

FINAL
Meeting Summary
WRIA 54 - Lower Spokane River Watershed
August 23, 2006

Location: Lakeside High School Library, Nine Mile Falls, WA.

Planning Unit members and guests recorded on the sign-in sheet were:

Jim DeGraffenreid, Lincoln County Planning	Reanette Boese, Spokane County
Lloyd Brewer, City of Spokane	Rob Lindsay, Spokane County
Keith Holliday, WA State Dept. of Ecology	Bob Derkey, WA State Dept. of Natural Resources
Bea Lackaff, Citizen	Fran Bessermin, Lake Spokane Protection Assoc.
Hank Nelson, Avista Corporation	Stan Miller, Citizen
Brian Crossley, Spokane Tribe	Shannon Work, Spokane Tribe
Bart Haggin, Lands Council	Craig Volosing, Landowner and Palisades Neighborhood
Cynthia Carlstad, Tetra Tech/KCM	Mike Hamilton, WA State Dept. of Natural Resources
David Luders, Fairchild Airforce Base and Indian Village Estates Water Assoc.	
Bryony Stasney, Golder Associates Inc.	

Call to Order

Bryony opened the meeting at approximately 6:00 pm. Attendees introduced themselves and the interest / organization they represent. Bryony asked all to document their attendance on the sign-in sheet.

The draft June 28, 2006 WRIA 54 Planning Unit meeting summary was reviewed page by page with the following request for change: 1) Dick Price asked that “do” be changed to “may” so that the first sentence on the top of page four reads, “...the aquifer boundaries ~~do~~ may not match up with the WRIA boundaries ...”. With this change, those present accepted the June 28, 2006 meeting summary as final. The final summary will be posted on the County’s web site at <http://www.spokanecounty.org/wqmp/wria54.htm>.

The draft July 26, 2006 WRIA 54 Planning Unit meeting summary was reviewed page by page. Two items remained unconfirmed at the end of the review: 1) the last sentence under Permit-Exempt Wells on page five which states that water use by individual water rights and public water systems are subtracted from the population-based assessment to estimate permit-exempt well water use; and, 2) the Hutterian Brethren agricultural irrigation estimate of 2.3 acre-feet per acre per year provided on page six. The group agreed that the draft July 26, 2006 WRIA 54 meeting summary will be reviewed again at the September meeting, once these items have been clarified.

Public Comment

Rob Lindsay said that Spokane County received a letter from Bill Herrlinger reminding the Planning Unit of the underground water feature on the West Plains near his property. Bill’s letter voices his concerns about development in this area and notes that he would like this feature to be addressed in the Phase II Technical Assessment report. Rob said that he would pass this request on to the Phase II consultant. Bill is also asking that the WRIA 54 Planning Unit consider sampling on his property as a part of the Water Quality supplemental work. Rob said that Bill’s property is south of I-90 in the vicinity of Thorpe Road and Assembly. The property is located just south and outside of the WRIA 54 boundary. Groundwater in this vicinity likely flows northwards into WRIA 54. Bryony noted that more information on Bill’s property is contained within the November 2005 meeting summary (posted on Spokane County’s web site at <http://www.spokanecounty.org/wqmp/wria54.htm>).

Rob thanked all those that have submitted comments to date on the draft Phase II, Level I Technical Assessment report. Rob asked that people continue to send their comments to Spokane County. Spokane County staff will compile the comments and send them on to the consultant team. The comment period is open until October 27, 2006.

Bart complimented Spokane County staff and all those involved in organizing the August 15 field trip. Bart said that the field trip was very enlightening.

Bryony asked the group to consider moving the date for the November Planning Unit meeting to the third Wednesday (i.e., November 15) so that the meeting will occur in the week prior to Thanksgiving. Reanette noted that this date and time conflicts with the WRIA 55/57 meeting. Those present agreed to move the meeting to the morning of Tuesday November 14 at the Airway Heights Community Center. Spokane County staff will contact Airway Heights to confirm the availability of the meeting room.

Keith noted that the group has another chance to complete the Watershed Planning Unit Participation survey developed by Dunau Associates since the deadline to receive submissions has been extended. Rob passed around the survey forms. Keith asked that any completed forms be handed back tonight.

Move to extend meeting from 8 pm to 9 pm

Bryony asked the group if they were agreeable with extending the meeting end time from 8 pm to 9 pm so as to work on the draft Mission Statement and watershed issues. Those present agreed.

Presentation by Shannon Work, Special Environmental Council to the Spokane Indian Tribe, on “The Importance of Water Resources to the Spokane Tribe, a look at Historical, Current, and Future water use”.

Shannon said that he planned to talk about historical and current water use. Future water use could be addressed in the question and answer period following the talk. Shannon passed around a handout outlining his talk and presenting some important legal aspects of Indian water issues. Shannon is an attorney and has represented the Spokane Tribe for 10 to 15 years.

The Spokane River is a life force to the Spokane Tribe. The Spokane Tribe believes that the Creator put them along the Spokane River in three bands: the upper band lived along the river close to the Idaho-Washington State line; the middle band lived along the river in the vicinity of the City of Spokane; and, the lower band lived around the confluence of the Spokane River and the Columbia River. The Indian people depended upon the Spokane River for water, for plants along the water’s edge that were used for medicinal purposes and food, for wildlife and for the salmon runs. The Spokane River is called, “The Path of Life” in the language of the Spokane Tribe. The Tribe buried their deceased along the edge and parallel to the river. The importance of the river was passed down through the generations via stories, traditions and ceremonies. Every aspect of Spokane Indian Tribe life was connected to the river.

The Spokane River provided the Tribe with a major center of commerce. The river provided transportation to the Columbia and provided the salmon. The river’s water falls provided good fishing opportunities. The Spokane Tribe welcomed neighboring tribes to join them to camp along the river and fish together since the salmon runs were so abundant. In return, the neighboring tribes would bring items such as hides. The river provided a wonderful opportunity for interchange of tribal goods and culture. In addition, the climate along the lower parts of the river was relatively mild, even in the winter.

Under CERCLA law (also know as SuperFund), Indian tribes can be a natural resource trustee along with the States and the land managing Federal agencies. Indian Tribes believe it is their duty to protect the land since they believe that the Creator put them on the land to subsist on the resources and to protect the resources for future generations. The Spokane Tribe is very interested in all work being done to protect the waters of the Spokane River. Tribes are sovereign governments, on par with States in many ways, and are recognized in

constitutions. As such, tribes have rights and responsibilities. In traditional manner, Indian people consider what effect an activity (such as mining, timber production, fish farming) will have in seven generations when considering whether or not or how to implement an activity.

In 1877 the war department sat down with the Spokane Tribe leaders to talk about a Reservation. At this time there had been recent wars between the Indian Tribes and the federal government. The Spokane Tribe and federal government ratified an agreement in 1881 (in 1871 the senate ended treaty making with Indian tribes). This agreement established the boundaries of the Spokane Indian Tribe Reservation as: the south bank of the Spokane River to the south; the east bank of Chamokane Creek to the east; and, the west bank of the Columbia River to the west. In the executive order, the Reservation boundaries are extended to the far banks of the rivers, acknowledging the connection between the Spokane Indian Tribe and the rivers and the importance of the water and fish to the Tribe to sustain them into perpetuity. The priority date for the Spokane Indian water rights is generally 1877, when the Reservation was formed.

The old system of riparian water rights allowed use of water so long as the water in the stream was preserved for the downstream users. Consumptive rights did not exist under this system. To use water, people had to be located along or near to a river. In the mid 1800s, miners in areas located some distance from streams were not able to operate using the riparian water rights system. As a result, water law in many areas was changed to first in time first in right for water used for a beneficial purpose. If water was not used, the right to use the water was lost.

The first in time, first in right aspect of western water law carries into Indian water law. However, the use it or loose component does not. For example, if a tribe had an aboriginal use for the water, the priority date for the water right can extend back to time immemorial (as noted in some case law). If it is not an aboriginal water use right, then the water right often has a priority date coincident with the establishment of the reservation.

Q: How does the building of dams without fish ladders, such as Little Falls Dam, affect this? Doesn't the Tribe have a right to the fish as well as the water?

A: We don't know what the affect of the dams is on the Spokane Indian Tribe's water rights. The Tribe's water right is connected with stream flows to support anadromous fish. In the case of Little Falls, the Tribe and Avista settled amicably. Tribal water rights related to river flows and fish have been asserted in some cases but have not been taken to full judicial conclusion. There is discussion that tribes may now have the right to the water needed to support a resident fishery. For example, the Anderson versus the federal government case required sufficient flows in Chamokane Creek to support resident trout. Maybe one way of looking at the dams is that they convert the Tribe's anadromous fish right to a resident fish right. However, the Tribes feel that they still have rights to the salmon and they would like to see the salmon return. The Tribe's position is that plans need to be made for both resident and anadromous fish.

Indian water rights generally have a priority date coincident with the year the Reservation was established and can have more than one purpose of use. Indian water rights are quantified based on the purposes of use. The Anderson versus the federal government case determined that there are two main purposes of use for water on the Spokane Indian Reservation: fish and agriculture. To determine agricultural water rights, the practicably irrigable acreage is quantified. Practicably irrigable acreage includes land that can support a crop and that can be irrigated. Indian water rights also include water to supply the community, in the form of both municipal and domestic water rights.

Ecology would like to see Indian water rights quantified, adjudicated and approved to make water management easier. Tribes are not eager to have this done because they feel their water rights are needed to fill the primary purposes of their reservation and if water rights are quantified wrongly, future generations will suffer. There is also concern about the jurisdiction to adjudicate tribal water rights. Tribes would prefer negotiation and settlement with States and a court decree rather than adjudication in state court.

Q: Is Chamokane Creek the only area of the Spokane Indian Reservation where water rights have been quantified?

A: The Chamokane Creek adjudication considered surface water and groundwater in the Chamokane Creek drainage and acknowledged that surface water and groundwater are interconnected. The Spokane Indian water rights on the Columbia River and Spokane River exist and have not been quantified. A settlement or adjudication will be required to resolve these water rights.

Q: Can you describe the Anderson case?

A: It was filed in 1972 by the US government to protect the Spokane Tribe's water rights. The order was issued in 1979. The case noted the interconnected nature of groundwater and surface water, quantified the tribe's agricultural rights and instream flow rights. The instream flows were set on the understanding that the native trout cannot survive if the water temperature exceeds 68 degrees F. The instream flows were therefore set to maintain the temperature below 68 degrees F.

Q: The draft Phase II report does not discuss instream flows in Chamokane Creek.

A: No it does not. The Chamokane Creek instream flow right is currently 24 cubic feet per second (cfs) for those that perfected their water rights prior to 1988 and 27 cfs for those that perfected their water rights after the 1988 order.

Cynthia asked Shannon if he could prepare the correct language to describe the Spokane Tribe's water rights for the report. Cynthia said that she did not have enough information to feel comfortable putting words into the Tribe's mouth. Shannon asked Cynthia to work with Brian Crossley on this.

Q: Does the Tribe take temperature readings in Chamokane Creek?

A: Yes.

Q: Given that the Spokane Indian Reservation is downstream of everyone else in WRIA 54, how does the Tribe deal with the fact that the Spokane River flows from Idaho across the state line into Washington – i.e. how does the Spokane Tribe deal with two states that share the same water resource?

A: When states have a dispute over water, one or the other state tends to exercise the constitutional jurisdiction of the US Supreme Court to have original jurisdiction over the dispute between two states. Idaho is about to adjudicate and it is very important to gather water resources information for this area to protect the water rights in WRIA 54.

Q: I think you said that the Spokane Tribe would not be in favor of a State adjudication. Is that right?

A: Tribes do not like State courts meddling in their rights. As counsel, I would advise the tribe to have water rights issues heard in a federal court.

Q: How do you know that there will be enough water left after the Idaho adjudication for the downstream Spokane Indian Reservation?

A: We do not know this for sure. But we do know that the Spokane Indian Tribe water rights have an 1877 priority date. The only other rights older than these are likely to be the Coeur d' Alene Indian Tribe.

Dick Price asked Shannon if he could come back in the future so that the watershed planning group can keep in touch with water resource issues of importance to the Spokane Indian Tribe.

WRIA 54 Multi-Purpose Storage Work Group Meeting Update

Rob Lindsay said that the Multi-Purpose Storage Work Group met a couple of weeks ago in August. The group continued to develop the scope of work. Although the group hoped to submit the draft scope of work to the Planning Unit at today's meeting, a few more changes were made. Spokane County plans to email the edited version to the Multi-Purpose Storage Work Group and get their approval before emailing out the scope to the

Planning Unit for discussion at the next meeting. At the July meeting, the Multi-Purpose Storage Work Group agreed to retain TetraTech to complete the project.

Rob said that the scope of work is written in a general manner for the grant application. Spokane County and the Planning Unit will work with the consultant on the specifics of the scope as the project progresses. It is important that the Planning Unit provides input on how to spend the grant funds in terms of the focus areas for potential storage projects in WRIA 54. The scope could involve a general overview of storage options, or as the consultant has recommended, the scope could focus on geographic areas that are stressed in terms of water supply. So there is additional input that is needed from the Planning Unit members.

Rob encouraged those interested to attend the next Multi-Purpose Storage Work Group meeting on September 13 in the afternoon at the Spokane County Public Works building..

WRIA 54 Instream Flow (ISF) Assessment Update

Rob Lindsay said that Pete Rittmuellor of EES Consulting (a subconsultant to TetraTech) was here the week of August 14 and finished the low flow measurements in three of the five transect areas on the Spokane River. The two lowest transects, located just below the rifle club, were originally identified as being outside the influence of the Ninemile Dam pool. However, when the elevation surveys were completed in the week of August 14, the elevation of the river was higher than when the median flows were completed. Rob said that after discussions with Avista, it appears that the instream flow work at the two lowest transects can be completed in mid September after drafting of the Ninemile pool begins and the river elevations are lowered in this area. Substrate information for these two lowest transects was collected during the week of August 14.

The toe width measurements on the tributaries are complete. A lot of in-kind services were provided by the Washington State Departments of Ecology and Fish and Wildlife and Spokane County. Measurements were completed on Coulee Creek, Deep Creek, Little Chamokane and Spring Creek.

Q: I am assuming that there will be a budget impact to have the consultant return to the two lowest Spokane River transects in September. Will we be discussing this at the next Steering Committee meeting?

A: Yes, there will be a financial impact. Cynthia is preparing a request. This will be discussed at the next Steering Committee meeting.

Q: Is EES comfortable that the data collected to date at this location is of good quality and that, once the river is drawn down, good quality data can again be collected?

A: Yes, EES is comfortable that once the river elevation is at an appropriate location, good quality data can be collected at this location. The Ninemile Dam pool is raised six feet in the summer using boards. After the summer, the boards are removed and the pool elevation is lowered.

Drainage Basin Prioritization

Bryony asked the group to consider which of the WRIA 54 subbasins they would consider as their priority. The purpose of this exercise is to poll the Planning Unit members at this early stage of the project to understand where people's priorities lie geographically. This exercise will be repeated once the Planning Unit has had an opportunity to become familiar with the technical assessment information and become involved in the supplemental projects (i.e., instream flow, storage and water quality). Bryony passed around stickers and asked each person present to place one sticker on the subbasin map of the watershed.

Q: Is one expected to place the marker at a location considering the organization represented, whether the organization be a government, corporation or landowner?

A: Yes. For those representing two entities, two stickers can be placed on the map.

Following the exercise, Bryony reviewed the map and noted that the greatest number of stickers had been placed in the Airway Heights area and along the Spokane River. Stickers were also placed in the Pitney, Hog Canyon,

Long Lake North and Long Lake South subbasins. The map will be put up at the next meeting for those not present today to take part.

WRIA 54 Mission Statement

Bryony asked those present to review the draft WRIA 54 Mission Statement. The draft Mission Statement was compiled by Spokane County Staff based on goals identified by the Planning Unit members in September 2004. The first draft was presented to the Planning Unit at the June 2006 Planning Unit meeting.

Draft WRIA 54 Mission Statement (June 2006): The WRIA 54 Planning Unit will create a watershed management plan that is a living document providing strategies to implement that balance current and future water uses while improving water quality. The strategies will provide economic growth while protecting and enhancing the natural environment by creating collaborative and cooperative partnerships between the populace, industry and regulatory agencies.

After discussion, those present agreed to revise the draft WRIA 54 Mission Statement to:

Draft WRIA 54 Mission Statement (August 2006): The WRIA 54 Planning Unit will create a living watershed management plan providing implementation strategies striving to balance current and future water uses while improving water quality. The Plan will support economic well-being while protecting and enhancing the natural environment by creating collaborative partnerships among the populace, industry and regulatory agencies.

This draft will be emailed to the group and considered again at the September 2006 WRIA 54 Planning Unit meeting. Bryony noted that the Mission Statement can be reviewed and revised periodically to make sure that it reflects the mission of the group.

Watershed Issue Development

A watershed issue can be defined in a number of ways, including a risk area within the watershed, a watershed concern, a problem or a challenge. Bryony brought people's attention to the large white paper sheets at the back of the room with issue category headings. Each person present was provided with pieces of lined sticky paper. Bryony asked those present to write each of their watershed issues on the sticky paper and to post them anonymously on to the white sheets under the appropriate category. The categories presented on the large white sheets included:

- Surface Water and Groundwater Supply
- Instream Flow
- Water Quality
- Water Management (e.g., Water Rights)
- Habitat
- Growth and Land Use
- Education

The purpose of this exercise is to poll the Planning Unit members at this early stage in the project to obtain a baseline record of the Planning Unit's watershed issues. The results of this exercise will be recorded word for word in Spokane County's project file. A summary of the issues, in which similar issues will be combined, will be presented to the group once the exercise is complete. At this stage the group will have an opportunity to comment on how their issues have been represented. As with the subbasin prioritization exercise, this exercise will be repeated at the September 2006 meeting to allow those who are not present tonight to participate. This issue identification exercise will also be repeated again in about a year, after the Planning Unit has become more familiar with the watershed technical information.

As the group were writing and posting their issues, Bryony handed out a memorandum that summarized the June 2006 “draw your watershed” exercise. Bryony noted that everyone who participated in the “draw your watershed” exercise had represented the Spokane River in WRIA 54.

After those present had posted their issues, Bryony asked individuals to read the issues posted under each category.

Public Comment

Lloyd Brewer noted that the Memorandum of Agreement (MOA) for the WRIA 55/57 Watershed Planning Implementation Phase (i.e. Phase IV) has been negotiated and will be presented to the Spokane Council for first reading on Monday August 28.

Rob Lindsay noted that there is a public meeting at 5:30 pm tomorrow (August 24) at the Spokane Regional Health District on College Avenue, south of the Court House in Spokane. The US Environmental Protection Agency (EPA) will be present to discuss the groundwater contamination in the Deep Creek area.

Rob Lindsay noted that the Washington State Department of Health (WDOH) will be holding a public hearing on their proposed water use efficiency regulations at the Spokane Airport Ramada Inn on August 29, 2006 at 3:30 pm.

General Schedule Announcements

The following meetings were scheduled and are open to the group:

- WRIA 54 Steering Committee meeting – Wednesday September 13, 2006 from 9:00 - 10:00 am at the Spokane County Public Works Building, Conference Room 2B, 1026 W. Broadway Ave, Spokane, WA 99260.
- WRIA 54 Multi-Purpose Storage Work Group - September 13, 2006 starting at 1:00 pm at the Spokane County Public Works Building, Conference Room 2B, 1026 W. Broadway Ave, Spokane, WA 99260.

Next Meeting Date and Adjourn

The next WRIA 54 Planning Unit meeting was scheduled for Wednesday September 27, 2006 from 10:00 am to 12:00 noon at the Airway Heights Community Center. The meeting was adjourned at 9:02 pm.