

Department of Ecology  
Bellingham Field Office  
Attn: Ann Wessel  
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Bellingham, WA 98225-7028

Dear Ms. Wessel:

The purpose of this letter to you is to provide Ecology comments on the preliminary draft of the Spokane River Instream Flow Rule.

The "Spokane River" does not fit the standard definition of a "river". The main stem of the "Spokane River" within that portion of Spokane County, Washington inside the boundary of the Spokane Valley Rathdrum Prairie Aquifer, as identified in U. S. Geological Survey Scientific Investigations Report 2007-5041 is not a free flowing stream; but a series of impoundments behind Avista's Hydroelectric Facilities. Additionally, there are no tributary streams flowing into the "Spokane River" within this boundary and as the flow in the river declines during summer low flow periods, the water temperature is lowered as the groundwater portion of the flow is proportionately greater. I am not aware of any other "river" in the world that exhibits these phenomena. Yet, in light of these facts, Ecology has made no attempt to address, utilize, incorporate, acknowledge or account for any of these issues within the process of setting these draft instream flow levels.

**WAC Section 173-557-010-Authority and Purpose** (2), (c) states "Establish and protect Washington State interests in the water resources of the Spokane River." This purpose seems to be overly broad and is undefined. Please specify what "interests in the water resources of the Spokane River" the instream flow rule will establish and protect on behalf of the state of Washington in addition to those specified in WAC Section 173-557-010 (2),(a) and (b). Ecology participated in the process followed by Avista, as mandated by the Federal Energy Regulatory Commission (FERC), to re-license its hydroelectric facilities on the Spokane River. This process resulted in the FERC establishing minimum instream flow levels in the Spokane River that were integrated into the current FERC license held by Avista. 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.

**WAC Section 173-557-050-Instream Flows** (1) states "The instream flows established in this chapter are based on detailed habitat studies of the Spokane River conducted for watershed planning and other purposes, and the recommendations of the Watershed Management Plan for Water Resources Inventory Area WRIA 57 – Middle Spokane River and WRIA 54 – Lower Spokane

Watershed Plan.” This is misleading at best. The Watershed Management Plan for WIRA 57 did not provide any recommendations on this issue; because consensus was not achieved by the Planning Unit regarding where the flow levels should be set. Further, it is my understanding that the Instream Flow Incremental Methodology (IFIM) tool was primarily used to determine the available habitat. This tool is only applicable to river segments that are free flowing. Therefore these studies were only conducted on very limited sections of the stream. Under such circumstance, how can flows in these limited areas be used to project flow levels back on the entire length of the stream? The fish, at all stages of maturity, have other habitats within the stream that they can use during low flow periods to escape the impacts of a lower flow in these limited optimum habitat stream segments. In spawning areas, lower flows bring cooler water. As long as there is some water flow over these areas, they should not be impacted by a lower flow.

It is apparent that Ecology has manipulated the habitat data to propose year around instream flows that maximize the available flows in the stream and leave no excess flows for further appropriation from surface or groundwater. 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 levels?

**WAC 173-557-060 – Future new uses of water (2)** “Based on the hydrogeology of the aquifer as described in U.S. Geologic Survey Scientific Investigations Report 2007-5041, ecology determines that surface water in the Spokane River and groundwater within the SVRP Aquifer are hydraulically connected. New groundwater withdrawals from the SVRP will be managed to protect the instream flows established in this rule.” These two sentences need to be revised as follows: in the first sentence the reference to the “U.S. Geologic Survey Scientific Investigations Report 2007-5041 is not correct, it should read U. S. Geological **al** Survey Scientific Investigations Report 2007-5041, this would match the first reference in the draft document under **WAC 173-557-020 – Applicability**. This should also be corrected under **WAC 173-557-030 – Definitions** which also has this error. This reference needs to be consistent throughout the document.

Further, the “e” in ecology should be capitalized as it is used as the name of the agency (**E**colony), (this is an issue throughout the document also). In the second sentence, the word “withdrawals” needs to be changed to “appropriations”. This change is justified as there will be additional groundwater withdrawals from the SVRP Aquifer under existing water rights after the instream flow levels are established.

**WAC 173-557-060 – Future new uses of water (3)** “Within the area regulated under this rule, public water suppliers are the primary sources of water for new

uses. If water is not available from a public water system, the consumptive use impacts to surface water from new permit-exempt groundwater withdrawals must be mitigated when stream flow is below the instream flows established in this rule....”

Additionally, Publication Number 14-11-001, dated April, 2014 states: “One potential effect of the instream flow rule would 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.” 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.

Finally, please describe in detail and/or cite the resource(s) that you are using to determine that “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 twenty year period or a fifty 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?

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 1980’s? 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 has publically stated that the adjudication process will require purveyors to determine their future water needs for some future period of time and if any inchoate water rights are left over, they will be relinquished. What process will be available, post adjudication, if this future demand determination was made in error and additional water demands are experienced?

If municipal water suppliers are denied water to meet future demands caused by growth and development, 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 RPSV Aquifer, what protection of the resource, the Spokane River and the RPSV Aquifer, will be accomplished by establishing instream flow levels on the Spokane River in Washington State? The economic impact 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.

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