



## **Methow Instream Flow Rule Interpretation Study Group**

Meeting Minutes

March 20, 2018

4-8 p.m. – River Bank Building, Twisp, WA

Invitees Present: Dick Ewing, Mike Fort, Natalie Kuehler, Soo Ing-Moody (arrived at 5:25 p.m.), George Schneider, Bill Tackman, and Travis Thornton

Minutes recorded by: Sali Kilmer, Administrative Assistant

### **1. Call to order**

The meeting was called to order by Travis Thornton at 4:12 p.m.

### **2. Purpose of the Study Group**

Travis reminded the group that the Methow Watershed Council has stated a goal to request Ecology's clarification and interpretation of aspects of the Methow Instream Flow Rule (WAC 174-548). In support of that goal, the work study group elected to approach such task by:

- Identifying and prioritizing the elements of the rule needing attention,
- Determining the preferred outcome of Ecology's interpretation, and
- Crafting the manner in which MWC will communicate the request to Ecology.

Acting as Facilitator for the meeting, George Schneider asked for input from the group on what the driving force is behind asking for these clarifications from Ecology now?

Dick Ewing noted that one of the original ideas of the Detailed Implementation Plan (DIP) was to be able to manipulate the 2 cfs reserve for flexibility in other places. The Hirst decision has brought the issue of water rights front and center, so he sees it as a good time to work on some of the solutions outlined in the DIP.

Mike Fort stated that prior meetings with various groups resulted in the opinion that if we open up the Methow Rule for revision, we may be putting the 2 cfs in danger. Therefore, it is more advisable at this time to simply seek clarification from Ecology on some of the grey areas of the rule, as written.

Travis Thornton added that it is still unknown whether the rule will need to be opened up for revision. Perhaps clarification from Ecology on certain issues will fix the perceived problems, negating the need for the rule revision process.

Natalie Kuehler noted that the definition of "single domestic" is a very ripe issue, as Ecology representatives are meeting with the state Attorney General on that very question. She cautioned the group not to leave the public behind in this process and to make sure that we advocate for what the community wants.

Bill Tackman concluded that there is no better time than the present if the Methow Watershed Council is going to have a chance to influence Ecology positions on local water management.

### **3. Identify and prioritize the elements of the rule needing attention**

George asked the group to look at the initial list of candidate elements for discussion in, or absent from, the Methow Rule. First, they brainstormed questions and issues related to each topic:

- Definition of “single domestic” and single parcel – Can single domestic and stock use incorporate anything more than one connection? Does it include outside use? What about developments and municipalities? Natalie referred to the Campbell & Gwinn decision which defined “group domestic” by ruling that wells drilled by a developer for a subdivision necessarily constitute a single “group domestic use” rather than a series of individual uses. All fourteen homes in the development were on one exemption and could not cumulatively withdraw more than 5,000 gallons per day. “Single domestic” has not yet been defined by the courts. Travis stated that the real question is what does “single domestic” mean in the context of the 2 cfs reserve, and whether such term may have different meanings when evaluating uses that may use the reserve vs. evaluating application of the well permit exemption?
- 2 cfs
  - Available to towns and Group A and B systems – This issue is entwined with the definition of “single domestic,” as discussed above.
  - Move downstream from upstream reaches - Mike noted that the only mention of this in the DIP was with regard to moving the Early Winters 2 cfs downstream, since there is no possibility of development in this reach.
  - Whether 2 cfs is reach-constrained given gaging/compliance realities – Natalie made the point that this isn’t really a question needing clarification.
  - Water banking of unused portion of 2 cfs – In Natalie’s professional opinion, how can you legally water bank a non-perfected water right?
  - Purpose of use definition – Does this include commercial use? What about nightly rentals?
  - Quantification of use of reserves since rule implementation – What is the lookback period? How do you quantify how much of the 2 cfs has been used? Mike reiterated that the Methow Watershed Council is bound by the Methow Plan to produce an annual report, which has never been done.
- Consumptive use definitions, amounts – Is the 2 cfs measured in consumptive use or diverted use?
- Closed basins – Natalie clarified that there really are not “closed basins” but rather there are closed surface water areas, meaning water cannot be taken that is in hydraulic continuity with the closed tributary.
  - Basin boundaries – The MWC generally has no objection to Ecology’s current determination of the level of proof required to show that wells are not in hydraulic continuity with the closed tributaries. The County is using the Ecology’s maps and shape files to determine whether to issue building permits or forward to Ecology for an answer.

- Use of high flows in closed basins for storage – Mike stated that this is not expressly permitted in the rule, and that most high flows occur outside of the mapped boundary lines.
- Minimum instream flows
  - Modifications to them – The Council is not looking to modify instream flows.
  - What duration below minimum constitutes flow triggers enforcement – Is it for a minute, a day, a month? The Council does not have an issue with instream flow triggers, but rather with how to use the 2 cfs.
  - Compliance points and gauging – Not really something addressed in the rule.
- Mitigation credits
  - Water treatment plant discharges – The Council is looking for Ecology to clarify that towns get credit for water discharged from treatment plants.
  - Alternatives to water-for-water mitigation – Based on the 1995 ROE discussed at the 3/15/18 MWC meeting, can an irrigation right be banked for domestic use to secure year-round use?

Based on the foregoing discussion, the group then prioritized the topics, focusing for now only on questions that need further clarification from Ecology. Topics that would initiate an actual rule change and topics that are not really included in the rule were eliminated. The study group drafted the particular questions to be asked of Ecology as well as the Council's interpretation of each point:

- Definition of "single domestic" and single parcel

**Question:** For the purpose of the 2 cfs reserve under our Instream Flow rule, please define "single domestic".

**We suggest that,** for the purpose of use of the 2 cfs reserve, "single domestic" includes traditional water use associated with a single family residence, including limited outdoor use including watering of lawns and gardens, and including use within a development or a municipality.

- 2 cfs

**Question:** What does "appropriation from the stream management units" under the rule mean?

**We suggest that** water use is available at any point from the specific reach downstream, within the Methow River Basin, so long as the use is charged against the original designated reach.

- Consumptive use

**Question:** When accounting against the 2 cfs reserve, are we to use instantaneous divergence amounts or consumptive use amounts?

**We suggest that** consumptive use is the measure used to debit against the 2 cfs reserve.

- Closed basins

**Question:** Are high flows in closed areas available for non-consumptive use, such as diversion for mitigation purposes?

**We suggest that** high Spring flows in closed tributaries are available for non-consumptive use such as aquifer recharge and storage.

#### **4. Craft the manner in which MWC will communicate the request to Ecology**

Travis asked whether the group should submit a request with the questions alone, the questions along with MWC's suggested interpretations, or both of the foregoing along with documentation and analysis to back up the preferred interpretations? George noted that researching and providing documentation would mean a commitment of more time and energy on the part of the work group. Mike suggested tying the preferred interpretations to specific points in the Detailed Implementation Plan.

Natalie cautioned the group on the need to frame the questions in such a way that they honor the original intention of the Methow Rule, which was essentially viewed as a restrictive land-use planning tool. The issue at hand is, "what does our community want its water to be used for?" The committee that worked on the Methow Rule in 1976 saw it as a way to localize planning, discouraging future platting, and preserving the rural character of the Methow Valley. The MWC "interpretations" included with the questions should not be slanted in such a way that they are contrary to what the community, as a whole, would want.

Soo agreed that the voice of the community needs to be heard in the questions posed to Ecology. At the same time, the MWC should not needlessly worry about the political end of things, as the towns and Okanogan County will necessarily have to deal with that regardless of the approach taken. She feels that the time is right to ask for these clarifications and recommends that the MWC advance the questions along with our interpretations for maximum flexibility for our communities now and in the future.

Mike recommended that the questions and interpretations as discussed be firmed up and circulated among work group members for comment. The work group draft will go before the Methow Watershed Council for input at the meeting of April 19. Once the Council agrees, the general public will have opportunity to comment before the questions are finalized and forwarded to Ecology.

#### **5. Meeting Adjournment**

At 7:55 p.m. the meeting was adjourned by Travis Thornton.