



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

**Chapter 173-98 WAC, Uses and Limitations
of the Water Pollution Control Revolving
Fund**

**Chapter 173-95A WAC, Uses and
Limitations of the Centennial Clean Water
Program**

Summary of rulemaking and response to comments

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Concise Explanatory Statement

**Chapter 173-98 WAC, Uses and Limitations of the
Water Pollution Control Revolving Fund
Chapter 173-95A WAC, Uses and Limitations of the
Centennial Clean Water Program**

Water Quality Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide the Washington State Department of Ecology's (Ecology) response to public comments.

This Concise Explanatory Statement provides information on Ecology's rule adoption for:

- Chapter 173-98 WAC, Uses and Limitations of the Water Pollution Control Revolving Fund.
- Chapter 173-95A WAC, Uses and Limitations of the Centennial Clean Water Program.

Adopted date: August 9, 2017.

Effective date: September 9, 2017.

To see more information related to this rulemaking see

<http://www.ecy.wa.gov/programs/wq/ruledev/wac17398/1604ov.html>. To see more information about other Ecology rulemakings see <http://www.ecy.wa.gov/laws-rules/index.html>.

Reasons for Adopting the Rule

Chapter 173-98 WAC, Uses and Limitations of the Water Pollution Control Revolving Fund, sets forth requirements for Ecology's administration of Washington State's Water Pollution Control Revolving Fund (CWSRF) and the Water Pollution Control Revolving Administration Account. CWSRF provides low interest rate loans to public bodies for statewide, high-priority water quality projects that are consistent with the federal Clean Water Act, 33 U.S.C. 1251-1388.

Chapter 173-95A WAC, Uses and Limitations of the Centennial Clean Water Program, sets forth requirements for Ecology's administration of the Centennial Clean Water Program (Centennial). Centennial provides financial assistance to public bodies for statewide, high-priority water quality projects in the form of grants and loans through appropriation by the Washington state legislature.

Since the rules were last updated, both external stakeholders and Ecology identified several issues related to errors, lack of clarity, and lack of flexibility in the rules. In 2014 the federal Clean Water Act was amended to allow states to offer loan terms of up to 30 years and to provide loans to acquire land for constructing treatment facilities. In 2016 Chapter 90.50A RCW was amended to allow Ecology to offer loan terms of up to 30 years. The extended loan terms and land acquisition amendments provided new funding opportunities.

With this rulemaking we:

- Addressed "housekeeping" issues.
- Provided more clarity.
- Provided more flexibility.
- Took advantage of new funding opportunities consistent with state and federal updates.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes.

There are some differences between the proposed rule filed on April 19, 2017, and the adopted rule filed on August 9, 2017. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology’s reasons for making them.

In WAC 173-98-100(20) we added the bold, underlined text:

(20) Land acquisition:

- (a) As an integral part of the treatment process (e.g., land application);
- (b) For siting of water pollution control facilities;
- (c) For wetland habitat preservation **and protection**; or
- (d) For riparian area **and watershed** preservation **and protection**;
- (e) For drinking water source protection.

In WAC 173-95A-100(14) we added the bold, underlined text:

(14) Land acquisition:

- (a) For wetland habitat preservation **and protection**;
- (b) For riparian area **and watershed** preservation **and protection**;
- (c) For drinking water source protection;

In WAC 173-98-400(2) we added the bold, underlined text:

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

- (a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and
- (b) Taken from the period one-hundred-eighty **to thirty** days before the funding application cycle begins.

In WAC 173-98-400(4) we added the bold, underlined text:

(4) The standard interest rates for water pollution control activities projects are the rates calculated for “moderate” hardship in accordance with Table 1 in WAC 173-98-300. **The department may work with stakeholders to develop a program that may further adjust interest rates for the purposes of further encouraging the funding of water pollution control activities projects.**

Appendix A: Commenters and Response to Comments

Ecology received sixteen comments on the proposed amendments. Ecology received comments in writing, through eComments, and orally. The following table provides basic information on the comments received.

Affiliation	Commenter	Topic	Comment Number
Agency			
City of Bellingham	Porter, Jason	Prior Authorization	A-1-2
		Grants for Preconstruction	A-1-3
		Alternative Public Works Contracting	A-1-4
		Hardship Grants	A-1-5
		Applicant Workshops	A-1-6
		Green Project Reserve (GPR) Ceiling	A-1-7
		Cost Effectiveness Analysis	A-1-8
		Support of Amendments	A-1-1
City of Oak Harbor	Merriman, Doug	Interest Rates	A-7-1
City of Pasco	Hagger, Chelsea	Publicly-owned Industrial Facilities	A-9-1
King County	Kaplan, Daniel	Reserve Account	A-6-2
		Interest Rate Source	A-6-1
Legislative District 13 Representatives	Legislative District 13 Representatives	Publicly-owned Industrial Facilities	A-3-1
Municipal Coalition	Municipal Coalition	Publicly-owned Industrial Facilities	A-5-1
Port of Moses Lake	Bishop, Jeffrey	Publicly-owned Industrial Facilities	A-8-1
Port of Moses Lake	Bishop, Jeffrey	Publicly-owned Industrial Facilities	A-2-1
Spokane Conservation District	Meyer, Ty	CWSRF Sponsorship	A-4-1
Organization			
Nisqually Land Trust	Kane, Joe	Watershed Protection	O-3-1
Trout Unlimited	Elliot-Perez, Crystal	Mine Reclamation Eligibility	O-4-1
Trout Unlimited	Elliot-Perez, Crystal	Mine Reclamation Eligibility	O-1-1
Washington Environmental Council	Remlinger, Lisa	Watershed Protection	O-2-1
Other			
Group of individuals	Washington Environmental Council for 986 signatories	Watershed Protection	OTH-1-1
Public			
	Bradley, Thomas	CWSRF Sponsorship	P-1-1
Tribal Government/Agency			
Colville Confederated Tribes	Wagner, Paul	Mine Reclamation Eligibility	T-1-1

Comments and Responses are grouped together and organized by topic. Under each topic heading is a summary of all the comments received for the topic followed by Ecology's response to the comments.

Ecology used the following topics (arranged alphabetically) to group the comments:

- Alternative Public Works Contracting.
- Applicant Workshops.
- Cost and Effectiveness Analysis.
- CWSRF Sponsorship.
- Green Project Reserve (GPR) Ceiling.
- Grants for Preconstruction.
- Hardship Grants.
- Interest Rate Source.
- Interest Rates.
- Mine Reclamation Eligibility.
- Prior Authorization.
- Publicly-owned Industrial Facilities.
- Reserve Account.
- Support of Amendments.
- Watershed Protection.

Summary of Comments on Alternative Public Works Contracting

Commenter: Jason Porter - Comment A-1-4

The City of Bellingham is concerned about the following changes:

- WAC 173-95A-100. Provide a definition of "an alternative public works contracting project". Without a definition it is left up to different interpretations of what constitutes "an alternative public works contracting project".
- WAC 173-98-100 & 173-98-600. The elimination of contractor design-build and design-build-operate. Contractor design-builds can be a cost effective alternative.

Response to Comments on Alternative Public Works Contracting

No change. The intent of amendments in the adopted rules is to provide greater flexibility for alternative public works contracting options than currently allowed. The amendments provide more flexibility by allowing other options that may develop in the future. Long-accepted options such as "design-build", "design-build-operate", and "general contractor-construction manager" are included (see WAC 173-98-100(1)). The main purpose of the amendments is to simplify the rule to state that alternative public works contracting must be done according to the applicable state statutes.

Summary of Comments on Applicant Workshops

Commenter: Jason Porter - Comment A-1-6

The City of Bellingham is concerned about the following changes:

- WAC 173-98-210. The department's (Ecology) responsibility for application workshops is removing the number of workshops required and changing from being offered in each

region to being available statewide. This modification seems to only benefit Ecology and not the applicant. Webinars rather than traveling is preferred.

Response to Comments on Applicant Workshops

No change. The adopted rule removes the requirement to hold in-person applicant workshops in each of Ecology's four regions as long as Ecology makes workshops available statewide. Ecology does not plan to end the workshops as long as applicants and Ecology's regional offices are interested in them. Currently, there is strong interest for Ecology to hold in-person applicant workshops in each of Ecology's regions. As such, Ecology will continue to hold these workshops.

Summary of Comments on Cost and Effectiveness Analysis

Commenter: Jason Porter - Comment A-1-8

The City of Bellingham is concerned about the following changes:

- WAC 173-98-730. The increased requirements of the cost-effective analysis to also include energy conservation, efficient water use, reuse, recapture, and conservation increases the analysis development time and costs.

Response to Comments on Cost and Effectiveness Analysis

No change. The amendments to the cost and effectiveness analysis requirements are consistent with the requirements in the 2014 amendments to the federal Clean Water Act. Ecology cannot require less than the federal Clean Water Act. Costs associated with conducting a cost and effectiveness analysis are eligible for CWSRF funding. In addition, in many cases increased diligence during planning can result in decreased costs during design and construction.

Summary of Comments on CWSRF Sponsorship

Commenter: Thomas Bradley - Comment P-1-1

We would like to see Washington develop a sponsorship program under the CWSRF as a number of other states have done. Funding then could be made available to address NPS pollution through the use of conservation easements along tributaries.

Commenter: Ty Meyer - Comment A-4-1

The Spokane CD has become aware of a program offered by several states through the Clean Water State Revolving Fund program called the Sponsorship Option. As we understand the program, a point source project and a non-point source project could be applied for as a combined application under the sponsorship program. The goal is to encourage projects to work together in addressing multiple sources of potential pollution in water bodies. This can be achieved by providing financial incentives through the reduction of the interest rate being paid on the point source project to compensate for the additional funds being borrowed to fund the non-point source project.

The Spokane Conservation District is in support of this concept and provides the following framework for implementing this program in the State of Washington.

- 1) Allow for any CWSRF loan applicant to work with non-point source applicants to combine projects to achieve a dedicated source of funding for the non-point program.
- 2) Allow the Department of Ecology to reduce the interest rate on the combined application to fully compensate the point source applicant for the additional funds borrowed to fund the nonpoint portion of the application over the desired payback years.
 - a) The State of Oregon Sponsorship Option states the following: "DEQ determines the amount of incentive associated with each sponsorship option loan. First, DEQ calculates the annual debt service for just the traditional treatment works project. Then it tabulates the annual debt service of the treatment works and non-point source projects combined. Finally, DEQ adjusts that combined debt service by reducing the loan's interest rate to the point where the annual debt service of the combined project is equal to what would have been the annual debt service of just the treatment works project by itself, or 1 percent, whichever is higher."
- 3) SCD agrees that the Department of Ecology should determine the level of incentive associated with the sponsorship option; however, we believe the interest rate should NOT have a floor of 1% written in the rule. We believe DOE should have the ability to fund combined applications with interest rates as low as 0% as an incentive to develop partnerships and implement on the ground non-point source projects.

Example:

Applicant borrows \$5,000,000 at 1.5% annual interest rate on a 20 Year payback.

Applicant borrows an additional \$500,000 to fund a non-point source project. Interest rate set at 1%.

Applicant borrows an additional \$500,000 to fund a non-point source project. Interest rate lowered to maintain the same payment as the original \$5,000,000 loan amount.

CWSRF loan	Loan Amount	Interest	Payback Years	Annual Payment
Regular Loan	\$5,000,000	1.5%	20 Years	\$291,228
Combined Loan	\$5,500,000	1%	20 Years	\$304,784
Cost for Non-point project			20 Years at \$304,784-\$291,228 = \$13,556/year	\$271,124
Interest rate for payments to remain the same as original loan.	\$5,500,000	0.552%	20 years	\$291,228

Response to Comments on CWSRF Sponsorship

Change. In the adopted rule, Ecology added language to WAC 173-98-400(4) to allow the option to develop a program that may be similar to other states' "sponsorship" programs. Such an option enhances the flexibility of the CWSRF. The addition is consistent with the proposed amended rule because it offers another option for increasing the number of

nonpoint projects funded through the program. Ecology will work with our stakeholders toward development of a program.

Summary of Comments on Green Project Reserve (GPR) Ceiling

Commenter: Jason Porter - Comment A-1-7

The City of Bellingham is concerned about the following changes:

- WAC 173-98-520. The reduction of the ceiling amounts for green project reserves from fifty percent to twenty-five percent. The fifty percent ceiling amount provides an incentive for jurisdictions to try new technologies and approaches. This is a significant reduction and justification by Ecology should be provided supporting the change.

Response to Comments on GPR Ceiling

No change. The reduced ceiling amount for forgivable principal loans for green project reserve from 50% to 25% is consistent with Water Quality Program policy and the Funding Guidelines. The reduction is necessary because the Capitalization Grant Ecology receives from the Environmental Protection Agency strictly limits the option to award forgivable principal loans each year. However, according to WAC 173-98-520(8) in the adopted rule, Ecology may raise the ceiling amounts if there is limited demand for eligible projects.

Summary of Comments on Grants for Preconstruction

Commenter: Jason Porter - Comment A-1-3

The City of Bellingham is concerned about the following changes:

- WAC 173-95A-520. Grants for facility planning and design may not exceed fifty percent of the total eligible costs. This reduction will likely effect large complex projects that could provide significant improvements in water quality.

Response to Comments on Grants for Preconstruction

No change. Currently Centennial grants for wastewater facility projects can only be used for construction costs in hardship communities. The adopted rule will allow Centennial grants to cover up to 50% of the total eligible costs for preconstruction projects in hardship communities as well. This change is similar to the option in WAC 173-98-520(2)(b) to provide up to 50% forgivable principal loans for preconstruction projects in hardship communities.

Summary of Comments on Hardship Grants

Commenter: Jason Porter - Comment A-1-5

The City of Bellingham is concerned about the following changes:

- WAC 173-95A-400. Removal of wastewater treatment facility construction. If water quality improvements is the goal of the funding source, removing wastewater treatment facilities and sanitary sewer projects seems to work against that goal.

Response to Comments on Hardship Grants

No change. The intent of the amendments to WAC 173-95A-400 is to simplify the Centennial rule by deleting redundant language. The adopted rule defers to the CWSRF rule (WAC 173-98-300) that specifies the long-established process to determine eligibility for wastewater facility construction subsidy. Ecology will continue to provide subsidy in the form of grants, forgivable principal loans, and loans with further reduced interest rates to help fund wastewater facility construction projects in hardship communities.

Summary of Comments on Interest Rate Source

Commenter: Daniel Kaplan - Comment A-6-1

The proposed amendment reads as follows:

WAC 173-98-400 Loan interest rates.

- 1) Interest will accrue on each disbursement as it is paid to the recipient. This is "deferred interest." Deferred interest is added to the principal at project completion.
- 2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:
 - a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

As stated in the annual Final Water Quality Funding Offer List and Intended Use Plan, loan interest rates are based on the 11 Bond G.O. Index, a weekly index published by The Bond Buyer. WTD recommends that section (2) above be revised to match the language in the Intended Use Plan so that the regulation conforms to what has been department practice.

Response to Comments on Interest Rate Source

No change. A key goal of the rulemaking is to provide greater flexibility. Specifying the source for determining interest rates in the rule would lock Ecology into using the same source even if a better source is found or if the source is no longer available in the future. Stating the source annually in the Funding Guidelines and/or the Final Offer and Applicant List provides important information to applicants while not tying Ecology to a particular source.

Summary of Comments on Interest Rates

Commenter: Doug Merriman - Comment A-7-1

The rule changes propose the ability for applying entities to ask for loan terms up to 30 years in duration. For certain hardship entities, the proposed rule change incorporates a proposed interest rate benchmark for 21 to 30 year loans at 80% of market rate (WAC 173-98-300(5) Table 1). This reflects a 33% rate increase ($80\%/6\% = .3333$) over the rate benchmark for 6 to 20 year loans. For many hardship entities, although appreciative of the reduced rate structure, a 30 year loan is attractive as it reduces the rate impact to rate payers with the principal repayment being spread over a longer term. However, the recalibrating of the interest rate from 60% to 80% of market reduces the benefit, and potential affordability benefit, of going out to 30 years. In a

sense, the proposed differential in rate benchmarks equates to a 33% penalty for attempting to mitigate rate shock on an economically distressed community. Mathematically, the total life interest cost differential between 60% and 80% of market rate increases the 30-year lifetime interest cost by 36.1% (see attachment).

For this reason, we respectfully request that the rule change retain the 60% of market rate benchmark, rather than the 80% benchmark, for those loans maturing from 21 to 30 years.

Comparison of 30-year loans at 60% and 80% of market interest rate.

Example Market rate of interest:	2.33%	2.33%	
<u>Given</u>	<u>Interest Rate at 60% mkt</u>	<u>Interest Rate at 80% mkt</u>	
Loan	1,000,000.00	1,000,000.00	
Interest Rate	1.40%	1.87%	
Term	30	30	
Annual Payment	(\$41,050.15)	(\$43,833.88)	
Lifetime Repayment	(\$1,231,504.55)	(\$1,315,016.48)	
Lifetime Interest	(\$231,504.55)	(\$315,016.48)	
<u>Lifetime Interest Cost Differential:</u>			
Interest Cost at 80%		(\$315,016.48)	= 1.360736 or 36.1%
Interest Cost at 60%		(\$231,504.55)	

Response to Comments on Interest Rates

No change. Issuing longer term loans comes with a cost to the CWSRF. In order to mitigate this loss and keep the CWSRF a viable financial tool into the future, the amendment increases the interest rates for 30-year loans relative to 20-year loans. Also, the adopted rule includes the following interest rates for 21 to 30-year term loans:

- 60% of the market rate for "moderate" hardship projects.
- 40% of the market rate for "elevated" hardship projects.
- 20% of the market rate for "severe" hardship projects.

Interest rates for 21 to 30-year term loans of 80% of the market rate only apply to "non-hardship" projects. Moreover, Ecology uses market rate for 20-year tax exempt municipal bonds to establish loan interest rates. So, the maximum interest rate for 30-year term loans will be 80% of the market rate for 20-year tax exempt municipal bonds.

Summary of Comments on Mine Reclamation Eligibility

Commenter: Paul Wagner - Comment T-1-1

Currently, Chapter 173-98 WAC and Chapter 173-95A which include restrictions prohibiting the use of Clean Water Act Section 319 funds for mine cleanup projects.

It is our understanding that other states do not self-impose this type of limitation on the use of Section 319 funds and frequently use these funds to implement important abandoned mine

cleanup projects. Such an opportunity exists at the Red Shirt Mill Site in the Methow River basin. It is our understanding that approximately 20,000-30,000 cubic yards of tailings contaminated with toxic heavy metals, including arsenic, cadmium, selenium, copper, zinc, and barium lie within the floodplain of the Methow River at this site; they occupy over three acres and reach depths of eight feet (SAIC 2002). Remedial Investigation/Feasibility Study Report. Red Shirt Mill Site. Twisp, Washington). The tailings extend to an actively eroding streambank on the outside of a meander bend of the Methow River and are exposed to surface water during all but the lowest stream flows, creating a direct heavy metal exposure pathway for fish and other aquatic organisms.

For this reason, we strongly support the inclusion of provisions for abandoned mine cleanup eligibility during the rulemaking process for Chapter 173-98 WAC and Chapter 173-95A. Specifically, we request that Ecology delete the provisions in the current rules prohibiting the use of funds for reclamation of abandoned mines, found at WAC 173-95A-120(20) and WAC 173-98-110(25). Furthermore we request the addition of a provision that authorizes the use of funds for reclamation of abandoned mine sites that cause impacts to stream habitat and/or water quality such as the Red Shirt Mill Site.

Commenter: Crystal Elliot-Perez - Comment 0-1-1 and Comment 0-4-1

Trout Unlimited (TU) and our 5,000 members in Washington State share Ecology's objective to support project opportunities critical to protecting and enhancing water quality in Washington State. For this reason, we strongly urge you to include provisions for abandoned mine cleanup eligibility during the rulemaking process for Chapter 173-98 WAC and Chapter 173-95A. Specifically, we request that Ecology delete the provisions in the current rules prohibiting the use of funds for reclamation of abandoned mines, found at WAC 173-95A-120(20) and WAC 173-98-110(25). We request the addition of a provision that authorizes the use of funds for reclamation of abandoned mine sites that cause impacts to stream habitat and/or water quality.

Currently, Chapter 173-98 WAC and Chapter 173-95A include restrictions prohibiting the use of Clean Water Act Section 319 funds for mine cleanup projects. Other states do not self-impose this type of limitation on the use of Section 319 funds. In fact, other states frequently use these funds to implement important abandoned mine cleanup projects. Specifically, TU's Abandoned Mine Restoration Program has a successful track record of using Section 319 funds in Idaho, Colorado and Montana to clean up abandoned mine pollution and rebuild damaged streams. In Colorado, over the past 10 years we have secured \$856,000 in Section 319 funding via that state's Nonpoint Source Program to leverage an additional \$1.2 million dollars from other sources to reclaim toxic mine tailings and restore 11 miles of stream channel and 100 acres of floodplain and riparian habitat on private land in the Rio Grande Basin. Similarly, in Idaho and Montana, we have leveraged seed funding from state-administered Section 319 funding programs to secure four times that much from federal and private funding sources to rebuild rivers in the Clark Fork and Salmon River basins that were turned up-side-down by placer and dredge mining. In all three of these states, Section 319 funds have not only paid directly to clean-up legacy mine impacts, but they also have leveraged significant additional outside funding for this work—funding that has created jobs in local communities that restore water quality and river health in those communities.

There is a critical need for authorizing the use of Section 319 funds for abandoned mine cleanup projects: there is no other designated funding source in Washington State for groups like TU – with the expertise, experience, and capacity to undertake this work – to access for this purpose.

Ecology has previously expressed a strong desire for groups like TU to take the lead on abandoned mine cleanups, as they acknowledge the lack of internal capacity for tackling these projects. For the past five years, we have been working hand-in-hand with Ecology to develop a public-private partnership model for these projects, but the successful path forward has been elusive due to lack of funding availability and other constraints.

This is an urgent cause: abandoned mine sites – with their contaminated mine tailings and acid mine drainage – are ticking time bombs in Washington State's headwater streams. From the Red Shirt Mill on the Methow River to the Sunset Mine on Trout Creek in Index, abandoned mines are a chronic source of pollution to our waterways and pose an acute risk for catastrophic ecosystem damage (think Gold King Mine in the Animas River watershed in Colorado).

Orphaned mine sites have one thing in common: the absence of any Potentially Liable Party (PLP) from which to collect damages to clean them up. Ecology's "Polluter Pays" approach only works when the polluter can be identified. Ecology's Central Region conducted an investigation of abandoned contaminated sites in eastern Washington to identify PLPs, and their results were sobering: only a handful of sites out of the hundreds investigated had viable PLPs.

The bottom line is Washington State's abandoned mine sites will continue to languish on our landscape and pollute our streams unless Ecology establishes a funding source for their cleanup. Ecology's rulemaking documents state that one of the purposes of the rulemaking is to "provide more flexibility" in the use of available funds. Simply removing Washington's self-imposed restrictions on use of Section 319 funds for this purpose would be a huge step in the right direction. We urge you to capitalize on the opportunity presented by the rulemaking process to make these important changes to Chapter 173-98 WAC and Chapter 173-95A.

Response to Comments on Mine Reclamation Eligibility

No change. Projects involving the reclamation of abandoned mines are ineligible for funding under both rules. Ecology expects mine owners and other persons profiting from mine operations to pay the cost of reclaiming the mines after mining operations have ended. The commenters are correct that in many cases no "Potentially Liable Party" can be located to pay for the reclamation of abandoned mines. However, it does not follow that Ecology should use the limited subsidized loan and grant funding on the reclamation efforts.

While the adopted rules uphold the ineligibility of the reclamation of abandoned mines for CWSRF and Centennial funds, water quality projects associated with reclaimed mines (e.g., riparian area restoration work) are eligible for funding under both rules. Similar work is eligible for funds from the Clean Water Act Section 319 program as well.

Summary of Comments on Prior Authorization

Commenter: Jason Porter - Comment A-1-2

The City of Bellingham is concerned about the following changes:

- WAC 173-98-800 & 173-95A-700. Eliminating reimbursement for prior authorized incurred costs will reduce flexibility and likely make project scheduling difficult, particularly when the requirement to start work is proposed to be reduced from sixteen to ten months of the publication date of the Final Offer.

Response to Comments on Prior Authorization

No change. The amendments will not affect the existing processes for reimbursing for incurred costs nor the requirement for starting work on a funded project. The rule amendment deletes old language describing a cumbersome process that is no longer consistent with the way Ecology reimburses costs.

Under the current approach for reimbursing for incurred costs, an “effective date” is negotiated between the applicant and the Ecology Project Management Team during agreement development. The effective date is the earliest date on which eligible costs may be incurred. Unless stated in a budget appropriation, the effective date for grants cannot be before the beginning of the state fiscal year (July 1). Under the "interim refinance" provisions in WAC 173-98-410(3), the effective date for CWSRF loans can go back to the beginning of the project if appropriate. An applicant may begin to incur project costs on the effective date, before Ecology's Water Quality Program Manager signs the final agreement. Ecology cannot reimburse expenditures until the agreement is signed. When applicants incur eligible costs before the agreement is signed, they do so at their own risk. The adopted rules remove outdated language about the prior authorization process.

Similarly, the requirement in the adopted rules to begin work on a project within ten months of the publication of the Final Offer and Applicant List reflects the current process. The threshold for meeting the requirement to begin work on a project is stated in WAC 173-98-800(1)(b) and WAC 173-95A-700(1)(b).

Summary of Comments on Publicly-owned Industrial Facilities

Commenter: Chelsea Hagger - Comment A-9-1

The City of Pasco became aware of the proposed rulemaking back in November 2016, and initially we, along with 4 other publicly owned industrial wastewater treatment facilities in Washington State, got together and looked at the proposed rules. Initially, we were under the impression the DOE rulemaking would allow these five municipalities to become eligible for a couple of seawater grants and low interest loan funding sources, and we are supportive of that. We have kind of watched our business come through the process and we are aware that now the FAC has moved forward with recommending that these 5 municipalities do not become eligible. So, I am here today to offer a little bit of information about the City of Pasco and urge the DOE to reconsider and potentially make that change through the final rule making.

So, Pasco's publicly owned industrial treatment works facility serves as the mechanism for supporting the City's economic growth and development specifically pertaining to the regions ag and processing industry, but by providing an affordable and effective means to treat and recycle processed wastewater the City has drawn large ag industry leaders to the area, in turn creating jobs and bolstering the region's economic vitality. Today, the ag processing industry employs around 1,000 people near Pasco. Additionally, as the market has developed and evolved, many processors have sought facility and operational expansion in addition to newcomers requesting access to the program. The City of Pasco is currently unable to support these growth efforts due to limiting nature of the facilities capacity. Pasco would put considerable effort and resources into a study that may pave a brighter path forward to meet this increasing need. This comprehensive study will evaluate new uses such as residential irrigation, and industrial use. Ultimately, state funding will be vital to the successful implementation of the study and the way

that it fosters economic growth and vitality, provides jobs and meets the environmental standards set forth by the DOE. Additional state grant opportunities would encourage additional food and agricultural processing businesses to invest in Eastern Washington communities and would bring more jobs to the area.

The City of Pasco urges your continued consideration of this issue and hopes that the DOE will act to make Pasco, and others alike, eligible for additional state water infrastructure funding.

Commenter: Legislative District 13 Representatives - Comment A-3-1

We represent the 13th Legislative District, which is home to two of the five publicly owned industrial wastewater treatment facilities in Washington State. The facilities in the 13th Legislative district are operated by the City of Quincy and the Port of Moses Lake. These treatment facilities are currently not eligible to compete for funding from the Water Pollution Control Revolving Fund (CWSRF) or the Centennial Clean Water Fund (CCWF).

We urge the Department of Ecology, in the rule-making cited above, to modify the rules to the CWSRF and CCWF to allow for publicly owned industrial wastewater treatment facilities to be eligible for funding under both programs.

The City of Quincy and the Port of Moses Lake have invested in wastewater treatment facilities to bring new industries and jobs to rural central Washington. Historically, publicly owned industrial wastewater treatment facilities have not been eligible for funding programs such as the CWSRF and the CCWF unless they can demonstrate that the project directly benefits residential taxpayers. However, DOE has acknowledged that there are no statutory, or other constraints, preventing these facilities from being eligible for assistance under these programs.

Indeed, last summer, DOE recommended expanding the eligibility for these funding programs to publicly-owned industrial wastewater treatment facilities. DOE's recommendation was rejected by the handful of their advisory committee members that attended the meeting to review DOE's recommended changes to the rules (only 39% of the advisory committee members attended the meeting).

Accordingly, the draft rules under consideration does not include this important element; however, the final rule can make this important change. Adopting a rule that will allow these facilities to become eligible for funding from these two programs will benefit the state in meeting water quality objectives and assist in job creation in rural central Washington.

Additionally, with this change in the rules, these facilities will be more competitive when applying for federal funds, which, in many instances are a critical investment requirement and component of projects.

For example, the U.S. Environmental Protection Agency (EPA) announced the availability of approximately \$1 billion in credit assistance for water infrastructure projects under the new Water Infrastructure Finance and Innovation Act (WIFIA) program. Unfortunately, eligibility for these federal funds is strongly dependent upon a jurisdiction first being eligible for state level grant funds. In 2016, DOE acknowledged that publicly-owned industrial wastewater treatment facilities are not prohibited from using federal sources of funding provided to the state for these two water pollution control accounts. Hence, the need to change the current rules.

We urge the final rules to include DOE's original recommendation to allow publicly owned industrial wastewater treatment facilities to be eligible for grants under the CWSRF and CCWF programs.

The change will assist in further job creation in rural Central Washington, and leverage available state and federal funds to achieve our common goal for clean water.

Commenter: Municipal Coalition - Comment A-5-1

We are contacting you as a coalition of the five publicly-owned industrial wastewater treatment facilities in Washington State to submit the following comments to the proposed rule that was published by the Department of Ecology (Ecology) on April 19, 2017. We are the City of Quincy, City of Pasco, City of Vancouver, Port of Moses Lake and Port of Sunnyside.

These communities have all invested in wastewater treatment facilities to enable job creation and economic growth outside of the Puget Sound region. Historically, publicly owned industrial wastewater treatment facilities have been ineligible for funding programs such as the Water Pollution Control Revolving Fund (CWSRF) and the Centennial Clean Water Fund (CCWF) unless they can demonstrate that the project directly benefits residential taxpayers.

At the July 21, 2016 Financial Assistance Council (FAC) meeting, Ecology presented their specific rulemaking recommendations including expanding the eligibility for these funding programs to publicly-owned industrial facilities. This suggestion was considered and rejected by only 12 FAC members, representing a meager 38.7% of the membership, and with limited Ecology support staff (6 out of 14) at their October 6, 2016 meeting. Nonetheless, the final rule can make this important change, which will benefit the state in meeting water quality objectives, and assisting in job creation outside of Puget Sound.

In recent years, local infrastructure funding has become less reliable and increasingly uncertain. Since 2009, dedicated infrastructure accounts like the Public Works Trust Fund, which were created to provide loans for community infrastructure projects, have been routinely swept, except in 2012, to resolve budget shortfalls. During the 2017 legislative session, the legislature proposes funding the Public Works Board's project list for the first time in five years, but continues to debate diversion of the Funds' revenue streams for future years. The inconsistency of water infrastructure funding during the past decade has led to project delays, reconsideration of financing options, redesign, reductions and postponements at the local level.

Should publicly-owned industrial facilities become eligible to apply for CWSRF and the CCWF grants, they would also become more competitive in applying for federal funds, a critical investment requirement and component of some projects. The U.S. Environmental Protection Agency (EPA) announced the availability of approximately \$1 billion in credit assistance for water infrastructure projects under the new Water Infrastructure Finance and Innovation Act (WIFIA) program. Unfortunately, eligibility for these federal funds is strongly dependent upon a jurisdiction first being eligible for state level grant funds. In 2016, Ecology acknowledged that publicly-owned industrial wastewater treatment facilities are not prohibited from federal sources of funding provided to the state in support of these two water pollution control accounts.

Consequently, we were encouraged when the agency recommended that publicly-owned industrials become eligible for these funds last year, and we strongly urge it to move forward with its initial recommendation to change the proposed rule and allow these five jurisdictions to compete for the state's largest and most reliable sources of wastewater infrastructure funding.

The change will assist the state in meeting its water quality goals, and assist in retaining and growing economic activity outside of Puget Sound.

Commenter: Jeffrey Bishop - Comment A-2-1 and Comment A-8-1

The Port of Moses Lake has one of the largest airfields in the world, and can accommodate the needs of the largest aircraft flying today. The handout you are receiving shows the location of the current wastewater treatment facilities in relation to the airport, a diagram of the current system, and a copy of a letter from the 13th District Legislators on this issue.

The Port of Moses Lake's focus is bringing new economic opportunity to rural, Central Washington. Our airport facilities have a long history of serving unique needs for the aerospace industry, including aircraft testing, certification, pilot training, emergency preparedness and military training.

But the Port is much more: in recent years, new industries like Genie, Chemi-Con, Moses Lake Industries, Mitsubishi Aircraft, SGL Carbon Fibers, AeroTEC, Aviation Technical Services and Greenpoint Technologies have located facilities at the Port - bringing over a thousand new jobs.

And we are in the midst of bringing rail service to meet the growing needs of these companies, for recruitment of new businesses, and to access more than 1,200 acres of available industrial lands next to the airport. With rail service, the Port will have the capability to connect runways, rail and roads to create new jobs in Central Washington.

The wastewater treatment facility at the Port was initially installed in 1999 at a cost of \$4.1 million. At that time, it was designed to handle only total suspended solids. In 2014, the Port expanded the pumping, storage and land application capacity - at a cost of \$4.7 million. The system has storage capacity of 60 million gallons and access to 640 acres for irrigation. To date, the Port has invested \$11.8 million in the system. It serves customers that provide about 2,500 jobs in our rural, central Washington community. We are in the planning process to integrate pretreatment to the facility, which would allow our current customers to expand their businesses, and bring another 800-1000 jobs to the community.

We urge DOE to amend the rules on uses of the Water Pollution Control Revolving Fund and the Centennial Clean Water Fund to allow publicly owned wastewater treatment facilities to be eligible for funding under these programs.

The Port of Moses Lake is one of only five publicly owned wastewater facilities in Washington State - and we were encouraged that DOE acknowledged that there were no statutory restrictions on facilities like ours being eligible to compete for funding under these programs. And we were in support of DOE's original recommendation to amend these rules to allow facilities such as ours to become eligible. However, these draft rules do not include this important change.

We urge DOE, in the final rules, to incorporate their original recommendation to allow publicly owned wastewater treatment facilities to become eligible for funding under the Water Pollution Control Revolving Funds and the Centennial Clean Water Fund.

This change will:

- Assist in our efforts to create new jobs and economic opportunity in Central Washington.
- Allow our facility to compete for federal funding programs that use eligibility under state programs as a criterion for project funding.

- Assist in meeting the goals for clean water in our communities.

Response to Comments on Publicly-owned Industrial Facilities

No change. The commenters provide excellent information on the importance of the five publicly-owned industrial wastewater treatment facilities operating in the state. Ecology appreciates the services these facilities provide and their positive impacts on the communities they serve. However, the adopted rules uphold the ineligibility of publicly-owned industrial wastewater treatment facilities to receive funding.

Directly subsidizing industrial users conflicts with the long standing view of the intent of the water quality financial assistance programs. The authorizing statutes for the rules (Chapter 70.146 RCW and Chapter 90.50A RCW) do not overtly exclude the use of the funds for publicly-owned industrial wastewater treatment facilities. However, Chapter 70.146 RCW implies that the intent of the Centennial program is to focus on the impact to residential ratepayers. Specifically, RCW 70.146.070(1)(b) and (d), respectively, state that when making grants or loans for water pollution control facilities, the department must consider:

- “The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance”.
- “The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities”.

In addition, RCW 70.146.010 clearly prohibits Ecology from funding industrial pretreatment by stating, “It is the intent of this chapter that industrial pretreatment be paid by industries and that state funds shall not be used for such purposes.”

Combined, these directives suggest that the intent of the Centennial program is to address the impacts to and needs of residential ratepayers, while industrial ratepayers and industrial users are expected to cover their costs without subsidy. Ecology applies the same expectations to the CWSRF.

Eligibility for the federal Water Infrastructure Finance and Innovation Act (WIFIA) program does not depend on eligibility for state loan or grant funds.

Lastly, as a clarification, Ecology raised the issue of the eligibility of publicly-owned industrial wastewater treatment facilities for discussion with the rule advisory committee, the Financial Assistance Council (FAC). Ecology raised the issue with FAC as a topic for discussion, not as a "recommendation". Please see Slide 27 in the presentation found at <http://www.ecy.wa.gov/programs/wq/ruledev/wac17398/docs/PotentialRevisionsUpdated100616.pdf>.

Summary of Comments on Reserve Account

Commenter: Daniel Kaplan - Comment A-6-2

WAC 173-98-450 Loan reserve requirements.

Wastewater Treatment Division of King County (WTD) currently maintains \$10.3 million of reserves for its revolving fund loans and, under its current loan agreements, must accumulate an additional \$8.0 million by 2020. WTD is pleased that for future loan agreements, the Department

is proposing that the creation and funding of a reserve account will be at its discretion rather than a requirement. The proposed change, however, does not relieve WTD from maintaining and accumulating \$18 million of reserves on its existing loans. These are funds that, if made available for its capital program, would reduce WTD's need for external financing and improve its overall credit quality.

WTD recommends that the proposed rule change include a provision that would allow the department to waive the reserve requirement on existing loan agreements for borrowers that have a rating of at least Aa3 by Moody's Investor's Service or AA- by S&P Global Ratings or Fitch Ratings Service. Given the high credit quality associated with the wastewater sector and with bond ratings in these categories, the department can be confident that the financial strength of the Water Pollution Control Revolving Fund will not be impaired. Eliminating the reserve requirement on existing loan agreements would also be consistent with the practices of other state revolving funds. The department may wish to consult the Public Works Trust Fund, which when it changed the debt service payment date on its loans to June 1 from July 1, amended Public Works loan agreements by requesting borrowers to simply sign a letter that confirmed the change in the payment date.

Response to Comments on Reserve Account

No change. A key goal of the rulemaking is to provide greater flexibility. The adopted amendments provide Ecology with the option of requiring loan recipients to have a reserve account without stating the criteria for making such decisions. This approach provides Ecology the most flexibility for applying the requirement. Ecology expects to apply the requirement very rarely.

Ecology agrees with the commenter that removing the reserve account requirement on existing loan agreements could be beneficial to some recipients. Ecology will not amend loan agreements that are already in repayment. However, Ecology may amend loan agreements that have not yet entered repayment. Ecology and the recipient would need to sign a formal amendment because of the loan agreement clause that states, "*No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement.*" For loans that have not entered repayment, Ecology will consider waiving the reserve account requirement if the recipient submits the following:

- A written request for the waiver.
- A completed Fiscal Sustainability Plan (FSP) certification that states the recipient has a plan(s) that at least addresses the minimum requirements of a FSP. The FSP certification can be found at <http://www.ecy.wa.gov/programs/wq/funding/FundPrgms/CWSRF/CWSRFres/FiscalSustPlanCert052815.pdf>.

Summary of Comments on Support of Amendments

Commenter: Jason Porter - Comment A-1-1

The City of Bellingham generally supports the proposed changes to WAC 173-95A-015 and WAC 173-98-010.

The City of Bellingham supports the following proposed changes:

- WAC 173-98-100 & 173-95A-110. The ability to use the funds for land acquisition for wetland habitat preservation, riparian area preservation and/or drinking water source protection.
- WAC 173-95A-540. The simplified step process for facilities.
- WAC 173-95A-610. Clarification and additional allowances regarding eligibility and compliance with the Growth Management Act.
- WAC 173-98-110. Engineering reports will be considered an eligible cost.
- WAC 173-98-110. Additional clarification on the ineligible operations and maintenance activities and permit fees.
- WAC 173-98-200. Simplification of the application for funding requirements.

Response to Comments on Support of Amendments

Thank you for the comments in support of the amendments.

Summary of Comments on Watershed Protection

Commenter: Washington Environmental Council for 986 signatories - Comment OTH-1-1 (986 signatories)

These comments relate to the eligibility criteria for using Clean Water State Revolving Fund loans for land acquisition. The proposed changes to WAC 173-98-100 (20) includes additions for siting of water pollution control facilities (b), for riparian area protection (d), and for drinking water source protection (e).

I support these additions. However, one category needs to be added: watershed protection. Management at the watershed scale is important to protect water quality. Right now, standard industrial forest rotations produce watersheds with young forests. Younger trees use more water than older forests thereby making less water available during critical times for salmon. Stream flow deficits in late summer and early fall contribute to other water quality impairments such as low dissolved oxygen and high temperatures. They are also an issue for drinking water availability.

Allowing CWSRF loans for land acquisitions at the watershed scale is crucial for being able to secure better forest management that improves drinking water, protects aquatic wildlife, and preserves water for recreational use.

Please further amend WAC 173-98-100 (20) to include watershed-scale protection as an eligible category for land acquisition.

Commenter: Joe Kane - Comment O-3-1

Specifically, we are concerned about the eligibility criteria for using Clean Water State Revolving Fund loans for land acquisition. The proposed changes to WAC 173-98-100 (20) include additions for siting of water pollution control facilities (b), for riparian-area protection (d), and for drinking-water source protection (e). We support these additions.

However, we strongly urge the addition of one further category: Watershed protection. Recent research published by Perry and Jones (2017) and validated modeling conducted in our Nisqually

Watershed (McKane et al., 2016), in which the Nisqually Land Trust participated with the Environmental Protection Agency and other partners, demonstrate that management at the watershed scale is important to prevent water-quality issues.

Modeling in the Mashel sub-basin of the Nisqually has shown that when entire forested watersheds, not just riparian areas, are comprised of forests 80 years old or older, they increase summer low flows by a factor of at least five compared to watersheds with forests that are 40 years old. These findings are particularly pertinent to our local communities, such as Yelm and Eatonville, which are severely challenged in their ability to provide adequate drinking water for their citizens.

And as research by the Nisqually Indian Tribe, the lead entity for salmon recovery in the Nisqually Watershed, has amply demonstrated, addressing stream flow at the watershed level is also absolutely critical to the survival of Nisqually Chinook salmon and steelhead trout, both of which are listed as threatened under the Endangered Species Act. For each species, the annual number of spawning adults is now so low that one bad year – for example, even one more year in which stream flows are as low as they were in 2015 – could well mean the loss of the species.

As the land-acquisition agent for salmon recovery in the Nisqually Watershed, we have learned that commercial timber harvest as practiced not only in our watershed but all along the west slope of the Cascade Mountains is steadily and rapidly reducing overall stand ages to levels that are significantly impacting both our human and our fish populations and must be reversed.

Standard industrial rotations produce watersheds with young forests across a vast landscape, and those younger trees use more water than older forests, thereby making less water available during critical times for salmon. Stream-flow deficits in late summer and early fall also contribute to other water-quality impairments, such as low dissolved oxygen and high temperatures, and they are a critical issue in drinking-water availability.

Ecosystem services in a healthy watershed provide a steady stream of benefits to local communities, supporting prosperous economies and a vibrant quality of life. The infrastructure provided by our forests includes benefits such as clean water and air, carbon storage, healthy fish, and timber. Other vitally important services include flood risk reduction, species habitat, and recreational values.

Maintaining and increasing these benefits requires better management of our forests, and allowing Clean Water State Revolving Fund loans for land acquisitions at the watershed scale is crucial for being able to secure that better management. Adding this category will make investing in "green infrastructures," and the management practices that support them, more of a reality for local projects that bring together local governments, small forest landowners and other nongovernmental organizations like land trusts.

If these rule changes are successful, they could be one of the largest funding opportunities to elevate forests as infrastructure in our state. Please further amend WAC 173-98-100 (20) to include watershed-scale protection as an eligible category for land acquisition.

Commenter: Lisa Remlinger - Comment O-2-1

We specifically want to comment on the eligibility criteria for using Clean Water State Revolving Fund loans for land acquisition. The proposed changes to WAC 173-98-100 (20)

includes additions for siting of water pollution control facilities (b), for riparian area protection (d), and for drinking water source protection (e).

We support these additions. However, we think that one category needs to be added: watershed protection. Recent research published by Perry and Jones (2017) and validated modeling conducted in the Nisqually Watershed (McKane et al., 2016), in which Washington Environmental Council participated with EPA and other partners, demonstrates that management at the watershed scale is important to prevent water quality issues. Modeling in the Mashel sub-basin of the Nisqually demonstrated that when entire forested watersheds, not just riparian areas, are comprised of forests 80 years old or older, they increase summer low flows by a factor of 5 compared to watersheds with forests that are 40 years old.

Standard industrial rotations produce watersheds with young forests. Younger trees use more water than older forests thereby making less water available during critical times for salmon. Stream flow deficits in late summer and early fall contribute to other water quality impairments such as low dissolved oxygen and high temperatures. They are also an issue for drinking water availability.

A healthy watershed and the ecosystem services it yields provide a steady stream of benefits to local communities creating a prosperous economy and healthy quality of life. The infrastructure provided by our forests includes benefits such as clean water and air, carbon storage, healthy fish, and timber. Other vitally important services include flood risk reduction, species habitat, and recreational values.

Bridging these benefits with funding sources requires us acknowledging them and increasing access to funds. Allowing Clean Water State Revolving Fund loans for land acquisitions at the watershed scale is crucial for being able to secure better management of our forests. Adding this category will make investing in these 'green infrastructures' and the management practices that support them, more of a reality for local projects that bring together local governments, small forest landowners and other NGOs like land trusts.

If these rule changes are successful, they could be one of the largest funding opportunities to elevate forests as infrastructure in our state. Please further amend WAC 173-98-100 (20) to include watershed-scale protection as an eligible category for land acquisition.

Response to Comments on Watershed Protection

Change. The intent of the proposed amendments is to make land acquisition projects for the protection of water quality eligible for funding. Protecting water quality includes protecting watersheds. The adopted rules include revised language in WAC 173-98-100(20)(d) and WAC 173-95A-100(14)(b), respectively, stating that land acquisition for riparian area and watershed preservation and protection is eligible. This change clarifies the original intent of the proposed rule amendments.

Appendix B: Citation List

This citation list contains references for data, factual information, studies, or reports on which the agency relied in the adoption for this rule making (RCW 34.05.370(f)).

At the end of each citation is a number in brackets identifying which of the citation categories the sources of information belongs. (RCW 34.05.272).

Citation Categories	
1	Peer review is overseen by an independent third party.
2	Review is by staff internal to Department of Ecology.
3	Review is by persons that are external to and selected by the Department of Ecology.
4	Documented open public review process that is not limited to invited organizations or individuals.
5	Federal and state statutes.
6	Court and hearings board decisions.
7	Federal and state administrative rules and regulations.
8	Policy and regulatory documents adopted by local governments.
9	Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under other processes.
10	Records of best professional judgment of Department of Ecology employees or other individuals.
11	Sources of information that do not fit into one of the other categories listed.

1. Chapter 90.50A RCW, Water Pollution Control Facilities—Federal Capitalization Grants. [5]
2. Chapter 70.146 RCW, Water Pollution Control Facilities Financing. [5]
3. Federal Clean Water Act, 33 U.S.C. 1251-1388. [5]