-priority locations described in (1)(a), but the project would benefit
2 stream reaches that contain federal or state listed endangered or threatened fish that are impacted by
3 low streamflows.
- 4 (2) Priority of project type.
- 5 (a) Highest priority projects include water right acquisitions under 173-566-200, water storage projects
6 under 173-566-210, and altered water management or infrastructure under 173-566-220, which:
- 7 (i) Improve streamflow conditions; or
- 8 (ii) When identified in an adopted watershed plan, provide access to a new water supply by offsetting,
9 reducing, or preventing consumptive use impacts caused by new domestic permit-exempt wells.
- 10 (b) Medium priority projects:
- 11 (i) Water right acquisitions under 173-566-200, water storage projects under 173-566-210, and altered
12 water management or infrastructure under 173-566-220 that are not identified in watershed plans but
13 would provide access to a new water supply by offsetting, reducing, or preventing consumptive use
14 impacts caused by new domestic permit-exempt wells.
- 15 (ii) Riparian and fish habitat improvement projects under 173-566-230. These projects would improve
16 instream resources, but may not improve streamflow conditions.
- 17 (3) Ecology may consider the priority given to a project within an adopted watershed plan when ranking
18 that project for funding.
- 19 (4) Ecology may set a minimum score that an application has to receive for Ecology to offer funds.

20

21 [173-566-200 – Water right acquisitions.](#)

- 22 (1) Prospective applicants must contact Ecology to coordinate potential water right acquisition projects.
- 23 (2) The purchase of all or a portion of a water right is eligible for funding. Costs to develop a water right
24 acquisition project are ineligible for funding under this chapter, but Ecology may provide support for
25 project development using other funding sources.
- 26 (3) Applications for a water right acquisition project must describe, when, where, and to what extent,
27 the water right purchase would accomplish one or more of the following:
- 28 (a) Offset consumptive use impacts from new permit-exempt domestic wells.
- 29 (b) Provide benefits to streamflow that support the recovery of threatened and endangered salmonids.
- 30 (c) Provide mitigation for new water supplies when the project is included in an adopted watershed
31 plan.
- 32 (4) Projects will be selected for funding based on the benefits described in (3).
- 33 (5) In order to receive reimbursement, grant recipients must:

1 (a) Obtain an approved water right change authorization providing for a change in the purpose of use of
2 the water right to instream flow according to RCW 90.03.380.

3 (b) Convey the water right to Ecology through a recorded deed following the change to instream flow in
4 (a), to be held and managed in Ecology's Trust Water Rights Program in exchange for the purchase price
5 of the water right.

6

7 [173-566-210 - Water storage.](#)

8 (1) Eligible water storage projects may be for above ground storage, below ground storage, within
9 natural formations, or be man-made. Examples include off-channel surface water storage, managed
10 aquifer recharge, infiltration galleries or ponds, and cisterns.

11 (2) Applications proposing water storage construction projects must:

12 (a) Identify the source of water for storage and address how the water will be available during the
13 periods of active storage to ensure there will be no impairment to senior rights.

14 (b) If a project is identified in a plan under RCW 90.94.020 or 90.94.030, address how water will be
15 managed and maintained to offset the consumptive use impacts from new domestic permit-exempt
16 wells.

17 (c) Describe how project will benefit streamflow or instream resources.

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

19 (e) Describe how monitoring, operations, and maintenance will be addressed to ensure benefits persist
20 over time.

21 (f) Address how the project will acquire and maintain all necessary permits.

22 (3) Water storage construction projects must meet the regulations and environmental concerns
23 described in (2) above. If these cannot be addressed in the application, projects will require a feasibility
24 study, approved by Ecology, which will precede any approval for project construction.

25

26 [173-566-220 - Altered water management or infrastructure.](#)

27 (1) Water management and infrastructure improvements involve changes in how and when water is
28 diverted, withdrawn, conveyed, or used to benefit streamflows and instream resources and carry out
29 chapter 90.94 RCW. Examples include conservation and efficiency projects such as diversion
30 modifications, lining and piping, sprinkler conversion, and other irrigation efficiencies, as well as source
31 switches, and streamflow retiming projects. Innovative methods will be considered.

32 (2) Applications for altered water management or infrastructure projects must:

- 1 (a) Identify the source of water for the project and evidence that water is available for the use so there
2 will be no impairment of senior water rights.
- 3 (b) Describe how monitoring, operations, and maintenance will be addressed to ensure benefits persist
4 over time.
- 5 (c) Address how water quality and aquatic species will be protected.
- 6 (d) Describe how the project will acquire and maintain all necessary permits.
- 7 (3) Altered water management or infrastructure projects must meet the regulations and environmental
8 concerns described in (2) above. If these cannot be addressed in the application, projects will require a
9 feasibility study, approved by Ecology, which will precede any approval for project construction.
- 10 (4) Eligible conservation and water use efficiency projects must permanently convey the saved water to
11 Ecology to be held in the Trust Water Rights Program for instream flow purposes.
- 12 (5) Projects must include sufficient provisions and protections so that completed projects will provide
13 permanent streamflow improvement or water supply benefits.

14

15 [173-566-230 – Riparian and fish habitat improvements.](#)

- 16 (1) Riparian and fish habitat improvements that do not directly increase streamflow, but do benefit
17 instream resources, may be funded through this chapter. Examples include, but are not limited to, in-
18 channel habitat improvements, riparian restoration, strategic land acquisitions, levee modifications,
19 floodplain modifications, fish passage, and beaver introduction.
- 20 (2) Applications for riparian and fish habitat improvement projects must:
- 21 (a) Identify how the projects will improve instream resources and include quantitative or qualitative
22 estimates, or both, of the benefit(s) provided.
- 23 (b) Describe the expected duration of the benefits from this project.
- 24 (c) Describe how the project will protect and enhance water quality and aquatic species.
- 25 (d) Provide metrics for project success, including quantitative metrics if available.
- 26 (e) Describe how the project will acquire and maintain all necessary permits.
- 27 (f) Include monitoring, maintenance, and contingency planning to ensure stream benefits persist over
28 time.
- 29 (3) Riparian and fish habitat improvement projects must meet the regulations and environmental
30 concerns described in (2) above. If these cannot be addressed in the application, projects will require a
31 feasibility study, approved by Ecology, which will precede any approval for project construction.

32

1 [173-566-240 – General environmental monitoring.](#)

2 General environmental monitoring includes stream gauging and groundwater monitoring directly
3 related to restoring, maintaining, or enhancing streamflows or instream resources and values as part of
4 a qualifying project. Recipients must follow all grant requirements for submittal of environmental
5 monitoring data, and standards when Geographic Information System (GIS) data are collected,
6 processed and submitted to Ecology.

7

8 [173-566-300 - Fiscal controls.](#)

9 [Determining allocation of funding.](#)

10 (1) For each funding cycle, Ecology may allocate a percent of available funding to certain project types.
11 Funding allocation may be based on demonstrated need, previous funding awarded, or other criteria.

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

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

17 [Grant decisions.](#)

18 (4) When awarding grants, Ecology decisions are:

19 (a) Consistent with all state laws and rules authorizing the funding and any specific direction by the
20 legislature.

21 (b) Subject to available funds.

22 (c) Based on evaluations of grant applications submitted and other relevant information available.

23 [Funding discretion.](#)

24 (5) Ecology retains the discretion to not provide a grant for an eligible project or to provide less funding
25 for an eligible project than the amount requested.

26 (6) Ecology has the discretion to:

27 (a) Hold funds:

28 (i) To cover cost overruns on funded projects; or

29 (ii) To use in later funding cycles.

30 (b) With the exception of fees collected under RCW 90.94.020 or 90.94.030, award unused funds to
31 lesser priority projects, following the initial grant awards in the funding cycle.

32 [Grant management.](#)

33 (7) Ongoing management of most aspects of grant projects is subject to the most recent edition of
34 *Administrative Requirements for Recipients of Ecology Grants Managed in EAGL*.

- 1 (8) Retroactive costs. Any costs incurred before the agreement signature date are at the recipient's risk.
- 2 (9) Ecology will establish reasonable costs for all grants, and require recipients to manage projects in a
- 3 cost-effective manner. Ecology may require grant recipients to periodically update a spending plan for
- 4 the grant.
- 5 (10) Ecology may withdraw or modify a funding offer if the recipient makes a request to significantly
- 6 change the scope of work after the award.
- 7 (11) Ecology has the right to withdraw funding and not approve expenditures that do not follow
- 8 appropriate contacting process.

9

10 [173-566-310 –Ineligible projects and costs.](#)

11 Costs that are ineligible to receive grant funding under this chapter include, but are not limited to:

- 12 (1) Project elements previously funded by Ecology.
- 13 (2) Projects that are otherwise obligated under statute, rule, ordinance, or court order, except pursuant
- 14 of this chapter and chapter 90.94 RCW.
- 15 (3) Projects that treat process water to meet an individual or general national pollutant discharge
- 16 elimination system (NPDES) permit.
- 17 (4) Staff time is only eligible if directly related to the project.
- 18 (5) Major and capital equipment purchases without pre-approval from Ecology.
- 19 (6) Contaminated soils removal or remediation.
- 20 (7) Projects that conflict with other Ecology rules, projects, or guidance.
- 21 (8) Aquatic plant control for aesthetic purposes, navigational improvements, or any other reason that
- 22 does not provide increase streamflow, nor benefit ecological functions or critical stream habitat.
- 23 (9) Bond costs for debt issuance.
- 24 (10) Operation and maintenance costs.
- 25 (11) Bonus or acceleration payments to contractors to meet contractual completion dates for
- 26 construction.
- 27 (12) Compensation or damages for any claim or injury of any kind arising out of the project, including
- 28 any personal injury, damage to any kind of real or personal property, or any kind of contractual
- 29 damages, whether direct, indirect, or consequential.
- 30 (13) Dispute resolution under the grant agreement.
- 31 (14) Office furniture not included in the recipient's indirect rate.

- 1 (15) Operating expenses of local government, such as the salaries and expenses of a mayor, city
- 2 councilmember, and city attorney.
- 3 (16) Overtime differential paid to employees of a public body to complete administrative or force
- 4 account work.
- 5 (17) Permit fees not directly required for the completion of the project.
- 6 (18) Professional dues.
- 7 (19) Property purchases without prior approval from Ecology.
- 8 (20) Refinance of existing debt.
- 9 (21) Costs to develop a water right acquisition project. Ecology may provide support for project
- 10 development using other funding sources.

11

12 [173-566-320 - Grant agreement.](#)

- 13 (1) Ecology works with the recipient to prepare the grant agreement.
- 14 (2) A grant agreement issued and managed in Ecology's electronic system must include, at a minimum:
- 15 (a) Project description.
- 16 (b) Expected outcomes.
- 17 (c) Project budget and funding distribution.
- 18 (d) Agreement effective date and expiration date.
- 19 (e) Description of tasks and deliverables.
- 20 (f) Contact information for Ecology and the recipient.
- 21 (g) Signatures of authorized signatories.
- 22 (h) General terms and conditions that specify requirements related, but not limited to:
- 23 (i) Amendments and modifications.
- 24 (ii) Assignment limits on transfer of rights or claims.
- 25 (iii) Inadvertent discovery plan for human remains and/or cultural resources.
- 26 (iv) Compliance with all laws.
- 27 (v) Conflict of interest.
- 28 (vi) Disputes.
- 29 (vii) Environmental data standards.

- 1 (viii) Governing law.
- 2 (ix) Indemnification.
- 3 (x) Independent status of the parties to the agreement.
- 4 (xi) Order of precedence for laws, rules, and the agreement.
- 5 (xii) Property rights, copyrights, and patents.
- 6 (xiii) Records, audits, and inspections.
- 7 (xiv) Recovery of funds.
- 8 (xv) Severability.
- 9 (xvi) Suspension.
- 10 (xvii) Sustainable practices.
- 11 (xviii) Termination.
- 12 (xix) Third-party beneficiary.
- 13 (xx) Waiver of agreement provisions.
- 14 (i) Special terms and conditions, if any.
- 15 (j) Agreement-specific terms and conditions, if any.
- 16 (k) Other items, if any, necessary to meet the goals of the grant program.
- 17 (3) All grant agreements under this chapter will include the latest version, as of the original agreement
- 18 date, of Ecology's grant general terms and conditions.
- 19 (4) Ecology may choose to extend a grant agreement at our sole discretion.

- 20 [173-566-330 - Amendments to the grant agreement.](#)
- 21 (1) A change to any of the following items requires an executed amendment to the agreement prior to
- 22 the grantee being eligible for cost reimbursement due to such change:
- 23 (a) Scope of work or the objectives of the project.
- 24 (b) Budget, whether for an increase or decrease.
- 25 (c) Funding, whether for an increase or decrease.
- 26 (d) Redistributing costs among budget tasks that exceed ten percent deviation of the total eligible costs
- 27 of the funding distribution.
- 28 (e) Funding distributions.
- 29 (f) Agreement effective or expiration date, whether to shorten or extend.

- 1 (g) Special terms and conditions or agreement-specific terms and conditions.
- 2 (2) Administrative changes do not require an amendment. Examples of administrative changes include
- 3 updates to contact names, addresses, and phone numbers.
- 4 (3) An amendment must be signed by all parties before it is effective.

5

6 [173-566-340 - Performance standards.](#)

7 [General provisions](#)

- 8 (1) Nothing in this chapter influences, affects, or modifies existing Ecology programs, rules, or
- 9 enforcement of applicable laws and rules relating to activities funded by a grant.
- 10 (2) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant
- 11 agreements and records.
- 12 (3) New Ecology grant agreements signed after the effective date of this chapter must be managed using
- 13 Ecology's designated electronic system. A recipient who cannot access the electronic system to meet a
- 14 deadline or agreement requirements must use a process approved by Ecology.
- 15 (4) Ecology may perform site visits to monitor the project, evaluate performance, and document
- 16 compliance or any other conditions of the agreement.

17 [Recipient standards](#)

- 18 (5) Recipients must:
 - 19 (a) Follow all applicable accounting and auditing laws and rules related to grants.
 - 20 (b) Use funds according to the agreement.
 - 21 (c) Use funds according to the recipient's own policies and procedures, and according to all applicable
 - 22 laws and rules.
 - 23 (d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by
 - 24 the agreement.
 - 25 (e) Obtain preapproval for equipment purchases over the amount specified in the agreement.
 - 26 (6) As specified in the grant agreement, the recipient must submit the following to Ecology:
 - 27 (a) Progress reports.
 - 28 (b) Payment requests.
 - 29 (c) Equipment purchase reports.
 - 30 (d) Documentation.
 - 31 (e) A final closeout report.
 - 32 (f) Any other required information.

1 Ecology standards

2 (7) Ecology will:

- 3 (a) Follow all applicable accounting and auditing laws and rules related to grants.
- 4 (b) Monitor projects and review progress reports to assure compliance with applicable laws, rules,
5 orders, permits, and terms and conditions of the agreement.
- 6 (c) Confirm that Ecology has received required documentation and the project is satisfactorily
7 completed before approving final payment.

8

9 [173-566-350 - Closing out the agreement.](#)

- 10 (1) The recipient must follow the closeout requirements in the agreement.
- 11 (2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet
12 all closeout requirements within the time frames in the agreement.
- 13 (3) Ecology will close out the grant agreement when it determines the recipient has met the closeout
14 requirements or when the agreement has been terminated (see WAC 173-566-360).

15

16 [173-566-360 - Termination of agreement.](#)

- 17 (1) Failure by the recipient to comply with a grant agreement may result in termination of the
18 agreement.
- 19 (2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior
20 to terminating an agreement.
- 21 (3) Ecology's ability to make payments is contingent on availability of funding. In the event funding from
22 state or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to
23 completion or expiration date of the agreement, Ecology, at its sole discretion, may elect to:
- 24 (a) Terminate the agreement, in whole or part; or
- 25 (b) Renegotiate the agreement, subject to new funding limitations or conditions; or
- 26 (c) Suspend performance of the agreement until Ecology determines the funding insufficiency is
27 resolved.
- 28 (4) Ecology will document the termination of an agreement.

29

1 [173-566-370 – Appeals process.](#)

2 (1) Grant applicants and recipients may formally appeal a written decision by Ecology. A recipient
3 cannot bring a lawsuit to Superior Court unless the aggrieved party adheres to the following procedures.
4 The procedures are intended to encourage the informal resolution of disputes.

5 (a) The applicant may seek review of an initial funding decision within 30 days of the decision. The
6 applicant or recipient makes the request for review in writing to the Water Resources Program
7 Manager.

8 (b) The Program Manager will consider the appeal information and will issue a written decision within
9 30 days from the date the appeal is received.

10 (c) If the applicant or recipient is not satisfied with the Program Manager's decision, the applicant or
11 recipient has 30 days to submit a written request to Ecology's Deputy Director of Ecology for a review of
12 the decision.

13 (d) Ecology's Director or Deputy Director will consider the appeal information and will issue a written
14 decision within 30 days from the date the request is received. This decision will be Ecology's final
15 decision.

16 (2) If the applicant or recipient is not satisfied with Ecology's final decision, the applicant or recipient
17 may appeal to the Thurston County Superior Court, pursuant to RCW 34.05.570(4), Judicial Review; see
18 <http://app.leg.wa.gov/rcw/default.aspx?cite=34.05.570>.

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

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