

Spokane River Instream Flow Rule-Making

Keeping water in the Spokane River is a priority for all of us. We all want a clean and flowing river.

For the Spokane River, *timing* of water availability is the key issue. The river depends on groundwater from the aquifer for flows in late summer and fall, at the same time human use from the aquifer is at its highest.

Population in the region is increasing while river flows are decreasing. Washington currently does not have tools in place to adequately protect the river and its associated benefits, such as hydropower, recreation, and wastewater management.

One important tool for protecting streams is to establish stream flow levels in regulations or “rules.” The Department of Ecology (Ecology) is developing an instream flow rule for the mainstem of the Spokane River. The rule would give the Spokane River a water right, much like we give individuals, farms and municipalities. The rule would apply to the Spokane River and that portion of Spokane County within the boundary of the Spokane Valley-Rathdrum Prairie (see map on page 6).

We can have a healthy river with enough water to meet all the various needs and demands placed on it, with careful management.

General information on instream flow rules

Q: What is the difference between stream flows and instream flows? Why do you call this an instream flow rule?

A: *Stream flows* are the amount of water flowing down a river or stream. *Instream flows* are stream flow levels set in rule.

The Legislature assigned Ecology the job of adopting rules to protect and preserve sufficient water in streams for “instream resources” including fish, wildlife, recreational uses, water quality and livestock watering. Rules that protect stream flows

MORE INFORMATION

The Department of Ecology is proposing an instream flow rule for the Spokane River, to protect existing water rights and prevent lowering of the river from future withdrawals.

This FAQ answers some of the most common questions asked about the proposed rule and the rule-making process. There will be opportunities for public input at many points in the rule-making process.

Ecology’s Spokane River Instream Flow Rule page: <http://www.ecy.wa.gov/programs/wr/rules/557-ov.html>

“Focus on Spokane River Flows: Setting and Protecting flows in the Spokane River” – Ecology publication #13-11-001, on-line at <https://fortress.wa.gov/ecy/publications/SummaryPages/1311001.html>

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by establishing instream flows are known by the shorthand “instream flow rules.”

Instream flows are specific levels of stream flow (measured in cubic feet per second, cfs) that are determined scientifically to be necessary for a healthy stream. The instream flow levels vary month-by-month, as flows naturally do.

Q: What is the purpose of instream flows set by rule?

A: Instream flows are the stream flow levels needed for a healthy stream. Once adopted in rule, 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 still protecting fish and other instream resources, and senior water rights.

Q: Would setting instream flows solve the problem of declining flows in the Spokane River?

A: Not entirely. It would set a benchmark to measure against, and it would prevent new authorizations of water rights from harming flows. There are existing water rights which, if fully used, could and likely would contribute to declining river flows. *Setting instream flows by rule does NOT require people to put water in streams.*

Science behind the flows

Q: How did you arrive at the instream flow numbers you are proposing to put into effect?

A: Fish biologists experts from Ecology and the Washington Department of Fish and Wildlife (WDFW) reviewed all available data, including the most recent fish spawning studies conducted by Avista Corp.,¹ to identify the flows needed for healthy fish populations. Those studies considered habitat needs for mountain whitefish and redband trout, species native to the Spokane River. The proposed instream flows are generally consistent with flows recommended in Avista’s license to operate, which was renewed in 2010 by the Federal Energy Regulatory Commission.

Q: What kind of data do we have that back up the recommendation to set instream flows for the Spokane River?

A: Many detailed reports and studies have been completed and support establishing an instream flow rule. These include:

- Avista flow studies
- Watershed plans for Spokane-area Water Resource Inventory Areas, and their associated background documents

¹ Avista Corporation is the operator of hydroelectric dams on the river.

- Spokane Valley-Rathdrum Prairie bi-state aquifer study
- Total Maximum Daily Load studies for dissolved oxygen.

A bibliography of studies is available on Ecology's website at <http://www.ecy.wa.gov/programs/wr/rules/557-res.html>

Potential effects of rule on individual well use

Q: What effect would instream flows for the Spokane River have on individual well owners in Washington?

A: An instream flow rule is essentially a water right for the river. Wells in use *prior* to the effective date of the regulation are considered “senior” to the instream flows. Therefore, wells in use prior to the rule are not affected by the rule. The rule affects *future* potential water withdrawals, not existing ones.

Withdrawals from the Spokane Valley-Rathdrum Prairie Aquifer approved after the rule is established would be interruptible if flows in the river fall below those specified in rule. However, the majority of the region is served by existing water purveyors with adequate water rights to meet future expansion and development demand.

Q: How would setting instream flows impact private property rights, such as the ability to drill a permit exempt well?

A: Current analysis of the proposed rule area shows that there are very few parcels of land that are not currently within the boundaries of existing water providers. For the rare cases where someone could not connect to an existing water purveyor in a reasonable and timely manner, Ecology is already working on providing a solution to ensure the few new permit-exempt uses in the rule area can proceed.

Permit-exempt well: The state Ground Water Code allows for certain uses of small quantities of groundwater without obtaining a permit from Ecology. (RCW 90.44.050)

Potential effects of rule – bigger picture issues

Q: How would an instream flow rule affect water purveyors with existing water rights?

A: Continued use of existing senior water rights would not be affected by the rule. Municipal water purveyors could continue to expand into unused water rights or portions of water rights.

One potential effect could be that some of the existing water rights held by public water purveyors may need to be shared among purveyors that don't hold large enough water rights to

meet their future demand. This is a common practice. Currently, there is an adequate supply of water held by municipal suppliers for future growth and development.

The rule may affect water right holders that make future changes to their water right, such as where water is applied or withdrawn or the transfer of ownership of a water right.

Q: How would setting instream flows affect pending water right applications for the aquifer?

A: Currently there are 24 applications waiting to be processed, requesting a total of 117 cubic feet per second of water be made available from the aquifer in Washington. Ecology cannot act on these requests without having an instream flow rule in place. Established instream flow levels will let Ecology know what water can be used out-of-stream while still preserving the river and instream resources, and senior water rights.

Q: Would an instream flow rule protect the region's economic interests?

A: An instream flow rule, which is required under state law, is designed to protect instream resources, including fish, wildlife, recreation and water quality. A rule would also help protect existing water rights including rights held by municipal water purveyors and Avista for hydropower generation. All these uses, which are part of our local economy, would suffer without adequate flows in the river.

Q: What are the economic impacts of establishing an instream flow rule?

A: Ecology is required by law to write several economic analyses when adopting a new rule. Benefits must exceed the costs before a rule can be adopted. We must also determine that a proposed rule is the least burdensome alternative for those required to comply.

New state regulations are required to ease disproportionate impacts to small businesses as much as possible. Prior to rule adoption a "Small Business Economic Impact Statement" must be prepared.

The rule would not establish fees or requirements that local businesses, individuals or cities would have to pay or meet. The rule would not impose any regulatory changes on existing water right holders, although it may impact changes or transfers of those rights made after the rule becomes effective.

A potential impact could be that new water rights from the river and the Washington side of the Spokane Valley-Rathdrum Prairie Aquifer would be restricted or interruptible (not consistently available year-round). However, existing municipal suppliers have ample water to meet new demands far into the future.

Q: How would an instream flow rule affect Clean Water Act obligations? Some wastewater dischargers may remove discharges from the river to meet those obligations, which could impact flow.

A: An instream flow rule does not add water to the river; rather it protects flows from new withdrawals in the future. Wastewater discharges help maintain flows in the Spokane River by returning water that was originally withdrawn for municipal water supply. It is true that removing discharges from the river could negatively impact the ability of the river to maintain habitat, particularly if discharges are removed outside of the aquifer. However, it does not change our obligation to protect the river and its flow.

A clean and flowing river is a priority for all of us. With foresight and creative solutions we can work together to improve water quality and protect flows in the river.

Q: How would setting an instream flow rule impact Idaho?

A: In short, it would not. Legally, our instream flow rule would not prevent Idaho from issuing new water rights from the Spokane Valley-Rathdrum Prairie Aquifer.

The Spokane Valley-Rathdrum Prairie Aquifer and the Spokane River are a shared resource between Idaho and Washington. While both states have tools to manage water resources in a way that benefits local communities, Idaho and Washington regulations are separate and distinct and legally cannot impact the other.

In the event of interstate legal conflict over water, each state has interests. Idaho has set lake levels for Lake Coeur d'Alene, issued an instream flow water right for the Idaho portion of the Spokane River, and is adjudicating water rights in the Spokane River drainage.

Adjudication: A legal process to determine who has a valid water right, how much water can be used, and who has priority during shortages.

Washington has not started adjudication in the Spokane River Basin due to state budget constraints. The first step in establishing Washington interests in this basin is setting instream flows for the Spokane River by rule. Once in place, Ecology will be able to better manage our shared water resource.

Q: How would this rule impact folks in the Little Spokane River area?

A: This rule would only affect new withdrawals from the aquifer and the Spokane River; it wouldn't affect new withdrawals that impact the Little Spokane River. There is already an existing instream flow rule for the Little Spokane River, Water Resources Inventory Area 55 (Chapter 173-555 WAC). However, because the Little Spokane River watershed overlaps with the aquifer, Ecology is concurrently proposing a narrow amendment to the Little Spokane River rule to clarify the application of each rule in the area of the overlap.

Area to be covered by proposed Spokane River Instream Flow Rule

