FINAL
Meeting Summary
WRIA 54 - Lower Spokane River Watershed
May 28, 2008

Location: Lakeside High School Library, Ninemile Falls, WA.

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

Mike Hermanson, Spokane County	Sara Hunt, WA State Dept. of Ecology
Lloyd Brewer, City of Spokane	Dick Price, Stevens County PUD #1
Rob Lindsay, Spokane County	Hank Nelson, Avista Corporation
Brian Crossley, Spokane Tribe	Bart Haggin, Lands Council
Stan Miller, Citizen	Charlie Peterson, Spokane County Conservation District
Brad Caldwell, WA State Dept. of Ecology	Dave Jones, Spokane County Planning Commission
Hal Beecher, WDFW	Craig Volosing, Landowner and Palisades Neighborhood
Guy Gregory, WA State Dept. of Ecology	Cynthia Carlstad, TetraTech
Robert Wheeler, Triangle Assoc.	Bryony Stasney, Golder Associates Inc.

Wes McCart, Stevens County Farm Bureau and Stevens County Water Conservancy Board

Call to Order

Bryony opened the meeting at 6:00 pm. Attendees introduced themselves. Bryony requested that each attendee complete the sign-in sheet.

Review and Approve April 2008 Meeting Summary

The Planning Unit reviewed the draft April 23, 2008 WRIA 54 Planning Unit meeting summary. Those present approved the summary without any changes. The final summary will be posted on Spokane County's web site at http://www.spokanecounty.org/wqmp/wria54.htm.

Public Comment

Brian Crossley noted that the Spokane River Forum float the river event has been postponed to July.

Mike Hermanson provided a handout documenting the final tally for the ranking of the projects for Ecology's 2009-2011 biennial budget. Mike submitted the ranked list of projects to Ecology on May 15. Sara said that Ecology will be requesting more specific project proposals in the fall.

WRIA 54 Instream Flow Update by Cynthia Carlstad of TetraTech

Cynthia provided an overview of the issues being considered by the WRIA 54 Instream Flow Work Group. A copy of the presentation will be posted at http://www.spokanecounty.org/wqmp/wria54.htm. Brad Caldwell (Ecology) and Hal Beecher (WDFW) attended the meeting to answer questions.

Cynthia reminded the group that there are two instream flow work groups operating: the WRIA 54 instream flow work group; and the WRIA 55/57 and 54 instream flow work group.

Instream Flow Primer

- The terms "instream flow", "minimum flow", "base flow", "conditioning flow" or "regulatory flow" are sometimes used interchangeably to describe flow levels established by rule for the purpose of conditioning subsequently issued water rights.
- Instream flow is a water right.
- Primarily used by Ecology in making new water rights decisions.
- Does not affect senior water rights, but may affect certain changes to existing water rights.

Report on WRIA 55/57 & 54 Work Group

1. Working over the past 9 months to develop a coordinated recommendation for the Spokane River.
2. Focused on mainstem Spokane River, primarily a control point near Spokane.
3. Met earlier today; finalizing a Tech Memo to Planning Units documenting their work and recommendations.
4. Elected officials meeting on June 26 (meeting room at the Spokane Convention center) – goal is education and group discussion.

Report on WRIA 54 Work Group

1. Strategy for WRIA 54 tributaries if WRIA 54 Planning Unit decides to pursue instream flow.
2. Possible regulatory point near Little Falls on the Spokane River.
3. Spokane River West Arm.

Preliminary ideas on instream flow rule for WRIA 54 tributaries

What does data show?

- Toe width study
- Streamflow – where and how much
- Surface Water Source Limitations (SWSL) – what area regulated

Is an instream flow rule needed? The workgroup considered two options and the implications of each:

1. NO - Water rights continue to be managed based on SWSLs
2. YES - What should rule be based on? What should rule address?
   - Surface water diversions
   - Groundwater withdrawals
   - Permit-exempt wells?
   - Stock water?
   - Mitigation?

What data is available what is needed?

- Toe width study
- Streamflow – where and how much
- Surface Water Source Limitations (SWSL) – what area regulated

Strategy for pursuing instream flow rule for WRIA 54 tributaries

The WRIA 54 instream flow work group agreed to pursue instream flow rule for the WRIA 54 tributaries using the following strategy:

1. Conduct regular flow studies (very little flow data available)
   - Prioritized regular flow measurements (quarterly or monthly?)
   - Surveys to determine where flow exists (some reaches are usually dry)
2. Collect other relevant data
   - Channel and riparian conditions
   - Hydrogeology – hydraulic continuity
   - Water uses (fisheries, permit-exempt, other water rights)
   - Reconfirm toe width study results (completed in 2007 for Spring, Little Chamokane, Deep and Coulee Creeks)
3. Milestone – Continue to pursue Instream Flow Rule? Case-by-case for each tributary.

Hal said that it will be important to review fisheries information for the tributaries to the Spokane River in WRIA 54. Even if the tributaries do not flow above ground to the Spokane River, there are likely fish populations along reaches. Hal said that Mark Wachtel (WDFW) would likely have a good understanding of the fisheries information for these streams. Hal said that WDFW would like to see instream flow rules for the tributaries with control points established at locations that make sense considering the stream hydrology and biology (i.e., where water flow is providing value).

Possible regulatory control point below Little Falls Dam

- Ecology has an interest in control point at this downstream location.
- Existing agreement between Spokane Tribe and Avista for releases from Little Falls.
- Several water rights have been issued that are conditioned to the Little Falls agreement.
- Avista has senior water rights for power generation.
- This portion of the Spokane River is owned by the Spokane Tribe. The Spokane Tribe has the most senior water rights.
- Preliminary recommendation from WRIA 54 instream flow work group: no control point at Little Falls.

Brian Crossley commented that the flow rate in the Little Falls agreement (i.e., 200 cfs and 500 cfs) is to keep water in the spillway channel so as not to strand fish. It is not an instream flow.

Q: Is there free flowing river downstream of Little Falls Dam?
A: No, Grand Coulee pool influences the river to Little Falls Dam.

SVRP Aquifer in WRIA 54 – West Arm

- Good understanding of interactions between SVRP Aquifer and Spokane River (USGS and WA-ID Bi-State Aquifer study).
- River gains about 250 cfs along the West Arm (Spokane River in WRIA 54 upstream of Ninemile Dam).
- Instream flow study for Spokane River indicates lower habitat flow in the West Arm (650 cfs at the Gun Club versus 850 cfs at the Spokane gage for 100% habitat).
- Model run with two additional wells in different locations in the SVRP pumping maximum of 89 cfs (the combined max pumping rate for the City of Spokane Parkwater and Electric wells).
    - 2 new wells in the Spokane Valley (around Pines and I90)
    - 2 new wells in the West Arm
- Model run indicates (for August) the same amount of water removed from the river. However, for the wells sited in the West Arm, the water is removed from the river in the vicinity of the Gun Club (where the instream flow model indicates less flow needed to support habitat).
- WRIA 54 Planning Unit could consider establishing a reservation for future withdrawals from the SVRP Aquifer in the West Arm.

Q: Do river otters effect the fish populations?
A: Yes. River otters are very effective predators.

Q: How can you set an instream flow when you do not have the data to understand what the actual flows are?
A: The next step is to gather stream flow data and to understand where the stream flows and where the stream is dry over the year.

Q: Is there limitation on the size of the stream for the toe width method to be applicable?
A: The toe width works on medium to small streams. For very small streams, the toe width (like most other analyses) indicates that any flow that is removed has a significant impact on habitat conditions. WDFW has a policy to ask Ecology to deny water rights applications from streams with a toe width of 5 feet or less.

Q: Currently, permit exempt wells can be drilled in basins with SWSLs that close the stream to further appropriation. Can setting an instream flow change this?
A: An instream flow is a water right (with a priority date) for the stream. Groundwater rights can be addressed in an instream flow rule. It is preferable to establish an instream flow rule rather than continue to administer using SWSLs.

Q: Do we have all the data we need for the Spokane River?
A: The State caucus needs to resolve data on spring flows.

Q: Do we have sufficient data for the tributaries?
A: No. We need more flow data and it would be good to also understand what are the limiting factors are for the tributaries (so that mitigation strategies may be developed). There will need to be coordination between WDFW, Ecology and the Spokane Tribe on existing data.

Q: What frequency of data collection is preferable?
A: It would be good to compile existing data first and establish a scope of work for each of the tributaries. Monthly streamflows initially would be a good frequency. It would be important also to document the dry reaches and seasons and to take flow measurements at a site being considered as a control point. Additional flow measurements could be taken at sites where it is important to understand the relationship between flow at the site and the control point. Seepage runs may also be valuable to assess losing and gaining reaches. It could also be helpful to understand locations of cold spring water inflow and gravels.

Q: Can you comment on the control point at Little Falls?
A: Typical instream flow models that assess water velocity and depth would not be relevant to develop instream flow / habitat values at this location since the river is essentially a reservoir. Since the river is essentially a reservoir, instream flow may be best considered in terms of changes in water quality as a result of flow. The existing water quality model could be used to link water quality and flows.

Q: Do the SWSLs close the streams and how does a SWSL work?
A: SWSLs are essentially administrative closures. A SWSL is an informal policy. For example, a SWSL could be a letter from WDFW stating that there is insufficient water in the stream to support appropriation of new water rights. Ecology would rather establish instream flow rules since it is more difficult to administer water rights using SWSLs.

Q: How does Ecology decide the groundwater encompassed by a SWSL? Is the entire basin considered?
A: By an assessment of the groundwater system. If Ecology has pumping test data, we use it. Hydraulic continuity is a yes / no decision.

Q: From previous work, has Ecology established that the streams are in hydraulic continuity with the basalt aquifers.
A: Yes, quite often. It depends on the specific situation.

Q: Are the SWSLs listed in the WRIA 54 Technical Assessment.
A: No. The SWSLs were discussed at the last WRIA 54 instream flow work group meeting and have been discussed at water management work group meetings. We have obtained hard copy of the SWSLs from Ecology.

Groundwater Management Area Designation by Guy Gregory of Ecology
Bryony noted that the water management work group has discussed groundwater management area (GWMA) designation as a potential option for addressing declining groundwater levels in the West Plains area and as a tool for managing growth in the use of permit exempt wells.

Overview

- Ecology has not established groundwater management areas for about 15 years.
- There are two ways to form a groundwater management area:
  - RCW 90.44.400 and WAC 173-100 (community based, generally water quality oriented)
  - 90.44.130 (agency based, water resources oriented, an enforcement law)
- Both processes long, involved, fraught with litigation danger
- None implemented in their simplest, straight forward form
- Original funding and procedural framework uncertain today

Objectives for WAC 173-100-050

- Ensure groundwater quality
- Ensure coordinated process between organizations
- Arrive at a jointly developed ground water management program tailored to local needs

Process for WAC 173-100-050

- Identify concerns (aquifer vulnerability, depletion of aquifers, concern over contamination)
- Designate area (considering hydrogeology)
- Ecology, local agency or advocate submits materials: proposed boundaries, outline of concerns and issues, proposes members for Ground Water Advisory Committee (GWAC) and lead agency
- GWAC - represent cross-section affected community
- Ecology reviews materials, and finding compliance with rule issues an order:
    - Identifying ground water management area
    - Establishes planning boundaries,
    - Appoints lead agency.
- Lead and GWAC:
    - Inventory - area characterization, problem definition, issue papers.
    - Planning - program development (goals, alternatives, direction).
    - Prepare findings.
- Ecology:
    - Evaluation of consistency with laws/regs.; technical & economic feasibility. Includes interagency and intergovernmental commitment to the Program.
- Ecology, Lead, and GWAC:
    - Public Hearings and final Order
- Following this, findings process and resolution of differences, Ecology certifies the program. This certification binds state and local governments to follow the Program. Local governments and state agencies adopt ordinances/regulations. Ecology and other governments authorized and encouraged to enter into MOUs and other interagency agreements.
- Ecology estimates takes about 5 years to go through this process.
- Implementation - work plan, monitoring, periodic review & enforcement.
- Program Review - see how the Program works and adjustments needed.

Process for RCW 90.44.130

- Enforcement rule
    - "…the department shall have authority and it shall be its duty from time to time, as adequate factual data become available, to designate groundwater areas or sub-areas, to designate separate depth zones within any such area or sub-area, or to modify the boundaries of such existing area, or sub-area, or zones to the end that the withdrawals therefrom may be administratively controlled as prescribed in RCW 90.44.180 in order that overdraft of public groundwaters may be prevented so far as is feasible."
    - "…the department shall have jurisdiction over the withdrawals of groundwater and shall administer the groundwater rights under the principle just set forth, and it shall have the jurisdiction to limit withdrawals by appropriators of groundwater so as to enforce the maintenance of a safe sustaining yield from the groundwater body…"
    - "...the prior appropriator shall as against subsequent appropriators from the same groundwater body be entitled to the preferred use of such groundwater to the extent of his appropriation and beneficial use, and shall enjoy the right to have any *withdrawals by a subsequent appropriator of groundwater limited to an amount that will maintain and provide a safe sustaining yield in the amount of the prior appropriation*…"
- Safe sustaining yield is not defined.
- Subsequent appropriator could be permit exempt wells.

- Designated area can be proposed by Ecology on its own motion or by petition to Ecology. Ecology publishes notice and holds hearing on boundary.
- Ecology holds second hearing to determine if water supply is adequate. If not, Ecology regulates withdrawal in accordance with prior appropriation doctrine to decrease withdrawal to meet available supply.
- Each such sub-area may be so designated as to enclose all or any part of a distinct body of public groundwater, as Ecology deems will most effectively accomplish the purposes of this chapter. This means that groundwater cannot be transferred in and out of the groundwater management area.
- Priorities of right to withdraw public groundwater shall be established separately for each groundwater area, sub-area, or zone and, as between such rights, the first in time shall be the superior in right. The priority of the right acquired under a certificate of groundwater right shall be the date of filing of the original application for a withdrawal with the department, or the date or approximate date of the earliest beneficial use of water as set forth in a certificate of a vested groundwater right, under the provisions of RCW 90.44.090. This means that Ecology does not have to adjudicate.
- Ecology has not enforced using this rule. Ecology does not have the resources.

Q: Is this happening outside of the Little Spokane River?
A: This is not the process that occurs in the Little Spokane River watershed. The Little Spokane River has an instream flow rule. Water rights junior to the instream flow rule are conditioned to the instream flow. Permit exempt wells are not conditioned to the instream flow rule. There is also significant illegal water use that occurs in the Little Spokane River watershed.

Examples

- Quincy Subarea established under RCW 90.44.130
  - No state water available. Water rights are agreements with Bureau of Reclamation
  - Cannot transfer / change water right across the boundary
- Odessa subarea established under RCW 90.44.130
  - Depletion of aquifer due to withdrawals to grow potatoes
  - Rule allows continued withdrawal of groundwater in anticipation of further construction of Columbia Basin project
  - Cannot transfer / change water right across the boundary
- Duck Lake (Karst area near Omak) established under RCW 90.44.130
  - Unusual geology and geologic system (only karst area in WA)
  - Landowners agreed to limit groundwater withdrawals
- Columbia Basin GWMA established under RCW 90.44.400
  - Nitrate contamination in shallow aquifers of the Columbia Basin
  - To avoid sole source designation for the Columbia Basin

Uncertainties

- Relationship to Watershed Planning process today
- Funding - formerly only for 24 months and from Centennial Clean Water Fund
- Agency level resource availability
- Legislative and community support once the going gets tough

Questions

Guy J. Gregory, Washington Department of Ecology, Eastern Regional Office
N. 4601 Monroe, Spokane, WA 99206. 509-329-3509
More info: http://www.ecy.wa.gov

Q: Why is it so hard for Ecology to enforce?
A: When the Washington State Department of Water Resources became a part of the Washington State Department of Ecology (in 1972), we lost the state Engineer and since then have had a politically appointed

lead. It may have been easier for the Department of Water Resources to enforce with a state Engineer. Ecology's ability to enforce was reduced by a lack of appropriation of funds by the legislature.

Q: It seems that the Kittitas petition is an attempt to have Ecology enforce in accordance with RCW 90.44. Could the Kittitas County permit exempt well issues result in a Groundwater Management Area (GWMA) designation?
A: Yes, I agree that this is an objective of the petition. A GWMA is unlikely. The issue is exempt wells and who is in charge. The County is the growth authority. Ecology is the water authority. If Ecology makes a finding that there is no more water available, the County cannot issue a building permit. In Kittitas senior water rights in hydraulic continuity are being curtailed when permit exempt wells in hydraulic continuity are not. This is also occurring in North Spokane County in the Little Spokane River basin (WRIA 55).

Q: What are the options other than GWMA designation?
A: GWMA designation is not a short, easy or cheap option. Ecology has considered GWMA designation for the West Plains because the aquifers are unusual and because the West Plains crosses into at least four WRIAs. The City of Spokane is extending water transmission to the West Plains. Ecology, Spokane County and the purveyors have been working on West Plains water supply issues this for the last few years. Other options include controls on outdoor irrigation, public education and awareness.

Q: Could the County consider density triggers as a way to manage exempt well growth?
A: There is a limit to what the County can do because there are a number of lots already established across the West Plains.

Q: Exempt wells are exempt from getting a permit but are not exempt from water rights law (i.e., exempt wells have a priority date). Also, Ecology can enforce if conditions on permit exempt wells are included as a part of a water management rule.
A: Yes, there are these options. In Walla Walla, Ecology made the ruling that there is no water available in the upper sand and gravel aquifer.

Q: Ecology is developing a rule for Kittitas based on the MOA without going through a GMWA process.
A: Ecology can develop a rule for a designated area.

Work Group Updates

Water Management Work Group
Will be meeting on June 5 to discuss water conservation and permit exempt wells.

Water Quality Work Group
Currently writing the draft issue paper. The group may meet one more time. The QAPPs for the palaeochannels and Ninemile area will be available around June 10 and will be emailed to the Planning Unit. We have a meeting scheduled for June 17 to hear presentations on these two QAPPs.

Land Use Work Group
Met on April 18 and discussed the preliminary issue paper. Plan to send out the preliminary issue paper to the work group for comment over the next week.

Education Work Group
Plan to send out the preliminary issue paper to the work group over the next month.

Technical Data Work Group
This work group plans to meet one more time to discuss the data needs identified by the other work groups.

WRIA 54 Instream Flow Work Group
This work group plans to meet again in July.

Cynthia noted that the draft Watershed Plan will likely be provided to the Planning Unit in August.

Review Decision Making Process

WRIA 54 Planning Unit Membership
- Established in February 2006 with approval of the operating procedures.
  - New voting members eligible after attending 3 consecutive Planning Unit meetings. Planning Unit may accept new voting members by majority.
  - Members may be removed from voting status if member / alternate fails to attend 3 consecutive meetings.
- The current members are listed on the Planning Unit meeting sign-in sheet

Quorum
- A quorum is required to qualify an official WRIA 54 Planning Unit meeting.
- Quorum = 10 Planning Unit members (and includes alternates).

Decision Making
- Consensus (i.e., unanimous agreement) as much as possible.
- Three types of Phase 3 decisions:
  1. Administrative (excluding Operating Procedure Amendments).
  2. Watershed Plan Contents or Operating Procedure Amendments.
  3. Watershed Plan Approval.

Administrative Decisions
- All decisions except those regarding operating procedures, watershed plan contents and watershed plan approval.
- Quorum needed.
- Consensus or a simple majority vote of Planning Unit members in attendance.

Watershed Plan Contents / Operating Procedure Amendments
- Quorum needed. By consensus as much as possible.
- Two-meeting approval process.
- Majority of Planning Unit members present can decide to move from consensus to voting.
  - Requires consensus of governmental Planning Unit members.
  - Requires majority vote of non-governmental Planning Unit members present.

Watershed Plan Approval
- Quorum needed. By consensus as much as possible.
- Majority of Planning Unit members present can decide to move from consensus to voting.
  - Requires consensus of governmental Planning Unit members.
  - Requires majority vote of non-governmental Planning Unit members present.

Rob Lindsay commented that there were individuals who entered the WRIA 55/57 Watershed Planning process during the final stages and expressed discontent to their County Commissioners. This resulted in considerable time delay in approval of the WRIA 55/57 Watershed Plan. The WRIA 54 Watershed Plan must be adopted by the County Commissioners. Spokane County is documenting outreach efforts to show that the process here is open to the public and is transparent.

Public Comment
No additional public comment.

Administration and General Schedule Announcements

The following meetings are scheduled and open to everyone:

JUNE 2008:

- WRIA 54 Water Management Work Group, Thursday June 5, 1:30 – 4 pm, Ecology Eastern Regional Office, N. 4601 Monroe, Spokane, WA. Tel: 509-329-3400.
- WRIA 54 Water Quality Work Group, Tuesday June 17, 9 am – noon, Conf. Rm. 4A, Spokane County Public Works Building, 1026 W. Broadway Ave, Spokane, WA.
- WRIA 54 Technical Data Work Group, Tuesday June 24, 2 – 4 pm, Conf. Rm. 4A, Spokane County Public Works Building, 1026 W. Broadway Ave, Spokane, WA.
- WRIA 54 Planning Unit, Wednesday June 25, 10 am – noon, Airway Heights Community Center, Airway Heights, WA.
- WRIA 54 and 55/57 Instream Flow Work Group Elected Officials Meeting, Thursday June 26, 9 am – noon, Spokane Convention Center meeting room.

JULY 2008:

- WRIA 54 Instream Flow Work Group, July 8, 9 am – noon, Conf. Rm. 4A, Spokane County Public Works Building, 1026 W. Broadway Ave, Spokane, WA.
- NO PLANNING UNIT MEETING IN JULY

Next Meeting Date and Adjourn
The next WRIA 54 Planning Unit meeting is scheduled for Wednesday, June 25, 2008, 10 am – noon Airway Heights Community Center, Airway Heights, WA. Bryony adjourned the meeting at 8:25 pm.