



CITY OF SPOKANE
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November 23, 2021

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RE: Notice of SEPA Application / Optional DNS Process
Airway Heights New/Transfer Water Rights in the Spokane Valley/Rathdrum
Prairie Aquifer

To Whom It May Concern:

The City of Spokane (Spokane) received a copy of the Notice of SEPA Application Optional DNS (Determination of Non Significance) Process for the City of Airway Heights' (Airway Heights) application for transfer or new water rights in the Spokane Valley/Rathdrum Prairie Aquifer. Spokane submits the following comments for consideration and specifically requests a full Environmental Impact Statement (EIS) process be conducted on impacts the proposal may have to both the Spokane Valley/Rathdrum Prairie Aquifer and the Spokane River. Use of the Optional DNS Process does not appear to be justified.

First, the Notice of Application and SEPA documentation are unclear and inconsistent. The Notice of Application in the proposal states "New/Transfer" of Water Rights. Is the request for a new water right in the Spokane Valley/Rathdrum Prairie Aquifer or a change application of an existing water right? It is unclear what was included in the Change Application to the Department of Ecology for the water rights certificates, but the inference from the Technical Memorandum states that new water rights are required for the proposal. Transfers of existing water rights require showing or analysis of the historical beneficial use of the water and identification of the new point of withdrawal, along with impacts on others' usage (impairment analysis). New applications require mitigation within the same water source under statute, case law and Ecology Policy. Mitigation of new water usage from the Spokane Valley/Rathdrum Prairie Aquifer is not addressed in the SEPA checklist or proposal, especially if the optional DNS under WAC 197-11-335 is used. Regardless, the optional process under WAC 197-11-335 does not appear justified.

The proposed new water right (by either transfer or newly issued) and new water demand from the Spokane Valley/Rathdrum Prairie Aquifer involves a substantial volume of

water which could have significant environmental impacts. As indicated in the SEPA Checklist and Technical Memo, the proposal includes new water rights in excess of 2,250 gpm. The proposal would not be eligible for any Categorical Exemption as provided in WAC 197-11-800(4). A full environmental analysis is warranted.

Next, the SEPA review does not address potential impacts and consequences to the Spokane Valley Rathdrum Prairie Aquifer (SVRP) or the Spokane River as a result of the proposal. Neither does the SEPA review address impacts as a result of additional water demand and usage on the Spokane River and its instream flow levels. Washington State Department of Ecology has established an Instream Flow for the Spokane River effective 2020. It is well established that the Spokane River and the Spokane Valley/Rathdrum Prairie Aquifer are interconnected. Based on the proposed point of withdrawal, there appears to be a strong correlation or impact to river flow rates. Any new or additional water usage or withdrawals since adoption of the Spokane River Instream Flow Rule should have an impairment analysis on River flows and other more senior water right holders¹.

Furthermore, as stated in the Technical Memorandum, the existing water rights certificates located within a different water source that *may be* hydraulically connected to the Spokane River may be intended to be used as mitigation. However, it is unclear if this is intended to be a mitigation outlined in the DNS process or if in fact, both aquifers are connected. This provides another reason the optional process under WAC 197-11-335 is in error and an EIS should be conducted. This is a determination to be made by Ecology in any Report of Examination of a water right change application, not the optional SEPA DNS process.

Additionally, the proposed mitigation measures are not relevant or applicable to new water demand or usage from the Spokane Valley/Rathdrum Prairie Aquifer. The proposal is inconsistent – in that the proposal offers mitigation by non-use of water rights in the Grand Ronde Aquifer, and then 1 for 1 transfer of the water quantity for use in the Spokane Valley/ Rathdrum Prairie Aquifer. Aside from being inconsistent, such proposed mitigation measures are contrary to statute, caselaw and Ecology's policy².

The proposal is likely to result in significant environmental impacts. Per the Notice of SEPA Application, this is a project application under WAC 197-11-704(2)(a)(ii). The SEPA Handbook outlines the need for a project EIS to be prepared for proposals that generally involve physical changes to one or more elements of the environment, as listed

¹ See, *Foster v. Ecology*, 184 Wn.2d 465, 362 P.3d 959 (2015)

² See, Department of Ecology Publications 20-11-083 & 98-1802-WR; Chapter 90.54 RCW; Chapter 90.03 RCW; *Foster v. Ecology*, 184 Wn.2d 465, 362 P.3d 959 (2015).

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in WAC 197-11-444. WAC 197-11-444 (c)(iv) lists impact to Groundwater movement/quantity/quality and WAC 197-11-444 (c)(v) lists public water supplies, along with other specific examples of projects to include facility operation changes and the purchase, sale, lease, transfer, or exchange of natural resources, all of which appear to apply to the subject of the Notice of Application.

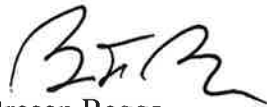
Both Spokane and Airway Heights work together under the Spokane Coordinated Comprehensive Water System Plan for Spokane County. Spokane and Airway Heights have had an interlocal agreement for water service for more than 30 years, under which Spokane provides supplemental and emergency water to Airway Heights. We anticipate continued partnering in an effort to effectively and efficiently address Airway Heights' water needs. However, based on the documents submitted regarding the SEPA, there needs to be a more comprehensive evaluation.

In summary, Spokane requests that the SEPA Notice of Optional DNS process be withdrawn and that there be a full EIS evaluation of proposed new water usage and demand on the Aquifer. Evaluation should not only address the water quantity (demand) impacts but also any impacts on the flows of the Spokane River. Thank you for allowing the City of Spokane to submit comments.

Sincerely,



Nadine Woodward
Mayor, City of Spokane



Breean Beggs
Council President, City of Spokane

cc: Members of the City Council
City Administrator Johnnie Perkins
City Attorney Mike Ormsby
Marlene Feist, Director, Public Works Division
Katherine Miller, Director of Integrated Capital Management
Raylene Gennett, Wastewater Director
Loren Searl, Water Superintendent
Albert Tripp, Airway Heights City Administrator