

**June 26, 2014**

**TO: Interested Persons**

**FROM: Ecology Spokane Instream Flow Rule Development Team**

**SUBJECT: Response to Questions and Comments Received, Preliminary Draft Outreach**

Ecology published a preliminary draft rule, soliciting comment, discussion and input from the public on April 23, 2014. A public workshop to answer questions about the preliminary draft rule was held on May 14, 2014 at Center Place in Spokane Valley. Approximately 40 people attended. Ecology received input from a variety of stakeholders and several individuals. We are currently considering the public's input on the preliminary draft rule and will accept formal comment once the draft rule is published and filed with the state code reviser. Attached is Ecology's response to input on the preliminary draft rule.

Comments consisted of statements, recommendations, and questions. Ecology will consider the point of view for statements and recommendations in the context of instream flow rulemaking, available information, agency policies, and state statute. Our responses to statements, recommendations, and questions, are tabulated in the following pages.

These comments on the preliminary draft will be used to revise, clarify, and improve language for the final proposed rule. The proposed rule and associated documents and agency determinations, will be available for formal public comment period, including hearing. At this time, we expect to begin that process in the Fall of 2014.

In the following pages, comments received are in italics. Ecology responses are not italicized. Where possible, the text of the comment is directly quoted, otherwise it is summarized. Individual comments are grouped by commenter, whose name and/or organization is in boldface type.

The team thanks all organizations and individuals for taking the time and energy to review the preliminary draft, and provide the following comments and questions.

## Spokane River Instream Flow Rule

Response to Questions and Comments Received, Preliminary Draft Outreach, April 23-May 30, 2014

1) Rachael Pascal Osborn on behalf of the Citizens for Environmental Law and Policy, the Sierra Club, and the Columbia Institute for Water Policy.

***Spokane Falls Flows.** The instream flow rules should establish a specific flow through the Upper and Lower Spokane Falls. We suggest the rule incorporate the flows established in the amended 401 Certification for the Avista Corp. Spokane River Project federal power license.*

The purposes of the instream flow rule are:

- (a) Establish instream flow levels necessary to protect wildlife, fish, scenic, aesthetic, recreation, water quality and other environmental values, navigational values, and stock watering requirements;
- (b) Meet water resource management objectives of the Spokane area watershed plans adopted under RCW 90.82; to protect existing water rights; and
- (c) Establish and protect Washington State interests in the water resources of the Spokane River.

Flows established for the operation of hydropower facilities are the purview of the Federal Energy Regulatory Commission. As you note, they have established specific flows for those reaches. Ecology believes the proposed instream flows do not conflict with those requirements, and will review and assess your request prior to publication of a draft rule.

***The Spokane Downriver Reach.** The rule proposes a very low flow, 850 cubic feet per second (cfs), for the important "Downriver Reach" of the Spokane River which flows from Monroe Street dam to the Nine Mile Falls pool, and which is measured at the Spokane gage (located downstream of the Monroe Street dam) ... We request that the Department of Ecology acknowledge the unique and important public values of the Spokane River and reconsider its summer flow recommendation. Summer flows in the Downriver Reach of the Spokane River should be sufficient to protect the Spokane River's annual variability and unique and valued qualities.*

Ecology acknowledges your comment, and will review proposed flows prior to publication of a draft rule.

***USGS Flow Data.** USGS Spokane gage data for the period June 15 to September 30 for the years 2009-2013 indicate that flows exceed 850 cfs most of the time.<sup>4</sup> As recognized in the draft rule, if the instream flow rule fails to protect flows above 850 cfs, that water becomes available for appropriation to new water rights out of the river. See Prelim Draft WAC 173-557-060(1), (3) and (4). ... Ecology is proposing an extremely low flow for the Spokane River downstream of Monroe Street dam. While flows vary from year to year, the rule as written would allow for the issuance of substantial new water rights from the Spokane River. We request that Ecology increase the summer period low flow in the Downriver Reach to include substantially higher flows.*

Ecology acknowledges your comment, and will review the water data prior to publication of a draft rule. The proposed instream flow numbers are based upon fish habitat studies as surrogates for protection of in-stream values. The purpose of the rule, as written, is not to extinguish the opportunity for new water rights from the river, rather, to establish flows protective of in-stream values upon which to condition any future water rights issued.

**Instream Flow Science.** *It is essential to protect variability (i.e., high flows and low flows and in between) – an approach that is now advocated by the scientific community. ... The preliminary draft instream flow recommendations do not adhere to this need for scientific variability, and of course a straight line flow does not even attempt to mimic the natural hydrograph. The appropriate approach to provide for flow variability is to codify a flow or set of flows on that, at a minimum, incorporate flows on the higher end of the hydrograph. By selecting a flow on the low end of the spectrum Ecology fails to protect the public interest.*

Ecology appreciates your comment, and will take it into consideration prior to publication of a draft rule.

**Recreation and Navigation Flows.** *The 850 cfs summer flow at the Spokane gage is not protective of recreational and navigational uses of the river....*

Ecology acknowledges your comments. We note that statute provides no guidance on primacy between instream uses.

**Fisheries Flows.** *As stated anecdotally by WDFW biologists, summer flows higher than 850 cfs in the Downriver Reach of the Spokane River will not harm fisheries. A post-licensing study prepared by Avista indicates the importance of the reach downstream of Monroe Street dam as a spawning and rearing area for redband trout. This productive reach deserves full protection. See Attachment 1 (Overview of Spawning Patches and Observed Spawning (Cardno-Entrix 2011).*

*This is a critical reach of the river, and maintaining clean, cold water is essential to the health of local fisheries. Let us be generous to our native fish. ... [further] The instream flow rule should anticipate and prepare for return of salmon to Spokane Falls.*

The proposed flows integrate the study cited. Please see <http://www.ecy.wa.gov/programs/wr/rules/images/pdf/spokane/SpokRivSpawnRpt-022011.pdf> for the study, and Beecher, 2012 ([http://www.spokaneriver.net/wp-content/uploads/2012/09/Instream-Flow-Recommendations-for-Spokane-River-5-31-12.WDFW\\_.pdf](http://www.spokaneriver.net/wp-content/uploads/2012/09/Instream-Flow-Recommendations-for-Spokane-River-5-31-12.WDFW_.pdf)) for analysis. Nothing in the proposed draft rule prohibits flows from exceeding the minimum.

Ecology believes instream flows provide important protections for fisheries resources, and in the event anadromous fish return to Spokane Falls, water will be available for them. Nothing in the proposed rule language prohibits future amendment of the rule as conditions change. See the proposed language for Regulation review, WAC 173-557-100.

**Impacts on Idaho.** *The flows adopted in this rule will effectively function as Washington's reservation of environmental flows in any future agreement or court order dividing Spokane River and SVRP waters between Idaho and Washington. As the USGS model referenced in the draft rule indicates, groundwater pumping in Idaho will deplete flows in the Downriver Reach of the Spokane River, and will have little if any impact in Idaho. Idaho continues to grant*

*substantial numbers of water rights from the SVRP Aquifer. What Washington fails to protect here will be awarded, at least partially, to Idaho in a future interstate apportionment proceeding. For this reason alone, Washington should declare a water right for the maximum justifiable instream flow quantities. Why Washington would not do so defies explanation.*

Ecology acknowledges the interstate issue. The instream flows would apply to new junior withdrawals in Washington. Ecology believes a defensible, scientifically derived flow regulating water use in Washington provides a solid basis for the future in any form the management of the region's water supply might take.

***Climate Change.*** *The 850 cfs does not take into consideration the hydrologic impacts of climate change. When exactly does the Water Resource Program anticipate it will begin to address climate change impacts in its water management decisions? See RCW Ch. 43.21M and Executive Order EO 09-05, Section 5.8 This includes considering the potential for increased demand for water as U.S. populations move north to locales, such as Spokane, that are considered more "water abundant."*

Ecology agrees that climate change is occurring and will continue, and in fact have already seen evidence for its impacts on the timing of the spring freshet. We acknowledge your comment, and will assess this issue prior to publication of a draft rule.

***Public Interest Language.*** *Language in preliminary draft WAC 173-557-010(3)(b) should be amended. Public interest considerations vary in each watershed, but arise universally in the context of establishing instream flows and protecting water quality and wildlife habitat – core public values associated with rivers and aquifers. The WRIA 55-57 watershed planning unit was unable to come to consensus on an instream flow recommendation at the Spokane gage, and the Department of Ecology stepped in, as required in statute, to propose specific flows. The WRIA 55-57 watershed plan also chose not to address the optional water quality and habitat elements for watershed plans. It is therefore inaccurate, or incomplete, for the rule to quote RCW 90.82.130(4) and assert that the watershed plan provides the "primary consideration in determining the public interest" for the Spokane River. The Legislature did not intend for a watershed plan that omits to address instream flows, water quality and habitat elements to substitute for Ecology's statutory duties under RCW Chapters 90.54, 90.48, 90.58, 90.72 and other relevant authorities. If you must include a statement regarding the public interest, please also reference these statutes.*

Ecology acknowledges your comment, and will assess this language prior to publication of a draft rule.

## **2) John Roskelley**

*The instream flows at the Barker Road station and Spokane stations are low for the period June 16 - Sept 30, especially at Barker. Is there science to base these numbers on? I would suggest breaking the flow periods down into smaller units, such as monthly, and increasing instream flow throughout the summer period. Although arbitrary, given the flow rate up to June 16, the river should not be allowed to drop below 750 cfs at Barker and 1250 cfs at the Spokane gauge. Limit groundwater removal during the period from June 16 to Sept. 30, specifically for watering public facilities, such as school grounds and golf courses, which consume far more than they need.*

Thank you for your comments. The flow numbers are based upon fisheries habitat studies done on the Spokane River. Our proposed flows integrate the study cited. Please see <http://www.ecy.wa.gov/programs/wr/rules/557-res.html> for links to the studies, and Beecher, 2012 ([http://www.spokaneriver.net/wp-content/uploads/2012/09/Instream-Flow-Recommendations-for-Spokane-River-5-31-12.WDFW .pdf](http://www.spokaneriver.net/wp-content/uploads/2012/09/Instream-Flow-Recommendations-for-Spokane-River-5-31-12.WDFW.pdf)) for analysis.

Ecology will consider finer intervals for flow establishment. Regulation of senior rights and patterns of water use is not within the scope of this rule.

### **3) Lynn Wells**

*The portion of map within Stevens Co. is erroneous. The boundary is arbitrary and does not relate to the aquifer. There seems to be an assumption the neighbors landscaping creating a green area is aquifer. The backwater of Long Lake Dam has changed the vegetation.*

The boundary of the Spokane Valley Rathdrum Prairie Aquifer was established by the United States Geological Survey during studies conducted between 1970 and 2008 using well log data, surface geologic mapping and other geologic information. The Stevens county portion, while interpreted, is not based upon landscaping.

*I am opposed to an arbitrary requirement for water meters on any new exempt household wells.*

Thank you for your comment. We are evaluating the metering requirement as we prepare the draft rule.

### **4) Wes McCart**

*Revise the paragraph which describes the overlap area between the Little Spokane Rule and the Spokane Rule to make it clear.*

Thank you for your comment. We will clarify the rule language.

### **5) Cindy Zapotocky, Kevin Paulson, Gloria Clark, Martin Howser, and Alene Lindstrand on behalf of Citizens' Alliance for Property Rights (CAPR)**

*Your document entitled, Frequently Asked Questions states, "The rule would give the Spokane River a water right, much like we give individuals, farms and municipalities. However, at the 5-14-14 Spokane DOE meeting, your employee Guy Gregory when asked how the river can have a right answered that a water right is granted to people to preserve uses and this is a community right, not a right for the river which is a misnomer. His statement seems to contradict the way the various DOE' documents state that the river has a water right. Please explain this contradiction.*

The Washington State Legislature has provided for the Department of Ecology to exclusively set instream flow levels for the benefit of the environment and the residents of the State of Washington as codified in Chapters 90.03, 90.22, and 90.54 RCW. RCW 90.03.345 states that minimum flows or levels under RCW 90.22.010 or RCW 90.54.040 shall constitute appropriations within the meaning of this chapter (the state water code) with priority dates as of the effective date of their establishment. What this means is the legislature intended instream flows established in a rule receive the same protection as

a water right granted under the state water code. Instream flows have a priority date (the date of adoption of the rule), cannot be impaired, and are senior in priority to water rights issued after the priority date.

*2. The Washington State Constitution mentions in Article 1 (Declaration of Rights), Section 1 that "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain INDIVIDUAL RIGHTS." In Section 3, under Personal Rights, "No person shall be deprived of life, liberty, or property, without due process of law." Community rights and or rights for inanimate objects such as rivers are not listed in our WA State Constitution under the Declaration of Rights. Thus, it appears that DOE must align with protection of individual rights, not community rights or rights for an inanimate river in order to meet the lawful conditions as set forth in our most foundational document, the Washington State Constitution.*

Thank you for your comment. Ecology is confident that it is acting within the confines of the constitution and the law in enacting this rule.

*3. On March 27th, your employee Keith Stoffel when asked if wells would be metered said that existing, permit exempt wells won't be metered. Rusty Post said that private wells are drawing very little water in the aquifer region. We understand that the rule was not released yet. However, the rule states on p 6, 5, "All future new surface and groundwater appropriations, other than rainwater collection, shall measure withdrawals." Thus, water meters will be installed on new wells in the Spokane aquifer region after the rule has taken effect. Thus it appears that with this rule a precedent to meter wells has been established in Eastern WA. Most private property owners who use water from their own wells do not want to have their wells metered or pay for water since many have paid thousands of dollars and already pay a utility bill to pump their wells. However, DOE has now just established that new wells will be metered in the Spokane aquifer region. CAPR Spokane strongly objects to metering of any wells in Eastern WA and strongly rejects this portion of your new rule. We think that this is just the beginning of requirements for meters for all domestic, exempt wells in Eastern WA. In addition, all exempt wells, whether those that exist now, or in the future, should not require metering, since 98% of the ground water is returned to the ground via a septic system in rural areas.*

Metering has been required in portions of eastern Washington for many years. In 1973, the management regulation adopted for the Odessa Subarea required all wells subject to that regulation be metered. In 1989, Legislation gave Ecology the ability to require meters on all well withdrawals (RCW 90.44.450). Since 1993, the water code (RCW 90.03.360) requires the measurement of all new surface water rights and all existing water rights that meet at least one of the following criteria:

- Surface water diversions greater than one cubic feet of water per second, or
- Diversions and withdrawals from surface and ground water sources that support fish stocks classified as critical or depressed by the Washington Department of Fish and Wildlife.

Since 2002, Ecology has required measuring devices as a condition in all water right permitting decisions.

Since the Department intends to provide mitigation water for new domestic exempt wells, without cost or fee, and since it is appropriate to account for the water being provided by the State for private use, the current proposal is to use metering to account for new water use. We are continuing to evaluate the metering requirement as we prepare the draft rule.

*4. RCW 90.54.005, that was passed in 1971, mentions that water is needed to meet the needs of people, farms, and fish. Why isn't water for agriculture mentioned in your Instream flow rule?*

Agricultural water rights already exist in the Spokane Valley/Rathdrum Prairie Aquifer (SVRP) area. They will have an earlier priority date than the instream flow rule. The only applications for irrigation water pending with the department are for golf courses. New agricultural uses, if applied for and approved, would be subject to the instream flow rule, just like all other new beneficial uses approved after the rule is adopted.

*5. On p 2, Federal and tribal reserved rights will not be affected. Why not or upon what authority do they meet the category of exemption? Will tribal members eventually be able to set large nets along the Spokane River to catch fish? Why or why not?*

Federal and tribal reserved rights are presumed to be senior to the instream flow rule. The rule will have no effect on fishing methods by anyone.

*6. This rule will be similar to the rule that is in effect in the Little Spokane River area that impacts 125 junior water right holders. Apparently, in the summer and early fall when water flow is diminished, they can get their outside water shut off. Thus, their crops, lawns and gardens could die and water to water stock has to be hauled in. Please supply CAPR with a current list of senior right holders and current junior water right holders and those who have applied for water rights in the Spokane River Aquifer area so we can better understand who will be impacted. Also, please clarify if senior water right holders would ever be impacted by this rule. Would senior water right holders ever get their water shut off and will they ever be able to assign their water rights? Please clarify.*

A current list of rightholders and applicants in the proposed rule area has been provided CAPR under separate cover.

All existing water right holders in the SVRP rule area have priority dates before, and are thus senior to, the proposed instream flow rule. In time of shortage, the senior right has priority. A junior right may be regulated to satisfy the needs of a senior right. A senior right may not be regulated to satisfy the needs of a junior right. Thus, rights senior to the instream flow may not be regulated to satisfy the instream flow.

Rights issued after the instream flow rule takes effect may be be interruptible, that is they can be regulated when the instream flow is not satisfied. That is the case with the rights you mention in the Little Spokane drainage. The rights junior to the instream flow are regulated when flows drop, usually in late summer. Rights senior to the instream flow are not regulated.

Assignment of water rights is not affected by the existence of an instream flow rule. Only changes to existing water rights will be affected, in that the water right change cannot result in impairment of another water right, including an instream flow established by rule.

*7. See p 4. The reports do not show how water well use could impact base flow in the Spokane River. Please provide all scientific studies which show a correlation between ground water withdrawal via exempt well water and surface water that flows in the Spokane River. The reports do not show how well water withdrawals can impact base flow in the Spokane River. Will all new wells impact the base flow? Please provide studies that prove this correlation.*

The relationship between surface and ground water sources has long been recognized in the Washington water code. Recent studies documenting the relationship between the Spokane Valley Rathdrum Prairie Aquifer and the Spokane River have been provided under separate cover.

*8. On p 5, you report that the instream flows are based on watershed planning and recommendations from different WRIs in the Spokane area. However, an Ecology approved facilitator conducted the meetings for the planning unit. The facilitator had an agenda to promote sustainability via a predetermined process which aligned with your own website's Sustainability page. What percentage of citizens that are not government employees or quasi government employees (water purveyors) or members of environmentalist groups have been involved in these planning processes? This could be easily determined by your sign in sheets.*

Watershed planning groups were coordinated and run by local "Lead Agencies" at the direction of their members. The Department of Ecology, under the requirements of Chapter 90.82 RCW and the "Administrative Requirements for Recipients of Ecology Grants and Loans" ensured that legal and financial requirements were met, including approval of payment vouchers for contracted services. Some groups used outside facilitators and some used staff from their own agencies. All meetings were advertised, and open to the public.

Ecology's sustainability website page places no requirements on the Watershed Planning Act, Chapter 90.82 RCW.

*9. The only scientific research that has been offered to establish ideal flow levels on the Little Spokane River are those pertaining to fish....two or three varieties....the number has been stated by DOE both ways. Which is it? (The only data cited is from AVISTA working under federal guidelines.) The DOE Q and A document we were referred to by Rusty Post, states that there are numerous other entities need's that should be considered when looking at what constitutes a "healthy stream": "Once adopted in rule (the amendment to 17555-010) the instream flows are water rights that must be protected from harm (impairment) by future withdrawals. Instream flows also become the regulatory flow threshold used by Ecology to determine whether there is water to withdraw for new uses while PROTECTING FISH AND OTHER INSTREAM RESOURCES AND SENIOR WATER RIGHTS. What are those other resources that need to be protected? (How will the rule affect water quality? How will it affect recreation?)*

Ecology assumes your comment refers to the Spokane River. Regarding the fish, you are welcome to review the four fisheries studies conducted by various consultants for Avista and the Watershed Planning groups. The WDFW analysis of those studies is also on our webpage. The most sensitive species used were Rainbow Trout and Mountain Whitefish.

As directed by the Washington State Legislature, Ecology is responsible to manage the water resources for all beneficial uses. RCW 90.54.020 calls for preservation of wildlife, fish, scenic, aesthetic and other

environmental values, and navigational values. RCW 90.22, in section 010 calls for protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters, and in section 040 calls for retaining sufficient flows for stockwatering. Instream needs are usually determined by the needs of fish since they tend to be the most sensitive, and we have the most background information on them of all the freshwater aquatic species.

The rule is intended to protect and hopefully enhance existing water quality in the river. Maintaining minimum instream flows is expected to maintain existing recreational opportunities.

*10. What will be the effect of flow rates on municipal water availability and costs? What would be the effect of this rule on the region's economic interests--businesses, cities, counties, families? DOE Q and A says that "Ecology is required by law to write several economic analyses when adopting a new rule. Where are these?"*

Economic impact assessments are part of rule development. Draft economic documents will accompany the formal draft rule, and be available for public input and opportunity to comment. Setting instream flows in rule will have no bearing on municipal water availability since existing municipal water rights, including inchoate water, are senior to the proposed rule. Individual municipal purveyor costs should not be affected by the rule.

*11. The Q and A document notes that there has been no adjudication started in the Spokane River Basin to determine "who has a valid water right, how much water can be used, and who has priority during shortages." DOE needs to give the citizens an estimate of what this process would cost, how long it would take, and again, how would it affect our city and county government costs/taxes if they have to defend our water rights in court? Additionally, then, THE SENIOR WATER RIGHTS HAVE NOT BEEN DEFINED YET BY ECOLOGY, ALTHOUGH THEY ARE CONSTANTLY SAYING THEY WILL NOT BE IMPACTED.*

Adjudication is a legal process to determine who has a valid water right, how much water can be used, and who has priority during shortages. It is currently the only definitive and legally binding way to make these determinations. Adjudication is a legal proceeding in Superior Court, thus it is not possible to fully predict costs.

In 2009, as Idaho began their North Idaho Adjudication, Washington began preparations for a Spokane-area adjudication. The state legislature appropriated \$587,000 to map water rights and complete other tasks to prepare for adjudication. However, since 2009, further state funding has not been available.

For more information about a possible adjudication in the Spokane area see:  
<https://fortress.wa.gov/ecy/publications/publications/0911017.pdf>

The State of Washington water code operates under the prior appropriation doctrine. The rule cannot affect continued use of all water rights that are senior to a new rule establishing instream flows, regardless of whether those rights are quantified.

Ecology will conduct public outreach should adjudication commence in this basin.

*12. From DOE's website: "The only section of WAC 173-555 under consideration for amendment is 010, the general provision that addresses applicability of this rule." Applicability is the*

*definition of why this law was created and for whom or what purpose. Does this amendment not make new law, changing the intent and parameters of the original law? Is making new law within the authority of DOE or is it rather under the authority of our state legislature?*

The amendment to Ch. 173-555 WAC, “the Little Spokane rule”, is proposed to ensure citizens in the area where the Little Spokane River drainage and the Spokane Valley Rathdrum Prairie Aquifer overlap are not regulated under two rules. In this area, if a withdrawal of water from the Little Spokane is proposed, Chapter 173-555 WAC would apply. If a withdrawal of water from the SVRP Aquifer is proposed, Chapter 173-557 WAC would apply. Ecology is not making a new law (RCW), which is the role of the state’s Legislature. We are proposing a new rule (WAC) which we have been authorized and directed to do by the legislature.

*13. The speed of implementing the instream flow rule is moving forward way too quickly. We strongly object to this without having all of our questions answered and Best Available Science data documented.*

Thank you for your input. Ecology will consider it as we prepare the proposed rule for filing with the State Code Reviser’s Office. Please review the “Resources for rulemaking” page for most recent studies on the Spokane Valley Rathdrum Prairie Aquifer and Spokane River water supply:  
<http://www.ecy.wa.gov/programs/wr/rules/557-res.html>

## **6) Spokane County Water District #3 (Summarized)**

*1. Were Washington State’s “interests in the water resources of the Spokane River” not recognized by the FERC? If not, please specify what interests were ignored by the FERC during the relicensing process.*

The FERC license is an authorization to operate a hydropower facility that must be renewed every 50 years, and could potentially be terminated by the licensee. The flow requirements in Avista’s FERC license are vital to protection of instream resources, however, in and of themselves, they do not function as instream flow protection under RCW 90.54.020. They are not water rights, and are not applicable to water right decisions. Furthermore, flows above Sullivan Road in Washington required by the FERC license were set by the Idaho Dept. of Environmental Quality, an agency with no jurisdiction in Washington.

*2. The FERC reviewed much of the same studies and data that Ecology used to establish the proposed instream flow levels. Why are the instream flow levels expressed in the FERC license granted to Avista so much less than Ecology’s proposed levels?*

The instream flow level of 500cfs at the Greenacres gage is based on a recommendation in adopted watershed plans for WRIs 54 and 55-57. In accordance with RCW 90.82.080 Ecology is obligated to propose this instream flow level for adoption in a rule.

The proposed instream flow levels for the Spokane gage are based on studies conducted by Avista and others both for development of the watershed plans and the FERC license, and later as a requirement of the FERC license. The proposed value for October 1 through March 31 is 1700 cfs, the FERC license cites 1100 cfs. The proposed value differs because of information developed in that subsequent study (Adley

and Peterson, 2011). No value was set for April 1-June 15 in the FERC license pending review of ordered studies; the proposed rule uses 6500 cfs. June 16-September 30 values are the same.

*3. Since water rights are a property right owned by the water right holder, please describe and/or cite Ecology's legal authority to require a purveyor to "share" their water right. Further, temporarily sharing a water right will cause irreparable harm when the temporary water right is rescinded and the original holder of the water right needs to use the water for its' own purposes. Also, please describe in detail the "common practice" of sharing water rights among water purveyors and cite examples.*

The draft rule at WAC 173-557-020(3) states that it shall not affect existing water rights. The draft rule does not include a provision that would require existing water purveyors to share their water rights. Water purveyors sourced in the Spokane Valley Rathdrum Prairie Aquifer have sold or otherwise shared water to one another many times in the past to make up for local or seasonal shortages, or meet public demand. Numerous interties exist between purveyors in the SVRP aquifer. As Ecology is seldom party to these decisions, we don't maintain documentation of these events, however, individual purveyors have that information.

*4. Finally, please describe in detail and/or cite the resource(s) that are used to determine "Currently, there is an adequate supply of water held by municipal suppliers for future growth and development." And "...existing municipal suppliers have ample water to meet new demands far into the future." What future period of time in years is equal to "far into the future"? Is it a fifty year period, a 100 year period or a 200 year period? What happens when this period of time passes and there are still unmet demands for water? What impact will the proposed water rights adjudication have on this "ample water" quantity?*

"Ample," or "adequate" water supply are subjective statements. These are not based upon speculation, however.

The 2013 update to the Spokane County Water Demand Forecast Model (<http://www.spokanecounty.org/data/utilitieswqmp/Water%20Demand%20Model%20&%20Forecast%202013%20Update.pdf>) projects that by 2040, additional annual demand of approximately 55 cfs will be necessary from the Spokane Valley Rathdrum Prairie Aquifer. Current inchoate rights for the Spokane Valley Rathdrum Prairie Aquifer, rights unaffected by the instream flow rule, are about 210 cfs, on an annual basis.

The Spokane County Demand Forecast Model goes on to state:

*"The connection of the Spokane River to the SVRP Aquifer is well documented, and the *Ground-Water Flow Model for the Spokane Valley-Rathdrum Prairie Aquifer* (USGS, 2007) demonstrates that withdrawals from the SVRP Aquifer have an impact on river flows within a very short time frame. This is particularly important during the summer months when demand is high and river flow is low. Analysis with the USGS SVRP groundwater flow model indicates a near 1 to 1 ratio of summer withdrawals from the SVRP Aquifer and flow reductions in the Spokane River. The forecasted increase in total summer with-drawals from the SVRP Aquifer from 2010 to 2040 is 112 cfs. The consumptive portion of the increase is 60 cfs, and the non-consumptive portion is 52 cfs. Approximately 20 cfs of the 52 cfs increase are direct returns to the Spokane River via municipal or industrial waste water treatment plants and 32 cfs are re-turns to ground."*

To meet obligations under RCW 90.54.020, 90.03.345, and 90.22.210, instream flow rule development is in the public interest at this time.

*5. If the municipal suppliers have “ample water” for future growth and development, why have Spokane County Water District No. 3 and several other municipal water suppliers had existing water right applications pending since the 1990’s?*

Water purveyors that hold existing water rights file applications for additional water rights for many reasons outside the knowledge of Ecology.

*6. Why did Ecology write a letter to Moab Irrigation District #20 stating that their practice of using irrigation water rights to meet future growth and development was no longer acceptable? This practice had previously been accepted by Ecology through the Washington State Department of Health approval process for two separate Comprehensive Water System Plan updates.*

Ecology is willing to discuss the implications of individual correspondence about individual water rights in proper context. Please contact us to set up a time.

*7. If municipal water suppliers are denied water to meet future demands caused by growth and development, it is logical the growth and development will move to north Idaho. Since the water to meet the needs of this growth and development will be supplied by the SVRP Aquifer, what protection of the resource, the Spokane River and the SVRP Aquifer, will be accomplished by establishing instream flow levels on the Spokane River in Washington State? The economic impact and the increased demands on the SVRP Aquifer of moving this future growth and development to north Idaho from Washington State needs to be included in your economic analyses required by state law when adopting an instream flow rule.*

The Cost-Benefit analysis for the rule will consider all the costs resulting from the rule. Existing inchoate water rights held within the Spokane Valley Rathdrum Prairie Aquifer are available to satisfy demands for growth and development for any reasonable planning horizon.

## **7) Spokane County Utilities**

*Thank you very much for your time on June 2 to meet with the Spokane County Commissioners regarding the Preliminary Draft of the Spokane River Instream Flow Rule. Your comments regarding the rule making process and schedule were appreciated.*

*As was discussed during that meeting, Spokane County Utilities/Water Resources staff, as Watershed Planning Lead Agency for the Middle Spokane River, have engaged in various discussions with Ecology Water Resources staff during the development of this draft rule. Spokane County staff also attended the public meeting of May 14, 2014 and engaged with Ecology staff at that time. During those discussions, Spokane County staff provided various technical comments on the Preliminary Draft.*

*In the interest of formally documenting those comments, I am providing them in written form, below:*

1. *This rule effective modifies the existing Little Spokane Rule (173-555 WAC, filed 1/6/76) to include "shallow" groundwater. The existing Little Spokane Rule does not mention groundwater; as written, this may add uncertainty to that rule. The Little Spokane Rule may need to be modified as well to incorporate these changes.*

At this time, we intend to modify the existing Little Spokane Rule and the Spokane rule to clarify the areas of application, thus minimizing uncertainty. Further modification of the Little Spokane rule to include groundwater at this time is outside the scope of this rulemaking under the Preproposal Statement of Inquiry (CR-101) filed with the State Code Reviser.

2. *The map of the proposed rule area should include the boundaries of the Spokane River Basin and the Little Spokane River Basin, to more clearly define the areas within the Little Spokane River basin that would be affected.*

Thank you for your comment. Ecology will present a revised map in the proposed Rule.

3. *The attached maps show the Coordinated Water System boundaries for the municipal water purveyors; these boundaries appear to be the areas the water purveyors will ultimately serve and are much larger than what is actually being served at this time. An evaluation of the actual, active service areas would provide a more accurate representation of the number of parcels potentially affected by the water rights mitigation.*

Thank you for your comment. Active service areas change over time as do the boundaries of Coordinated Water Systems. Ecology agrees it would provide a more precise estimate of the number of parcels who might need to mitigate; we will assess using these data. The precise number of parcels (derived either way) is not included in the rule language.

4. *Spokane County remains concerned over the effect this proposed rule may have with respect to potential water right impairment claims, in the event Spokane County determines that the Spokane County Regional Water Reclamation Facility is unable to meet water quality standards and elects to limit or eliminate discharges to the Spokane River. It is understood this issue is of statewide significance and is not exclusive to this rule.*

Ecology appreciates your comment. Similar comments were received from the City of Spokane. This issue is of statewide significance. Both Spokane and Spokane County are aware impairment is a concern for various activities under the Clean Water Act now, in the absence of a rule. We are seeking legal advice on this topic.

**8) Mr. William Demers, in a series of emails dated May 29, 2014,**

*Has a SEPA Environmental Impact study been done for this rule? Where is the SEPA Environmental Impact Statement for this rule?*

SEPA documents will be filed with the draft Rule, scheduled for Fall, 2014.

*What studies has DOE conducted or depended upon to consider economic Impact of this rule in Spokane County and Washington State? Please provide them to me. (2 emails)*

Economic Impact documents will be filed with the draft Rule, scheduled for Fall, 2014.

*Why does the Draft allow the Federal Govt and Tribal entities unfettered access to water in the rule?*

The Draft acknowledges the seniority of Federal and Tribal water rights under Washington law.

*DOE's Employees told us at a meeting on April 27th in Otis Orchards that DOE has no interest in water meters on private well. In fact we have on video that Keith(DOE Employee) went on a tirade that the DOE has no interest in meters, The DOE would have to track them, the DOE would have to set up some sort of infrastructure etc.*

*On page 6 of the Draft approximately in the middle of the page there is language of the specs of meters and they must be read and reported as directed by Ecology.*

*If you like I will contact the video taker and get you a copy or just watch it on YOUTUBE.*

Draft rules are not final documents, and metering of post-rule permit exempt wells is a matter of discussion within the community and Department.

*On page 1 of the draft there is no mention of food production, AG except for livestock, no food production, health care facilities listed in Authority and purpose segment. Why not?*

The listing on page one of the draft rule is of the instream values that must be protected in accordance with state statutes. A complete listing of all the beneficial uses of water is not intended.

*Is there a stated priority of access to water in the case of rationing?*

No.

*Why does DOE not give a specific Geographic boundary for the SVRP?*

The map indicates the specific geographic boundary of the SVRP.

*I asked Mr Post and the DOE guy named Keith at the April 27th meeting if all waters in the hills and such would be regulated. Mr Anderson of DOE told me such would be the case.*

*At the meeting Mr post and Keith stated no. I see on the DOE FAQ sheets that water quality in the river in part of this issue. If my cows are pooping in a stream leading to the river(which I have reported they are), will the impact on water quality be subject to this Instream Rule?*

For the latest information on applicability, please see the draft Rule. Water Quality in Washington Waters are regulated by statutes developed under the state Clean Water act, Ch. 90.48 RCW.

*In KOONTZ v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT the US Supreme Court considered permit application and fees for water access a Regulatory Taking. What considerations and actions has DOE applied to become compliant with the Constitution of the United States?*

Permitting of Washington water use has been a part of Washington law since 1917.

*Does DOE plan to charge fees for future access to water such as permit applications etc? How much will DOE charge in other River Drainages with Instream Rules in place?*

RCW 90.03 has authorized Ecology to collect fees for permit applications for many years. Ecology currently charges the same permit fees to prospective water users both inside and outside drainages with Instream Rules.

### **9) City of Spokane (summarized)**

*The City presents several suggestions to increase the clarity and precision of language used in the rule, through making consistent use of defined terms and being more precise in distinction between new and existing rights.*

Thank you for your comment. Ecology will revise the preliminary Draft language with that in mind, and present such language in the Proposed Rule.

*The City of Spokane suggests Ecology include language that would waive any state claim to impairment relating to changes in wastewater or stormwater practices required by Clean Water Act permit or approval.*

Ecology appreciates your comments. This is a concern shared by Spokane County Utilities. This issue is of statewide significance. Both Spokane and Spokane County are aware impairment is a concern for various activities under the Clean Water Act now, in the absence of a rule. We are seeking legal advice on this topic.

## **Summarized Comments**

Ecology has received comments on the preliminary draft rule from the following entities, paraphrased below. We are carefully considering each comment and, where appropriate, will revise the draft rule language.

### **10) Inland Empire Paper Company**

IEP's primary concern with the Spokane River Instream Flow Preliminary Draft Rule is to assure that the water quantity requirements of this rule comport with the water quality requirements under the DO TMDL and to assure that existing water rights are protected. IEP suggests the following language be included:

“Nothing in this chapter shall be construed to lessen, enlarge, or modify existing rights, including the right to conserve, reclaim or re-use water, acquired by appropriation or by other means, including federal reserved rights, to constitute a right in the continuation of any existing wastewater or stormwater discharge, or to establish a claim of impairment in favor of instream flows based on the quantity and quality of wastewater discharges.”

### **11) Consolidated Irrigation District**

The District does not support the instream flows in the draft, their comments indicate they believe the instream flow levels are too high. They feel Ecology is adopting instream flows to deny water right applications, pointed out that watershed planning did not reach consensus on flow levels, and state that the flow levels proposed by Ecology leave no excess flows for future appropriation.

They state there are no studies to show that an adequate supply of water held by municipal suppliers is available for future growth and development.

See the response to #6(4), above for information about the adequacy of the supply of water held by municipal suppliers for future growth and development.

### **12) Cattlemen's Association**

The rule must not diminish the value of an existing water right. To do so would be viewed as a taking of a property right. Requests Ecology recognize the sovereignty of private water rights, and all points of diversion as part of a water right and property right.

The WCA supports amending RCW 90.14 to allow removal of a riparian stockwater right from the stream. WCA opposes any designation of a Sole Source Aquifer in Washington.

**Comments submitted by Commissioner McCart and Representative Shelly Short at Ecology Eastern Regional Office, June 20, 2014**

**Spokane River ISF – Questions & Comments**

June 20, 2014

Stevens County

Wes McCart, Stevens County Commissioner – Chair

*How much further will this rule expand before adopted. We were originally told that an ISF rule would be adopted for the Spokane River with one gage at downtown. Now the proposed rule includes two gages with sets of numbers and the entire SVRP aquifer.*

This is the first preliminary Draft of this rule. Ecology does not intend to “expand” this rule however there have been past discussions of rule scope over years prior to beginning this formal rule adoption process.

*Discrepancy in the footprint of the SVRP Aquifer. In a slide presentation dated May 8-9, 2007 by Sue Kahle of USGS, there are many different versions of the footprint and depths of the SVRP Aquifer; Sole source, Ground water flow model, 2005 aquifer boundary, and 2007 aquifer boundary. The preliminary draft ISF reflects this latest model, yet we are unsure of the actual boundaries and how will that effect the rule implementation? This is especially a factor for Stevens County as there appears to be little study to secure actual footprint on the upper west end and this area has many parcels not served by a water purveyor. Further in both the WRIA 54 Watershed Plan and the WRIA 54 Implementation plan, all of the maps show the aquifer footprint outside of the county line and our citizens are under the belief that this rule will not impact their property. More in-depth notification of this area is needed at the least.*

The current understanding of the extent of the Aquifer is reflected in the mapped boundary. In areas where that actual boundary is under question, Ecology will use site specific hydrogeologic information to determine applicability on a case-by-case basis. Thank you for your suggestions regarding notification.

*What effect will this rule have on the ability to store water in the future? Storage in the immediate area, and storage for the Columbia basin?*

Water storage opportunities are governed by many issues. Ecology feels this will not limit the opportunity to store winter water in this basin.

*What effect will the flows, especially the spring flows, have on the Columbia River Program and our ability to store water for the basin project? We are currently asking the Canadians to store more water, and drawing down Lake Roosevelt (and paying annually to do so), yet this rule makes it harder for us to help ourselves in supplying water to the Odessa Aquifer and farmers in the basin.*

No effect is anticipated on these issues as a result of this rule.

*What are the effects of this rule on Newman and Liberty Lakes?*

Liberty and Newman Lakes are outside the boundary of the rule.

*Please explain how setting an instream flow on the Spokane River and the associated SVRP Aquifer will “help” or give Washington an advantage over Idaho should the two states go to the Supreme Court over water allocations. How does the current Kootenai Tribal claim over waters and territorial areas play into this? It is my understanding that the court will rule upon the claims of each individual entity on the merits and under their respective State Law allocation processes and an ISF does not give either state a tactical, logical, or factual advantage. If this truly is the case, that Washington gains a water advantage over Idaho; will Ecology move to implement an ISF on the Pend Oreille River and all other cross border waters in the very near future?*

An instream flow set by rule provides no “advantage”. It simply provides standing to instream flows in any adjudicative process. Ecology has no plans to proceed with other instream flow rulemaking at this time.

*Stevens County has developed an estimate of the number of parcels and possibly exempt wells that can be created under current regulations at maximum build out of the foot printed aquifer boundaries provided by Ecology. There are approximately 34 wells as indicted by the map provided with these questions and comments. The number could be more if the footprint of the aquifer expands into the county, could be less if the aquifer does not extend into the County, and does not mean that all homes or wells would occur due to other regulatory factors.*

Thank you for your comment.

*Stevens County is adamantly opposed to any metering provision of new exempt wells. It is clear that future exempt well development in the entire area covered by this proposed rule would be mitigated for under the State trust program and no impairment of a senior water right user would be indicated, water would be available, and development potential would not indicate any need that future development would approach the mitigated amount allocated to this use for Stevens and Spokane Counties combined. Resources, time and dollars, would be expended for no gain to the accounting of the water.*

Thank you for your comment. Metering provisions are being evaluated in light of this and other comments received.

*When will the mitigation water be purchased? Before the rule goes into effect, during the process, or after the process? Stevens County believes that any water purchased for mitigation must take place in conjunction with any rule effective date.*

Negotiations with willing sellers are proceeding. We note your comment on timing.

*We are concerned about the outstanding water right applications. Why are these applications not being processed prior to rule development? Under State law, first in time, first in right, it*

*would seem not only prudent, but fair to issue decisions on all outstanding applications before the rule effective date. We understand there is a provision to allow applications to be denied after an instream flow rule is adopted, but the work and data needed to deny these applications should be done first. If water is available for an ISF at the level proposed, there seems to be adequate water for the current applications or at the very least due process. If the outstanding applicants know they will be denied after adoption of the ISF rule and are okay on being denied, why not merely ask them to withdraw their applications.*

Ecology is proceeding in this way in part to decrease litigation risk for all parties in decision making for these applications. Ecology relies on the instream flow levels established in a rule to make the water availability and impairment determinations that are required for water right decision making. Additionally, resource limitations prevent Ecology from proceeding with both processes, and our highest priority in this basin is rulemaking.

*The ISF numbers are troubling. The laws state and allow for setting a minimum or base flow. The 850 cfs low flow for summer is the optimum flow for maximum habitat of both the spring and fall fish species (rainbows and whitefish). This is easily seen by the grafts provided at the public outreach meeting. The graft for rainbow and whitefish meet at approximately 850 cfs. The idea is that this maximizes habitat for both species since one species does better during high flows and the other during low flows (within limits). The idea is to establish flows for the purpose of “protecting” fish and other wildlife, not optimizing the desired two game species.*

The method used to establish instream flows is based on the statutory requirement to protect instream resources found in RCW 90.54.020 and RCW 90.22.010. Ecology and the State Department of Fish and Wildlife have found from experience that instream flows set at low levels (such as the lowest flow of record or at hydrologic base flow levels) do not adequately preserve and protect instream values such as fish, recreation, and aesthetics. Ecology regards the minimum permissible flow consistent with legislative intent as the lowest flow capable of protecting and preserving instream values, in this case native fish populations. Ecology’s proposed flows are not “optimum” flows as you suggest.

The method employed by Ecology and the Department of Fish and Wildlife to establish instream flows was affirmed by the State Supreme Court in: Supreme Court of Washington, En Banc.; State of Washington, Department of Ecology, Department of Fisheries and Department of Wildlife, Respondents, v. PUD No. 1 of Jefferson County and City of Tacoma, Department of Public Utilities, Appellants. No. 58272-6. April 1, 1993.

*Why multiple flow numbers at the Spokane gage? Nothing in current statute allows setting flows based on seasons. A base or minimum flow is just that, not a series of flows. Further, where in the fish studies is it indicated that varying flows are needed for habitat. Nothing in the technical report produced in May 2007 indicates the high or multiple flows.*

On the contrary, RCW 90.22.010 requires Ecology, in conjunction with Washington Dept. of Fish and Wildlife, to “...establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same.” It is in the public interest to protect all life stages of fish and wildlife.

*The draft ISF rule (WAC 173-557) talks many places about watershed planning done under RCW 90.82 and how plan recommendations under the WRIA 54 and 57 plans request moving forward with an instream flow on the Spokane River, however, the Instream flow meetings held under a joint WRIA workgroup failed to reach any agreement to move forward and ended up in a stalemate of varying views. We believe in light of the fact that these meetings took place in 2007-8 timeframe and consensus was never reached, and that the watershed plan was adopted in 2009, that it is unfair and incorrect to substantiate that this rule is being done as a desire of the watershed groups. The language regarding watershed planning is incorrect and not needed to substantiate moving forward with a rule. Further, several conditions have changed and public meetings never held to try to achieve consensus after release of State numbers, we therefore request that language around watershed planning be removed.*

Consensus on the full scope of instream flows was not reached in the planning units, for many reasons. The WRIA 55/57 Watershed Management Plan does include the recommendation to adopt the 500cfs summer instream flow for the Greenacres gage (Barker Road). RCW 90.82.080 authorizes Ecology to initiate rulemaking to adopt instream flows in watersheds where approval by the watershed planning unit is not reached. Thank you for your comment. We will evaluate language prior to publication of the draft Rule.

*Section 173-557-010(2)(b) states that the purpose of this rule is “to protect existing water rights.” How does setting an instream flow “protect” existing water rights? Any existing water rights are protected of their volition.*

Instream flow rights are published values, and condition all subsequent rights, thus are the most junior rights addressed by anyone who wishes to challenge senior rights. Water rights do not protect themselves.

*Section 173-557-020(1) states that “hydrologic evidence of the SVRP aquifer determines applicability of this rule.” Please explain what this statement means and how it will be determined. Hydrologic evidence would suggest physical, chemical, or biological properties of the water were the same which can only be determined after a well is done which leads to great expense. Hydrogeologic evidence could be used to make a determination prior to expense drilling test to explore water properties.*

Most of the aquifer area is well understood. In areas where continuity may come into question, geologic logs and water levels in the prospective well will be used. None are cost-prohibitive.

*Section 173-557-020(2) tries to explain the interaction or applicability between the two rules, or aquifers of the SVRP and the Little Spokane. However, John Covert made the statement that there is approximately 200 cfs of water that expresses itself in the lower Little Spokane River between the Dartford gage and the confluence. This would suggest that the two systems are in direct hydraulic continuity by definition. Therefore, explain how two different rules would apply to one hydraulically connected system.*

In the northern arm of the Spokane Valley Rathdrum Prairie Aquifer, which runs east to west between Wandermere and the Little Spokane confluence, the upper aquifer is in hydraulic continuity with and discharges to the Little Spokane River, while the lower aquifer is in hydraulic continuity with and discharges to Lake Spokane. We are reassessing the language in the draft Rule to make this clearer.

*If the flows of the Spokane River are not being met, what effect will this rule have on all of the tributaries? Explain how and why if the SVRP aquifer boundaries extend into or below the tributary systems they would be excluded from the need to make flows, especially when we know all of the tributaries have some degree of hydraulic connectivity.*

Thank you for your input. The boundaries of the rule will be reassessed to clarify applicability.

*It was stated at our last meeting that if the current water purveyors were to exercise their inchoate rights that they could dry up the Spokane River. If this is true, why adopt a rule for instream flows? Wouldn't this cause pressure on Idaho aquifer flows and Spokane river tributaries to move water downstream faster and cause hardship on upland resources? Also, wouldn't the additional burden of an ISF rule increase this burden on upstream resources? No new water rights could ever be established and with an ISF, any reappropriation of existing water rights could only be used to reestablish river flows. When flows are not being met, what is the plan to achieve these flows in the future?*

Thank you for your input. Instream flow rules are adopted to protect public resources. Any new rights issued in Washington will be interruptible to these flows. There is no requirement that "reappropriation of existing rights could only be used to reestablish river flows."

*How will this rule effect transfers, both seasonal and permanent?*

There are no seasonal transfers in the Spokane area. Changes to permanent water rights will have to consider impairment of the instream flow, and either avoid or mitigate any impairment.

*Why is only the Little Spokane River being targeted for a rule modification or adoption?*

The Little Spokane Rule (WAC 173-555) is the only rule which overlaps the proposed area of the Spokane rule. Ecology will assess the need to amend WAC 173-555 prior to publication of the draft Rule.

*There are many concerns and potential problems with opening the Little Spokane River rule WAC 173-555. Opening this rule for modification or revision makes it vulnerable to any number of other issues that may arise. Section 100 state "the department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions." Case law established over the last several years may warrant further changes to this rule by any number of interests. Further, new evidence in regards to the hydraulic connectivity of the LSR and the SVRP aquifer as proposed by the rule change, along with the USGS SI Report 2013-5124 "Hydrogeology of the Little Spokane River Basin, Spokane, Stevens and Pend Oreille Counties, Washington," should be evidence enough that opening this rule any would constitute the need for a complete review of the rule. Could reservations, wells or various types of uses be changed? We would suggest that the rule not be revised at all, or a complete review and modification of the rule take place. The litigation potential of proceeding forward with only limited changes is high.*

Further modification of the Little Spokane rule beyond that proposed is outside the scope of this rulemaking under the Preproposal Statement of Inquiry (CR-101) filed with the State Code Reviser.

*Can you explain the process and timelines of the rule, SEPA, and the economic analysis?*

Draft economic analysis documents and the SEPA determination will be posted on Ecology's webpage when the proposed rule language and required CR-102 form is filed with the State Code Reviser this fall. The formal public comment period on the rule, SEPA documents, and economic analyses start with the filing of the CR-102. The comment periods will run concurrently. A public hearing on the proposed rule may be held no sooner than 20 days after the notice of the proposed rule is published in the state register, typically the public hearing is held about 35 days after the CR-102 is filed. Final rule language will be adopted no later than 180 days following filing of the CR-102.

*When will a list of all of the science behind this new rule proposal be available? Considering the time it will take to review all of the information, can a list be compiled immediately on the website and added to as the rule progresses?*

The rule website contains the studies relied on to develop the draft rule:

<http://www.ecy.wa.gov/programs/wr/rules/557-res.html>. References to other studies are also available from this site, however, so many studies have been conducted on the Spokane River and the Aquifer it is not possible to compile a complete list.

*Since pre-adjudication of the basin has been started and finished, shouldn't this action wait to be funded and finished prior to an instream flow being established? If adjudication were to happen first, more water might be available for future uses and needs, along with outstanding applications.*

*Tribal rights have also not been adjudicated. Does an instream flow rule take precedence over other water rights and uses if tribal and all other water rights are adjudicated? Who are the losers of water rights in this case and how would it be determined?*

Ecology believes the instream flow rule should be adopted prior to adjudication in this basin.

*Stevens County desires and requests that a public hearing be held in Stevens County at the High School or other suitable nearby location before establishment of a Spokane River ISF rule.*

Thank you for the suggestion, Ecology will consider this.