

Observations/Differences Among Stormwater Interrelationship Regulatory Intent and Perception Matrices

Stormwater Management Regulatory Relationships

Department of Ecology - Bill Moore
Department of Ecology - Tom Luster
Department of Ecology - Dave Peeler and Ron McBride
Department of Transportation - Shari Schafflein and Bert Bowen
Office of Community Development - Chris Parsons
Department of Fish and Wildlife - Peter Birch
National Marine Fisheries Service - Thom Hooper

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Observations/Differences Among Stormwater Interrelationship Regulatory Intent and Perception Matrices (see Table F-1)

Relationships Among Regulatory Programs

- **NPDES Phase 1/NPDES Phase 2 (perceived negative relationship):** According to Ecology (Bill Moore), there is a gap between current Phase 1 requirements and EPA's Phase 2 regulations. Phase 1 includes a comprehensive stormwater program for protection and restoration. The scope and content of Phase 2 requirements are not finalized, but are mostly focused on protection, and not much on restoration (see **NPDES Phase 1/TMDL** below). Phase 1 requires CIP project prioritization; this is not required by federal Phase 2 requirements. Phase 1 and Phase 2 should be complementary to fill in regulatory program holes and manage stormwater on a watershed basis.
- **NPDES Phase 1/TMDL (perceived negative relationship):** TMDL requirements have been evolving. Ecology (Bill Moore) is looking at requiring basin planning under the Phase 1 permitting process, which could be used to facilitate the implementation of TMDLs. EPA would expect Ecology to enforce TMDLs through the Phase 1 permit. According to Ecology (Dave Peeler), there could be opportunities for coordination between NPDES and TMDLs. TMDLs have a stakeholder input process and stakeholder involvement is built into the NPDES permitting process. However, in Pierce County, EPA developed a TMDL for Lake Steilacoom ignoring stakeholder input.

NPDES Phase 2/TMDL (perceived negative relationship): According to Ecology (Bill Moore), the restoration elements not included in Phase 2 could be covered in TMDLs. As discussed above (NPDES Phase 1/TMDL), there could be opportunities for coordination between NPDES and TMDLs.

NPDES Phase 1/401-CZM Certifications (perceived relationship, neither + nor -): According to Ecology, NPDES permits do not require individual 401s; EPA would have to get a 401 from Ecology for federal facilities or anything else that requires a Federal permit.

401-CZM Certifications/TMDL (perceived relationship, neither + nor -): According to Ecology (Dave Peeler), the relationship of TMDLs with 401/CZM certifications will come in implementation of TMDLs. A 401 is not necessary to do a TMDL, but if there is an existing TMDL, a 401 must take that into consideration (Tom Luster).

NPDES Phases 1 and 2/ESA 4(d) (multiple perceived negative relationships): According to NMFS (Thom Hooper), there is a loose connection between NPDES Phase 1 and Phase 2 and the ESA 4(d) rule related to the Tri-County 4(d) proposal for stormwater. It is Ecology's (Bill Moore) expectation that environmental groups will look for consistency among Phase 1, Phase 2, and ESA 4(d).

NPDES Phases 1 and 2/ESA Section 7 (multiple perceived negative relationships): Implementation of NPDES Phase 1 and Phase 2 has been delegated from EPA to Ecology; there has been discussion at NMFS (Thom Hooper) of a ESA Section 7 consultation.

NPDES Phase 1/Puget Sound Plan (multiple perceived relationships, neither + nor -): The Puget Sound Plan is a planning document that serves as a vision for Puget Sound communities. The plan has Plan basic and Comprehensive Stormwater Program elements. According to Ecology (Bill Moore), the Comprehensive Program is essentially the same as Phase 1 permit requirements. All Puget Sound communities are recommended to meet the Comprehensive Program requirements, but there are no regulatory sanctions for failure to meet program goals.

NPDES Phase 2/Puget Sound Plan (multiple perceived relationships, neither + nor -): Ecology (Bill Moore) has not made any final decisions on the scope and content of Phase 2 requirements; may depend on Puget Sound Plan's expanded Comprehensive Stormwater Program requirements (13 elements).

NPDES Phases 1 and 2/GMA-driven ordinances (multiple perceived negative relationships): According to the Office of Community Development (Chris Parsons), there are direct relationships between NPDES Phases 1 and 2 and GMA-driven ordinances.

TMDL/ESA 4(d) (multiple perceived negative relationships): According to Ecology (Dave Peeler), the relationship with TMDLs and the 4(d) rule is being coordinated, but 4(d) does not specifically mention TMDLs.

TMDL/ESA Section 7 (multiple perceived negative relationships): According to Ecology (Dave Peeler), there is no direct relationship between TMDLs and ESA Section 7, and the services are not considering Section 7 consultations on TMDLs. According to NMFS (Thom Hooper), an ESA Section 7 consultation is being discussed, because TMDLs are delegated from EPA to Ecology.

TMDL/ESA Section 10-HCP (multiple perceived negative relationships): According to Ecology (Dave Peeler), there is a first-time HCP agreement on an ESA/TMDL relationship by a landowner (Simpson Timber Company)

TMDL/GMA-driven ordinances (multiple perceived negative relationships): According to the Office of Community Development

(Chris Parsons), there is a direct relationship between TMDLs and GMA-driven ordinances. Ecology (Dave Peeler) has given out model ordinances for protecting water quality (but nothing specific to GMA). Facility plans required by GMA generally have dealt with sewers, but there is an opportunity to coordinate with stormwater in the future.

WDFW HPA/Clean Water Act Section 404/10 (multiple perceived negative relationships): According to WDFW (Peter Birch), projects that require 404/10 permits also may require an HPA.

ESA 4(d)/GMA-driven ordinances (multiple perceived negative relationships): According to the Office of Community Development (Chris Parsons), there is a direct relationship between ESA 4(d) and GMA-driven ordinances. NMFS (Thom Hooper) is encouraging jurisdictions to enforce land use standards to meet ESA requirements. There is overlap with the Tri-County 4(d) proposal's requirements for Management Zones and the Shoreline Management Act's requirements for GMA Critical Areas Ordinances. According to Ecology (Bill Moore), there is a GMA requirement that jurisdictions must look at impact on salmonids in land use decisions, but no action is required after the impacts are documented.

Puget Sound Plan/GMA-driven ordinances (perceived relationship, neither + nor -): According to the Office of Community Development (Chris Parsons), there is a direct relationship between ESA 4(d) and GMA-driven ordinances.

Shoreline Management Act/GMA-driven ordinances (multiple perceived relationships, neither + nor -): According to the Office of Community Development (Chris Parsons), there is a direct relationship between ESA 4(d) and GMA-driven ordinances. There is overlap between the Shoreline Management Act's requirements and GMA Critical Areas Ordinances.

Relationships Between Regulatory Programs and Technical Standards

NPDES Phase 1 and Phase 2/Stormwater Technical Manual-Western WA (multiple perceived negative relationships): According to Ecology (Bill Moore), Phase 1 permits required adoption of stormwater technical manual; Phase 2 will also.

NPDES Phase 2/Stormwater Technical Manual-Eastern WA (perceived relationship, neither + nor -): According to Ecology (Bill Moore), Phase 2 permits will require adoption of stormwater technical manual.

NPDES Phase 1 and Phase 2/Highway Runoff Manual (perceived relationship, neither + nor -): According to WSDOT (Shari Schafflein and Bert Bowen), there is a direct relationship between NPDES permits and the Highway Runoff Manual.

NPDES Phase 1 and Phase 2/Erosion Control Plans (perceived relationship, neither + nor -): According to Ecology (Bill Moore), Erosion Control Plans are required components of Phase 1 and Phase 2 programs.

TMDL/Water Quality Standards (perceived relationship, neither + nor -): According to Ecology (Dave Peeler), the TMDL program relies on Water Quality Standards by making an effort to meet standards and protect designated uses. TMDLs make governments look at how various activities meet water quality standards.

TMDL/Stormwater Technical Manuals, Western and Eastern WA (perceived relationship, neither + nor -): According to Ecology (Dave Peeler), TMDLs will require actions to improve water quality. The actions required by the Stormwater Technical Manuals are technology-based BMPs, while TMDLs, especially those dealing with traditional point sources, are generally based on regulating the content of discharges. Implementation of the Manuals will be the first step toward meeting TMDLs; monitoring will be the second step to check efficacy.

TMDL/Stormwater Contaminated Sediments Standards (multiple perceived relationships, neither + nor -): Ecology (Dave Peeler) is searching for a way to get a connection between TMDLs and Stormwater Contaminated Sediments. There is a possible connection with cleanup plans under CERCLA/MTCA.

401-CZM Certifications/Erosion Control Plans (perceived relationship, neither + nor -): According to Ecology (Dave Peeler), if erosion control plans are required by NPDES construction permits, 401 certifications will reference the plans.

WDFW HPA/Stormwater Technical Manual, Western WA (multiple perceived negative relationships): According to Ecology (Bill Moore), the update to Ecology's Stormwater Technical Manual is intended to be a tool for compliance with the WDFW HPA program.

ESA 4(d)/Water Quality Standards/Stormwater Technical Manual-Western WA (multiple perceived negative relationships): NMFS (Thom Hooper) is encouraging the use of water quality standards and the Stormwater Technical Manual, to meet ESA 4(d) rule requirements. Ecology (Bill Moore) is working with NMFS to get its approval of application of the updated Stormwater Technical Manual as compliance with ESA 4(d) on-site stormwater control requirements.

Puget Sound Plan/Stormwater Technical Manual, Western WA (perceived relationship, neither + nor -): According to Ecology (Bill Moore), the Puget Sound Plan requires adoption of the Ecology Stormwater Technical Manual or a technically equivalent manual.

Relationships Between Regulatory Programs and Programmatic Standards

NPDES Phase 1 and Phase 2/ ESA 4(d)/Tri-County Plan (multiple perceived relationships, neither + nor -): According to Ecology (Bill Moore), the Tri-County Plan emphasizes overlaps among Phase 1, Phase 2, and the ESA 4(d) rule. The plan includes 14 stormwater program elements, similar to the 11 elements in the Phase 1 permit and some land use provisions (over and above GMA requirements). The Tri-County Plan may be a driver for Phase 2 requirements. Phase 2 will apply to most, if not all, of Tri-County jurisdictions.

NPDES Phase 1/Stormwater Retrofits (perceived relationship, neither + nor -): According to WSDOT (Shari Schafflein and Bert Bowen), there is a direct relationship between NPDES Phase 1 permits and stormwater retrofits.

GMA-driven ordinances/Watershed Plans-2514 or other (perceived negative relationship): According to the Office of Community Development (Chris Parsons), there is a direct relationship between GMA-driven ordinances and watershed planning.

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Stormwater Management Regulatory Relationships

Bill Moore – Department of Ecology (see Table F-2)

- 1) Phase 1 covers municipalities with populations more than 100,000 (six jurisdictions and WSDOT) for general permits, in addition to industrial and construction-related (≥ 5 acres of land-disturbing activity). Phase 1 permits will be re-issued in April, 2001.

Phase 2 will apply to approximately 95 municipalities in Washington (including all “census urban areas”) and construction sites ≥ 1 acre. Phase 2 permits will be issued in April 2002.

There is a gap between current Phase 1 requirements and EPA’s Phase 2 regulations. Phase 1 includes a comprehensive stormwater program for protection and restoration. The scope and content of Phase 2 requirements are not finalized, but are mostly focused on protection, and not much on restoration (see #2 below). Phase 1 requires CIP project prioritization; this is not required by federal Phase 2 requirements.

According to Ecology, Phase 1 and Phase 2 should be complementary to fill in regulatory program holes and manage stormwater on a watershed basis.

- 2) TMDL requirements have been evolving. . Ecology (Bill Moore) is looking at requiring basin planning under the Phase 1 permitting process, which could be used to facilitate the implementation of TMDLs. EPA would expect Ecology to enforce TMDLs through the Phase 1 permit.
- 3) According to Ecology, the restoration elements not included in Phase 2 could be covered in TMDLs.
- 4) It is Ecology’s expectation that environmental groups will look for consistency among Phase 1, Phase 2, and ESA 4(d).
- 5) The Puget Sound Plan is a planning document that serves as a vision for Puget Sound communities. The plan has basic and Comprehensive Stormwater Program elements. The comprehensive program is essentially the same as Phase 1 permit requirements. All Puget Sound communities are recommended to meet the comprehensive program requirements, but there are no regulatory sanctions for failure to meet program goals.
- 6) Ecology has not made any final decisions on the scope and content of Phase 2 requirements; may depend on Puget Sound Plan’s expanded Comprehensive Stormwater Program requirements (13 elements).
- 7) Phase 1 and Phase 2 communities have GMA land use planning responsibilities, as well as stormwater obligations.

- 8) NMFS is encouraging jurisdictions to enforce land use standards to meet ESA requirements. There is a GMA requirement that jurisdictions must look at impact on salmonids in land use decisions, but no action is required after the impacts are documented.
- 9) Water Quality Standards will be a consideration in Phase 1 and Phase 2 permits. Stormwater permits have preferred the use of narrative standards (BMPs, adaptive management).
- 10) Phase 1 permits required adoption of Ecology's Stormwater Technical Manual; Phase 2 will also. The Puget Sound Plan also requires adoption of the Ecology manual or a technically equivalent manual.
- 11) Implementing Ecology's Stormwater Technical Manual is meant to ensure compliance with 401 standards. BMPs in the manual are intended to meet compliance with water quality standards.
- 12) The update to Ecology's Stormwater Technical Manual is intended to be a tool for compliance with the WDFW HPA program and the Underground Injection Control program.
- 13) Ecology is working with NMFS to get its approval of the application of the updated Stormwater Technical Manual as compliance with ESA 4(d) onsite stormwater control requirements.
- 14) Erosion Control Plans are required components of Phase 1 and Phase 2 programs.
- 15) The Tri-County Plan emphasizes overlaps among Phase 1, Phase 2, and the ESA 4(d) rule. The plan includes 14 stormwater program elements, similar to the 11 elements in the Phase 1 permit and some land use provisions (over and above GMA requirements).

The Tri-County Plan is a driver for Phase 2 requirements. Phase 2 will apply to 75 to 80 percent of Tri-County jurisdictions.
- 16) Ecology's standards for combined sewer overflows are much more stringent than EPA's. MS4's are covered by Phase 1 and Phase 2 permits, and are required to comply with standards.
- 17) Stormwater could be included as part of a 2514 Watershed Plan under the optional water quality component. This also could be included in a TMDL.

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Stormwater Management Regulatory Relationships

Department of Ecology – Tom Luster (see Table F-3)

401/CZM certifications are both required for projects in Washington's 15 coastal counties; only 401 certifications are required in the rest of the state.

There are direct and indirect relationships between 401/CZM and the other stormwater regulations/programs. 401 certifications are only required when a federal permit is required.

- 1) NPDES permits do not require individual 401s; EPA would have to get a 401 from Ecology for federal facilities or anything else that requires a federal permit.
- 2) A 401 is not necessary to do a TMDL, but if there is an existing TMDL, a 401 must take that into consideration.
- 3) If a project requires an HPA and 401, conditions on the HPA would go into the 401; state standards require protection of fish and wildlife habitat.
- 4) 401 does not require ESA analysis; the 401 process proceeds independently but substantive issues of protection of fish and wildlife habitat must be taken into consideration; relationship with the services is evolving.
- 5) There is no direct relationship between 401s and the Puget Sound Plan. 401s do not require compliance with the Puget Sound Plan, but conditions can be added to be consistent with the substantive issues of the plan.
- 6) The 401 process reviews critical areas ordinances (wetland buffers, for example) on a project-by-project basis and makes the appropriate recommendations.
- 7) A shoreline permit or exemption must be in place before 401 review.
- 8) Any dry wells built in U.S. Army Corps of Engineers - regulated water bodies would require a 401 certification.
- 9) 404 projects always require a 401; certain nationwide permit projects would be pre-approved and automatically covered for 401 certification. Ecology has not invoked 401 authority on Section 10 projects.

Some projects that may require a 401 certification may also require a water right.

- 10) Under nationwide permits, compliance with an approved stormwater manual is required. In some cases, additional requirements are added.

- 11) If erosion control plans are required by NPDES construction permits, 401 certifications will reference the plans.
- 12) 401 requires compliance with Sediment Management Standards.
- 13) 401 staff are placed in regional Ecology offices and are available for guidance to 2514 Watershed Planning groups.

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Stormwater Management Regulatory Relationships

Department of Ecology – Dave Peeler and Ron McBride (see Table F-4)

The TMDL program relies on Water Quality Standards and makes an effort to meet standards and protect designated uses. TMDLs make governments look at how various activities meet water quality standards.

As part of a settlement agreement, Ecology will do a number of TMDLs (from the 1996 list of 303(d) water bodies) – Memorandum of Agreement between EPA and Ecology.

Stormwater can be considered as both a point and nonpoint source. Ecology will have to decide how to approach stormwater through either: a) waste load allocations (point source), or b) load allocations (nonpoint source) – BMPs.

The first part of a TMDL is a technical analysis to determine the problem. Ecology does not dictate the solutions.

In terms of regulatory relationships, there are categories of regulations: Water Quality (NPDES, TMDLs, etc.) and Resource-based (ESA, GMA, etc.).

- 1) There could be opportunities for coordination between NPDES and TMDLs. TMDLs have a stakeholder input process and stakeholder involvement is built into the NPDES permitting process. However, in Pierce County, EPA developed a TMDL for Lake Steilacoom ignoring stakeholder input.
- 2) Relationship of TMDLs with 401/CZM certifications will come in implementation of TMDLs.
- 3) Ecology is trying to coordinate TMDLs with HPAs; may be accomplished through implementation of TMDLs.
- 4) Relationship with TMDLs and 4(d) rule is being coordinated, but 4(d) does not specifically mention TMDLs.
- 5) The services are not considering Section 7 consultations on TMDLs; no direct relationship.
- 6) There is a first-time HCP agreement on a ESA/TMDL relationship by a landowner (Simpson Timber Company)
- 7) Puget Sound Plan encompasses TMDLs as a way to control industrial discharges (not specific); Nonpoint source (400-12) plans also may have data collection and implementation strategies similar to TMDLs; there may be opportunities for coordination there; recommendations are publicly reviewed/approved.

- 8) Ecology has given out model ordinances for protecting water quality (but nothing specific to GMA); Facility Plans required by GMA generally have dealt with sewers, but there is an opportunity to coordinate with stormwater in the future.
- 9) TMDLs look at riparian conditions and habitat (as Shoreline Management Act) does, but there are no specific relationships.
- 10) Surface waters can be affected by polluted groundwater, so lack of treatment is a concern. No TMDL considerations yet for this issue, but could possibly.
- 11) No specific relationships between TMDLs and Clean Water Act Sections 404/10 yet, but could possibly in the future (especially regarding heavily modified watercourses).
- 12) Obvious connection between Water Quality Standards and TMDLs.
- 13) TMDLs will require actions to improve water quality. The actions required by the Stormwater Technical Manuals are technology-based BMPs, while TMDLs, especially those dealing with traditional point sources, are generally based on regulating the content of discharges. Implementation of the Manuals will be the first step toward meeting TMDLs; monitoring will be the second step to check efficacy.
- 14) Same as Stormwater Technical Manuals.
- 15) Proposed changes to the Water Quality Standards-Surface Water will have public workshops, similar to the public input in TMDLs.
- 16) Erosion Control Plans should be in place; if TMDLs show erosion as a significant problem, Ecology would look to plans as a tool.
- 17) Ecology is searching for a way to get a connection between TMDLs and Stormwater Contaminated Sediments; possible connection with cleanup plans under CERCLA/MTCA.
- 18) A possible connection between TMDLs and Alternative Mitigation-Stormwater could be through Pollutant Trading in the same basin (although there are no examples of this in Washington); this would not be easy to accomplish, as it is "resource intensive" and cross-media/habitat trading does not meet Clean Water Act requirements (TMDLs are based on meeting strict criteria).
- 19) Although new BMPs approval is not done for individual TMDLs, Ecology would look at BMPs for certain activities, such as forestry and agriculture.
- 20) In 2514 Watershed Plans, water quality is optional and TMDLs are not allowed. Ecology is trying to partner with individual planning units.
- 21) Ecology would try to help with grants and loan funds for TMDLs.

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Stormwater Management Regulatory Relationships

Department of Transportation – Shari Schaftlein/Bert Bowen (see Table F-5)

- 1) Highway Runoff Manual - TMDL relationship: TMDL not yet developed for stormwater discharges. 401 documentation wants justification for compliance.
- 2) Highway Runoff Manual - 401/CZM Certifications relationship: No direct connection. Design standards will need to satisfy TMDL requirement.
- 3) Highway Runoff Manual - WDFW HPA relationship: Design standards need to satisfy HPA requirements.
- 4) Highway Runoff Manual – ESA Section 10 (HCP) relationship: Indirect only. Not second effects.

Other Comments:

- 5) Highway Runoff Manual – Water Quality Standards relationship: Currently designs indicate compliance. Nonpoint sources are not regarded to demonstrate compliance.
- 6) Highway Runoff Manual – Tri-County Plan relationship: Will implement minimum treatment and control standards.
- 7) Highway Runoff Manual – Innovative Research: Eastern/Western WA relationship: Implementation of innovative research.
- 8) Stormwater Retrofits – 2514 Watershed Plan relationship: Can be the driver. Needs complement plans.
- 9) Stormwater Retrofits: Includes concept of redevelopment and stand-alone retrofits.
- 10) Stormwater Retrofits – Alternative Mitigation-Stormwater relationship: Should be connected. Conflicts with Clean Water Act. Complements ESA and TMDLs through trading.
- 11) Stormwater Retrofits – Sole Source Aquifer relationship: Retrofit required to protect aquifer water quality.

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Stormwater Management Regulatory Relationships

Office of Community Development – Chris Parsons (see Table F-6)

OCD is involved with stormwater management as it relates to the Growth Management Act (GMA). The GMA speaks to stormwater management policies through the requirement that drainage, flooding, and stormwater run-off in the area and nearby jurisdictions be reviewed and, if applicable, corrective actions to mitigate or cleanse discharges be included in the land use element of the comprehensive plan (RCW 36.70A.070 (1)). Countywide Planning Policies provide a uniform framework of agreed to policies and procedures for counties and cities to coordinate cross-jurisdictional issues. Locally adopted comprehensive plans, development regulations and Shoreline Master Programs are the principal legal methods available under the GMA for regulating land use decisions.

Flooding is a key trigger (“frequently flooded” critical area designation) and an identified problem with stormwater management. Drainage and stormwater run-off may affect critical areas, such as fish and wildlife conservation areas and geologically unstable areas prone to landslides or flooding. Critical areas must be designated and their functions protected using the best available science (RCW 36.70A. 172). OCD is currently developing a list of science to be used for decisionmaking on critical areas, including flooded areas. It also is developing a model land disturbance ordinance.

- 1) NPDES Phase 2 program requirements should be incorporated into comprehensive land use elements and development regulations. Citizen participation methods required under GMA provide a possible framework for Phase 2 public outreach and involvement needs. Providing timely technical assistance for those jurisdictions without a comprehensive stormwater program is a major concern to OCD.
- 2) OCD worked through the Tri-County effort to ensure that the growth management planning framework was considered and integrated in the 4(d) rule requirements.
- 3) OCD has been involved with the Puget Sound Plan; growth management goals, and strategies were addressed in this program.
- 4) The goals and policies of the Shoreline Management Act are added as a goal in the GMA (RCW 36.70A.480). Integration of Shoreline Guidelines with Comprehensive Planning through GMA plans and regulations, and ensuring internal consistency is a priority of OCD. OCD will provide review and comment to local governments and to Ecology, which is the regulating agency.
- 5) OCD worked through the Tri-County effort to ensure that growth management planning goals and policies were addressed.

- 6) OCD adopted an Administrative Rule (WAC 365-195-900 through 925) in August 2000 to assist citizens and jurisdictions with identifying what is the best available science and how jurisdictions include the “best available science” in ordinances and Comprehensive Planning.
- 7) The 2514 process will result in a plan that can be implemented through the adoption of local government policies and development regulations, such as zoning and water availability requirements for issuance of permits.
- 8) OCD funds a competitive grant program to local governments fully planning under the GMA to help plan and implement GMA; OCD staff also provides technical assistance.
- 9) OCD provides capital projects and planning funding for stormwater through the Public Works Trust Fund in conjunction with its 6-year Capital Facilities Plan (CFP). If any jurisdiction is out of compliance with GMA, they are not eligible for Public Works Trust Fund or Centennial Grant funds.

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Stormwater Management Regulatory Relationships

Department of Fish and Wildlife – Peter Birch (see Table F-7)

Hydraulic Project Approvals (HPAs) are intended for protection of fish life. HPAs are project-driven. Projects in waters of the state have to demonstrate conditions to be approved; stormwater is just one potential condition to be considered.

HPA is related to other stormwater-related regulations because the HPA program's goal of protecting fish requires regulatory action to protect clean water and habitat.

- 1) HPAs have the authority to regulate stormwater discharges in NPDES jurisdictions; if discharges meet NPDES requirements, HPA should not be necessary. WDFW will still issue HPAs for certain construction projects.
- 2) A TMDL program in place may obviate the need for an HPA, if an appropriate mechanism is in place.
- 3) If a project is intended to control stormwater discharges, the 401/CZM certification may cover the need for an HPA.
- 4) This will depend on what evolves from the 4(d) rule. A jurisdiction's stormwater program to meet 4(d) rule requirements may cover the need for an HPA. However, an HPA is available as a "last line of defense" to cover projects with stormwater impacts.
- 5) The relationship between HPA and ESA Section 7 will be evaluated.
- 6) The relationship between HPA and ESA Section 10 will be evaluated.
- 7) The Puget Sound Plan recommends comprehensive stormwater management programs. If a jurisdiction has the recommended program in place, a stormwater-related HPA would probably not be necessary.
- 8) Although there is no direct connection to GMA-driven ordinances, WDFW considers good land use planning to be critical in its connection to stormwater.
- 9) There is a broad relationship between Shoreline Management rules and the HPA programs goals for protecting buffers, streambanks, etc. WDFW is working on streambank protection standards.
- 10) There is no direct connection between HPAs and the UIC program, but WDFW is concerned about the connection between stormwater discharges to groundwater that could result in surface water contamination. Onsite infiltration must be done safely.

- 11) Projects that require 404/10 permits for in-stream work also may require an HPA.
- 12) As part of WDFW's proposal for the HPA program to comply with ESA, several strategies are being considered. An HCP is only one option at this point. An HCP approach would need to go through the SEPA/NEPA process.

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Stormwater Management Regulatory Relationships

National Marine Fisheries Service – Thom Hooper (see Table F-8)

- 1) According to NMFS, there is a loose connection between NPDES Phase 1 and Phase 2 and the ESA 4(d) rule related to the Tri-County 4(d) proposal for stormwater.
- 2) Implementation of NPDES Phase 1 and Phase 2 has been delegated from EPA to Ecology; there has been discussion at NMFS of a ESA Section 7 consultation.
- 3) TMDLs delegated from EPA to Ecology; NMFS is discussing ESA Section 7 consultation.
- 4) 401/CZM certifications delegated from EPA to Ecology; NMFS discussing ESA Section 7 consultation.
- 5) WDFW signed a memorandum of agreement to consult with NMFS on HPA projects; there may be a ESA Section 10 HCP for all HPAs.
- 6) DNR approached NMFS for considering an HCP to cover projects in aquatic lands.
- 7) NMFS is encouraging jurisdictions to enforce land use standards to meet ESA 4(d) requirements. There is overlap with the Tri-County 4(d) proposal's requirements for Management Zones and the Shoreline Management Act's requirements for GMA Critical Areas Ordinances.
- 8) There may be a Section 7 consultation for federal funding to Ecology for implementation of the Shoreline Management Act.
- 9) There may be a Section 7 consultation for the federal Underground Injection Control standards of the Safe Drinking Water Act.
- 10) NMFS is encouraging the use of technical standards, such as water quality standards and the stormwater technical manual, to meet ESA 4(d) rule requirements.
- 11) There may be a Section 7 consultation for federal funding to WSDOT for implementation of the Highway Runoff Manual.
- 12) Water Quality Standards delegated from EPA to Ecology; NMFS discussing ESA Section 7 consultation.
- 13) Erosion Control Plans are required components of Phase 1 and Phase 2 programs; may require Section 7 consultation.
- 14) The Tri-County Plan includes a significant proposal for stormwater management for coverage under the ESA 4(d) rule.

- 15) Stormwater retrofits are part of the stormwater technical manual, a technical standard that NMFS is encouraging use of for ESA 4(d) rule coverage.

Stormwater Management Regulatory Relationships

Department of Ecology - Mary Shaleen Hansen (see Table F-9)

On the federal level, management and regulation of stormwater drainage wells falls primarily under the UIC program authorized by the Safe Drinking Water Act (SDWA). Other federal programs that address stormwater drainage wells indirectly are implemented under the NPDES program of the Clean Water Act (CWA), as well as the Coastal Zone Management Act (CZMA), the Coastal Zone Reauthorization Amendments of 1990 (CZARA), and Federal Highway Administration (FHWA) guidelines.

- 1) With the increased regulation of stormwater discharges to surface water, there may be increased use of underground injection to dispose of stormwater runoff. The NPDES Stormwater Program contains provisions specifically relating to reducing pollutants in stormwater runoff, and thus may indirectly reduce the threat of groundwater contamination through Class 5 stormwater drainage wells.
- 2) The UIC program focuses on groundwater protection. There are currently no groundwater TMDLs. However, there could be a relationship with TMDLs if a surface water body is connected with groundwater that has been proven to contribute contaminants to the surface water body.
- 3) No direct relationship at this time, but EPA and Ecology are trying to link the requirements of the Clean Water Act and the Safe Drinking Water Act together.
- 4) Stormwater management is a requirement of the GMA. UIC facilities should be designed to handle stormwater discharges from different land uses in both urban and rural areas.
- 5) UIC facilities will be subject to Shoreline Management regulations if located within regulated shoreline areas.
- 6) UIC facilities are subject to Ground Water Quality Standards.
- 7) Stormwater dry wells are included in the western Washington stormwater management manual as stormwater BMPs.
- 8) Ecology has not issued any guidance related to stormwater dry wells due to the delay in progress on the eastern Washington stormwater manual.

Other Regulatory Inter-relationships

SDWA: The Sole Source Aquifer program (Section 1424 of the SDWA) designates an area that has an aquifer which is the sole or principal drinking water source for the area, which if contaminated would create a

significant hazard to public health. EPA Region 10 has used this program to help implement the UIC program. EPA reviews construction and development projects that receive FHWA funds for potential impacts to sole source aquifers, particularly from stormwater drainage wells.

CZMA and CZARA: CZMA does not contain language specific to stormwater, but does address nonpoint pollution. States adopt, at a minimum, enforceable policies and mechanisms to implement coastal nonpoint guidance management measures. CZARA also requires states to establish coastal nonpoint programs.

FHWA: Guidance prepared by FHWA on management of highway runoff water quality discusses wet and dry detention basins, infiltration trenches, infiltration basins, dry wells, and other BMPs for controlling runoff and for the protection of underground drinking water sources.

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