

FINAL
Meeting Summary
WRIA 54 - Lower Spokane River Watershed
April 25, 2007

Location: Airway Heights Community Center, Airway Heights, WA.

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

Lloyd Brewer, City of Spokane	Rob Lindsay, Spokane County
Mike Hermanson, Spokane County	Mark Wachtel, WA Department of Fish and Wildlife
Sara Hunt, WA State Dept. of Ecology	Brian Crossley, Spokane Tribe
Jim DeGraffenreid, Lincoln County Planning	Hank Nelson, Avista Corporation
Bart Haggin, Lands Council	Craig Volosing, Palisades Neighborhood and Landowner
Doris Dietrich, Landowner	Charlie Peterson, Spokane County Conservation District
Cynthia Carlstad, TetraTech	Bob Derkey, WA Department of Natural Resources
Brian Farmer, Ecology	Dave Jones, Spokane County Planning Commission
Brian Walsh, Ecology	Bryony Stasney, Golder Associates Inc.
Wes McCart, Stevens County Farm Bureau and Stevens County Water Conservancy Board	
David Luders, Fairchild Airforce Base and Indian Village Estates Water Assoc.	
Jeanne Barnes, Spokane Association of Realtors and Lake Spokane Park Homeowners Association	

Call to Order

Bryony opened the meeting at 10:00 am. Those in attendance introduced themselves. Bryony requested that each attendee complete the sign-in sheet.

Review of March 2007 Meeting Summary

The draft March 28, 2007 WRIA 54 Planning Unit meeting summary was reviewed page by page with the following edits: 1) page 4, first sentence under heading Storage Work Group and Project Update will be edited as follows: Cynthia provided a one-page handout entitled, "Summary of Water Storage Opportunities for West Plains and Suncrest Study Areas". Those present accepted the suggested edits and approved the summary as final. The meeting summary will be posted on the County's web site at <http://www.spokanecounty.org/wqmp/wria54.htm>.

Public Comment

Rob Lindsay noted that the Water Quality Work Group met on Monday April 16 between 1 and 3 pm.

Rob introduced Mike Hermanson as the new Spokane County Water Resources staff. Mike will be taking the lead on the WRIA 54 Watershed Planning project. Mike is an environmental scientist. He worked with the Pend Oreille Conservation District during the early phases of Watershed Planning in WRIA 62 (the Pend Oreille Watershed).

Lloyd Brewer provided CDs of the City of Spokane's Reclaimed Water Feasibility Study that was presented by Bill Rickard at the March 2007 WRIA 54 Planning Unit meeting.

Bryony noted that Ecology is hosting a public meeting on May 8 and 9 to present the results of the USGS Bi-State Spokane Valley Rathdrum Prairie Aquifer study.

“Instream Flow Rules Briefing” by Brian Walsh, WA State Department of Ecology

Brian’s presentation is available at the County’s web site at <http://www.spokanecounty.org/wqmp/wria54.htm>. The following summarizes the presentation and discussion.

Questions

Brian listed the questions that Sara had asked him to answer:

- What is an instream flow rule?
- What are the things you can do with an instream flow rule?
- What is an instream flow reservation and how does it affect water rights, including inchoate municipal rights?
- What are some of the options developed in other rules?
- What is the process for planning units?
- What is Ecology’s obligation if the Planning Units can’t reach agreement?
- What is the instream flow rule process?
- Rulemaking timeline?

Instream Flow Rules: a Synthesis of Factors

Instream flow rules incorporate science (e.g., hydrology, biology, geology), law and social / economic factors.

Instream Flow Methods Commonly Used in Washington

There are many assessment methods. The two commonly used in Washington include:

- 1) **Toe-width:** Simple method which is correlated to detailed studies throughout Washington.
- 2) **IFIM / PHABSIM:** Requires much more extensive, site-specific stream measurements and calculates fish habitat versus streamflow relationship.

How Low Flows Can Affect Fish

- Fish passage problems
- Loss of habitat
- Egg incubation mortality
- Mortality from high temperatures
- Increased competition for food
- Increased disease
- Predation from resident or introduced species
- Reduced production of essential food organisms
- Timing of migration for anadromous species

Ecology does not expect instream flows to be achieved all the time. As an example, the Samish River proposed instream flow is generally higher than the September flows for the 1943-2002 period of record. The instream flow may be exceeded only one in ten years but this higher flow is generally important on a periodic basis to support channel maintenance.

What is an Instream Flow Rule

Ecology is authorized under state law to establish state water-management rules that protect and preserve: fish, wildlife, recreation, navigation, aesthetics, water quality, and livestock watering. Authorizing Legislation is:

- RCW 90.22 – *Minimum Water Flows and Levels*
- RCW 90.54 – *Water Resources Act of 1971*
- RCW 90.82 – *Watershed Planning*

A regulatory instream flow is used to limit future water use when the actual stream flows drop below the flow described in the rule. An instream flow rule is essentially a water right for the stream with a priority date. Senior water rights are not regulated. Junior water rights are regulated.

An Instream Flow Rule does NOT

- Affect existing or “senior” water rights.
- Affect existing small wells (i.e., domestic exempt wells).
- Require people to put water into streams.
- Guarantee that water will be in a stream.

Elements for Consideration in an Instream Flow Rule

These include: flow levels, maximum allocation, closures, ground water reservations, mitigation and storage. Brian provided a handout summarizing the various elements that have been considered in other watersheds. The options for WRIA 54 will depend upon specific watershed conditions.

Groundwater Permit Exemption

Instream flows also need to consider groundwater, including permit exempt wells as described in Chapter 90.44.050 RCW. Ecology may use methods such as modeling to determine hydraulic continuity and effects on surface water. Impairment is not authorized by statute.

Uses	Quantity Limit	Acreage Limit
Stock-watering	None	None
Lawn-watering / non-commercial garden	None	½ acre
Domestic	5,000 gpd	None
Industrial (includes commercial agriculture)	5,000 gpd	None

Note: Information in table not tested in court, but based upon Attorney General Office formal opinion.

How Much can be Irrigated with 5,000 gpd

- Depends upon climate zone
- Typical range is ½ acres to a couple of acres
- Priority system still applies , i.e. can not impair senior water rights or instream flows
- Use could be subject to regulation

Reservation for Domestic Supply

- Addresses issue of “interruption” and provides time to improve groundwater water management.
- Policy driven
 - Required to preserve safe supplies of domestic water (RCW 90.54.020 (5))
 - Recognition that small uninterrupted water sources are necessary
- Reservation
 - Finite allocation of water for domestic purposes for a specific area
 - Not subject to instream flows
- Overriding Consideration of Public Interest (OCPI)
 - Narrowly construed
 - Intended for domestic supply
 - measures to avoid and reduce impacts
 - stream closure
 - hook-up to public water
 - limited irrigation
 - conservation
- No significant long-term impact to natural resources (no more than 1-2% loss of habitat during critical conditions).

Groundwater Reservations

- May not meet all demand in all places
- Will be used up at some point
- Will have a small impact on stream flows
- May not serve certain sectors (ag, municipal, regional needs)
- Will require extra administration by Ecology and local governments

Administrative Procedure Act / Rule Process

<u>Rule Stage</u>	<u>Activities</u>
CR 101 – Intent to Prepare Rule	Executive Management Briefing then File CR 101 form
CR 102 – Proposed Rule	Draft Rule Public Workshops Public Notice & Comment SEPA Plain Talk Economic Documents
CR 103 – Rule Adoption	Document Responses and Prepare Responsiveness Summary Revise Rule Language Reconsider SEPA Prepare Rule Implementation Plan Finalize Cost Benefit File Rule with Code Reviser Director Signs Rule

State-Wide Effort to Set Instream Flows

Driven by: Watershed Plan recommendations, growth pressure, ESA listings and Legislative direction. Instream flow rule making is planned by Ecology in 17 watersheds over the next few years

Contacts and Information

- Brian Walsh, WA Department of Ecology, Water Resources Program, Policy & Planning Section Manager - bwal461@ecy.wa.gov / (360) 407-6647.
- Ann Wessel, Instream Flow Rules Coordinator - awes@ecy.wa.gov / (360) 407-6785.

Q: How does this relate to the Clean Water Act?

A: State water law is separate from the Clean Water Act. However, the Elkhorn decision (case law) noted that water quantity and quality are linked. Water quality issues are addressed through the TMDL processes.

Q: Is lawn watering covered under the permit exemption?

A: Yes. Exempt use is subject to the water code and must be beneficial. For example, 5,000 gpd water use over a small lawn could be considered excessive and wasteful. Permit exempt wells can be regulated and there is an option to limit permit exempt well water use through an instream flow rule. If aquifer levels are declining, it may mean that the aquifer is not being managed at a sustainable level.

Q: Does Ecology give any thought to what happens in 20 years time when the reservation has been allocated?

A: Yes, a reservation is a finite resource and is actively managed. The hope is that water management (e.g., reallocation of water rights, water banking, conservation) will improve over time.

Q: Water system planning does not define 5,000 gpd per household. Under water system planning, Indian Village Estates Water Association was capped at forty ten acre lots with an annual water right of 36 AF/yr.

A: 5,000 gpd cannot be used automatically; the water must be put to beneficial use. Counties and cities may also have water system design standards. Also, a number of permit exempt wells cannot be used to supply water to a large development. Only one permit exempt well is allowed per project.

Q: Do you expect any changes as a result of the Bi-State aquifer study or the North Idaho adjudication?

A: The fact that Washington has not adjudicated the Spokane area is worrisome. Metering will help to define current water use. Adjudication clarifies historic water use and the validity of water rights claims. Under the water code, if there is more than five years of non-use (with some exceptions), a water right is relinquished. Federal reserve water rights (e.g., tribal water rights) are often not quantified and it may be important in the context of instream flows and priority.

Q: How do you establish the priority date for permit exempt water use?

A: The priority date is the date that the water was put to beneficial use.

Q: Can you give us an example of how an instream rule would be implemented on the Spokane River.

A: If a reservation is included, implementation would involve managing the reservation. Water rights issued subsequent to the instream flow would likely be conditioned to the instream flow rule. Existing water rights (including municipal water rights) would not be subject to the flow requirement. Mitigation may be required to offset new water use.

Q: When a municipality expands, how does the municipality obtain water?

A: A municipality may expand the place of use as described in the municipal water law. To do this the municipality must be in good standing with their water system plan and not be inconsistent with watershed plans and local land use plans. The municipality can use inchoate water rights to serve the expanded area. Inchoate water rights are currently being challenged in court.

Q: The Walla Walla basin, like the Spokane watershed (WRIAs 54 and 57), was essentially closed when instream flow rule making started. Since no new water rights are being issued, the attention focuses on permit exempt wells, since these are the only new water withdrawals. In WRIA 57, there are large inchoate water rights. If we set an instream flow in WRIAs 54 and 57, the instream flow will be junior to the municipal water rights. I am not sure what we can do to manage this situation.

A: The only closed basin in WRIA 54 is Chamokane. Water rights may also be subject to Surface Water Source Limitations (SWSLs).

Q: When an instream flow is set, is there certainty that the Federal Government and Tribes will agree?

A: The Federal Government and Tribes may bring suit if there are issues such as impairment of Tribal rights and insufficient flows to protect ESA listed species or meet water quality standards.

Q: Late summer and early fall flows tend to be lower than the flows that fish need. However, there are often short periods of time during late summer and early fall when higher flows occur. I understand that fish may only need these late summer and early fall higher flows for short periods. I have not seen this concept of short term flows incorporated into a rule. Has this been considered and how would Ecology regulate this?

A: The concept of flows to trigger the fish to spawn, for example, is being considered in Walla Walla. This has not been incorporated into rule but is being considered in terms of voluntary agreements.

Instream Flow Recommendation Work Group

Rob passed around sign-in sheets for WRIA 54 and WRIA 57. Spokane County may be coordinating the work groups with help from TetraTech and Golder. A meeting to discuss the WRIA 57 and WRIA 54 instream flow recommendations is scheduled for the afternoon of June 27 in Airway Heights. The work groups will be starting at this meeting and will be tasked with developing language for the Spokane River instream flow rule.

Cynthia noted that the response to comment document for the draft WRIA 54 Instream Flow Assessment was emailed out to the group on April 24 and that she has hard copy for anyone who is interested. Cynthia encouraged those present to call her with any questions / comments. Cynthia noted that the assessment recommendations will remain in the final report and should be considered by the group as a starting point for developing instream flow recommendations. The final report will be available after May 4.

Updates on the Water Quality Work Group and Multi-Purpose Storage Work Group

Water Quality Work Group

The Water Quality Work Group met on April 16, 2007. Cynthia provided a draft grant application. A three step process is proposed for the work:

- Step A: Identification and documentation of water quality processes (e.g., TMDLs), water body uses and where water quality standards are not being met within WRIA 54. Identification and prioritization of projects for implementation.
- Step B: Development of quality assurance projects plans (QAPPs) for priority projects. QAPPs include work plans, sampling and analysis plans and QAQC plans.
- Step C: Implementation

The work group felt it was important that Step A is completed in time for water quality issues to be adequately considered within the Watershed Plan. Depending on available funding, Step C may not be completed until Phase IV of Watershed Planning in WRIA 54 (i.e., Implementation). Rob said that he is hoping to email out a draft scope for Planning Unit review this week. The project is expected to start in the beginning of July 2007.

Multi-Purpose Storage Work Group

The consultant team has completed the WRIA-wide screening of storage options. The work group provided direction to the team to focus the remainder of the study as described in the March 28, 2007 WRIA 54 meeting summary. The May 23, 2007 WRIA 54 Planning Unit meeting will be a public meeting to present the draft WRIA 54 Multi-Purpose Storage Report. A draft report will be provided to the Planning Unit in mid May.

Public Comment

Rob reminded the group that the Steering Committee recommended that Spokane County amend the contract with TetraTech to include development of the WRIA 54 Watershed Plan. Spokane County has submitted the Phase III grant to Ecology. Ecology has approved the grant effective April 1, 2007. Rob said that the group will work on completing the supplemental projects before kicking off the Phase III project in August 2007.

Rob noted that he attended a meeting in Moses Lake on April 11 along with Merrill Ott of Stevens County for the Columbia River Management Program. Rob noted that the meeting was informative and invigorating. A number of County Commissioners and Watershed Leads attended. The discussion was frank and open. If the WRIA 54 group identifies projects that will result in additional water into the Columbia, there may be funding to support these types of projects. Rob said that he plans to continue attending these monthly meetings and will encourage the Spokane County Commissioners to attend. The next meeting is scheduled for May 9.

Sara Hunt noted that Ecology will be hosting a Watershed Lead meeting in Moses Lake on May 17 and that all planning unit members are invited. There will be an agenda item on the Columbia River Water Initiative.

Dave Jones noted that Linda McCollum (Eastern Washington University) has been gathering well data across the West Plains area. Bryony noted that this was discussed at the West Plains meeting in Cheney in February 2007. Bob Derkey said that he has been working closely with Linda on this.

The Lake Roosevelt Forum is hosting a workshop between 10am to 12:30pm on April 26, 2006.

General Schedule Announcements

The group agreed to cancel the May 9, 2007 Steering Committee meeting due to a conflict with the Bi-State aquifer study conference.

Next Meeting Date and Adjourn

The next Planning Unit meeting is scheduled for Wednesday May 23, 2007, 6:00 – 8:00 pm at the Lakeside High School library. The library is located opposite the cafeteria.

The meeting was adjourned at 11:58 am.