Water Resources Program “Streamlined” Cost Reimbursement Pilot Project

Background

The state Legislature established cost reimbursement in 2000 as an expedited alternative to the standard water right decision-making process. (See RCW 90.03.265). In 2010, the Legislature amended the code to improve upon cost reimbursement. As part of the Department of Ecology (Ecology) commitment to continuous improvement, Ecology piloted two streamlined cost reimbursement projects that allowed the applicant to contract directly with a consultant of their choosing to process their water right application. Ecology evaluated the outcome of the pilot projects, located in the Northwest and Southwest Regions, and determined that this option can result in efficiencies for applicants and Ecology in some, but not all cases.

Overview of the Current Cost Reimbursement Process

The **standard cost reimbursement** process requires an applicant to enter into a contract with Ecology to process a water right. The applicant may select a consultant from Ecology’s cost reimbursement consultant pool or elect to have Ecology select a consultant on their behalf. Working under a multiple-year master contract with Ecology, the consultants in the consultant pool work directly for Ecology. Each cost reimbursement project has a project-specific work assignment which is a sub-contract with a negotiated scope, budget and deliverables. The current master contract will expire December 31, 2015.

Ecology’s Cost Reimbursement consultant pool consists of the following 8 firms:

- Aspect Consulting
- GeoEngineers
- Golder Associates
- Hart-Crowser
- HDR
- Pacific Groundwater Group
- RH2
- Robinson & Noble

Streamlined Cost Reimbursement Pilot Project

*The “streamlined” cost reimbursement pilot project* similarly requires an applicant to enter into a contract with Ecology to process a water right application. **In contrast to the standard process, streamlined cost reimbursement bypasses the Ecology-consultant work assignment and contract. Instead, the applicant directly contracts with a consultant to process their water right.** A report is delivered to Ecology with all the necessary research and hydrogeological analysis needed to answer the four-part water right test. All applications must be processed to Ecology standards and Ecology issues a final decision.

The following diagram on the next page gives a visual explanation of the differences in these two processes.
Potential Benefits of the Streamlined Cost Reimbursement Approach

Streamlined cost reimbursement offers potential process improvements for applicants and for Ecology:

- Increases process flexibility and cost efficiency by allowing applicants to contract with consultants that have a prior working knowledge of their water system or project;
- Expands competition by broadening the pool of consultants eligible to process water rights;
- Increases process transparency and enables applicants to more easily negotiate project costs; and
- Improves internal Ecology contract processing time by reducing the number of process steps.

Potential Challenges of the Streamlined Cost Reimbursement Approach

Ecology has identified a number of challenges that must be addressed before expanding this pilot project:

- Applicant/Consultant following streamlined process could complete the effort only to have the application denied. No set mechanism for “early warning” from Ecology that application will be denied – thus costing applicant a lot of money and time.
- In current process, in Phase 2, the consultant is Ecology’s advocate (they are doing the work for Ecology). In streamlined process, consultant is always the applicant’s advocate.
- While Ecology is required by statute to not “recommend” or “promote” the work of consultants OR to “un-recommend” consultants that do poor work, there is the challenge that some consultants are better qualified and better experienced with the nuances of water rights permitting and interpreting of unique hydrogeological conditions. Having a streamlined process could result in some applicants using inexperienced consultants or consultants that would try to drive costs lower or try to “cut corners”.
Conclusion

Ecology’s Water Resources Program conducted a “pilot or test project” of the streamlined cost reimbursement process with two pilot projects (Firgrove Mutual Water Company in Pierce County and City of Stanwood in Snohomish County). Based on the (likely successful) outcome of these pilot projects, Ecology has determined the following path forward:

1. Water Resources Program will develop best practices and guidance documents to set clear expectations for applicants and consultants that wish to utilize the streamlined cost reimbursement approach. Not all applications will automatically qualify for this approach. For many applications, for example, those in watersheds where mitigation will be required or for applications where there is likely a strong public interest, the traditional cost reimbursement process is likely a better approach.

2. Establish internal Water Resources Program project evaluation criteria and final product review protocols to ensure that each project will produce the impartial, detailed analysis necessary to make a final decision on an application.

3. In the streamlined cost reimbursement approach, the applicant will still need to pay Ecology for our oversight and draft/final review and approval or denial of ROE.

In addition, this year the Water Resources Program will initiate a Request For Qualifications (RFQ) for a new group of environmental consultants that Ecology and applicants can consult with for the next 5-6 years. Our current contract with the 8 firms consultant pool currently under contract expires at the end of 2015.

The Water Resources Program Leadership Team recommended to adopt the “Streamlined Pilot” approach as the “Streamlined” approach, thus offering applicants (at our final discretion) the following options in the CRA Process:

<table>
<thead>
<tr>
<th>Type of Cost Reimbursement Agreement</th>
<th>Who does Phase 1?</th>
<th>Who does Phase 2?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard</strong></td>
<td>Either their consultant or one of our 8 consultants Applicant’s choice</td>
<td>Our consultant, under direct contract with Ecology</td>
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<tr>
<td><strong>Consolidated</strong> (Where several applications are processed in the same basin or watershed)</td>
<td>Either their consultant or one of our 8 consultants Applicant’s choice</td>
<td>Our consultant, under direct contract with Ecology</td>
</tr>
<tr>
<td><strong>Front Loaded</strong></td>
<td>Ecology does Phase I internally</td>
<td>Our consultant does Phase 2 (and confirms Phase I work)</td>
</tr>
<tr>
<td><strong>Streamlined</strong></td>
<td>Their consultant</td>
<td>Their consultant (and applicant pays us for our oversight and draft/final review and approval or denial of ROE)</td>
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