Jefferson County PUD #1 asked some questions shortly after Ecology posted the Frequently Asked Questions document on this webpage. The following are the PUD's questions and Ecology's responses:

1) Aren't instream flows largely if not entirely based upon biologically-defined optimal flow levels that maximize habitat yet will seldom, if ever reach that flow level needed to utilize that habitat? And the point of that is…. ???

Yes, instream flows are primarily biologically-based but are also modified to reflect the hydrology of the stream. Instream flows are intended to protect and preserve available habitat.

Instream flows are set at levels that will be met some of the time. They are not expected to be met all the time. Streamflow naturally varies year by year, with good years (high summer flow) and bad years (low summer flow) for salmon. Fish populations benefit from increased summer streamflow in good years. If you only protect the low summer flow, you will not protect the salmon population.

If you are interested in reading more about the science of instream flows see: Instream flows for riverine resource stewardship, revised edition. 2004. Annear, T., I. Chisholm, H. Beecher, A. Locke, and 12 other authors. Instream Flow Council, Cheyenne, WY.

2) Ecology has a broader charge than just protecting flows for fish. Why the uncompromising optimum conditions solely for fish and not for navigation? Or aesthetics? Or people?

Ecology is required by statute to protect a wide range of instream resources including aesthetics, livestock watering, recreation, wildlife, navigation, fish, and water quality. All instream resources are considered when determining instream flow levels. Typically, providing flows high enough to protect fish habitat will also protect the other instream values.

Ecology has set flows based on other instream resources, when those flow needs were higher than those needed for salmon spawning and rearing. For example, instream flows were set based on other instream resources for:

- Snoqualmie River - aesthetic values at Snoqualmie Falls
- Cispus River - recreational boating
- White River - water quality.

3) Why is it necessary to adopt biologically-idealistic habitat flows when only base flows (flow that results from the discharge of groundwater) can be realistically expected to be met regularly year after year?

See the response to #1, above.

4) If instream flows, particularly during the low flow season, are set above base flow values where would the water to meet instream flows actually come from?

No one is required to put water back in a stream to meet an instream flow. Nor are instream flows expected to be met at all times.

The purpose of the instream flow is to prevent new withdrawals from further degrading instream resources. Water rights issued after the effective date of the instream flows will be conditioned to protect the instream flows.

5) How does one practically manage for an ideal that can never be achieved?

See the responses to #1 and #4, above. The Water Resources Act of 1971 (Chapter 90.54 RCW) requires Ecology to prevent further degradation to the instream resources in the stream. Some of our available tools include:

1. Closing the stream to further consumptive withdrawals of surface water, and ground water that is in hydraulic continuity with the surface water.
2. Limiting new permit-exempt wells.
3. Using the State's water acquisition and trust program.
4. Working with the local Planning Unit to encourage stream habitat restoration.

6) Have relinquishment enforcement actions increased, decreased, or stayed the same in instream flow basins AFTER an instream flow rule was promulgated compared to before a rule?

The state's level of effort on relinquishment enforcement actions is not affected by adoption of an instream flow rule.

Relinquishment actions are typically either voluntary or begun in response to a request for an action on an existing water right, such as a change, transfer, or trust program acquisition of an existing water right. In some instances relinquishment actions were started through the metering program. Investigating a complaint could also trigger a relinquishment, but staff at our Southwest Regional Office have not done this. During adjudication, a judge will not confirm (reinstate) a relinquished water right.

7) If instream flows are seldom close to being met and since the only water that can be realistically added to stream to achieve instream flow is existing water rights that are currently being put to use, aren't water rights actually more threatened by relinquishment from non-use if the goal is to actually achieve instream flows?

It is not expected that instream flows will always be met; see response to #1, above.

Acquisition and putting water in trust are the State's preferred methods for putting real water into a stream, not relinquishment. See the response to #6, above.

8) Since relinquishment is the only real way to get water into the stream, will this not scare existing water right holders into using as much water as their water rights entitle them to use?

Relinquishment is not the only real way to get water into the stream. Flows have been increased around the state through new storage projects, alternative reservoir operations, and trust water programs. None of these options involve relinquishment. See also the responses to #6 and 7, above.

Existing water right holders are legally entitled to make full use of their water right, provided they are putting water to beneficial use, comply with the terms of their water right and associated provisions, and do not impair senior water rights.

9) If instream flows for any given day are based upon an annual frequency in which they are expected to occur on that day, how can flows be expected to be met without accounting for that frequency? For instance, say an instream flow setting for October 1 is 100 cfs and based on 10% exceedence or 1 in every 10 years the flow will be met or exceeded. If one year in a decade the flows is 130 cfs, and in the other 9 years no more than 95 cfs on October 1st, isn't the instream flow being met since it has occurred at the frequency in which the flow was intended?

The flow exceedance frequency is sometimes used to determine the level of instream flow to protect. Once an instream flow level is determined and set into rule, the purpose of the instream flow rule is to protect that level of flow whenever it occurs. See also the response to #1, above.

10) If the water that is pumped from new well is pulling water that would otherwise go to a stream, how would that impact be mitigated for a new water right?

Ecology has had experience with several types of mitigation projects. A standard mitigation practice is to purchase and retire or lease an upstream water right to offset surface water impacts. Another is using reclaimed water to augment surface water flow. In some areas it is possible to augment surface water through pumping groundwater (we've approved projects like this near areas of marine drainage).

Other mitigation options can be considered. For example, we are working with a Thurston County applicant who is looking into modifying reservoir operations to mitigate for impacts on the Nisqually River.

Recent case law provides some guidance on what the courts expect for mitigation. See the following Pollution Control Hearings Control Board decisions:

- Squaxin Island Tribe v. Ecology and Miller Land & Timber LLC
- OHA v. DOE and Battle Mt Gold Company

The Board conclusions generally indicate that mitigation must meet the following criteria:

1. The mitigation must be in-kind, providing water for water;
2. There must be certainty for the water provided. Certainty includes availability (actual availability including timing and location) and monitoring to ensure success; and
3. The mitigation must be assured in perpetuity.