

[PROPOSED] NOTICE FOR SHOW CAUSE ORDER.

NOTICE REGARDING DOMESTIC AND STOCK WATERING FROM WELLS IN THE CHAMOKANE CREEK BASIN AND UNITED STATES V. ANDERSON.

You are receiving this notice because you are a landowner in the Chamokane Creek Basin. The notice concerns water use on your property from a well for inside and outside household use, including for lawn and garden (domestic use), or water provided for your cattle, horses, sheep, hogs or other animals from a well or creek (stock use), or from a well you may drill in the future for stock or domestic use. In the 1970s, in a case known as *United States and Spokane Tribe v. Anderson*, No. 2:72-cv-03643-SAB (E.D. Wash) (*Anderson*), the federal court found that the Spokane Tribe (Tribe) has a water right to benefit fish in Chamokane Creek, which requires leaving water in the stream. At that time, the U.S. and the Tribe only included larger water rights, including those that were permitted by the state, but not rights that were exempted from permits for small uses such as domestic and stockwater. Twice, in 1979 and in 1982, the Court concluded that domestic and stock use was so small that it did not need to be included in the judgment.

Over the last 40 years, additional wells have been drilled for domestic and stock use in the Chamokane Basin. Pursuant to RCW 90.44.050, those wells do not need to be permitted by the Washington Department of Ecology (Ecology) because of the exemption in statute regarding the small uses of groundwater. The United States, Spokane Tribe, and Ecology hired the United States Geological Survey (USGS) to determine several questions regarding hydrology and water use in the Chamokane Creek Basin. The USGS concluded in 2012 that domestic and stock use impacted the amount of water in Chamokane Creek to meet the instream flow water right. See <https://wa.water.usgs.gov/projects/chamokane/>.

The United States, Spokane Tribe, and Ecology (the three governments) argued in *Anderson* over what to do about the USGS studies. The three governments have now agreed that the best way forward is to not disrupt current stock use and domestic use of the types the USGS used in its studies. The three governments developed a mitigation program that off-sets the following stock use and domestic use:

stock-watering directly from the stream or its associated off-channel stock water tank or from any permit-exempt well, without storage impoundments, at the carrying capacity of the land as historically practiced in the watershed; or any permit-exempt well providing domestic use not to exceed one acre-foot per year per domestic project including for both in-house use and irrigation of a lawn and/or of a noncommercial garden not exceeding one-half acre in area.

The water usage mitigated by the Government Parties is for the reasonable amounts of stock and domestic use that the USGS studies relied upon and found were typically being used in the Chamokane Basin. Ecology will largely fund the mitigation program.

With the USGS study and the mitigation program, the three governments have filed a motion in *Anderson* which requests a change in how stock use and domestic use is handled, and to incorporate other agreed upon changes to the Court's prior orders in the case. The Court has issued a Show Cause Order (attached) explaining the changes and describing a process that can be used to object to entry of an order to implement those changes. The Court also reviewed and approved this notice explaining the changes.

In *Anderson*, the Court appointed a Water Master to aid in regulation of water rights confirmed by the federal court in the case. The three governments are requesting the Court to allow Ecology to cross-deputize the Water Master with state regulatory authority over existing state water rights in the Chamokane Creek Basin. This will allow the Water Master to carry out certain administrative actions and enhance the Water Master's role in the basin to address improper water uses under state law, as well.

Further, the three governments are requesting the Court to eliminate the general exemption of stock use and domestic use from the judgment and allow the Court to regulate those types of uses, **if** in the future the Tribe and United States ever bring into *Anderson* any domestic or stock water users who exceed the mitigation program. These water users will not be subject to regulation, so long as they stay within the water use amounts described in the mitigation program definition above. The proposed changes also stop the United States and Tribe from trying in the future to regulate stock and domestic use that is within the mitigation program.

Additionally, based upon current scientific studies and literature, the three governments are requesting that the Court adopt minimum instream flow levels of 140 cubic feet per second (cfs) during March and 151 cfs during April. Any new excess interruptible surface water rights issued after the date of the *Anderson* Agreement would be subject to the currently effective 27 cfs minimum flow for the other ten months of each year, and the higher flows proposed for March and April.

Finally, in its 1979 Order, the Court concluded that the geology of Chamokane Basin was composed of three parts: upper, middle and lower. Also in that Order, the Court concluded that there was a geologic barrier separating the groundwater of the upper basin from the middle and lower basins. Subsequent research has confirmed hydraulic connectivity exists between the upper Chamokane Basin groundwater and the remainder of the basin. See <https://pubs.usgs.gov/sir/2012/5224/pdf/sir20125224.pdf>; <https://pubs.usgs.gov/sir/2010/5165/pdf/sir20105165.pdf>. Therefore, the Show Cause Order requests that the Court's previous finding that the upper basin was geologically separate from the rest of the basin be eliminated.

For most landowners in the basin, you will not need to do anything regarding your present use of groundwater. As highlighted above, domestic users are only impacted if their permit-exempt well use exceeds one acre-foot per year per domestic project including for both in-house use and irrigation or a lawn and/or of a noncommercial garden not exceeding one-half acre in area. The mitigation program will cover your very small impact to the flow in Chamokane Creek. If your exempt use is exceeding the limits

outlined above, you should reduce your use (to be within the limits) to avoid being in conflict with the mitigation program.

You can learn more about the mitigation program and the *Anderson* motion and show cause order in several ways¹:

*review the motion found at: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-availability/Chamokane-Creek>;

*consider information about the mitigation program and the pending legal action, including a frequently asked questions list, at: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-availability/Chamokane-Creek>;

*attend a public meeting at [LOCATION] on _____ [DATE ABOUT FOUR WEEKS AFTER NOTICE MAILED OUT], from _____ [TIME] when more information about the mitigation program and the proposed legal action will be discussed and you can ask your questions; or

*call (509) 329-3541 and ask an Ecology staff person your questions about the mitigation program and the pending legal action.

If you would like to oppose the request filed by Ecology, the Tribe, and the United States, you must file your objection to the attached Show Cause Order in federal court by: _____ [date that is specified in the show cause order]. The show cause order required that any objection to the proposed changes to the prior orders must include certain critical information. The allowed objection form is Attachment A to the Show Cause Order and can be found at <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-availability/Chamokane-Creek>;

Any objection that you wish to file must include **all** of the following items:

- State your (i) Name; (ii) Address; (iii) telephone number; and (iv) e-mail address.
- Describe: (i) your current water use or potential water use within the Chamokane Basin; and (ii) the location of that use or potential water use.
- Describe the factual basis for your objection to the show cause order.
- Describe the legal basis for your objection to the show cause order.

¹ The three governments may seek to slightly modify the contents of this Proposed Notice at a later date, prior to its mailing and publication. The anticipated changes would include a different phone number for the Department of Ecology, and more accurate citation to the Department of Ecology's website, after the Department of Ecology creates the url which will direct users to the motion, objection form, etc. and after that url goes live. The changes will also include the deadline for filing objections. Other changes may include details regarding the public meeting, and, possibly, links to the Spokane Tribe's website.

- Describe how you will be injured or harmed by the proposed revisions to prior court orders described in the Show Cause Order.