

Appendix A & B

Concise Explanatory Statement for the Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resources Inventory Area (WRIA) 18

Appendix A: Written public comments

Appendix B: Transcript of public testimony received at
the public hearing

November 2012

Publication no. 12-11-039a

Appendix A

From: Asdfasdf Adf [REDACTED]
Sent: Sunday, May 13, 2012 7:13 AM
To: Wessel, Ann (ECY)
Subject: Dungeness Water Management - Comments on Proposed Rule

NO on more State regulations from the department of ecology ...any ecology based regulations should come from and approved by the counties ..these proposed additional regulations are a power grab at the state level, and inappropriate

Mr. Chun

[REDACTED]

Kaj Ahlburg

Ann Wessel
Washington State Department of Ecology
ann.wessel@ecy.wa.gov

July 5, 2012

Dear Ms. Wessel,

Please find following my formal comments on the proposed Water Resources Management Program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18, Chapter 173-518 WAC. I will first offer some fairly broad comments, followed by more specific comments on the language of the rule and a list of questions. The questions submitted are part of my formal comments and I request they be answered in your Concise Explanatory Statement. The questions also serve as comments to make the appropriate changes to the extent the questions can not be satisfactorily answered.

General Comments

1. The cost benefit analysis (CBA) is flawed and needs to be redone. It does not include, or even consider, decreases in property values that would result from the proposed rule. It does not include, nor even consider, the diminution in economic activity as fewer people choose to engage in the now more expensive pursuit of building a house and landscaping a garden in the covered area. It also does not include or analyze the resulting loss of sales and property taxes and decrease in employment. It double counts the benefits from "avoided fish losses" and protecting salmon restoration: the only benefit of salmon restoration is avoiding fish losses. It uses an arbitrary and outlandishly high amount of over \$20 million for benefits from avoiding litigation and increased certainty of development if the rule is passed, even though no litigation is pending or even threatened and the only uncertainty of development currently is the one caused by the threat of this rule. On the other hand it ignores the very real cost of the likely litigation if the rule is implemented as now written.

Ecology's own economist, Mr. Tryg Hoff, is on the record with a formal notice that the costs of the rule exceed its benefits and that it fails under RCW 34.05.328 (1)(d). The economic analysis now served up by Mr. Hoff's successor is indeed a "*cooked' analysis*" that is "*ignoring the economic evidence*", as Mr. Hoff was pressured, but refused, to prepare. The approach suggested in comment 2. below would go far to bring benefits and costs more into balance.

The rule making process needs to be put on hold while an independent economic cost benefit analysis is done. Only if such analysis results in benefits exceeding costs should the rule making process continue. Any other result would almost certainly result in lengthy and expensive litigation in which Ecology's position would be very shaky.

2. Instead of requiring "mitigation" payments, Ecology should follow the Skagit County approach of having the State purchase the required water rights through an appropriation in its capital budget. This would also constitute a less burdensome alternative, as required by RCW 34.05.328 (1)(e), and cure the most serious problems with the cost/benefit analysis for the proposed rule currently being upside down, as described in comment 1. above.

3. RCW 19.85.040(1) requires the Small Business Economic Impact Statement (SBEIS) to “*consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue*”. The proposed rule will have material adverse effects on the revenues and profits of realty, building, landscaping and well drilling small businesses. To comply with RCW 19.85.040(1), the SBEIS needs to be revised to reflect that.

4. The metering requirement runs afoul of the RCW 34.05.328 (1)(e) least burdensome alternative rule. There are now sophisticated techniques for estimating well pump usage through residential electric metering, something that would clearly be less burdensome than spending \$1.4 to \$2.1 million on well meters and millions more on monitoring and administration. Your employee Robert Barwin’s e-mail dated March 12, 2012, in which he wrote “*Given the relatively low costs of the metering requirement, I didn’t even bother with describing a metering v. no metering alternative*”, shows there never was the serious consideration of less burdensome alternatives required by RCW 34.05.328 (1)(e) with respect to a requirement expected to cost property owners millions of dollars.

5. There is insufficient peer reviewed scientific data on the hydrologic continuity between all private exempt wells and the streams in the Dungeness basin, particularly wells that draw water from the second or third aquifer down. Ecology claims that the confining beds separating these lower confined aquifers from the uppermost aquifer and the river beds are, in fact, permeable, but there is no peer reviewed scientific study supporting that assertion.

Section 90.54.030 (3) requires Ecology to “*Develop such additional data and studies pertaining to water and related resources as are necessary to accomplish the objectives of this chapter*”. Ecology should commission such a study, and incorporate its results into the rules before proposing any final version of the rules.

Furthermore, in WRIA 17 a study performed, I believe, by the USGS showed that a very significant amount of water travels directly from the mountains underground through deep confined aquifers to the sea. If this were the case in the Dungeness basin, the focus should shift to attempting to bring some of this water up to the surface to allow it to replenish stream flows when they are low. A similar study should be performed for WRIA 18 East before implementing any rules.

Ecology should produce peer reviewed scientific studies that show which wells in which specific areas, and drilled at what depths into which aquifers, have hydrologic continuity with streams in the Dungeness basin. Only those wells for which hydrologic continuity with rivers in the Dungeness Basin has been proven to have a material and adverse effect on stream flows, reducing them below required minimum instream flows, should the proposed rules subject to the restrictions you want to impose on all wells (metering, reduction in allowed daily withdrawals below 5,000 gpd, restrictions on outdoor watering, mitigation payments, etc.). Ecology has no statutory authority to regulate wells that can not be proven to be hydraulically connected and such an approach would violate the least burdensome alternative requirement.

6. RCW 90.54.020 (1) states that “*Uses of water for domestic, stock watering, ... irrigation, ... are declared to be beneficial.*” Ecology’s attempt to discriminate against outdoor water uses in the future is directly inconsistent with this statement. Such outdoor uses, which are an essential component of the rural life style of Clallam County, under the statute need to be given equal priority to “domestic use”.

7. Ecology's internal e-mail correspondence (Tryg Hoff, Dave Nazy) on the rule making process shows that the estimated impact of permit-exempt well water withdrawals on the Dungeness is relatively de minimis – as little as 0.77cfs, an amount so small that is inside the error of measurement of the stream flow gauges used. This needs to be kept in mind when balancing the advisability of imposing severe restrictions on land use, development, and availability of affordable housing (restricting supply drives up price) against the benefits for fish habitat that might be achieved.

In "Findings – Purpose 1997 c 360 § 1" in connection with RCW 90.03.255 the legislature found that "*It is the goal of this act to strengthen the state's economy while maintaining and improving the overall quality of the state's environment.*" The draconian restrictions on water use your draft rule would impose in the Dungeness Valley are directly contrary to the legislature's mandate in the Water Code to balance environmental protection against strengthening the state's economy. These restrictions also violate the maximum net benefits rule in RCW 90.54.020(2), which mandates that allocation of water resulting in maximum "*total benefits less costs including opportunities lost ... for the people of the state*" (and not the fish of the state, whose interests have to be balanced with, and can not override, the interests of the people).

8. The draft rule exceeds Ecology's statutory authority and contradicts common sense. This authority only extends to requiring instream flows equal to the stream flow derived from groundwater inflow or discharge, protecting currently existing instream flows, but not to requiring flow levels, as this draft rule does, that may be desirable from a fish habitat perspective but that in actuality have rarely been achieved. In some instances the minimum instream flows you propose to set have been achieved historically less than 10% of the time, and in others never. Required minimum instream flows for each stream and each month should be set at levels that for the last 10 years have actually been achieved a high percentage of the time (I suggest 80% or 90%).

WAC 173-518-020 states that the purpose of the rule is "*retain natural surface water bodies ... with stream flows at levels necessary to protect instream values and resources*". Please explain from where Ecology derives the statutory authority for such a purpose.

9. You propose that the priority date for an exempt well will be the date that water is put to beneficial use, and distinguish between the different subcategories of beneficial uses (e.g., prior domestic use does not give the right to water a garden in the future). Such a rule would be bad public policy.

It would tell a landowner who has a permitted well for future use that he must place it in use now, even if not needed, to avoid losing its use in the future when it will be needed. It would tell a landowner who owns land without a well on it that he perhaps plans to build on later, that he must immediately drill a well and begin using it. This would result, in addition to unnecessary consumption of electricity from running a well pump 24/7 (and think how hard our utilities are working to get everyone to save electricity) in over 1.8 million additional gallons of water (at 5,000 gpd) being extracted from the aquifer every year for each well. Surely this would be a result directly opposed to the goals of the proposed rule. A common sense adjustment is needed.

10. In WAC 173-518-085 (4) (c) you propose that 90% of outdoor water use should be assumed to be consumptive, compared to 10% for indoor use in a house served by a septic

system. Instead of penalizing those who use their irrigation water efficiently, you should make allowances for the fact that much more water that flows through a drip system used at night returns to the aquifer, than, for example, would be the case for a sprinkler system used during the day. In fact, the recharge rate for an underground drip system should be no different than that for a septic tank drain field. Your own internal correspondence refers to a recharge rate of about 75% for water in irrigation ditches. The rate should be even higher for water discharged underground by a buried drip system. Any average percentage must be based on scientific evidence and take into account different means of irrigating and different recharge rates.

11. Pursuant to the Watershed Planning Act, Ecology must show deference to the will of the people of Clallam County, as expressed in their comments to you, and through their elected Board of Commissioners and Director of Community Development.

Section 90.82.005 states that *"The purpose of this chapter is to ... provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development."*

Section 90.82.010 states that *"The local development of these plans serves vital local interests by placing it in the hands of people who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources."*

Finally, in "Findings -- 2003 1st sp.s. c 4 § 1" in connection with this RCW 90.82.040 the legislature stated that *"The legislature declares and reaffirms that a core principle embodied in chapter [90.82](#) RCW is that state agencies must work cooperatively with local citizens in a process of planning for future uses of water by giving local citizens and the governments closest to them the ability to determine the management of water in the WRIA or WRIs being planned."*

During the June 28 public hearing you heard universal public opposition from almost 300 citizens, the only person in favor of the rule being an employee of a state environmental agency. The Board of County Commissioners is on record as unanimously being opposed to the rule as drafted, as is the City of Sequim, the major town in the area covered by the rule, and the Director of Community Development. A multitude of business and industry organizations from the affected area also are on record opposing the rule as now proposed. Ignoring this opposition and these statutory requirements and legislative intent can only lead to unnecessary litigation and lengthy delays in the implementation of any rule.

Specific drafting comments

1. WAC 173-518-070(2) - Specify under what statutory authority the RCW 90.44.050 right for permit-exempt well water withdrawals can not be exercised if connection to a public water supply is available, even if only at exorbitant cost. In the absence of such authority, remove this provision. Specify precisely what written evidence that connection is not available will be acceptable under the rule.

2. WAC 173-518-070(3)(a)(i) – Specify exactly how drilling to the middle or deep aquifer is encouraged. Given per foot drilling costs, doing so may well cost the homeowner thousands or tens of thousands of dollars extra. How will he be compensated for, or incentivized to incur, such an expenditure?

3. WAC 173-518-075, line 5: add after “ecology approval”, “which shall not be unreasonably withheld”.

4. WAC 173-518-075(3): delete in line 2 “, for any reason,” and add after “adequate” in line 3 “in its reasonable judgment”.

5. WAC 173-518-075(3)(g): add after “ecology”, “in its reasonable judgment”.

6. WAC 173-518-080, 2. paragraph, line 2: add after “supply”, “and outdoor irrigation of an area not exceeding ½ acre per residence” (see general Comment #6 above).

7. WAC 173-518-110(3), line 3: add after “causing”, “material”.

8. WAC 173-518-120: add a subsection (3) reading “Ecology shall initiate a review, and if necessary amend, this rule if requested by the Clallam County government at any time more than five years after its implementation.”

Questions

1. What section in the state statutes provides Ecology with the authority to override RCW 90.44.050 with an agency rule? Since in the proposed rule it seems the availability of reserves or mitigation can not be assured in all cases, the rule if adopted would override RCW 90.44.050 in those cases.

2. Why didn't Ecology examine depreciated land value as a result of the rule? Land with use of the exemption outlined in RCW 90.44.050 is clearly worth more than when you have to pay for water, or in some cases have the uncertainty as to whether water from reserves or mitigation will be available at all. Why did your economists fail to describe and analyze this?

3. P. 20 of the CBA states that existing state law requires metering of all new withdrawals, including permit exempt ones, in the Dungeness watershed (WRIA 18). Are you referring to all of WRIA 18 or just the area affected by this rule? What section in the RCWs contains that requirement? Where in state law is the area affected by this rule, constituting only a portion of WRIA 18, defined?

4. Pp. 20 – 21 of the CBA introduces the concept of “maximum depletion amounts”, which you admit “is new to instream flow rules”. On what section of the RCWs does Ecology base its statutory authority to create this new concept now and use it in a rule?

5. P.21 of the CBA states that “new permit-exempt well use may not occur where an existing municipal water supplier can provide service”. What constitutes the statutory authority that overrides permission to withdraw public groundwaters under RCW 90.44.050, which contains no such qualification?

6. P.27 of the CBA states that the cost of foregoing outdoor water use, where neither reserves nor mitigation credits are available, is \$1,000 per household. Given the common rule of thumb of spending about 10% of the value of the house on landscaping, and given that the mean price for a detached home in the Sequim area is over \$250,000, how did you arrive at a

“cost” of a mere \$1,000 for not being able to have outdoor landscaping for which the homeowner on average would have been willing to pay over \$25,000?

7. Why is litigation part of the “baseline”? What evidence supports this assumption?
8. Do you have hard factual proof for the assertion that “permit-exempt uses are at an elevated risk of being litigated”?
9. Why does the assumption of litigation also include an assumption that development throughout the entire basin would be brought to a halt?
10. How exactly was the \$19.9 to \$62.1 million cost of avoided litigation arrived at?
11. Who exactly would have borne the assumed cost of litigation?
12. How is the assumed cost of litigation divided between attorneys’ fees, judgments for damages and reduced property values of the parties assumed to be losing?
13. On what are the assumptions regarding who would win or lose the lawsuits, and the likelihood they would be settled rather than litigated to conclusion, based?
14. Please set forth in detail: (a) the amounts of irrigator water rights (p. 10 of the preliminary CBA mentions 518 cfs in 1924), (b) when they were established, (c) where applicable, the dates on which failure to beneficially use each of those rights led to their automatic extinction, and (d) quantify in cfs rights for how much irrigation water were extinguished on what dates due to lack of beneficial use, and what rights are still in existence (with last known date of beneficial use). It is important to understand that water rights purchased by a water bank from irrigators actually are water rights that have been in recent enough beneficial use to still be valid. It also is important to understand by how much senior withdrawal rights have diminished since 1924 simply through non-use and relinquishment.
15. What is the expected cost in terms of agricultural production and jobs of agricultural land taken out of production as a result of no longer being able to be irrigated because the irrigation water rights were sold to the water bank to be used for mitigation? Why is this cost not included in the cost/benefit analysis?
16. Why does the proposed rule and analysis involve your agreement with the Jamestown S’Klallam Tribe and the proposal to restore stream flows? What legal authority does Ecology have to *restore* stream flow, rather than just requiring instream flows equal to the stream flow derived from groundwater inflow or discharge?
17. Why does Ecology utilize hypothetical impairment claims? Where is the statutory authority to do so?
18. If all the rivers are hydraulically connected, how can you close some year round and not others?
19. What is “administratively closed”, what was the authority and basis for such an action and when was it taken, and why does Ecology believe this has legal significance as

part of the baseline if there currently are no restrictions on permit-exempt wells in the affected area?

20. What statute authorizes the definition of “closure”?
21. What statute authorizes “mitigation” as utilized as part of the definition of “closure”?
22. What statute or legal precedent authorizes the definition of “hydraulically connected”?
23. Why does your least burdensome alternative analysis ignore many less burdensome alternatives, such as the wholesale purchase of water rights by the state or another entity, or impounding excess spring run off water and releasing it back into the rivers in late summer, when stream flows are lowest?
24. How does Ecology decide to close a basin that historically shows less water use every year? Why wasn't historic water use presented in the analysis? Why are water available and water used not described?
25. Who formulated the Overriding Considerations of the Public Interest determinations?
26. Who do you expect will sue claiming that the benefits of this rule don't exceed the costs? What do you expect the plaintiffs' causes of action to be?
27. Table 3 in the CBA projects 162 to 403 new domestic uses per year. How can this be accurate when Clallam County estimates an average of 65 new building permits per year outside a service area? Please explain the calculations.
28. RCW 19.85.040(2)(d) requires that the Small Business Economic Impact Statement include an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule. Why was this not done?
29. RCW 19.85.040 requires the agency to describe in the Small Business Economic Impact Statement the additional costs to businesses, how the agency reduced regulatory requirements, how small businesses were involved in the development of the rule, a description of the steps to reduce the costs on small businesses, and a variety of other items that must be analyzed. Why was this not done?

I look forward to your responses. I strongly urge you to place the rule making process on hold while an independent economic cost benefit analysis is prepared. Thank you for your consideration.

Sincerely,

Kaj Ahlburg

From: [Wessel, Ann \(ECY\)](#)
To: [REDACTED]
Subject: FW: DOE stepping on property rights again.
Date: Tuesday, July 10, 2012 4:33:00 PM

From: kyalami morgans [REDACTED]
Sent: Tuesday, July 10, 2012 2:52 PM
To: Wessel, Ann (ECY)
Cc: [REDACTED]
[REDACTED]

Subject: DOE stepping on property rights again.

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time

as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

**Signed
Neville & Gayle Aitken**

From: Cindy Alia [REDACTED]
Sent: Tuesday, June 26, 2012 12:23 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Basin Inflow rules

Anne Wessel,

Please consider the facts in the present inflow rule debate, and include in that consideration the work and efforts expended in the huge amounts of water already saved through the intensive water conservation measures taken by the irrigators. Also please consider that as we are able to make more sophisticated studies with better technology, we are learning that we have far more reserves in water than what was thought in the past. I do not support adoption of the proposed instream flow rule for the Dungeness River. However, if adopted, the rules more than adequately protect the Dungeness basin from the appropriation of its water resources. The proposed rule allows for withdrawals of water, in the form of reservations for future use. Allowing those future uses will keep the river achieving the 180 cfs minimum flow in late summer to sustain fish and the river itself. I urge Ecology to take into consideration the above if a rule and the proposed reservations for future use is adopted. I have loved the land and the people of the Dungeness area all my life and my hope for the future of both is a balance of the harmonious existence of all species, our human brethren as well, many of the people of the area have worked hard to be excellent stewards of the land they love. This is evidenced by the continuing beauty of the lands where people live and work, sharing their bounty with their equally successful and thriving brothers, the salmon.

Sincerely,
Cindy Alia

From: Maxwell Anderson [<mailto:maxscruiser@gmail.com>]
Sent: Monday, July 09, 2012 1:40 PM
To: Wessel, Ann (ECY)
Subject:

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's "experts" assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this hypothesized hydrological connectivity has not been proven and is merely a guess. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

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Maxwell Anderson, DDS, MS, MEd
872 Three Crabs Road
Sequim, WA 98382

Phone 360-681-5033
Cell 206-499-7616

From: Alan Barnard [REDACTED]
Sent: Friday, July 06, 2012 10:56 AM
To: Wessel, Ann (ECY)
Subject:

Hello Ann,

I won't repeat all the points made by Marguerite Glover, Steve Marble, Kaj Ahlburg, and our Clallam County Commissioners etc. so I will just encourage you in the strongest terms to remove this rule from consideration in its current form at this time. It is counter-productive, damaging, punitive, and due largely to bad science and inaccurate assumptions it will not improve the salmon situation and instream flows significantly. It will only create chaos, devalue thousands of acres of land needlessly and take from our citizens their investment and future plans.

Please heed all this input and stop this rule at this time. Any future attempts in this direction must have a more accurate foundation and support.

Respectfully,

Alan Barnard

Alan Barnard, ABR, SRES
Managing Broker
[A Realtor with a Proven Track Record](#)
[Windermere Real Estate Port Angeles](#)



From: Alan Barnard [REDACTED]
Sent: Monday, July 02, 2012 10:51 AM
To: Wessel, Ann (ECY)
Subject: New Water Rules WRIA 18

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial.

Thank you for your attention.

Signed

Alan Barnard,
Port Angeles, WA

From: Susan Bauer [REDACTED]
Sent: Friday, July 06, 2012 3:03 PM
To: Wessel, Ann (ECY)
Subject: Water Use Limitations

Dear Ms. Wessel

The Department of Ecology (DOE) is proposing a number of significant limitation on water usage in the Dungeness Valley (WRIA 18). I am a concerned resident that also works in the economic development field on the Olympic Peninsula. We are a distressed rural county. Everything that happens on the Olympic Peninsula is all about JOBS. This proposed set of rules will not only stifle any kind of growth, but will also adversely impact economic development. How can new jobs be created or businesses grow with this set of rules in place?

Can you tell me what the REAL benefit of these rules are? What is the cost of implementation and would it outweigh the benefits by a factor of 10? It appears the process that produced these rules is flawed and again the DOE is putting mandates and rules ahead of logic and common sense.

Please consider putting the rule making timeline on hold until an independent economic impact study can be done. Not one done by the DOE, such as Mr. Hoff already did, that was probably ignored because the study did not say what the DOE wanted it to say (based on Mr. Hoff's removal from his position upon publishing the study).

The citizens of Clallam County are not going to have the DOE making decisions for us without proving to us through an independent economic impact study that these rules are lawful, logical and beneficial to us.

Thank you
Susan Bauer

[REDACTED]

From: Susan Bauer [REDACTED]
Sent: Friday, July 06, 2012 2:30 PM
To: Wessel, Ann (ECY)
Subject: Proposed water limitation rules

Dear Ms. Wessel

The Peninsula Development District (PDD) is a two county economic development district serving both Clallam and Jefferson Counties. Our mission is to foster cooperative efforts in the development and implementation of local and regional plans that will increase the economic activity in the area. The proposed water use limitations do just the opposite. They will stifle development, adversely impact economic development and result in fewer jobs in an already distressed area.

The PDD requests that you delay implementation of these water usage rules and stop the rule making timeline until an independent economic study is done. We do not believe that the proposed rules are logical, lawful nor beneficial and we question the integrity of the process leading up to these proposed rules.

[REDACTED]

Economic Development is like playing a game:
Play Hard
Play Well
Play Together

From: Barbara Bentley [REDACTED]
Sent: Thursday, July 05, 2012 6:50 AM
To: Wessel, Ann (ECY)
Subject: Water Usage.

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on June 28, 2012, reflected that the majority of the citizens who will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Barbara Bentley
Port Angeles

From: Glenn Bingham [REDACTED]
Sent: Sunday, July 08, 2012 7:24 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

Please address each of the following five issues:

Deficiencies in the cost benefit analysis

1. Costs associated with the control of new use from in-stream diversions is not separated from costs from new use from wells. In-stream irrigation and large water system diversions will account for >99% of the impact of Dungeness River flow rates while individual residential well uses account for <1%. Yet the cost to residential well users represents the vast majority of the costs associated with the implementation of this rule. The cost to irrigation districts and water systems is relatively small. The cost benefit analysis should be broken out into two separate analyses in order to show that the costs far exceed the benefits for individual residential well users. Using your current cost benefit methodology results in individual well users paying for a substantially disproportionate share of the impact they have on river flows.
2. No costs are shown associated with the loss of real estate values. Real estate prices drop to reflect increases in costs. If a \$3500 water mitigation fee is added to a lot then the price of the lot will drop by \$3,500. While the mitigation fee may only apply to a small minority of the lots a price drop in those lots will pull down the prices of all lots. This occurs because mitigated lots will be used for cost comparison purposes in valuing all lots. The effect of the rule will be to drop all real estate prices. At \$3,500 per lot the aggregate loss in real estate value could be \$35,000,000 or more (\$3,500 X 10,000+ lots).
3. Because mitigation is only required for new uses this has the effect of placing all of the costs on new businesses and new residents. As new businesses and new residents are key to growth, this will slow the economic growth of the area. No costs were associated with the resulting slowdown in economic growth.
4. Cost estimates are based on mitigation prices of \$500-\$3500 per new use. However, prices in other mitigation areas in the state range from \$5900 to \$10,000 according to the Dept. of Ecology staff information provided at the public hearing. There are no price limits on mitigation prices so that if demand is high the prices could soar to well above \$10,000.

Enforcement Issues

5. There appears to be no mitigation enforcement mechanism other than through the building permit process. This means that application of this rule will be uneven and unfair as there is no building permit process required for many new uses (i.e. watering a lawn or garden, filling an above ground temporary swimming pool, etc.)

Thank you,
Glenn Bingham
[REDACTED]

From: Dale Blankenship [REDACTED]
Sent: Saturday, July 07, 2012 3:17 AM
To: Wessel, Ann (ECY)
Subject: Dungeness water management proposal

Ms. Weisel,

I am especially concerned about the proposed Dungeness water management proposal. I never cease to be amazed at the audacity of bureaucracies, emplaced directly or indirectly by and for the people, which evolve into emboldened entities that irresponsibly wield their powers against the people. Not because they should, but because they can.

Dale Blankenship

From: Beth [REDACTED]
Sent: Tuesday, July 03, 2012 2:31 PM
To: Wessel, Ann (ECY); Wessel, Ann (ECY)
Subject: Public Comment re public meeting O& Water Rights comment

1. There was inadequate notification of all parties affected for this change. All property holders were NOT notified officially as should have been done on such a drastic proposal.
2. People who have existing wells &/or right to hook up to a community well but have not had the finances to proceed to build and therefore comply with the 5 year arbitrary deadline are penalized without regard to hardship. (Existing permitted wells should be factored into useage without regard to "present" use.)
3. It is unacceptable to have rules/regulations as important as this decided upon by a few rather than by a democratic vote of the property owners.
4. It is preposterous to set in place regulations without any agency presently in place to process any and all mitigation imposed by these policies.
5. Every owner of property affected but unable to meet the IMPOSED deadline will be adversely affected and suffer additional property value decline as a result of this new restriction. In this time of recession hardship, it is inappropriate to enact a rule to further devalue our property.
6. The Open House and Public Hearing for the 6/28/12 meeting AGENDA sheet states the meeting to be about the PROPOSED water resources management rule yet the presentation was NOT this. Indeed, it was presented as a "done deal" with the meeting set only to comply with having a meeting. Is this a "proposal" which may be modified or not?

Florence E. Blay
[REDACTED]

From: Aloma Blaylock [REDACTED]
Sent: Tuesday, June 26, 2012 9:36 PM
To: Wessel, Ann (ECY)
Subject: Water rules WRIA 18 East

To Department of Ecology

I have many concerns regarding the proposed rules for WRIA 18 E. Our area has suffered a continuous onslaught of rules and regulations which threaten the use of my land, water, my business, and my financial security. I DO NOT want to destroy or misuse land, water, or air. I DO want to use that which I have purchased on good faith.

When I purchase adjoining land and drill a well, so that my daughter can later move there to help me, these proposed rules would leave her without water, unless mitigation payments are made. These rules are not in effect now, or my actions would have been different. With a private well, if I decide in a few years to grow a garden (as I am encouraged to do to protect clean air) this would be an extra expense and perhaps impossible due to increased water usage. These new rules could make the adjoining land useless, my investment would be useless, and my financial security would be threatened. In two other ways, these rules affect my finances. If private wells become metered, I will have an additional unexpected expense. With other people also having no water on property, which makes it useless, property taxes on my usable property increases. These rules are unacceptable.

I am very disturbed by the expectations of the Department of Ecology. To achieve the river flows, we would need to decrease the current usage substantially. Who gets cut? How did you set the \$20.5 million savings in salmon restoration? Your numbers do not pass the sniff test. A second look is needed.

These rules should be tossed.

Aloma Blaylock
[REDACTED]

From: [REDACTED]
Sent: Thursday, July 05, 2012 7:56 AM
To: Wessel, Ann (ECY)
Subject: Planned Water Management/Dungeness Valley

----- Sirs:

I am greatly concerned over this plan and what the effects will be on my efforts to sell my primary residence, which is being served adequately by a well serving 3 households.

Sunday's July 4, 2012, Peninsula Daily News printed an article stating the Clallam County Commissioners wrote a letter addressing the state Ecology proposed water management rule for the Dungeness Valley....stating the letter was "available" at www.clallam.net it was not found by me, after a frustrating search of that site. So far, everything about this "rule" is lacking in disclosure, ie last Thursday community meeting in Sequim was produced with unbelievable poor quality audio/visual aids and badly narrated as to render it useless for the average person attending to gain any knowledge about this rule....but, I suppose the Ecology department got a box checked for making the presentation to the community, no matter the quality or effectiveness. It clearly was not intended to INFORM. I can't imagine private sector company making a presentation of this quality to "sell" a potential customer.

The following are questions I would like your departments response to:

1.0 Who made the determination that a need for this rule was necessary and....was it backed by concurring scientific analyses that would withstand "outside of Ecology" critical review ?
A) Who made the determination that the "remedy" fit the problem as a solution? With what scientific analyses? Was it computer based analysis?
B) What if any "pro/con" analysis was made about the proposed remedy, in view of the negative aspects on livability here in the Dungeness Valley this rule dictates. Are those data available for public review ?

1.0 What is Ecology's opinion of the effect of this proposed rule on my ability to sell my private residence, as follows:

- A) No effect
- B) Negative effect
- C) Positive effect

For any selection above, please offer your rationale for that selection

2.0 If the rule does what I believe it will do, ie severely limit my ability to use water from the well, which of the following is true:

- A) Clallam County Property Assessor will lower the assessed value of my property, if 1.0 (B) above was true
- B) Clallam County Property Assessor will raise the assessed value of my property, if 1.0(C) was true

3.0. There seems to be a study available now to determine the cost/benefit of this rule, which appears to show there is no benefit from a cost expenditure standpoint. Was the potential lost values of assessed property values part of the cost/benefits analysis?

- A) Who benefits from this rule?....in the face of a negative value from a cost/benefit analysis?....who's decision is it and with what authority?
- B) Why is rule limited to the Dungeness Valley water system?

Respectfully,
Charles Blood



Board of Clallam County Commissioners

223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015
360.417.2233 Fax: 360.417.2493

E-mail: commissioners@co.clallam.wa.us

Jim Jones, Jr., County Administrator

JIM McENTIRE, District 1
MICHAEL C. CHAPMAN, District 2
HOWARD V. DOHERTY, Jr., District 3, Chair

File: A22.08

3 July 2012

ISF Rule Comment Letter
Ms. Ann Wessel, Instream Flow Rule Lead
Washington State Department of Ecology
Bellingham Field Office
1440 10th Street, Suite 102
Bellingham, WA 98225-7028

RE: Clallam County Comments on Water Management Rule for the Dungeness Portion of WRIA 18

Dear Ms. Wessel:

Thank you for this opportunity to provide comments on the Dungeness Instream Flow Rule, Chapter 173-518 WAC. We want to recognize and thank Ecology for its efforts in working to inform the public by holding Q&A panels at two public open houses in January, meeting with numerous stakeholder groups, and distributing the *Water Watch* newsletter on behalf of the Local Leaders Water Management Work Group earlier this spring.

We understand the necessity to manage our important water resources for both natural resource needs and our societal needs for growth, jobs, and all the benefits that come with that. We also understand that the Dungeness River could be over-appropriated, that late-summer stream flows sometimes run short, and that climate change will likely worsen that seasonal problem. That said, our concerns are centered on the impact of the Rule on the County's present and future residents in the Dungeness area.

Our concerns continue to be:

1. As has been widely reported, there is uncertainty among many of our citizens regarding the integrity of the process leading up to the Rule's economic analysis and therefore its validity. We urge you to undertake an independent validation of the study's results, and the assumptions that underpin it. This will allay many of the concerns voiced at your public hearing held in Sequim on June 28.

2. That the Rule must be able to be enacted quickly, fairly, and without ambiguity, so that your agency will not be tied up in court, fighting one lawsuit after another and cause extended periods of economic uncertainty.
3. That a simplified solution to the Water Exchange mechanism (i.e. securing the right to use water for development) be explored. In particular, the State capital budget might support bulk purchase or long-term lease of additional instream flow conservation (or other projects that mitigate groundwater withdrawals), obviating the need for each new permit applicant to visit a local water bank.

More details about the proposed water bank (Exchange) are needed. Where is mitigation water likely to come from to supply the Exchange over the next 20 years, especially for the small stream sub basins? (Related to this, we support allowing sales of mitigation back to the bank by individuals.) What is the cost of mitigation (break down of cost elements) and will it vary over time?

4. At this time, a majority of the Board of Commissioners continues to oppose the requirement for meters on all new uses for reasons described at length in previous correspondence. (We continue to support indoor and outdoor water conservation, and education and incentives offered to all water users whether new or established). However, if future policymaking requires precise measurement of all components of the water budget (all stream flows, recharge, groundwater levels, well withdrawals, etc.) then we understand that residential metering by the Department of Ecology on new uses may be a necessary part of that effort.
5. There are hundreds of undeveloped lots in the Rule area, approved by the County for water supplies from permit-exempt wells. We strongly urge Ecology to notify all landowners in the Rule area regarding, at minimum, proposed Rule requirements for mitigation of new water use in addition to how beneficial use is established (as it differs from having a well drilled). We also recommend that the Rule require a parcel number be included on every well driller's report (well log).
6. It is the intent of the County to avoid liability based on implementation of the Rule and/or any inadequacies contained therein. For this reason, we recommend that Ecology clarify the mechanism(s) through which users may access water for outdoor residential use as well as new commercial, small agricultural, industrial, and home-based business. We further recommend that Ecology establish a means to ensure the availability of reserves to new residential indoor uses and simultaneously prevent existing and approved lots from being rendered undevelopable.
7. Pending water right applicants have been waiting for years, up to 20 years in some cases, for their application to be processed. The Rule does not provide a method to prioritize new versus existing applications which may greatly impact the "life" of the water reservations. The County does not want to find itself in a similar situation as in the Carpenter-Fisher basin in Skagit County, where the reserve was used up sooner than expected and the sub basin closed to new uses in 2011. We feel it is essential that mitigation projects be geographically focused to avoid

the same problem, through simultaneous tracking of reservation use and mitigation demand by sub basin.

8. Are there performance assessments that could be added to the Rule (and/or implementation mechanisms) such that after a period – perhaps five years – its effectiveness could be determined (in terms of protection of senior rights, stream flows, and continued availability of water for future development)? In terms of future costs to ratepayers in public water systems, we understand that water management will be most efficient and associated costs of expanded infrastructure will be minimized if development is planned accordingly.

In closing, Clallam County has a long history of leadership on water issues in this watershed, particularly through the Dungeness River Management Team. We recognize that the development of an instream flow rule for the area is highly important but contentious, due to the long-lasting effects on current landowners, future residents, and County government. The Rule must protect senior and current residents' water rights and provide predictability that water will be available for future development, at least for the next 20-year planning horizon. The Rule should also protect existing stream flows so that threatened fish populations in the basin do not further decline in numbers.

We look forward to our continuing cooperative efforts to ensure that the rule-making process is transparent, the issues are clear and well explained, and implementation from the County's perspective is fair, reasonable, and not overly burdensome.

Sincerely,

BOARD OF CLALLAM COUNTY COMMISSIONERS


Howard V. Doherty, Jr., Chair


Jim McEntire


Michael C. Chapman

From: Wendy Bonham [REDACTED]
Sent: Tuesday, July 03, 2012 6:55 PM
To: Wessel, Ann (ECY)
Subject: Water Rules

Hello, my name is Wendy Bonham and I live at [REDACTED] in Sequim (County). The gal whom we bought our home from had the property subdivided before we bought it but we bought both lots however there is currently a well on only one of the lots.

I have been quite concerned about what I have read in the newspapers and online about this new water rule and what it will mean for us and our properties. The rule seems vague, especially in terms of what "increased usage" would mean. I'm also disappointed that there has not been an independent study done and hope (and am praying) that the powers that be will allow an independent study to be done before this rule goes into effect. I do hope that a solution can be reached that will be the best for all involved, people and fish!!

Thank you,
Wendy Bonham

From: Jim Boyer [REDACTED]
Sent: Sunday, July 08, 2012 12:32 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Instream Flow and Water Management Rule
Importance: High

Ms. Wessel-

So much has been written and so many comments have been logged proving that Ecology's position in the creation of this proposed rule is, in many cited instances, neither factual nor unbiased. It has been said that this rule is a "*solution looking for a problem*". That would be treating it kindly. This plan, like others we have seen around the state, is obviously a creation of agenda driven NGOs that operate outside the confines of our legislative process and bear neither responsibility, nor liability for the unintended consequence of their actions.

With attention given to the recently publicized comments from Director Sturdevant regarding Ecology's ideological push to harness American citizens with U.N. Agenda 21 dictates in the name of "*environmental justice*", it is time to suspend adaptation of this rule and go back to square one where we can form an honest participatory process giving taxpaying citizens and businesses a fair and equal voice in our own defense. Doing so will save endless and costly litigation and further separation of factions along with the growing contempt for government.

Jim Boyer
Citizens Alliance for Property Rights

From: JJ [REDACTED]
Sent: Wednesday, July 04, 2012 2:14 PM
To: Wessel, Ann (ECY)
Subject: Limitations on water usage must be based on results from an independent study

Dear Ms. Wessel,

When I got word of this issue I immediately thought of the over-reaction to perceptions about global warming, and the need to pass obamacare so we can know what is in it. The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area. Let's have a thorough, independently performed economic study, then go on from there.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proved and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Mark and Jackie Bragdon

From: Danni Breen [REDACTED]
Sent: Tuesday, July 03, 2012 3:13 PM
To: Wessel, Ann (ECY)
Subject: DOE overstepping

To Whom it May Concern,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial.

Thank you for your attention.

Danni L Breen, CRS GRI

Managing Broker

John L Scott Sequim, WA



From: Rich Brough [REDACTED]
Sent: Thursday, May 10, 2012 12:27 PM
To: Wessel, Ann (ECY)
Cc: 'Alan Barnard'
Subject: Dungeness Proposed Rule Comments

Hello Ms Wessel,

I am a property owner at the Sequim Valley Airport where three years ago I bought 5.8 acres there to build (eventually) my retirement home. I have put in a water well at the cost of \$18,000, brought in electricity and run all the underground piping for irrigation, drinking water hydrants and septic (under the road pre laid lines) at the cost of another \$10,000. I have also put in a concrete RV Pad (50"x50") with electrical, telephone and cable outlets, and in addition, installed a very nice 16x16 foam panel insulated outbuilding (\$20,000).

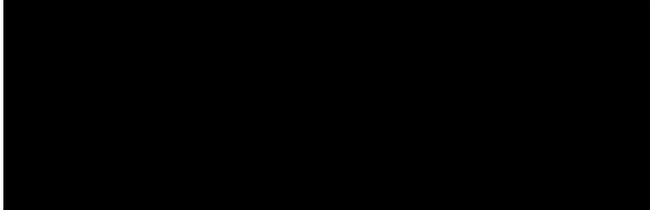
Furthermore, I also had a very expensive fire pit and BBQ area poured (\$8,500.00) and finished nicely, near the RV pad, with the intent to enjoy it ourselves and to also have our invited guests enjoy it too. I have about \$225,000 CASH into the project, including the land. Now it appears, that to save some fish, we are likely going to have our real estate value and dreams of a retirement home retreat, collapse to a near worthless value, due to the restrictions on and the availability of unregulated well water? All this, in a climate that gets more rain than Noah did at the time of the great flood? I find this thinking very "Progressive" as it serves as an illustration of the current level of governmental idiocy that we currently suffer under. If this thinking were applied here in the Las Vegas, NV area DESERT it might be understandable. I have used the well water now for two years to supply the RV pad with fresh drinking water, to keep the area green, keeping the Black Berry gardens watered in summer and also for washing my personal vehicles and aircraft, when I am there.

I fear that this will all get tangled up in the legal system for years to come. I also fear that we (and people like us) will foot the bill both personally (to hire lawyers to fight this to the end), and as taxpayers (to fund the government lawyers), as I can't imagine that citizens who own property, with a similar purpose for retirement living, are going to stand for this type of radical environmentalist agenda and subsequent governmental intrusion into our most personal of rights!

This whole issue desperately needs to be accurately defined and properly (read INTELLIGENTLY) managed without trampling on peoples' rights and robbing them of their hard earned fortunes and dreams! What are we to do about this and where do we stand regarding being grandfathered in to unrestricted water use after two years of our previous water use history described above? What are we to do now? There is no planned water service from the city of Sequim, as far as I know. Our property is outside of their boundaries.

Mad as Hell!

Richard Brough - Founder/Owner
Tactical Solutions, LLC



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From: Patty Brueckner [REDACTED]
Sent: Saturday, July 07, 2012 12:34 PM
To: Wessel, Ann (ECY)
Subject: Formal Comment for WRIA 18

Dear Ms. Wessel:

We are extremely concerned with the impact the new in stream rule will make to our community. We believe the cost outweighs the benefits of the Rule in its current form and that a simplified solution to the Water Exchange mechanism (i.e. securing the right to use water for development) be explored. In particular, the State capital budget might support bulk purchase or long-term lease of additional in stream flow conservation (or other projects that mitigate groundwater withdrawals), obviating the need for each new permit applicant to visit a local water bank.

At this point, the rule making time line should be stopped. An independent economic study should be made. And sufficient time should be allowed for the public to be made aware of the rule and its effect on their property. It will affect property values significantly.

Recently we spoke with a woman who lives in the Lost Mountain area. They purchased their property several years ago, they put \$25,000 in drilling a well. They use the property for vacation purposes and bring a recreation vehicle here part of the year. She is extremely concerned whether she will be able to use her very expensive well once the rule is in place.

This process needs to be stopped, a new economic study done and allow the public to weigh in.

Don & Patty Brueckner
[REDACTED]

From: Hbmjbrunstad [REDACTED]
Sent: Monday, July 09, 2012 1:43 PM
To: Wessel, Ann (ECY); Wessel, Ann (ECY)
Subject: PROPOSED WATER RESOURCE MANAGEMENT PROGRAM FOR DUNGENESS WATERSHED

To: Ann Wessel, Washington State Department of Ecology

From: Harold Brunstad, Citizen

Subject: Proposed Water Resource Management Program for the Dungeness Watershed

REF: COMMENTS BY KAJ AHLBUR dated 5 July 2012

Please enter this communication as a formal comment regarding the subject proposal. I totally support and echo the questions and concerns reflected in the comments referenced above.

I have been monitoring the progress and development of the subject proposal for several months with increasing concern of its potential along with many other initiatives to continue the eradication of private property rights and land-use by state and federal natural resource agencies, often driven by the whims of anti-property rights NGO's.

Ecology has taken this issue into "territory" beyond the technical and analytical abilities of most citizens apparently in an attempt to dazzle the public and cloak the real agenda of this water resource use initiative. Mr. Ahlburg's analysis surfaces many questions and flaws in the proposed rule and suggests that the department does not understand or has lost sight of it's statutory obligations to the public and regulating limitations, even casting aside internal dissent.

These questions and concerns, along with those from other commentators, need to be addressed. Without the support of the property owners affected, this initiative should cease.

[REDACTED]

7/9/12

From: Arthur Buhrer [REDACTED]
Sent: Wednesday, July 04, 2012 8:57 AM
To: Wessel, Ann (ECY)
Subject: Wira18E rule

Dear sir or madam.

Please postpone the making of an additional law here in Clallam county until an independent study has been done.

I have been listening to the data presented and I dont think thos rule is a good fit for our County.
Sincerely,

Arthur Buhrer
[REDACTED]

From: Barb Butcher [REDACTED]
Sent: Tuesday, July 03, 2012 5:07 PM
To: Wessel, Ann (ECY)
Subject: public meeting last week

Dear Ann,

My husband and I attended the meeting last week at Sequim Community Church and after listening to testimony, and reading many e-mails and media report, we are asking for Department of Ecology to stop the process of closing our basin down. We have lived here for 43 years and want to finish out our years here.

Thank you.

BARB BUTCHER and Dennis Butcher
John L. Scott/Sequim

[REDACTED]

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Ron Calson, [REDACTED]

From: mike & barb cameron [REDACTED]
Sent: Tuesday, July 03, 2012 7:14 AM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

I wan't to express my utter discontent with Washington Dept. of Ecology for your uselessness and self serving agenda. When I needed you and asked for help because of contaminated well water (caused by an unlined manure lagoon which still exists, and overs spraying of said manure) you guys pass the buck. Both you and Clallam County are worthless. BTW, I still have high nitrates (from manure) as well do some of my neighbors. Now with the proposed water rule, you guys are crazy!! All your research on water levels was done before they began piping miles of irrigation ditches in the valley, which were the biggest water wasters. I think the science should be verified by "real" scientists, after new measurements are done. You will cripple an already anemic building industry in this area, and when you do, I'll gladly join the lawsuit since I may be one of those put out of business. Most of us in the area know that this is all about the Indians, and we are sure they are the ones who will get the checks from the meters, as well as being the ones reading them. I think you guys owe me an un-conditional, un-expiring, permit/ right to have a new well drilled to "safe" drinking water, not only this but I think Ecology and Clallam County should pay for the well since both entities are spineless jellyfish. Mike Cameron

From: pcameron [REDACTED]
Sent: Monday, July 09, 2012 2:04 PM
To: Wessel, Ann (ECY)
Subject: Emailing: My objections to the implementation of the WIRA 18 Water Rule are

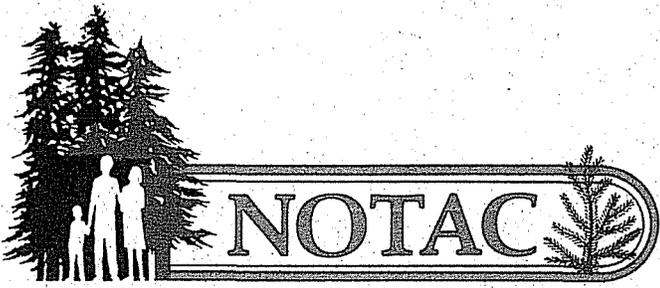
My objections to the implementation of the WIRA 18 Water Rule are below:

1. There is a lack of particulars on how the Rule will actually be implemented i.e. there are too many details left out that need to be worked out BEFORE - NOT AFTER - the Rule takes effect.
2. The science supporting this Rule does not appear to have a very good basis. Kind of reminds me of a collage class I took on "How to Lie With Statistics".
3. If you are serious about saving the fish in the Dungeness River - do what they used to do when we had lots of fish - dredge the river. This would not only get rid of the silt build up by the dike but would create a deeper channel (with pools, of course) so the river would flow better. Plus, it could supply a lot of sand/gravel to the county and other government agencies for roads/trails/etc.
4. The Water Trust group does not appear to be anywhere near ready to deal with mitigation or the development of holding ponds for recharge and/or irrigation. When asked some simple basic questions about how they will implement these programs all you get is "I don't know". Not a very satisfying response from a group that is supposed to be able to grant water rights as soon as the Rule takes effect.
5. Why aren't Johnson and Jimmiecomelately creeks in WIRA 18 as opposed to WIRA 17? Both go through the Sequim Valley and drain into Sequim Bay I also understand the WIRA 17 doesn't regulate that area but....will in the future?. Does that mean it will be regulated after future development has already taken place in that area?
6. How - with any kind of a straight face - can you allege that land without the ability to put in an exempt well has the same value as land with an existing exempt well or land that has the ability to put in an exempt well without having to "mitigate" that well? Give me a break! The loss in land values by itself would make the cost of the Rule outweigh it's benefits. Your arrogance astonishes me.
7. Since people can't sell water rights they don't use (5,000gal/day minus actual water used) because ecology says the unused water rights have already been relinquished, where are all the water rights going to come from for people who want water for their future homes/gardens? Additionally, since Ecology alleges almost every home owner in the valley has already relinquished unused water rights and the Water Users/ditch companies/districts have also relinquished a substantial number of water rights, doesn't that mean that the actual number of allocated water rights that exist are far less than the number of allocated water rights that exist on paper?

8. I can't believe the projected 0.7 to 2 cfs for all future development/houses in the Sequim Valley is going to affect a single fish!

9. If perforated pipes had been placed alongside the solid pipes when numerous ditch companies/districts enclosed their open ditches, water could have been put back into the aquifers during the high water months thereby preventing the wells in the valley from ever going dry. Why was Ecology in such a rush to pipe the ditches that they didn't do a test with the double pipes in Carlsborg as was considered at one time or just have the ditch companies/districts install the double pipes when they piped the ditches. Now Ecology mentions perforated pipes again. Kind of like shutting the barn door after the horse is gone. Ecology always seems to be in a rush to get things done without considering actual/all possible future consequences and that there might be a better way.

Pamela Cameron
Sequim, WA



NORTH OLYMPIC TIMBER ACTION COMMITTEE
P.O. Box 1057 • Port Angeles, WA 98362 • (360) 452-6645 • FAX (360) 452-0718

Department of Ecology

Bellingham Field Office

Attn: Ann Wessel

1440 10th St Suite 102

Bellingham, WA. 98225

June 28, 2012

To Whom It May Concern;

The North Olympic Timber Action Committee has concerns regarding the Dungeness WRIA18 East Rule because of the impact this rule would have on the citizens and economy of Clallam County.. This is a complex issue! You have published mounds of data but few examples that would inform property owners of the real impacts to their property.

1. Who will be able to sell back water rights to the water mitigation bank today and into the future?
2. Your benefits vs; costs analysis should be more transparent.. Explain your costs and corresponding benefits such as: How many more fish will be in the river and at what cost? What happens to property values between the water haves and have nots? How many fish are in the Dungeness today and what are your projections in 5-10-20 years?
3. DOE mentions the term "timely & reasonable". What rule or person defines this term?
4. What storage options has DOE considered?

5. What is the DOE analysis of recharge contribution to the watershed from septic systems and outside watering?
6. Exempt wells that are drilled and capped should be exempted from this rule.
7. What are the impacts of using different control point gages? USFS gage vs. Ecology gage and how well do the in stream flow gages represent the flows in the rest of the river?
8. What are the projected administrative costs of the water bank and if there are profits where would they go? How much will it cost to purchase a water right? NOTAC is uncomfortable with the water bank administering water allocations as a non profit, unelected board that does not represent the citizens of Clallam County.

The Department of Ecology needs to do more public outreach to inform the public that will be impacted by the proposed rule. This is too complex an issue to presume that if only a few have commented that the rest are not concerned. The North Olympic Timber Action Committee is asking the Department of Ecology to delay the final rule until there has been more outreach to the affected landowners.

Respectfully,

A handwritten signature in black ink that reads "Carol Johnson". The signature is written in a cursive, flowing style.

Carol Johnson

Executive Director

From: NOTAC [REDACTED]
Sent: Friday, July 06, 2012 1:39 PM
To: Wessel, Ann (ECY)
[REDACTED]
Subject: W18 Dungeness East rule

Dear Ms. Wessel;

The North Olympic Timber Action Committee has already commented from the June 28th meeting. We are sending a comment in support of the comments made by the Clallam County Board of Commissioners.

We have concerns about your cost/benefit analysis, metering, the water bank and the fact that DOE finds it necessary to close the basin. We do not see the need to mitigate for water when it is a fact that area residents have a history of reduced water use over decades and combined with the small impact of new water use, your actions are indefensible. As one of your own employees said "This rule is way too over-engineered!

Future water needs can be met by educating the public about water conservation and by providing incentives for low flow plumbing in new homes and remodels. Your timeline should be delayed until after the first of the year 2013.

Respectfully,

Carol Johnson
Executive Director

From: Greg R Carroll [REDACTED]
Sent: Saturday, July 07, 2012 8:56 PM
To: Wessel, Ann (ECY)
Subject: Comment on proposed Sequim area water well restrictions

To whom it concerns at Ecology:

My wife and I would both like to voice our VERY strong opposition to your proposed restrictions on water wells here in the Sequim area.

Your ideas make absolutely no sense at all and smacks of nothing but wacked out enviro extremism. Unless you can repeal the law of gravity there is no way my well or any other well in the future that is drawing water some 75-100 feet below the bottom of the Dungeness River bed can have ANY impact on the water flow levels of the river. Please don't insult my intelligence with your nonsense.

To outlaw outside well water use will mean landscaping on new construction will be extremely limited. We built our house in this area eight years ago and I can assure you that without watering our landscaping virtually non of it would survive since Sequim only gets about 12-15 inches of rain each year. But there is plenty of water flowing down the river from the snow melt year round.

This will have a negative impact on existing land. Just recently we learned of a vacant 1.8 acre lot on our own street that a couple from outside of Washington purchased several years ago with the intention of building a home and retiring here soon. But upon hearing of the coming restrictions they have decided to sell and locate elsewhere.

Now, we would not be directly impacted by this law, but I'm betting like the sun rises in the east that within a few years you people will be wanting to meter and restrict ALL existing wells, not just new ones. But the point is anyway, that your proposals are eminently unfair and harsh on existing landowners who may be looking to build in the future. And what will all this accomplish in the real world - absolutely NOTHING of any productive or useful purpose.

And the idea of selling water rights in order to drill a well is nothing but a clear-cut government money grab, plain and simple. We're sick of the government at all levels bleeding us dry. Enough is enough. You people in the government are like my dog and her food. No matter how much food the dog gets it's not enough, and with you government busy-bodies no matter how much money you get it's never enough. Could you please do something productive for society for a change instead of harassing us hard working, tax paying citizens with our own money.

Two concerned & fed-up citizens,

Greg & Joanna Carroll
Sequim, WA

From: parealty [REDACTED]
Sent: Thursday, June 07, 2012 1:18 PM
To: Wessel, Ann (ECY)
Subject: No Benefit to Dungeness Watershed

In the 1940's, there were 949 farms with milk cows, in the Sequim-Dungeness Valley. The irrigation was flood irrigation, with high withdrawals off the Dungeness River. Yet, there were plenty of fish. Even with the increase in population, the amount of water pulled from the Dungeness River now is FAR less than what was used in previous times.

There have been many water rights that have been relinquished, from the Dungeness River, Matriotti Creek, Sieberts Creek, Casselary Creek, and more. In addition, the Water Users' Association (Irrigators) use far less water than they did in the past. The Dungeness Watershed is NOT over-allocated (except on paper). There is no reason to close this basin.

Ecology's Cost-Benefit Analysis says that 457 mobile homes in the area "would build a permanent house on site in the next five years..." And, would thus, use more water. These homes ARE permanent homes! And, even if they would change to site-built homes, the family size would remain the same, as would the water usage.

One of the main reasons for this Water Management Rule, is the threat of a lawsuit, or lawsuits. The estimate of the predicated lawsuit is a 14.1-27.7 percent predictability. We are going to cost the residents of the Eastern portion of Clallam County a major hit to their rural quality of life, an increase in county and state enforcement personnel, the expense of a new Water Exchange bureaucracy, mitigation and metering costs, and a reduction in the value of raw land, for a less than 30% chance of a lawsuit? It seems to me that, with the Rule, there will be lawsuits, by those whose property has been devalued, due to lower water use availability, the costs, and the chance that there might be no outside water available.

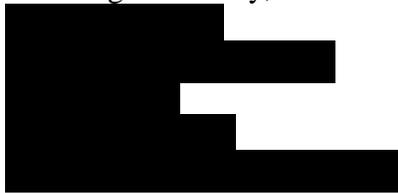
Ecology's Cost-Benefit Analysis says that 6.2% of the people in the Dungeness Watershed would have to "forego outside water use." Because these are properties above the irrigation diversions, and possibly, properties in the Bagley Creek and Casselary sub-basins, I think this figure will be higher. In addition, most of these properties do not have access to irrigation water. This will cause a dramatic reduction in the value of properties, in these areas. The CBA says that the impact is \$1,000 per household. In reality, it is much more. There is no reason, in a rural

area, that those properties will be purchased by a Buyer, when there are other properties that allow outside water use. Gardens, berries, orchards, etc., are highly valued, in our rural communities.

To say that this Rule will be a huge benefit to the Dungeness Watershed community is a fallacy. Currently, properties are able to have wells drilled, and to use them. There is no reason to close our basin, as we are using less and less water, all the time. Irrigation/Agricultural water was the biggest water use, in the past. The irrigators have cut their water usage dramatically. The entire impact of all the permit exempt wells is very small. The Cost-Benefit Analysis is not a true picture of what is occurring in our Valley.

Please listen to the local people, and do not force this upon our community. It is unnecessary.

Sharon H. Case
Office Manager
Port Angeles Realty, Inc.



From: ron casscles [REDACTED]
Sent: Thursday, May 10, 2012 9:24 PM
To: Wessel, Ann (ECY)
Cc: Dave Croonquist
Subject: Dungeness Proposed Rule Comments

Just what part of Russia in Eastern Clallam County? Where do you people have the right to even think of this kind of stuff. I suppose the Tribes will be able to have all the water they need to do whatever they want to use it for. We use about 1-2 % of the available water in the valley and you people are just looking for a way to bring more government rags into our lives. you all need to get a life. I have a well and have had one for some time, you say it will not effect me, I don't believe you. Down the road you will want more, Big Government always does. I will not be here for the BIG meeting, but I think you get my drift on my feeling on this issue. Ronald J Casscles, Sequim.



CLALLAM COUNTY
Department of Community Development
County Courthouse
223 E. 4th St., Suite 5
Port Angeles, WA 98362-3015
Phone: (360) 417-2323
Fax: (360) 417-2443

smiller@co.clallam.wa.us

Sheila Roark Miller, Director

June 15, 2012

Ms. Ann Wessel
Department of Ecology
PO Box 47775
Olympia WA 98504-7775

RE: Economic Analysis - Water Resource Management Program WRIA 18

On June 5, 2012, at the Local Leaders Work Group, you asked that I submit my comments in writing:

LOGISTICS:

- Include an Appendix to qualify the terms, definitions, while making it more user friendly for the common person.
- Use the correct references, concerning new homes and manufactured homes. Those figures were provided by the Clallam County Community Development Permit Center.

PRINCIPLE:

- Compare the economic value per fish, to that of **saving family wage jobs**, specifically in the construction industry. These citizens will be affected if water is not available for new construction.
- Several land-dependent occupations are affected economically by this proposed rule. Lending institutions, realtors, septic designers, well drillers and contractors, to name a few.
- Land owners, stemming back as far as the 1800's are affected by the rule. Many expect their great-grand children to move onto their property to assist them as they age. Some expect to pass on acreage as part of an estate, or to sell parcels to support their retirement, but will be economically encumbered by the increased cost of purchasing a mitigated water right.
- Many families are moving into this area to help support farming. Through a home based industry or through Sequim's Lavender tourism, they are part of a group that sells farm-related products (soaps, oils, wreaths and other products), encouraging a lifestyle specific to this region.

My office is concerned about the numerous Short Plats that were approved based on ONE well that established the availability of water to the numerous, vacant parcels of land that were legally developed.

- What about the legal costs that we may incur, should these land divisions be challenged due to sub basin closures?
- What about the loss of a tax base, due the drop in assessment values?

That a State DOE Economist agreed that there is no economic benefit to the proposed Dungeness Water Rule, only enforces the belief that the State Department of Ecology is deceiving Clallam County citizens.

Sincerely,

A handwritten signature in cursive script that reads "Smiller".

Sheila Roark Miller
Elected Official

cc

DEPARTMENT OF COMMUNITY DEVELOPMENT
CLALLAM COUNTY COURTHOUSE
223 E. 4TH ST, SUITE 5
PORT ANGELES, WA 98362

Ann Wessel

Economic Analysis

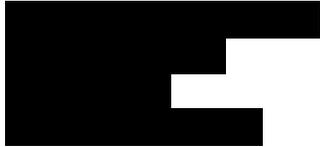
From: Masill, Keith [REDACTED]
Sent: Monday, July 09, 2012 2:53 PM
To: Wessel, Ann (ECY)
Cc: Suzanne Skinner [REDACTED]
Subject: Comments to proposed Dungeness rule

Hello Ann,

I would first off like to thank you and your staff for being so generous with your time in responding to my many questions about the proposed rule. I have attached CELP's comments to the proposed rule to this email. Please let me know if you have any trouble viewing this email or the attached pdf. I look forward to your response and again thank you for your time.

Sincerely,

Keith Masill
Center for Environmental Law and Policy (CELP)





CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

Ms. Ann Wessel
Instream Flow Rule Lead
Department of Ecology
1440 10th St., Suite 102
Bellingham, WA 98225
Phone: 360 715-5215
Via E-mail: ann.wessel@ecy.wa.gov

Re: Proposed Chapter 173-518 Washington Administrative Code: Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18.

Thank you for the opportunity to comment on the proposed Dungeness Instream Flow rule.

The Center for Environmental Law and Policy (CELP) is a Washington non-profit conservation organization devoted to ensuring clean, flowing waters for the state. CELP has long advocated for the adoption of an instream flow and water management rule for the Dungeness River basin. CELP thanks the stakeholders in the Dungeness River basin and the Department of Ecology for the long hours devoted to developing the proposed rule. Given the imperiled state of many rivers and streams in Washington it is encouraging to see a draft rule for the Dungeness published.

CELP strongly supports the adoption of an instream flow rule that not only protects, but also restores and replenishes the Dungeness basin and associated aquifers. The proposed rule must be amended to achieve those essential goals. CELP applauds the surface water closures and the minimum flow levels set under the proposed rule. However, CELP objects strenuously to the creation of reserves of water for domestic use when mitigation is not available, and the setting of so-called maximum depletion amounts for consumptive uses both from the reserves and mitigation plans. The reservations and the maximum depletion amounts undermine the very purpose of the rule: setting instream flows which Ecology itself defines as the “stream flow (amount of water) that must remain in the stream at a specified location and at a specified time to protect instream values.” Department of Ecology, *Workplan for Instream Flow Setting Through 2010*, (2002) at 2.

CELP recognizes the tremendous pressure that Ecology and local government are under to find more water for domestic uses in the Dungeness. The greater Sequim area has experienced a 32% population increase since 2000. However, the population will continue to increase, and the proposed reserves, if adopted, will soon be used up. When that happens Ecology and local government will face renewed pressure to create additional reserves—as recent developments in the Skagit River basin prove. Reserves do nothing more than kick the can of dealing with water shortages down the road at significant cost to the sustainability of our water resources.

The impact of the reserves and the maximum depletion amounts on the waters and the fish of the Dungeness river basin will be significant. The basin is home to four species of salmonids listed under the Endangered Species Act (ESA) and the precipitous decline of flows in the basin is the fundamental cause for the listing. In 1899-1901, the average September flow in the lower Dungeness River was 200 to 225 cubic feet per second (cfs) at river mile 0.9. Caldwell and Beecher, *Instream Flows for the Dungeness River* (WDFW and Department of Ecology). Since then, irrigation and development have done significant damage to flows. In 2000-2011, average monthly flow in September averaged *only* 113 cfs at river mile 0.8 (with that average increased due to high flows of 212 cfs in 2010 and 222 cfs in 2011, two very wet summers). In short, current average September flow in the Dungeness falls far below the minimum flow level set in the proposed rule. Plainly, the water resources of the Dungeness are imperiled. Yet, in the name of political compromise and consensus, the proposed rule allows further consumptive use from this water-short basin.

In summary, CELP is very concerned that the proposed rule, as presently configured, does not (1) sufficiently protect the Dungeness from further degradation; (2) adequately consider changes to the basin occurring since the completion of the draft instream flow in 2010; and (3) provide protections and habitat enhancements required to conserve¹ the river's four Endangered Species Act (ESA) listed salmonids. 16 U.S.C. 1532(3).

Specific Comments

WAC 175-518-010 General Provisions

Subsection(3)

The rule, as proposed, exempts yet undeveloped parcels that are part of a group domestic if one parcel has put water to beneficial use. Subdivisions, or portions of subdivisions, based upon permit exempt wells or private water systems in which water has not been put to use should not receive a five-year exemption from the rule. *Dep't. of Ecology v. Theodoratos*, 135 Wn.2d 582, 957 P.2d 1241 (1998) requires actual beneficial use of water, not a demonstration of system capacity, to secure a water right certificate. Therefore, for a subdivision based upon a permit exempt well or private water system, the use associated with each new residence should only obtain a priority date once beneficial use begins.

Subsection(4)

The water problems of the Dungeness and WRIA 18 are not just the concern of local residents. The Dungeness and the Elwha rivers are cherished regionally, nationally, and internationally. Both rivers are essential to the health of Puget Sound and the Strait of Juan de Fuca. Nothing could make the importance of the rivers of WRIA 18 clearer than the national and international attention focused on the removal of dams from the Elwha River. Therefore, while watershed plans may express some component of the public interest, the locally developed watershed plan is not the sole expression of the public's interest in the river, nor does the plan fulfill the state's

¹ Ecology is well aware that the state's ESA obligations to "conserve" the Dungeness basin's listed salmonids require "all methods and procedures which are necessary to bring any endangered or threatened species to the point" where ESA protections are no longer necessary. 16 U.S.C. 1532(3).

public trust obligation to protect the public's interest in returning adequate instream flows to the Dungeness. The state's trust obligation to protect the public's interest in instream environmental values limits the state's authority to diminish or impair minimum flows. *In the Matter of Water Appeals*, PCHB Nos. 90-08 et seq. (1996) (“[T]he water code, by recognizing the waters of the state belong to the public and acknowledging the state acts as the trustee for the public in regulating the use of those waters . . .”); *See also Weden v. San Juan Cty.*, 135 Wn.2d 678, 698, 958 P.2d 273, 283 (1998) (quoting Ralph W. Johnson, et al., *The Public Trust Doctrine and Coastal Zone Management in Washington State*, 67 Wash. L. Rev. 521, 524 (1992)); *Orion Corp. v. State*, 109 Wn.2d 621, 640–41, 747 P.2d 1062, 1073 (1987) (Washington courts have recognized new public trust interests in keeping with evolving public need). In disregard of its trust duties—for the sake of political compromise—Ecology proposes to allow new consumptive uses—even if not fully mitigated—in spite of the fact that the very minimum flows the rule establishes remain unmet. The state's duty as trustee of public waters constrains Ecology from giving away trust resources to private users by waiving impairment of instream flows by establishing reserves that are not fully mitigated and maximum depletion amounts. *See, Rettkowski v. Dep't of Ecology*, 122 Wn.2d 219, 232, 858 P.2d 232, 239 (1993).

WAC 173-518-030 Definitions

“Critical Period”

The definition of critical period is wholly inadequate in the proposed rule. There are many important fish species in the Dungeness and all species have several critical life stages: spawning, rearing, and migration, to name a few. The critical life stages of the various species in the basin generally persist for more than thirty days and can vary greatly. For example, Chinook are considered to be spawning throughout August and September; Steelhead spawn from February through June; and Bull Trout spawn from September through November. P.L. Wampler and J.M. Hiss, *Fish Habitat Analysis for the Dungeness River Using the Instream Flow Incremental Methodology*, U.S. Fish and Wildlife Service, Western Washington Fishery Resource Office, Olympia, WA (1991). It is unclear why the “critical period” is limited to thirty days when scientific evidence clearly indicates that critical periods almost always persist for longer than thirty days. The definition of critical period should be amended in the final rule to include all the critical life stages, for their full duration, of the important species of the Dungeness. Moreover, the definition of “critical period” is difficult if not impossible to apply accurately since by its terms it applies to the thirty day period with the “lowest stream flow available”: a judgment that can only be made with hindsight once the low flow period is over.

“Instream flows”

The equating of “base flow” and “instream flow” confuses hydrology with regulatory terminology and misstates the law. The reference in RCW 90.54 to “base flows” makes clear that base flows are different from minimum instream flows or instream flows, by stating, in pertinent part, as follows:

(3) The quality of the natural environment shall be protected and, where possible, *enhanced* as follows:

(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, and aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their

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natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

RCW 90.54.020(3)(a) (emphasis added).

Base flows are therefore “natural” flows which the state is obliged to retain, to sustain, and, where possible, enhance wildlife, environmental, and aesthetic purposes. Base flows can enhance where the purpose of minimum flows is to protect. Instream flow rules take into account use both by wildlife and humans, and do not necessarily mimic natural flows. Instream flows, as the name of their authorizing statute—the Minimum Flow Act— suggests, are (or at least should be) set at levels absolutely necessary to protect salmon and other wildlife. Hence, instream flows may be less than base flows.

In short, by conflating these two terms Ecology is rewriting the Legislature’s purposeful use of two different terms in two different statutes, and the proposed rule should be amended accordingly.

“Mitigation”

The definition of “mitigation” in the proposed rule means “action taken to offset impacts”...“on closed surface water bodies or senior water rights...” The proposed language is unacceptably vague, and fails to prevent detriment to the public interest. To protect the public interest, any action purporting to constitute mitigation must *fully* replace the newly appropriated water in-quantity, in-quality, in-time, and in-place: bucket for bucket and drop for drop. “Action...to offset impacts” simply expresses the intent to mitigate, it does not promise delivery of full mitigation.

Moreover, the definition for “mitigation” in the proposed rule differs from the definition Ecology uses for mitigation in its draft mitigation policy (Final Draft 1/17/12—Water Resources Policy—POL-xxx, Evaluating Mitigation Plans).² It is not clear why Ecology proposes to use two different definitions of the term mitigation and what the differences might be in how those definitions are applied.

“Timely and reasonable”

See comments for WAC 173-518-070 below.

WAC 173-518-060 Metering

Ecology very wisely incorporates metering into the Dungeness rule. Metering, which of course is common to all municipal water users, encourages conservation by informing users of how much water they are using. Being able to track withdrawals is critical in an area like the Dungeness where the water resource is in short supply. However, the rule should also reiterate the metering requirements of RCW 90.03.360 and court orders as they pertain to existing water users in this fish-critical basin.

² “‘Mitigation’ means measures that offset adverse effects on a water source to eliminate impairment and/or detriment to the public interest.”

Additionally, the rule should be amended to require mitigation that matches the consumptive use as indicated by a meter. The rule should also set penalties for those who exceed their amount of mitigated consumptive use. Metering is a tool that can and should be used to ensure that water in excess of the mitigated amount is not being withdrawn.

WAC 173-518-070 Future Groundwater Appropriations

Subsection (2)

CELP commends Ecology for encouraging, as the first option for new water, hook-up to a public water system, and for requiring written evidence when hook-up is not “timely and reasonable.” However, the term “timely and reasonable manner” is neither clearly defined nor linked directly to any guidance provided by the Department of Health. “Timely and reasonable” is only statutorily defined in relation to counties that have a Coordinated Water System Plan in place. RCW 70.116.060(3)(b) defines “timely and reasonable as follows: “[a]n existing purveyor is unable to provide the service in a timely and reasonable manner if the water cannot be provided to an applicant for water within on hundred and twenty days unless specified otherwise by local legislative authority.” If Ecology is referencing this provision, it should be stated with specificity in the rule.

In the alternative, if Ecology intends to leave the determination of “timely and reasonable” up to the County, then this provision fails to provide the public guidance on the term’s application. This lack of guidance could mean that permit exempt wells are issued based on nothing more than the mere assertion that the time or cost of hook-up exceeds that of installing a well, even if the potential user is located within an existing water district and service is available. Such fuzzy language inevitably will not protect the public’s interest in reducing consumptive uses of Dungeness basin water, and is likely to make drilling new wells the fall back every time a prospective applicant finds the process for hook-up to be burdensome. The definition of “timely and reasonable manner” should be amended in the final rule to avoid complications in this section’s implementation.

Subsection (2)

The proposed rule provides that a new permit exempt withdrawal when added to an existing domestic system will be considered an additional and separate exemption. What also should be noted is that the priority date for that new permit exempt withdrawal is the date of beneficial use and that the exemption will be subject to the instream flow rule.

Subsection (3) generally

CELP is concerned about Ecology’s too-hearty embrace of mitigation in closed basins or where instream flows are unmet. We should be restoring flows to levels sustainable for fish and people. Mitigation is theoretically possible only if sufficient in time, quantity, quality, and location.

Subsection 3(c)

This subsection allows a new use in a closed subbasin if the proponent can show no adverse effect. The problem is that the reason that the subbasin is closed is that it is already water-short and suffering the adverse effects of too little water. Closed should mean closed to any and all new consumptive uses—if not fully mitigated—until we restore enough water to the Dungeness and its side channels to meet the flow numbers established in the rule.

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Turning to the specifics of section 3(c), Ecology provides no guidance on what kind of showing or data it will require to demonstrate no adverse effect. The groundwater modeling prepared for the basin is insufficient: it is designed to analyze hydrological systems, not predict the impact of a single use over time. More specific analysis is required.

Furthermore, a new user should not only address the impact of his or her proposed use, but the cumulative impact of other individual users. Without assessing cumulative impacts, particularly in low flow periods, subsection (3)(c) fails to protect closed waters from the adverse effects of further withdrawals.

Finally, given that we know that climate change will significantly reduce recharge from snow melt, Ecology should apply the precautionary principle and assess any new proposed use against the likelihood of reduced recharge over the next few decades.

WAC 173-518-075 Mitigation Plans

Subsection (2)

Tightening of the requirements for a mitigation plan is essential. The rule currently states a “mitigation plan must show that the proposed new water withdrawal with mitigation in place will not: 1) Impair existing water rights; 2) Be detrimental to the public interest.... OR 3) Result in a net loss of water from a closed source greater than the applicable maximum depletion amounts.” “[O]r” must be changed to “and.” Each of these three subparts of this section must be met, not simply one of them, to constitute mitigation that not result in loss or harm to an already water-short system.

Moreover, the term “result in a net loss of water from a closed source” should be replaced with “consume water from a closed source.” Any consumptive use of water from a closed source has an adverse impact on that source and should be prohibited. The purpose of closing a water source is to protect it from further appropriation. Changing the rule to read “consume water from a closed source” would more be more likely to accomplish that objective.

WAC 173-518-076 Expedited Processing

Ecology should not be expediting the processing of a water permit application or request that is *expected* to “fully offset the impacts to surface water.” Expedited processing is only warranted for applications or requests that return water to the basin, as set forth in subsections (2) and (3). Any water permit application or request that is only expected to fully offset impacts to surface waters should receive the same level of scrutiny as any other water permit application. There is too much uncertainty to the art of assessing impacts to surface water to allow expedited processing, especially weighed against the risk of exacerbating the insufficient flows throughout the Dungeness basin. Subsection (1) should be deleted from the final rule.

WAC 173-518-080 Reserves of Water for Domestic Use

CELP strenuously objects to Ecology’s current interpretation of “overriding concerns of public interest” (OCPI) as the basis for the creation of so-called reserves of water for new homes—which may not be or cannot be properly mitigated—for short-term, localized economic gain. Applying OCPI to the proposed Dungeness reserves allows the exception to be used for private

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interests: namely, new wells for private development. Ecology's current interpretation of the rule raises the question: if private development can be asserted to be a public interest, what remains as a "private" interest under Ecology's interpretation? CELP urges Ecology to return to the definition of OCPI it defended in *Auburn v. Department of Ecology*. PCHB No. 96-091 (1996).

It is not in the public interest to further deplete already over-appropriated stream systems, and it is certainly not an *overriding* public interest. The proposed reserves allow consumptive use of water for domestic use irrespective of instream flow levels or closures established by the rule. The rationale for turning this rule into Swiss cheese is the generalized economic benefits of continued residential growth fueled by permit exempt wells from the proposed reservations. The relied upon economic analysis of development gain and fish losses for the Dungeness is localized. By contrast, the viability of the commercial fisheries—which are heavily dependent on the region's rivers—in Washington and British Columbia is of international concern. Ecology acknowledges that creating reserves in the Dungeness means the Dungeness will support less fish. As insupportable as this is in the Dungeness, the impact of this policy extends regionally. If the Dungeness instream flow rule becomes final containing reserves, Ecology will be hard-pressed not to incorporate reserves into every new instream flow rule it proposes, and, under some circumstances, to amend existing rules to add reserves. What Ecology's economic analysis fails to consider is the cumulative impact of diminished fish viability in rivers throughout Washington on the commercial fishery regionally. Moreover, the impact of the fishery cannot be measured wholly in dollars and cents: an imperative consideration is the central role of fisheries in the culture and viability of the region's tribes.

Additionally, it is inappropriate, if not legally foolhardy, to weigh localized economic benefit against the endangered Chinook, Chum, Steelhead, and Bull Trout in the Dungeness basin. WDFW has long recognized that "[i]t is logical that increased stream flow results in increased production of anadromous salmonids." Hal Beecher, *Low Streamflow and Steelhead Production*, Washington Department of Fish and Wildlife (1979). The converse is also logical; decreased stream flow results in decreased numbers of salmon and trout. CELP is very concerned that an ESA violation could arise from allowing reserves that would allow taking more water out of the main stem Dungeness and its side channels, without water for water mitigation at the same time and location and of the same quantity and quality, when current flow levels frequently fall substantially below the levels recommended in the rule. The likely loss of flow and habitat accompanying implementation of the reserves could give rise to a potential ESA violation for failing to "resolve water resource issues in concert with the conservation of endangered species." 16 U.S.C. 1531(c)(2); 16 U.S.C. § 1532(3).³

The section on reserves should be deleted from the final rule.

Subsection (3)

³ For all the controversy about the so-called avoided legal costs in Ecology's cost benefit analysis for the proposed rule, the state's avoided risk of an ESA violation by establishing truly protective instream flow rules is a consideration that supports the setting of the rule.

This section should read: ...ecology *shall* take action under WAC 173-518-110, not “may take action...” If the reserves are to be implemented then Ecology needs to ensure that compliance is mandatory.

Subsection (5)

Ecology’s method for debiting against the reserves is flawed. Neither Ecology, nor anyone else in Washington State, has comprehensively assessed ongoing consumptive uses in the Dungeness basin. Ecology bases its consumptive use assumptions on a USGS study conducted in the Great Lakes area. See Kimberly H. Shaffer and Donna L. Runkle, *Consumptive Water-Use Coefficients for the Great Lakes Basin and Climatically Similar Areas*, pubs.usgs.gov/sir/2007/5197/pdf/SIR2007-5197_body_ptl.pdf [hereinafter USGS study] (indicating as a median a 15% consumptive use coefficient for areas climatically similar to the Great Lakes basin and 20% consumptive use as the 75th percentile). Ecology’s reliance on the 15 gpd, representing the use of a coefficient in the 25th percentile is too liberal; at a minimum, 22.5 gpd, or 20% consumptive use, would be more scientifically sound. *Id.*

Use of caution in calculation of consumptive use is not only realistic, it is required. Ecology after all is not obliged by law to permit new uses where, as in the Dungeness, there is no un-appropriated water, the new uses conflict with existing rights, or if the new uses *threaten* to prove detrimental to the public interest. RCW 90.03.290(3) (emphasis added). The Legislature’s use of the word “threaten” calls for Ecology to invoke the precautionary principle in using consumptive use calculations to “find” new water, which is consistent with the agency’s duty to retain “waters within streams and lakes in sufficient quantity and quality to protect instream and natural values and rights.” RCW 90.03.005.

WAC 173-518-085 Maximum depletion amounts

Subsection (3)

The first flaw in this subsection is its incorporation of the draft rule’s definition of “critical period.” As stated above under WAC 173-518-030, the current definition reflects neither reality nor the biology of the seven principal fish species in the Dungeness basin. Because of the truncated, arbitrary definition of critical period, the limit on maximum depletion in the proposed rule is far too short to protect the seven important Dungeness fish species.

Finally, subsection (3) should be amended to make clear no new uses in excess of the maximum depletion amounts will be allowed, and any new uses later discovered to be in excess of the depletion amounts will be terminated, if not fully mitigated with water for water mitigation at the same time and location, and of the same quality and quantity.

Subsection 4(a)-(c)

As mentioned in, and in addition to, the comments to WAC 173-518-080(5)(a), CELP opposes the use of a 10% coefficient for indoor domestic use of water served by an individual or community on-site septic system and the use of a 90% coefficient for outdoor water use. First, the indoor domestic use should initially be set at a minimum of 15% and should be re-evaluated if new studies or a change in circumstances warrant.

Second, outdoor water use should be assumed to be 100% consumptive. The 100% coefficient is supported by the USGS study based on its coefficients for irrigation and livestock. Additionally,

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a 100% coefficient is justified because it encourages water conservation by irrigators; nothing less than 100% efficiency in irrigation should be tolerated in an over-appropriated basin.

Third, CELP is very concerned about using "return flow" from septic systems to justify pumping more ground water from over-allocated groundwater systems. Septic return flow does not necessarily return to the same groundwater source from which household water was originally pumped, and frequently is returned in substantially lesser quality.

Therefore, Ecology should use the more conservative numbers presented in the USGS study because the basin is already over-appropriated and "return flow" from septic systems and irrigation is not a guarantee.

WAC 173-518-095 Storage Projects

This provision allows Ecology to authorize storage projects for "environmental enhancement and other beneficial uses." This open-ended authorization undermines the incentives to find mitigation water to accomplish the purposes of the rule. It is in the public's interest to rely on conservation and mitigation measures to restore flows to the river; storage projects are massively expensive, by comparison, for each drop of water captured. This provision should be rewritten to require that all opportunities for conservation are fully exploited and implemented before Ecology and local governments turn to additional storage, especially if additional storage is achieved by dams. Dams have consistently been shown to have adverse effects on wildlife and the surrounding ecosystem as a whole. Given the imperiled state of several ESA listed species in the watershed, the effect of any storage project on salmonids should be at the forefront of what shall be considered if the implementation of a storage project becomes a consideration.

WAC 173-518-100 Lakes and Ponds

The title of this subsection misleadingly gives the impression that RCW 90.54.020(3)(a) applies only to lakes and ponds. Ecology's duty under the statute is to enhance rivers and streams, where possible, which the reservations set forth in the proposed rule do not.

WAC 173-518-110 Compliance and Enforcement

Subsection (2)(a)

Ecology is a regulator, tasked to protect the state's waters. It is wholly inappropriate for Ecology to limit its ability to enforce, without resort to voluntary compliance, to "egregious cases," an undefined term with no basis in statute. Undoubtedly, if that language remains in the final rule, Ecology will be constrained from enforcing against an impairment of instream flows because the violation was not sufficiently harmful to be egregious or the overtures at procuring compliance inadequate. Ecology always has the discretion to seek voluntary compliance. Its enforcement authority should not be limited by rule.

Finally, CELP notes that repeated legislative cuts have significantly diminished Ecology's enforcement capabilities and efforts. Absent funding for Ecology's employment of a dedicated full time water master for WRIA 18, the proposed compliance and enforcement provisions are likely to prove toothless. We therefore recommend that a private right of action to enforce violations of instream flows be established, with an attendant attorney's fee provision.

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In closing, CELP supports the closures and instream flows in the proposed rule. CELP, however, objects to the proposed reserves as they will, if enacted, exacerbate the over-appropriation of the basin. The reserves, if used, will further degrade habitat critical to a number of commercially and culturally significant species of fish, and fail to meet the mandate of "conservation" under the ESA. Additionally, CELP supports the use of the median coefficients found in the USGS study to measure consumptive use, anything less could fail to offset the inevitable habitat loss resulting from the implementation of the rule.

CELP strongly encourages Ecology to strengthen the rule and meet its obligations to the public by incorporating the aforementioned revisions in the rule.

Very Truly Yours,

THE CENTER FOR ENVIRONMENTAL LAW AND POLICY



Suzanne Skinner, Executive Director



Keith Masill, Intern

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From: Elaine Chandler [REDACTED]
Sent: Saturday, July 07, 2012 6:57 PM
To: Wessel, Ann (ECY)
Cc: Jim McEntire; [REDACTED] Tharinger, Steve; [REDACTED]
[REDACTED] Dick Pilling
Subject: WIRA 18

Dear Ms. Wessel,

My husband and I were among the 300 concerned citizens in Sequim, June 28 who attended your WIRA 18 presentation that proposes weighty, and considerable limitations on water usage in our region.

We see these limitations as adversely impacting development and land values which in turn will decrease business and real estate tax bases. Your proposal does not take into account the effect on the local economy and the high cost of likely litigation because what you propose is a "taking" of land, an infringement upon our Constitutional rights that will lead to lawsuits to defend those rights.

We also are aware from the article in the Sequim Gazette, that your proposal to mitigate water rights does not meet the criteria of having a benefit that outweighs the expense and is therefore in violation of Washington statutory requirements. And it seems that water banking is not authorized by any statute. Your own economist, Tryg Hoff, argued that the costs of the rule by far outweighs any benefits. In Hoff's opinion, the rule "will probably save less than 1 CFS of water from the rivers and streams throughout the watershed (over a 20 year period)." When Mr. Hoff expressed his concerns, according to DOE emails, he was transferred to another department after first being pressured by his supervisors to ignore scientific evidence and the law.

The proposed rules are flawed legally, are illogical, and of a punitive nature. They smack of an anti-development policy on the part of the DOE. You will need to clarify for us and for our elected officials the logic, lawfulness and benefits of these rules by having a thorough, independent economic study done before proceeding any further. You tie everything in your rules to stream flow which is strictly surface runoff whereas well water comes from the aquifer; therefore we also think you should have an independent peer review of the science purported to be the basis of these rules before proceeding.

Sincerely,

Elaine and George Chandler
[REDACTED]

My name is George Chandler, [REDACTED]

I am very troubled by the comments in the emails that were referenced in the Sequim Gazette article of June 6. I have requested and received copies of the those emails, over 1,700 pages of what I call "duck and cover" by certain members of the Department of Ecology. It is obvious that your department was seeking a certain "outcome" and when the the individual assigned the responsibility to do the cost-benefit analysis could not provide your predetermined outcome, you applied enough pressure that the individual "asked" to be reassigned. Having spend more that 30 years in positions of management in the private sector, I assure you that your methods were somewhat juvenile and obvious that you need a training session on how to conduct an employee exit.

It is obvious from the emails that your proposed rule is in violation of the state rule requiring that probable benefits of the rule are greater that its probable costs. Are you prepared to stand here this day and put your name on a proposal that you know is in violation of the state rule?

I quote from one email; " Is there a need for mitigation in this basin? No one has evaluated this except activists that say yes, you must mitigate everywhere. All the time! For every reason! This is nonsense, and overstepping our regulatory trust to make good judgement calls. The Dungeness basin is NOT a closed basin. ----You should only pull out the regulatory stick if you can prove that regulation is necessary to stop a runaway train. The fact is that there is plenty of legal water available in the basin."

Another interesting email reads;" You can disagree with me all you want but you better check with your attorneys! It's clearly bad policy to put millions of gallons of water for fish over a few gallons for people. Or God forbid, not protect the water for the people at al. Like I said this rule smacks of anti growth." Is this when you made the decision that "that guy needs to change jobs"?

Your proposed rule is all about control! You and your department consider yourself members of the elite part of our society and only you know what is best for the little people in the hinterland.

Thank you.

From: Marv Chastain [REDACTED]
Sent: Friday, July 06, 2012 8:36 AM
To: Wessel, Ann (ECY)
Subject: DUNGENESS WATER RULE

Ann Wessel, Washington State Department of Ecology

My comments regarding : **Dungeness Water Rule**

Your **Dungeness Water Rule** Seems to be a very radical solution desperately in **search of a problem**. You need to state the problem before the solutions - not after. It would appear you are trying to solve a water shortage problem - but we have none. We sit at the base of a mountain range that gathers water and dumps it on us thru both rivers and aquifers, with salt water to the North of us. We are blessed with a plethora of water.. And any water we don't use is turned into salt and evaporated and returned to the mountains.

PLEASE STATE THE PROBLEM YOU ARE GOING TO SOLVE BEFORE STATING THE SOLUTION.

If your claim is a **shortage of water**, then provide some real scientific basis for it.

Justification of the rule as saving the state money by avoiding lawsuits is ridiculous. It certainly will create more lawsuits than it will avoid.

Your proposal to extract huge sums of money from people just for the privilege of using water is a huge money grab. You are asking for a mechanism to:

- 1- discourage people from buying and using land and
- 2- creating a huge money pot which apparently will profit your agency - or do you have some special interest in mind to receive that money?

That piracy is simply outside the scope of your agency - and most likely outside the scope of state government itself.

I call your attention to the analysis by Marguerite Glover, who seems to have studied the situation more than your staff has

Your Economic Analysis simply doesn't work - It's just hype. - See the Clallam County Commissioners's letter, and read the multitude of other responses.

Your agency has **One Billion dollars of our tax money to spend**. Can you not find anything to do with it other than to harass the taxpayers who are funding you? Perhaps you should return half of it to the state. Of course you won't, but maybe if enough people complain, the next meeting of the legislature will do that for you. Do you not

understand that it is landowners who pay the taxes that you are spending to harass and discourage folks from becoming land owners?

J. Marvin Chastain - [REDACTED]

[REDACTED]

[REDACTED]

Contact: Diane Johnson, Ph.D.



Testimony given at the hearing for
WRIA 18 In-stream Flow Rule
June 28, 2012
Sequim, Washington

By

Diane Johnson, Ph.D., Representing
Chimacum Grange #681

I am here to represent a voice of caution on behalf of agriculture in the Dungeness basin. This basin, like the Chimacum Creek basin, has some of the absolutely best soils for agriculture in the world! The agricultural base has already been decimated by urban residential growth, leaving only a fraction of the former open space available for cultivation, all at a time when we see a resurgence of interest and activity in consumers for "eating local" for the health benefits of fresh, more nutritious food which would once again make agriculture profitable! At the same time, fuel prices have quadrupled, making food "from there" far more expensive, and traveling "there" to shop becomes more difficult, making food "from here" much more attractive. Ultimately, maintaining the wherewithal (that is, the farmland and farmers) to grow enough food to feed ourselves locally seems like a better and better idea.

Safety and health are not the only positives. We are seeing small farm agriculture, growing for local and nearby markets, become an economic driver in Jefferson County, and know that Clallam is experiencing similar growth in this sector. There are tremendous opportunities for economic development, increasing the tax base of businesses, and creation of jobs in the small ag area.

None of this can happen without water. Closing the basin to new development in Chimacum valley has killed the opportunity to develop new uses for old ag land and new, small niche growing operations on the rural residential 5, 10, and 20 acre parcels. We know that the levels set for in-stream flow in Chimacum Creek were for the MAXIMUM needs for fish, rather than the minimums required. We believe that actual usage rates are important, even if they are not metered, and that includes the fact that the bulk of water users are residential only and NEVER use their maximum allotment--but that is the factor used by DOE in determining the "shortage" of water. If one looks at historic usage rates, even with projected future increases, the picture is one of abundance!

In the Dungeness Basin, figures are available to show that overall usage has declined dramatically over the last 20 years or so--irrigation needs and practices have changed, the type of crop has changed, and residential needs are significantly lower than those of large herds of cattle and hayfields. Conservation efforts have been extensive and effective. More is being done with less, and there is more water in the river now than ever. Don't let environmental extremists and fear-mongers override actual data and the state mandate for balanced use. High fees for mitigation and use of water will kill farming and small agriculture. (As you know, farmers are a lot like starving artists--they usually operate on a shoestring.)

The Chimacum Grange asks that you consider carefully the unintended consequences of your decisions on such a critical sector of water users. They are critically important to the well-being and even the sustainability of the citizens who live here. Please make a rule which will support the continued presence and success of our farmers in feeding us all.

RECEIVED

JUN 27 2012

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR



CITY OF
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June 26, 2012

Ann Wessel, Instream Flow Rule Lead
Washington State Department of Ecology
1440 10th Street, Suite 102
Bellingham WA 98225

Ted Sturdevant, Director
Washington State Department of Ecology
PO Box 47600
Olympia WA 98504-7600

Re: Official Comments to Proposed Rule 173-518

Dear Ms. Wessel and Mr. Sturdevant:

I represent the City of Sequim with respect to proposed final administrative rule 173-518.

We are submitting comments on the proposed final rule.

General Comments

The rule in its entirety has a defect which is more clearly set forth in the proposed WAC 173-518-010. That defect is that the statutory definition of WRIA 18, as recognized by the Legislature in much of the enabling law [RCW 90.82.020(4), 90.71.010(13) and 90.74.010(6)], includes the Elwha/Morse Creek watershed, the Morse Creek/Bagley watershed, the Dungeness watershed, and the Bell/Johnson watershed. With that broad area, the statutory requirement [RCW 90.82.060(2)(a)] for a voting member to be the largest city in the WRIA mandated that Port Angeles be the voting city, and thereby excluded Sequim from a vote and from direct funding under 90.82.040. However, the new rule covers *only* the Dungeness watershed and several other minor watersheds but specifically *excludes* the Elwha/Morse Creek watershed basin. With that exclusion, Sequim is the largest city in the WRIA. Thus the City of Sequim would be entitled to a vote and to funding for rule development. The map referenced in this section as an attachment is not the map approved by the State in the above-listed rules and their references to existing WACs. The attached map excludes the Elwha basin which is part of WRIA 18.

The statutory history authorizing the development of WRIA rules mandates that the largest affected city in the WRIA and county and irrigation district users get to sit at the table and try to agree on a rule utilizing State funding. In fact, such city and the county have a vote. When the voting members approved the concepts in this rule, the City of Sequim did not have any authority to vote. Consequently, the City of Sequim did not have any power to structure the proposed watershed rule upon which this rule says it is based. Had the City of Sequim been able to so vote, an entirely different rule may have been proposed by agreement. A different rule definitely would have been proposed by Sequim.

By excluding the Elwha/Morse Creek watershed basin from the current rule definition of WRIA 18, the Department of Ecology is creating a new and different WRIA. This is not authorized by the enabling statutes.

The City is concerned that in subsection (4) of section 010, DOE specifically references decisions made by the voting entities and states that the 2005 plan was the foundation and basis for this rule. Thus, the rule is flawed from its inception. The City of Sequim should have been a voting entity if we were dealing with the Dungeness basin. Thus, Sequim is placed at a disadvantage in a number of ways: It was not a voting member for the full WRIA 18, the rule does not affect the Elwha/Morse Creek watershed basin, and the votes of the statutorily-authorized voting entities negatively affects Sequim when the basin is limited to the Dungeness and other basins where the City of Sequim would have been a voting member.

In addition to the City's concerns that we may have been able to agree on a rule without DOE imposing a rule, the exclusion of the Elwha/Morse Creek watershed basin presents substantial obstacles to the City's potential desire to use Elwha/Morse Creek watershed basin water both from a direct purchase of water rights standpoint and from an intertie standpoint. It is respectfully submitted that DOE should either follow the definition created by statutory recognition of WRIA 18 --- which definition includes the Elwha/Morse Creek watershed basin --- or DOE should seek legislative authority to create a new WRIA, such as 18 East. It is the City of Sequim's position that failure to properly identify the WRIA and the attempt to regulate a different area of land than is authorized by statute and regulation invalidates the proposed rule.

Another general comment also related to WAC 173-518-010(3) is the fact that the language of the section *does appear to* consider the laws applicable to municipal water systems. Generally speaking, the language changes from the draft rule appear to deal with a requirement that the withdrawals be put to regular beneficial use only for exempt wells. This of course is *not* a requirement for municipal systems, which are regulated under the "pumps and pipes" theory. It still is a requirement for other non-municipal permitted water rights holders. However, it appears that the first bullet under (3) covers it. It is suggested that the rule use conventional numbering where each of the four bullets be replaced with (a), (b), (c) and (d).

Another concern in the same section is that it is not intended to affect "federal and tribal reserved rights." There is no definition of federal and tribal "reserved rights." There are, of course, various speculative federal and tribal "reserved rights." It would seem more reasonable to change that sentence to "federal and tribal legally protected rights to the extent of such legal protection." This issue has yet to be fully litigated and there is no reason for language in this rule which could be construed as either an admission by the State of Washington or as a grant of rights by the State.

Comments on Other Sections

Section 020, Purpose, does not follow the statutory language. Section 020 says a purpose is to set "stream flows at levels necessary to protect in-stream values and resources." It should read "necessary to protect currently existing in-stream flows and currently existing in-stream values." It should also state that it is also intended to protect existing water rights. The inclusion of "in-stream ... resources" is not authorized in enabling legislation.

Case law seems to say that aesthetic use of water for such things as ornamental ponds and "water features" is contrary to good water management.

In the definition section, 030, the term “beneficial use” is vastly improved from the earlier draft except that the inclusion of the WAC reference still includes a definition not provided for in statute.

From case law and past practice of DOE, it appears that such things as new ornamental pools and water features, while perhaps aesthetically pleasing, would not be beneficial uses, while older pools and fountains might be under the statutory definition. Again, the referenced WAC should be precisely consistent with the statute.

“Closure.” The term, “closure” does not appear in statutes. “Withdrawal from appropriation” does [RCW 90.54.050(2)], but the “closure” definition is not authorized by statute, nor have the required findings or hearing notices been promulgated. The required language and the interpretation in AGO 2009 #6 should be followed. The term “mitigation” as set forth in the definition of “closure” is found nowhere in water law statutes relating to water rights and possible potable water except once in the policy section of RCW 90.42. Thus, mitigation as provided for in the definition of “closure” is not authorized by statute. Nowhere in water law is there a provision where DOE is allowed to withdraw from appropriation water from any basin because of shortage or pending shortage, and then turn around and “sell” water rights under the guise of mitigation. While this may be crucial to DOE’s concept of “water banking,” it is not authorized by statute. It is respectfully submitted that DOE, if it wishes to obtain water rights, whether it calls that obtaining of water rights “reserving water rights” or “the obtaining of water rights,” needs to apply for water rights like any other user and, unless DOE is a municipal water supplier, it must use those rights within the statutory time period or lose them.

“Domestic Use.” This definition is not correct unless limited to exempt wells. While AGO 2009 #6 spells out that garden watering cannot be included in the 5000 gallons per day exempt well amount (because there is another statutory right to exempt water for such uses in addition to the 5000 gallons per day), the statutes dealing with exempt wells are not authorized to define domestic use for other water rights such as municipal water rights.

“Hydraulically connected.” The definition of “hydraulically connected” does not fit any statutory definition and does not fit the court definition found in Postema v. Pollution Control Hearings Board, 142 Wn 2d 68, 76, 11 P3d 726 (2000). It is respectfully submitted that Postema is the only authority DOE has for regulation based upon hydrologic connectivity, and we should use the definition found in that case. This is critical for validity of the Rule because such connectivity must be the basis for the withdrawal from appropriation of the waters in the Dungeness Basin. Are some wells in the basin not hydraulically connected? If so, which ones? If there are wells which are not so connected, how can this rule apply to them?

“In-stream flow” definition. The minimum flows set appear to be under the statutory authority found only in RCW 90.22. RCW 90.22.020 requires prerequisite notices. It is questionable whether notices given under the WRIA planning statute and which do not specifically mention RCW 90.22.020 qualify as proper notices to set minimum in-stream flow. Further, minimum in-stream flow must be consistent with the *existing in-stream flow* based upon current lawful water usage. Any authority to set minimum in-stream flow probably comes from the Clean Water Act, 33 USC §1251-1387 (1972 and 1977). See Public Utility District #1 of Pend Oreille County v. State Department of Ecology, 146 Wn 2d 788, 51 P3d 744 (2002), and 40 CFR § 131.12 (1993). Thus, until an in-stream flow amount is adopted, assuming proper notice, the rule can protect only what exists at the time the rule is adopted, not what the “historical” in-stream flow used to be. Even if the rule could relate back to earlier in-stream flows, those could not be earlier than 1977.

“Mitigation” definition. The mitigation definition does not fit any statutory requirements and it must do so. The best definition is probably found in RCW 90.03.265(1)(d). It is respectfully submitted that DOE, in a rule, is not entitled to contradict, supersede, or expand the statutory definition.

Municipal water system definition. It is respectfully suggested that a municipal water system definition be included. The definition should be the one found in RCW 90.03.015(3) and (4). It certainly would be appropriate to simply reference that the definition of municipal water system is the same as that contained in the referenced statute. This was suggested in our previous comments but not incorporated into the rule.

“Nonconsumptive use.” This term is not mentioned in statutes. It is an important term used in this rule. The term uses “water source” which is also not defined in the rule. Is the “water source” the whole river or the whole aquifer? If it is the river, then the tail water is a nonconsumptive use. If it is the aquifer, then water pumped from an aquifer but used in a way that “tail water” returns to the aquifer, is the amount of tail water nonconsumptive? More significant for Sequim, is water withdrawn from an aquifer which is processed and returned to the aquifer as Class A reclaimed water a nonconsumptive use?

The inclusion of Clean Water Act language dealing with quality as well as amount is inappropriate. There is Clean Water Act case law stating that water temperature is a “quality” factor. This concept should not be part of a water rights rule. This rule should not be skewed toward habitat protection, at least not to the exclusion of beneficial water reuse projects. There is no authority in the statutes for this definition. RCW 90.54.020 could provide some useful definitions.

“Reservation.” While this definition fits the rest of the rule, there is no authority for a reservation as so defined. The only authority appears to be RCW 90.54.050(1).

However, the findings in this rule seem to imply that there is no water available to “reserve.” You can’t reserve for future use, water which does not exist.

“Water resources inventory area (WRIA).” While the definition is nearly correct, it must be emphasized that the rule violates this very definition. The rule, to be statutorily correct, should state the date the WAC was referenced by the State Legislature when WRIAs were statutorily authorized. E.g. WAC 173-500 as adopted on ___ date.

Water right change or transfer definition. This definition should simply be a statutory reference and should not attempt to interpret the statute. RCW 90.03.380 defines water rights changes or transfers. DOE has no authority to redefine these.

Water right permit definition. This term is defined by statute at RCW 90.03.250. Clearly, the definition provided by DOE does not meet the statutory definition and far exceeds the authority granted to DOE in the statute.

WAC 173-518-040(5) has some problematic wording. It deals with the term “new water uses” which could be construed to mean new uses under a permit authorizing such uses for municipal water supplies. While it is true that new uses for “use it or lose it” users may not have problems with the definition, municipal users should have problems with it. Municipal users may use water for new uses, within the limits of their water rights. Either municipal users should be excluded from this subsection, or the term “new uses” should be changed to “new water rights.”

In addition, generally this section in subsections (1) and (3) create water rights without a petition for establishment of those water rights. Section (5) interferes with municipal water rights as explained, and might require such municipal owners to need special permissions or be prohibited from taking additional water even though they own those water rights. RCW 90.03.247 sets forth requirements. There appears to be no authority to call in-stream flows “water rights,” especially when a petition to appropriate water has not been filed by DOE and proper notice to establish in-stream flows has not occurred. In addition, the proposed WAC 173-518-080 seems to create “super water rights” which are not subject to the in-stream flow rules. This does not appear to be allowed by statute, either.

WAC 173-518-050 closures. The only statute authorizing anything resembling “closures” appears to be RCW 90.54.050. That statute doesn’t specifically talk about the term “closures.” Since that statute requires specific notices, those notices should at least be referenced in section 050 and all the terms of the statute in section 050 should be the same terms used in the WAC section 050.

Further, in the statute, there is a requirement that DOE must find that there is not sufficient data to allow making sound decisions on appropriation. But that needs to be said in the WAC or in some findings. Absent that, the closure is not permitted.

It also appears that, under the statute, DOE needs to go through the State Senate and House standing committees first.

The law does not seem to allow DOE to withdraw water from further appropriations except for certain special applicants. In other words, you can't withdraw the waters from appropriation unless you have insufficient information to make sound decisions. If DOE has insufficient information to make sound decisions, DOE cannot turn around and withdraw even more waters and then set up some comprehensive scheme to allow "mitigation" without actually replacing the new appropriation of water. If in fact DOE has found that the basin is over-appropriated, there is even more reason why DOE cannot turn around and withdraw additional waters and set up a water bank and comprehensive mitigation plan. The statute simply doesn't allow it, however meritorious the intent may be. (The City's objections do not apply to distribution of DOE purchased trust water.)

WAC 173-518-060 Metering and reporting water use. This is a necessary component of water management for the future. This section does not go far enough. Wells which may be exempt from a water rights permit are not exempt from metering requirements under any statute or common law principle. All wells should be metered.

WAC 173-518-070, Future Groundwater Appropriations. This section is problematic for the City. This section appears to prohibit new withdrawals but then says that it does not apply "if connection to a public water supply is not available in a timely and reasonable manner" It then allows the drilling of private wells. This is inconceivable if in fact the basin is closed or if there is insufficient information to decide whether or not a basin should be closed. It appears that this section would potentially allow a city resident, when there is a moratorium on city water, to potentially develop in the city with water from an exempt well.

This section also does not deal with a public water system which has so many additional customers it cannot supply them. Will this be interpreted to mean that a city water system can use exempt wells under this section?

In addition, the City does not want to be in a position where it is required to provide such services and use up its limited water supplies outside of the city limits. It is respectfully submitted that DOE either closes waters to further appropriation, or doesn't close waters to further appropriation. DOE has no apparent authority to say, in effect, "There's no more water, but you can drill and appropriate more water if the City or PUD can't serve you because they have insufficient water and you pay for 'mitigation'."

A minor issue is that any such additional use of an exempt well should mandate metering of the entire exempt well.

WAC 173-518-080, Reserves of Water for Domestic Use, provides in the third paragraph that consumptive water use must be mitigated. There needs to be a provision stating that the section does not apply to municipal water systems within their maximum water right. Subsection (d) is unlawful. DOE must reserve a finite amount of water. Any additional reservation must be done by adoption of a rule, not by administrative fiat.

WAC 173-518-095, Storage Projects. The City has discussed above the problems with limiting the WRIA to a size other than as recognized by the Legislature. The problems with this subsection are similar. This section requires consultation with the tribes, Clallam County, Department of Fish and Wildlife and NOAA fisheries but does not even include the largest city in the WRIA, let alone Sequim in the modified WRIA. This is not acceptable. Sequim must be included in the list. It is respectfully submitted that the other largest water purveyor, the Public Utility District, should also be included in the list.

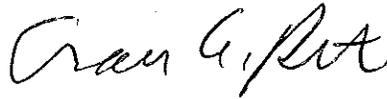
WAC 173-518-100, Lakes and Ponds. It is respectfully submitted that this provision should distinguish between *created* ponds and bodies of water and *natural* ponds and bodies of water. It appears that this particular section is intended to try to bring back what the Corps of Engineers lost with its court-ruled inability to require regulation of bodies of water and water not directly connected to navigable water. This section would also appear to be an attempt to change Washington law by recognizing something that doesn't exist in Washington law, namely the right to regulate non-mitigation-created wetlands such as ponds. Again, there is no exemption for municipal systems and there is no logic in the process. Ponds and many other artificial bodies of water waste water because they increase evaporation. This is particularly true of ornamental ponds. Ecology may have habitat protection justification in mind, but the language does not recognize that habitat protection is not specifically a justification of a water right, and the rule isn't even so limited to habitat restoration or protection.

WAC 173-518-140 Maps. This map is not the map of WRIA 18. It is a map of most of the Dungeness Basin. There is no statutory authority for this map. The map must include WRIA 18 as recognized by the Legislature.

The City of Sequim recognizes the efforts of the Department of Ecology to try to deal with the many conflicting interests in water rights regulation. The City also recognizes the lack of legal authority for DOE to deal with extremely significant issues such as limiting the 5000 gallon per day exempt wells. However, the City encourages

DOE to offer executive request bills to change the statute. It is respectfully suggested that attempting to do indirectly what is not lawful to do directly is a dangerous course fraught with potential legal challenges.

Yours truly,



Craig A. Ritchie
City Attorney

CAR:elh

Clallam County Republican Party

PO Box 808
Port Angeles, WA
98362-0140



6/26/12

Ann Wessel
Washington State Department of Ecology
Ann.wessel@ecy.wa.gov

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant – even draconian – limitations on water usage in our area.

These limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

In the opinion of many, however, DOE has proposed a solution in desperate search of a problem... that there is no problem and, moreover, if there was, DOE’s proposal would have little impact upon it.

In essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers.

Many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

Clallam County Republican Party

PO Box 808
Port Angeles, WA
98362-0140



Accordingly, we propose that you delay the implementation of the Instream Flow Rules until impartial studies have:

- Presented sound, peer reviewed evidence that said hydrological connectivity exists
- Confirmed that limiting water usage by well-users will have more than a passing affect on in stream flow levels
- Established that the In stream Flow levels mandated by DOE are actually achievable and are not impossible goals that have only rarely been achieved in past decades.
- Determined that DOE has the statutory authority to impose these limitations
- Reviewed the “unintended consequences” on property owners, tax bases, area development, etc
- More fully examined “creative” innovations to actually increase availability of water rather than merely concentrating on restricting usage. Such innovations could be water storage or banking whereby spring surpluses could be captured for use during times of lessened flow. (Maybe a reservoir or, even, a dam...)

“First, do no harm” is one of the principle precepts of medical ethics and means, given an existing problem, it may be better not to do something, or even to do nothing, than to risk causing more harm than good.”

If this philosophy is good enough for physicians, it should be good enough for you.

A handwritten signature in black ink, appearing to read 'RA Pilling', written over a printed name and title.

RA Pilling
Chairman, Clallam County Republican Party.

From: Roger Clark [REDACTED]
Sent: Sunday, July 08, 2012 12:54 PM
To: Wessel, Ann (ECY)
Subject: Egrgious water rule-making

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area. A phone call to your office revealed that staff is completely unaware of the details of this ruling. It's sort of like the "We have to pass it before we read it" logic of speaker Pelosi. We know how well that sits with the public.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Regards,

Roger L Clark
[REDACTED]

From: Bill Clarke [REDACTED]

Sent: Thursday, June 28, 2012 3:30 PM

To: [REDACTED] Wessel, Ann (ECY);

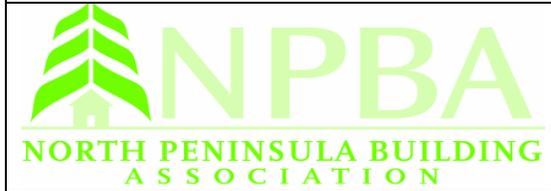
Subject: Letter on Dungeness Rule

Ted & Co. - Attached is a letter from state and local business associations on the proposed Dungeness Rule. Based on the experience of our members in other parts of the state with exempt well closures with or without available mitigation, we are asking that the proposed rule not be adopted and that Ecology instead continue using Capital Budget funding to address streamflow concerns. I will follow up with Maia.

Thanks, Bill

**BILL CLARKE
ATTORNEY AT LAW & GOVERNMENT AFFAIRS**

[REDACTED]

	
	
	<p>JEFFERSON COUNTY ASSOCIATION OF REALTORS®</p>
<p>Sequim Association of REALTORS®</p>	
	

June 28, 2012

Ted Sturdevant, Director
Washington Department of Ecology
PO Box 47600
Olympia WA 98504-7700

**RE: Proposed WAC 173-518
Dungeness Basin Water Management Rule**

Dear Mr. Sturdevant:

Our organizations are writing to request that the Washington Department of Ecology (“Ecology”) **not adopt the proposed Dungeness Basin Water Management Rule**. Instead, we ask that Ecology develop a simpler, fairer, and less costly approach through which the agency uses capital funding to protect streamflows.

We are concerned about the actual economic impact that the rule will have on current and future water users in the basin, as well as the impact on the economy of the region. We ask that Ecology reconsider the economic analysis done to date to fully encompass the impact of closing the basin through the proposed rule.

Additionally, with the dramatic reduction in withdrawals from the Dungeness and its tributaries over the last several years, we believe the new instream flow rule is overly restrictive and would unnecessarily impact the lives of citizens in light of the dramatic increases in the efficient use of water in the basin.

In the past two decades, Ecology has spent tens of millions of dollars in public funds in the Dungeness Basin to reduce the direct impacts on streamflows caused by large surface water withdrawals. A fraction of the cost of this recent public investment in senior water rights would offset future junior exempt well impacts throughout the Dungeness Basin.

As seen throughout the state, Ecology's new policy of requiring exempt well mitigation on a project-by-project basis simply does not work. Exempt well mitigation disputes of the agency's own making consume significant agency staff resources, impose unwarranted regulatory burdens and costs on landowners, and make local building permit and land use decisions more complicated – all to address extremely small consumptive uses of water whose impacts on streamflows are difficult to precisely determine.

If water rights are now available for the Dungeness water exchange to function as promised by Ecology, then these same water rights should be used by Ecology to mitigate for impacts on streamflows caused by consumptive water use. If such water rights are not available, then the proposed rule should not proceed, as the absence of the promised mitigation will create the same morass of "red zones" and moratoria caused by Ecology's exempt well regulations in other counties. Recent experience has shown that Ecology should not prohibit exempt wells in hopes that homeowner-developed, non-profit, or for-profit water mitigation proposals will suffice.

In 2012, to address the exempt well moratorium caused by Ecology's Skagit Basin Rule, the Legislature provided capital funding for the agency. In prior decades, significant capital funds were provided for water acquisition and instream flow protections throughout the state.

If Ecology believes that future exempt well uses in the Dungeness Basin are of such concern, then Ecology should continue using capital funds to protect streamflows. This approach will ensure consistency with the county's Growth Management Act comprehensive plan and protect landowners from the financial ruin of moratoria seen in other counties, while allowing Ecology to offset future exempt well impacts to the same extent as would occur in the proposed rule.

Please consider the wisdom of our request and do not adopt the present rule, but work with our organizations to find a solution that addresses the agency's streamflow concerns without creating an unmanageable regulatory structure that is costly and unnecessary.

Sincerely,

Washington REALTORS®

Washington Farm Bureau

Building Industry Association of WA

WA Cattlemen's Association

Washington State Grange

Association of Washington Business

North Peninsula Builders Association

Sequim Association of REALTORS®

Jefferson County Assoc. of REALTORS®

cc: Sen. Jim Hargrove

Rep. Kevin Van De Wege

Rep. Steve Tharinger

Clallam County Commissioner Mike Chapman

Clallam County Commissioner Jim McEntire

Clallam County Commissioner Mike Doherty

Sheila Roark Miller, Clallam County Department of Community Development

From: Nell Clausen [REDACTED]
Sent: Tuesday, July 03, 2012 4:44 PM
To: Wessel, Ann (ECY); Wessel, Ann (ECY)
Subject: Please consider delaying the adoption of WRIA 18 - Formal Comment

Hi Ann,

I've been to all the meetings that DOE has hosted here in Sequim as well as a plethora of local meetings where this rule has been discussed and I am not convinced that there is a hydrological connectivity between aquifers and the waters flowing in streams. The science from DOE and from independent scientists is not 100% conclusive so I ask that we stop the clock from ticking in adopting the rule until we know for certain which of these scientific studies is correct. There is also the question of how this will impact the economy. I don't believe enough time has been spent looking at this.

Thank you for your time.

Nell Clausen

Estes Builders
Your Award Winning Builder Since 1989



From: Kathy Cooper [REDACTED]
Sent: Sunday, July 08, 2012 11:26 AM
To: Wessel, Ann (ECY)
Subject: Proposed Dungeness Water Rule comment

My name is Kathleen Cooper. I currently live at 62 Lazy Creek Lane in Sequim. Since 2004 I have owned a 5-acre parcel along Cassalery Creek, on Vine Maple Lane, zoned Ag, with the intention of building on it in a few more years. However I may choose to sell it instead, as I am happy with my current home.

I am deeply concerned about this proposed rule and the effect it will have on my future ability to obtain water rights for myself for reasonable cost, or to be able to sell the property w/o existing rights. The value of the property has already taken a huge hit since I bought it in 2004, and any further decrease in its value would be devastating to me financially. This proposed rule seems very unnecessary, arbitrary, and extremely unfair to those of us who have been holding our property until we retire or otherwise are ready to build on it. I purchased the property with the understanding that I would be able to pay to drill a well and then I would be all set for water. It seems the science on whether restricting future well use will have ANY effect on instream flows is highly questionable, and even if it did, there are many other ways of mitigating this problem than slamming those few of us who have parcels in the affected area that aren't using water yet. Why did they allow farmers to subdivide and sell all those parcels if there is not enough water? How about a tax on ALL water users, PUD included, so we future well-drillers don't have to bear all the weight of this iffy science? Why should someone who moves here from CA and buys a new ranchette not have to pay for his water, and I've lived here for years and have had my parcel for 10 years and have to pay for my water right? I understand there is the issue of State water rights law, which limits the options of dealing with this issue, but surely you can find other ways that are more fair and will be less of a financial hit to the community than this, especially since it is highly debatable whether the changes will have the desired effect. What if nobody wants to sell their water rights? And who would? Nobody! Look what happened in the Chimacum Valley - we don't want that here. If you want residents to use less water, then you have to make it more expensive for everyone, not just future users, even if it means putting meters on all existing wells.

Please discard this proposed rule and start over with something completely different, that doesn't place the burden entirely on so few unsuspecting citizens.

From: [REDACTED]
Sent: Thursday, June 28, 2012 2:50 PM
To: Wessel, Ann (ECY)
Subject: : Formal Comment on the Proposed Dungeness Water Management Rule

Dr. Robert N. Crittenden
[REDACTED]

Ann Wessel
awes461@ecy.wa.gov
1440 10th st., Suite 102
Bellingham WA 98225
360 715-5215

June 27, 2012

Regarding: Formal Comment on the Proposed Dungeness Water Management Rule

Dear Ann,

Unfortunately, the comment I submitted on June 27 contained several omissions and errors in writing. I have corrected them, here. I would appreciate it, if, you would substitute this comment as my formal comment in place of my July 27 comment. Thank you.

The Instream Flow Incremental Methodology (IFIM) study that was done on the Dungeness River is one of the main pieces of research that provides the basis for the Dungeness Water Management Rule. However, that methodology has several serious weaknesses. Two of them are concerns here. In this application, it also has a dubious key assumption and there are a couple of flaws in how the sampling was done.

I will address the sampling issues, first, as they are fairly simple.

1. The observations of the river's configuration weren't random samples. They, therefore, can't be used to compute unbiased estimates of the river as a whole.

According to Dr. Hal Beecher's public presentation in Port Angeles, they didn't sample cross-sections of the Dungeness River at random but selected ones that they thought were representative. That is contrary to the principles of scientific sampling and leads to a potential bias.

The general principle involved is, that samples that were drawn at random from a population of possible samples, can be used to estimate the average characteristics of that population. In this case, as they didn't draw their samples at random from the overall river, they can't be used to provide unbiased estimates for the overall river, only for those sections of it that they considered "representative."

If one were to contrast their estimates against estimates based on samples drawn at random from the overall river, you could estimate the bias in their perception of what was "representative." However, that was not done and the configuration of the bed of the Dungeness River has gone through substantial changes since those original samples were taken, so, it is no longer possible to estimate the bias.

2. The configuration of the Dungeness River has changed considerably since those samples were taken. Consequently, they are no longer applicable even if they were when they were taken.

Those changes in the riverbed were primarily caused by a pulse of bed material that moved down the river. It destabilized the river's channel and in many locations, caused it to change its course. That pulse originated in a large mass failure in the Upper Dungeness Valley, during 1980. It is known locally as the "Gold Creek Slide." Only, in the last few years, has the resulting pulse of bed material reached the river-mouth. However, now that it has done so, the riverbed may have once again achieved a relatively stable configuration. It would now be appropriate to remeasure its cross-sections, this time, at random locations along the river. That would provide estimates that might remain reasonably accurate for a period of years. In contrast, the previous measurements probably no longer reflect current conditions in the river.

3. The optimum instream flows need to be recalculated based on new measurements, before the rule is adopted, as it has been a long time since the river's configuration was measured and there have been substantial changes during the intervening period.

Next, I will address the less serious of the two weaknesses of IFIM. That is that it doesn't model the movement of the bed-load. That is something that can only be done to a very limited degree. The approach that IFIM takes, instead, is to only predict the effects of small incremental changes that would not be expected to result in large changes in the river's configuration. However, the methodology also expects the user to observe how the configuration of the river-bed changed in response to whatever was done. The instream flow needs are, then, reassessed using the new set of cross-sections that were measured after the change was made. --- IFIM is a process of making many small changes and re-assessing after each of them. That is why it is called "incremental."

The Water Management Rule may be expected to result in relatively small changes in the discharge of the river. That meets the assumption of there being only small changes. Nevertheless, the cross-sections need to be remeasured and the instream flow needs reassessed, now, as more than twenty years have elapsed since the last cross-sections were sampled, the river's configuration has changed dramatically during those years, there has been significant water conservation during that period, as well as there having been sampling problems in the original study.

The proposed rule has a trigger-level for the re-measurement of the cross-sections, if there is a large change in the river's discharge. That is as it should be, although, one might debate what that trigger-level should be. However, in addition, there should, also, be periodic resampled, because, although, we expect that the planned changes in the river's discharge will only cause relatively small and gradual changes in the river's configuration, other factors that are not accounted for, such as large woody debris or the breaching of bank protection or dikes, can lead to abrupt unexpected changes in the river's configuration.

Now, I will address the more serious of the two weaknesses of IFIM

4. IFIM isn't a scientific method, because, it contains a qualitative element which allows its outcomes to be politically determined. Furthermore, that appears to have happened in this case.

That qualitative element is the selection of the objectives of the study and the species and age compositions of the aquatic organisms for which the flow rates are optimized.

The potential of that qualitative element to have a strong influence over the outcome of an IFIM study are well recognized. For example, Dr. Ken Bovee said in the preface to his 1986 paper (Bovee, Ken D 1986. Development and evaluation of habitat suitability criteria for use in the instream flow incremental

methodology. *Instream flow information paper no. 21*. Washington DC, National Ecology Center, Division of Wildlife and Contaminant Research, Fish and Wildlife Service, US Dept of the Interior.):

"... Experienced users realize that the important decisions relating to biological data are made outside the mechanical operation of the models, and that the outcome of the analysis hinges on assumptions and decisions made long before the models are run."

In the body of the text of that paper, he went on to discuss the importance of properly establishing the study's purpose and objectives, including avoiding any hidden objectives or agendas; and the importance of the selection of the target species and the criteria for their selection.

He also discussed those issues in his 1982 paper (Bovee, Ken D 1982. A guide to stream habitat analysis using the Instream Flow Incremental Methodology. *Instream flow information paper no. 12*. Washington DC, National Ecology Center, Division of Wildlife and Contaminant Research, Fish and Wildlife Service, US Dept of the Interior.)

Those papers, show that he was concerned about the possible use of IFIM to advance hidden agendas or objectives. He undoubtedly was well aware of the existence of intentions that might not be made public in a particular application of that methodology, because, several of them were explicitly stated in the first paper of that series (Lamb, Berton L. and Debra A. Sweetman, (eds.) 1979. Guidelines for preparing expert testimony in water management decisions relating to instream flow issues. *Instream flow information paper no.*

1. Washington DC, National Ecology Center, Division of Wildlife and Contaminant Research, Fish and Wildlife Service, US Dept of the Interior.) They included, among others, the use of the strict control of land-use, as a means for controlling water use; and the control of water rights, as a means from controlling land-use.

I have encountered a fairly widespread belief, among the residents of the Dungeness Valley, that the stated purposes and objectives of the Dungeness Water Management Rule aren't its real purposes and objectives. Many of them believe that it is intended to control land-use, development, and possibly many other aspects of human life. I, too, have reason to believe that it serves objectives other than those that are stated in the proposed rule.

I will, now, address how the IFIM study was conducted, as that sheds some light on what its real objectives may be.

At one WRIA18 meeting, I asked Mr. Brad Caldwell, who had been involved in the IFIM study, why they had focused on providing habitat primarily for Chinook Salmon. His response was that, the Washington State Department of Ecology had instructed them to maximize the instream flow requirements.

Chinook Salmon require higher flow levels than most, if not all other, salmonid species, because, they are adapted to spawning and spending much of their freshwater live in main channels. I should, also, add that, over the last few decades there has only been a very small population of Chinook in the Dungeness River System.

At some point in time, there was also another decision that was made, that was that they should maximize salmonid habitat. Common alternatives would include but are not limited to maximizing habitat for different species of fish, or for a broad range of aquatic species; achieving a balance between fish production and other beneficial uses for the water, such as irrigation for agricultural production; or maximizing other beneficial uses of the water, while still maintaining the minimum flow needed to provide necessary fish habitat.

I should add that most fisheries biologists, today, believe that freshwater habitat isn't the limiting factor in the life-cycle of most salmonid stocks. I will say more about that, later on in this comment.

The above critical decisions (that they should maximize salmonid habitat, instream flow, and focus on Chinook Salmon) don't appear to have been made within the open public process. --- That is precisely the type of issue that Dr. Bovee was concerned about, decisions based on hidden objectives or agendas that effectively determine the outcome of IFIM.

I was present at the WRIA18 meeting when the sub-committee was formed to select the species and age compositions for the IFIM study. Although, I am a PhD fisheries biometrician, have published on salmonid life histories, and had used IFIM, during the 1970s, the members of WRIA18 strongly dissuaded me from attending those sub-committee meetings. The result was that those meetings consisted primarily, if not entirely, of government employees. What I recall is that they represented the Tribe, Department of Fish and Wildlife, and possibly one or more other agencies. As a result, their deliberations and the objectives or agendas they were serving remain unknown to the public, except to the extent that they can be deduced from their actions.

The above qualitative decisions on the objectives and target species, effectively determined the outcome of the IFIM process. The other issues, such as the defects in the sampling methods, are probably of little consequence, in comparison. Nevertheless, redoing the IFIM study remains important, because, those qualitative decisions can be reconsidered, at that time. They need to be reconsidered, so that any hidden objectives and agendas that are not legitimate government objectives can be brought to light and avoided.

5. A key assumption in this application of IFIM, is that salmon are limited by freshwater habitat. However, that assumption is doubtful in general and fails to reflect the conditions in the Dungeness River system, in particular. The result is that the predicted optimum flows, from IFIM, are probably grossly out of proportion to what is necessary or needed.

Regarding the factors limiting salmon abundance, Bob Lohn, the Director of NOAA for the Northwest Region during the mid-1990s, aptly summarized the situation, when he stated that, "Most credible scientists, today, believe that the salmon crisis was caused by ocean conditions, not freshwater habitat."

During the early 1990s, I modeled a sockeye salmon stock in British Columbia (Crittenden R.N. 1994. "A model for the processes regulating recruitment in a sockeye salmon stock." *Ecological Modelling*,71: 69-84). I found that their smolt migration was the bottleneck in their life-cycle. The smolts experienced intense predation by birds and fish but larger smolts could swim faster and were better at avoiding those predators. At that time, the only other study of the full life-cycle of a salmonid stock which achieved statistical significance was the work done by William Ricker on an Oregon Coastal stock, during the 1950s. He also found that the bottleneck occurred during their smolt migration. However, he concluded that the limiting factor was the availability of hiding places, from predators, whereas, I found that their size was the limiting factor.

Other authors have postulated various other possible limiting factors. For example, some think that it may be the availability of near-shore habitat, such as eelgrass beds. However, one has to model the full life-cycle, with statistical significance, in order to demonstrate where the bottleneck occurs but very few studies have done that.

Furthermore, each salmonid stock is adapted to its specific habitat and the various stocks and species show remarkable variation in their life-cycles. Consequently, the fact that, twenty years ago, there were only two stocks for which the limiting factor had been identified and for both of them that occurred during their smolt migration; certainly doesn't demonstrate that that is when the limiting factor occurs for *all* salmonid stocks.

Nevertheless, Bob Lohn's remark about its, not being freshwater habitat, remains accurate, for he made that statement, during the salmon crisis of the 1990s and the low salmon abundance during that period clearly wasn't due to limitation of that factor. That should have been evident to many people. The reason is, that the salmon abundance was reduced in both rivers that had degraded habitat and pristine rivers. --- So, obviously their decline wasn't caused by habitat loss.

In most cases, the management policies of government agencies were what was actually limiting their abundance. I wrote three books on that issue and related topics. (Crittenden, R.N. 1992. *Salmon at Risk*, first edn. Hargrave Publishing, Carlsborg WA. Over the years that followed, that book gradually grew, as I learned more. It went through eight editions. It is now out-of-print. I also wrote two other books on closely related topics. They are *Elite Planners* which does an analysis of the interlocking directorates of the groups and corporations behind the policies that were discussed in *Salmon at Risk*; and in the year 2000, I published, *Politics of Change*, which is a history of Western thought, which traces the roots of those agendas back to their origins.) As a result of having written and published around a thousand pages on this topic and related issues, I know many examples and illustrations of how the low salmon abundance was and still is the result of deliberate government policies. I will try to pick a few that tell the story as briefly as possible.

Ocean harvest was one of the main parts of the policies that caused the salmon crisis. As the agencies regulate that harvest, Mr. Lohn's statement remains literally correct, although, it is somewhat deceptive.

In particular, a NOAA study had definitively demonstrated that the West Vancouver Island fishery was the main factor that had depressed the Chinook salmon stocks of Western Washington, before the Canadian American Salmon Interception Treaty of the late 1980s and early 1990s. For that reason, the terms of that treaty specifically included closing that fishery. The effect was that the Chinook stocks in Western Washington recovered, exactly as might be expected.

Freidenburg (M.E. Fraidenburg 1989. The new politics of natural resources: Negotiating a shift towards privatization of natural resource policy making in Washington State. *The Northwest Environmental Journal*. 5:211-240.) recorded how the State Agencies and an environmental group took advantage of that knowledge to influence the beliefs and behavior of the public. Specifically, the environmental group, Long-Live-the-Kings, formed groups of local volunteers and got them to do habitat restoration projects on the rivers of the Olympic Peninsula. The members of those groups didn't know about the interception treaty, they thought that their habitat restoration projects had caused the subsequent increase in salmon abundance. --- That established a pattern that the government agencies would use again-and-again over the years that followed. That approach towards tricking the public by manipulating a part of the salmon life-cycle that the public doesn't see, was even used to influence the instream flow negotiations for the Dungeness River and to mold public opinion about those negotiations and the resulting proposed Water Management Rule.

The Canadian-American Salmon Interception Treaty came to an end, due to the refusal of the State of Alaska to stop the fishermen of the southern panhandle from intercepting the Fraser River Sockeye. Then, Canada re-opened the West Vancouver Island fishery. That had its expected effect, and contributed substantially to depressing the salmon stocks from Washington State. I knew Norma Jean Sands, who was the manager of that South-Alaskan fishery, as I had attended graduate school with her. So, when I met her at an American Fisheries Society meeting, I asked her why she let them catch the Canadian fish. She told me that Senator Stevens, the US Senator from Alaska, had told her to. That was why she did it. Later Senator Stevens would be one of the individuals who testified at the hearing that led to the creation of the "salmon czar." That position eventually took form as the head of the Salmon Recovery Funding Board. That individual eventually controlled much of the funding for the Watershed Councils and WRIAs. --- These events are all interconnected and it is a complicated story.

Later, at the end of the decade of the 1990s and the opening years of the next decade, Canada unilaterally closed the West Vancouver Island fishery. As might be expected, there were good runs of salmon in Washington State. They were record runs. However it is impossible to prove that there was a causal relationship between the fisheries and those large runs, because, there were also changes in ocean condition, those years.

More recently, I attended the impact hearing on the Washington State Hatchery Management Plan at the Jefferson County Library. Only two members of the public attended, myself and another fellow. He asked his questions first and then left. Then, I asked my questions. I explained that I had written a paper in fitting the

Ricker Curve to Salmon spawner-recruit data (Crittenden, R.N. 1994. Optimum Escapement Computed using the Ricker Spawner Recruit Curve. *Fisheries Research*. 20: 215-227). That is a statistical procedure that is necessary, if one intends to do conventional scientific management of salmon. Unfortunately, with the amount and quality of data that were available at that time, the fit of that curve was rarely significant. However, with only a few more years of data, particularly from low abundance years, significance could be achieved. Then, I asked whether they were or planned to depress the salmon abundance to obtain those data. They said, Yes, they were doing that. So, I asked what rivers they were doing it on. They said that there were too many for them to remember. Finally, I asked about two specific rivers, the Samish and the Dungeness. They said, yes, they were doing that on both of them.

The principle ways they depress the salmon stocks is to allow too high a harvest, so that not enough adults return to spawn, or simply by not putting enough eggs into the spawning trays. They also do various things that reduce natural spawning. One example, is placing rootballs from large forest trees and other large woody debris in the Dungeness River, allegedly to provide habitat. However, during large storm events they are carried downstream and as they go they plow up the riverbed. They destroy any salmon redd they go through. The residents along the river have complained about this, many times. Nevertheless, it probably makes little difference, for there are many ways by which the agencies can depress the salmon stocks.

Regarding the upper part of the Dungeness Watershed, above the hatchery, the reason that there is little spawning there, even though that part of the river is pristine and has a great deal of habitat, is that a number of years ago they raked the river at the hatchery. Their intention was to make the upper river a Coho-only river for sport fishing. When I came to Clallam County in the mid-1990s, that rack was still in the woods behind the hatchery. However, when I looked for it again, more recently, it was no longer there.

The reason that few fish still ever go above the hatchery, even though they no longer rack the river is two-fold. First their abundance is low enough that they find abundant habitat in the lower river and don't need to go any further; and Second, the fish that are raised in the hatchery are imprinted on Canyon Creek water and return to that water source. Canyon Creek is blocked off from salmon except that it provides the water supply for the hatchery. The Department has an acclimation pond in the upper river basin but they don't raise the fish in it long enough for them to imprint on that water, instead.

Nevertheless, not even a month ago, two members of a sport fishing group came by my home and told me that the employees at the hatchery had complained to them that the Tribe was instituting a program to raise salmon from the egg stage in the upper basin. They and the WDFW employees they had talked with wanted that program stopped. --- In fact, that program is something that I have been advocating for several years. I am glad that someone is finally doing it. However, they are not likely to succeed as well as they ought to, unless WDFW allows them to. There are just too many opportunities for the department or their cooperating sport fishermen to eliminate those fish.

The point that I wish to make, is that the salmon stocks in the Dungeness River System are limited by government policies, not by freshwater habitat, and even under natural conditions freshwater habitat is probably not the limiting factor in their life-cycle. In light of these considerations, the estimates from IFIM of the optimum instream flows are probably grossly out of proportion to what is necessary or needed.

Sincerely
Dr. Robert N. Crittenden
June 28, 2012

From: [REDACTED]
Sent: Sunday, July 08, 2012 8:00 PM
To: Wessel, Ann (ECY)
Subject: formal comment on the proposed Dungeness Water Management Rule

Dr. Robert N. Crittenden
[REDACTED]

Ann Wessel
awes461@ecy.wa.gov
1440 10th st., Suite 102
Bellingham WA 98225
360 715-5215

July 8, 2012

Regarding: Formal Comment on the Proposed Dungeness Water Management Rule

Dear Ann,

Please consider this as a formal comment. Thank you.

During the question and answer session before the formal public hearing on this proposed rule, in Sequim, on June 28, 2012, I asked about the two parts of the 2008 groundwater flow model and whether they were proprietary or in the public domain. The answer I received from a representative of the Department of Ecology, if, I properly understood it, was that those two parts are a finite difference model that was written by the USGS and an interface that allows one to run the finite difference model. He said that the finite difference model is in the public domain but the interface is proprietary.

Apparently, the 2008 groundwater flow model requires the use of both of those components. That model is important, because it provided some of the studies upon which the proposed rule is based and it will, also, be used in its implementation. It is specifically referred to in the proposed rule at 173-518-070 3ai, 173-518-080 5c, 173-518-085 4d, and perhaps elsewhere.

As a proprietary program, it would appear that members of the general public don't have the right to obtain it. By that I mean, obtain the compiled program, its source code and its documentation, and have the right to thoroughly examine it and run it. These things are necessary for them to obtain an understanding of what precisely it does and how it functions. For that reason, it probably has never been examined by any member of the general public.

In particular, when I asked the Department of Ecology for the groundwater model, on two occasions, I was told, both times, that it was proprietary and I couldn't have it. I thought that those Department of Ecology employees had told me a direct lie, and I complained about that in item #3 of my June 22 formal comments on this rule. However, it now appears that they told me the truth, that part of that model is proprietary and, therefore, unobtainable.

If all the components of the 2008 groundwater flow model that are needed to actually run it, aren't available to the public, then, the proposed rule is a secret rule to the extent that it rests upon those proprietary components or they are necessary for its implementation. In that case the public will be governed by a secret rule.

I recommend that an alternative in the public domain to those proprietary components be provided and that, if, the rule is implemented, it use those alternatives, instead of the proprietary components. Furthermore, there will be a need to allow time for an open public review of those components, once they become available. That is particularly important, here, as the present situation bears the appearance of, having been an attempt to avoid review.

Allow me to apologize for accusing the Departmental employees of telling a direct lie. It, now, appears that Clallam County's hydrologist, Ann Soule, was the individual who provided me with false information. She did that, first, when she responded to my testimony to the County Commissioners, in which I said that the groundwater model was proprietary and not available. She said that the groundwater model was not proprietary but was available. However, it appears, now, that part of it was available but another part of it was proprietary. Later, during the afternoon information session before the public hearing in Sequim, on June 28th, she told me that the interface was available but the USGS model wasn't. However, when I asked the Department's staff, during the question and answer session just before the formal hearing, to verify whether what she had told me was correct or not. They told me that I had it exactly backwards: The interface was proprietary but the USGS model is in the public domain.

I still haven't verified what the true situation may be. Nevertheless, whatever it may be, there should not be any part of that model including its interface, that is proprietary. It must all be in the public domain, so that it can be thoroughly examined and run by any member of the public. Otherwise, we would be governed by a secret rule.

Sincerely
Dr. Robert N. Crittenden
July 8, 2012

From: [REDACTED]
Sent: Saturday, June 23, 2012 10:19 PM
To: Wessel, Ann (ECY)
Cc: Marguerite Glover
Subject: Formal comment on the Proposed Dungeness Water Management Rule

Version:1.0 StartHTML:0000000168 EndHTML:0000036744 StartFragment:0000000471
EndFragment:0000036727

Dr. Robert N. Crittenden



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June 23, 2012

Regarding: Formal Comment on the Proposed Dungeness Water Management Rule

Dear Ann,

Please consider these as formal comments. Thank you.

1. The steady-state calibration runs in the 2008 Dungeness Groundwater Flow model have more parameters than data and, therefore, have zero degrees of freedom.

In this comment, I go through the 2008 report showing, where the data and parameters are found and demonstrating that there are more parameters than data. Then, I compute the model's degrees of freedom.

The 2008 Dungeness Groundwater Flow Model, Design, Construction, Calibration, and Results by Clallam County and Pacific Groundwater Group is available on Clallam County's website at clallam.net/environment/assets/applets/PGG_2008_Dungeness_Model_Final_Report.pdf

That is a pdf file. I will refer to the page numbers of the original report as, for example, "Section 5.5.3 on page 35." However, not all the pages of that report were numbered. In particular, the tables and figures at the end of it don't have page numbers. Therefore, for those pages, I will

refer to their location by the page number of the pdf file, for example, "Table 4.2 on pdf page 61."

They presented the data set that they used in the steady-state calibration runs in their Table 5-3 on pdf page 64 of their report. There are 69 observations. That is,

$$n=69$$

where n is the sample size

They presented the estimated values for the hydraulic conductivity parameters in Table 4-2 on pdf page 61. There are 68 of those parameters.

In particular, that includes 27 vertical conductivities, 27 horizontal conductivities, and twelve vertical conductivities for the streambeds, plus two additional values for the streambeds of Siebert and McDonald Creeks. Thus, $27+27+12+2=68$.

However, those were not all the estimated parameters. Other parameters that they estimated are discussed in Section 5.2 beginning on page 27 of their report. There they list most of the parameters that they estimated or adjusted. In particular:

- Aquifer horizontal conductivity --- These were included in the 68 parameters discussed above.
- Aquitard vertical conductivity --- This is at least one additional parameter.
- Streambed vertical conductivity --- These were included in the 68 parameters discussed above.
- Dungeness River Elevation --- As discussed in their text, they treated the Dungeness River as if it were elevated above grade by this fixed amount, in order to better fit the movement of water into and out of its streambed. This is one of the more obvious unrealistic aspects of this model. It adds at least one additional parameter.
- Drain Cell Distributions --- This may have be the locations of the "drain cells", where groundwater finally moves from the ground into saltwater or possibly, alternatively, into a stream. There seem to have been several of these drain cells. They contribute at least one more parameter but probably several.
- Constant head cell vertical conductivity --- There seems to have been at least one of these. That contributes at least one more parameter but possibly more.

These parameters contribute at least four additional parameters but probably more. Taking these additional parameters into account, there were at least $68+4 = 72$ estimated parameters. That is more parameters than data.

That is what I wish to show, because, the model's "degrees of freedom", df , is equal to the number of data minus the number of estimated parameters. However, zero is the smallest possible value for the degrees of freedom. So, if there are more parameters than data, the degrees of freedom is set to zero. As that is the case here, the model has zero degrees of freedom:

$$df=0$$

where df is the degrees of freedom

Nevertheless, their model had even more fitted parameters than were included in Table 4-2 or in their explicit list in section 5.2. They are discussed elsewhere in the text. In particular, in the text on page 27 of their report, they discuss varying the horizontal conductivity of the lower aquifer and, also, of one or more additional deep layers. That adds at least two more parameters, bringing the total to at least $68+4+2=74$.

Furthermore, by far the largest group of additional parameters that they adjusted to improve the fit of the model were structural parameters, rather than the more usual numerical parameters. Specifically, these were the locations of the boundaries between the various zones in layer 1. They provide a map of those zones in figure 4-10 on pdf page 84. In particular, on page 23 of their report they say, "the boundaries of the various sub-regions were sometimes shifted within layer 1 during calibration." As these changes in the locations of the boundaries could be represented as numerical parameters, they have to be included as estimated parameters. Potentially, there are several hundred such parameters but they seem to have only adjusted a few of them.

In particular, on page 28 of their report they mention changing the boundaries of Grey's Marsh. There are also several differences in the zone boundaries between realization Dung-7e and Dung-7g. These can be seen by using a light table and overlaying the maps in Figures 4-10 and 4-11 on pdf pages 84 and 85. However, these differences don't reveal what all the changes may have been from the zones, that were originally defined by Dr. Thomas et al. in their 1999 report (Hydrogeological assessment of the Sequim-Dungeness Area. Clallam County, Washington. USGS Water Resources Investigation Report 99-4048.)

2. The standard errors for the 2008 model and its parameter estimates are infinite.

In this comment, I compute the standard error, using information provided in the report on the 2008 model.

The standard error of the error components of the observations in a linear model can be estimated using the equation,

$$SE(e) = \text{Sqrt}(RSS/df)$$

where:

Sqrt is square-root;

SE() is standard error;

e is the random error component in the observations;

df is the degree of freedom; and

RSS is the residual sum of squares.

You can find that equation in any good book on linear models. For example, Sanford Wiesberg's 1980 book *Applied Linear Regression* by John Wiley and Sons.

The only thing we are lacking to do this computation is the residual sum of squares, RSS. Its value can be found near the bottom of Table 5.3 on pdf page 64 of the report. They give its value for two different realizations of the model. For Dung-7e it is 28523 and for Dung-7g it is 32755. However, it doesn't matter what its value is, so long as it isn't zero. The reason is that, the model has zero degrees of freedom and, consequently, the equation for the standard error involves a division by zero. The answer is infinity.

$$SE(e) = \infty$$

What we just estimated, is the standard error of the error components. However, what we really want is the standard error of the estimated parameters. The equation for that can be found, for example, on page 43 of Weisberg's book (*ibid.*). However, that introduces a lot of terminology that is trivial if you're familiar with it but is unnecessarily confusing if you aren't. Nevertheless, what it tells you, is that the square of the standard error of the estimated parameters is linear in the square of the standard error of the error components. Consequently, if the latter is infinite, the former is, too.

Before considering the consequences of these results, from comments 1 and 2, I will state a qualification to their applicability.

That is that they are based on the assumption that the groundwater model is a linear model. Groundwater models usually are, because, the relationship between pressure and discharge is linear. However, nonlinear elements could have been inserted into this particular model. I don't know whether that was done or not but it might have been done. However, even if it were, I suspect they had a minor effect on the overall response of the model. Nevertheless, I need to note this qualification.

3. The reason that I didn't directly examine the model's code and its documentation, was that on two occasions, when I requested copies of them, I was told that they were proprietary and I could not have copies.

I was only told that it was not proprietary at the Clallam County Board of Commissioners' hearing on the proposed rule. By then, it was too late for me to obtain and study it. --- I strongly object to the Department's employees telling me a direct lie in order, apparently, to prevent my examining the model.

Incidentally, I did a groundwater model as part of my master's thesis, and several others later on. So, I have little doubt that I could understand it and run it, provided that its code was written transparently and it was properly documented.

4. The subsequent studies that rest upon the static calibration study have the same problems.

If you continue reading the groundwater report beyond the static calibration study, you will find several other studies that were conducted using the parameter values that were estimated in the static calibration study. That is, these subsequent studies were done conditional upon the results of that first study.

However, when you do another study conditional upon an earlier study, you need to incorporate the uncertainty in that earlier study into your estimates of the uncertainty of the second study. You might compute that by, using the conditional variance formula or by, using various alternative approaches. However, in this case the answer is clear: As the standard errors of the first study were infinite, they contribute infinite variation to the results of the subsequent studies.

Those subsequent studies include but are not limited to the transient calibration study, the test of whether the southern boundary is impermeable, the test of whether additional lower layers should be considered in the model, and an aquifer recharge study. Quite a few other studies that used those estimated parameters and/or the results of these secondary studies, were done later on. Obviously, all of them must be considered as being highly suspect.

5. No statistical tests based on the 2008 model can be significant.

Parameters estimated from linear models are normally distributed. (The normal distribution is the familiar bell curve.) Their 95% confidence limits are at the mean plus-or-minus two standard errors. So, if the standard errors are infinite, the 95% confidence limits are at plus-or-minus infinity.

However, if a particular parameter can not have negative values, as is the case for hydraulic conductivities, its confidence limits would be from zero to infinity.

The basic statistical test asks whether an estimate lies beyond the 95% confidence limits. In that case, it is "significant." That means that there is less than a 5% chance that it arose from random variation.

However, if the confidence limits are infinitely broad, it is not possible to ever achieve a significant result. That is the case for the 2008 model, as well as all the secondary studies that were done conditional upon it.

6. Estimates and predictions based on the 2008 model have no scientific support.

If, the parameter estimates can never be significant, because, the model has zero degrees of freedom, there is an unacceptably large chance that they arose solely from random variation. In that case, there is no scientific support for the parameter estimates or any predictions that might

be made using that model. --- That is the conclusion that has to be reached for the 2008 groundwater model as well as for all the secondary studies that were done conditional upon it.

7. No meaningful measures of dispersion were computed for the above models.

The accepted scientific practice requires that variances, standard errors, confidence limits and/or other measures of dispersion be computed for estimates. However, those things were not done for the 2008 groundwater study.

Instead, they computed the sample statistics for the observed residuals. They presented them in Table 5-3 on page 64 of their report. They, also, compare them to the range of the residuals. They use those statistics as measures of the accuracy of their results. Unfortunately, that sample statistic is a biased estimator for the dispersion of the error components of the model, because, it does not account for the model's degrees of freedom. The standard errors that I computed above, are the unbiased estimators. You can see from the difference between them, how very large that bias is.

8. The 2008 model contains no statistical tests. Conclusions were reached based on "judgment," instead. That is not a scientifically valid method.

The accepted scientific practice is to conduct statistical tests and to draw reasonable conclusions based upon their results. However, no tests were conducted. The conclusions that were reached appear to have been based on the user's judgment. That would, of course, be expected to include the user's biases and preconceptions. That is contrary to the purpose of science, as science seeks to avoid precisely those types of influences. This shows that the 2008 model is not scientific. The same also applies to the secondary studies that were based upon it.

9. The 2008 model doesn't provide unique solutions.

Because their model has more parameters than data, it will not provide unique estimates. The authors recognized that non-uniqueness and repeatedly mentioned it. For example (on page 47) they said:

"The ability to create more than one model realization capable of meeting calibration criteria (referred to as non-uniqueness) is quite common, and accounts for some of the uncertainty inherent in predicting impacts from hydrologic stresses. This inherent uncertainty can not be avoided in any model or predictive approach, largely because subsurface conditions are inherently variable and data are typically insufficient to characterize such variability. While model predictions can still be performed to obtain estimates of impact at a commonly accepted degree of accuracy, uncertainty associated with non-uniqueness cannot be avoided and prevents prediction of "exact" values of hydrologic impact. In some cases, modelers will use stochastic analysis of multiple (ie. many) realizations to characterize the range of uncertainty in model predictions."

That shows that they recognized the cause of the non-uniqueness but it also reveals their naivety of statistical methods and scientific modeling practices.

If they would reduce the number of parameters in their model and/or get more data, they would obtain unique estimates. Nevertheless, those would still be estimates with random error, rather than exact values.

10. The fitting procedure used in the above models wasn't impartial

They computed two realizations of the parameter values, to provide some impression of how non-uniqueness affected the dispersion in their estimates. However, the values of those two realizations largely reflect choices they made, for they manually searched for optima, and decided where to stop, presumably, when the response surface got relatively flat, instead of using an automated or standardized search procedure.

I must admit that the more widely available automated search procedures don't work very well. They tend to be slow and all too often miss optima or won't converge. Although, more reliable procedures can be written, the usual ones often need manual oversight. However, in doing that, care needs to be taken that the outcome of a search is not the user's choice, as occurred for the two realizations of the groundwater model.

Incidentally, notice that those two realizations have different RSS values. So, clearly they are not two instances of non-unique solutions. They appear to have been selected, instead, from the total range of possible realizations.

They also manually adjusted parameter values in certain cells with large residuals such as dry or flooded cells. However, they seem to have referred back to other reports to correct defects in the model structure for those cells. So, what they did probably was not so serious a flaw in methodology that we would have to conclude that any cell's parameters would have been individually readjusted if they didn't like the way the model fitted it.

Their comments on page A5 of their report, regarding those types of corrections reveal that they did not even consistently hand-adjust the hydraulic conductivities to improve the fit of the model.

Overall, their fitting methodology seems to have been ad-hoc and subject to their personal biases.

11. The "peer review" of the 2008 model wasn't effective.

The "peer review" of the groundwater model appears to have been conducted by individuals who, for the most part, were not independent, scientists, nor peers of the scientific community. However, the courts and the State have diluted the definitions of "peer," "scientist", and "science" so far that they are far removed from the academic standards for peer review.

Also, if the individuals who did the review weren't effectively independent, they might not have commented on any flaws they may have found.

The substantive defect, in their review process, was that none of them criticized the model's having zero degrees of freedom. --- Here, I must admit, that neither did I immediately find that flaw. It is so far from the accepted scientific practice, that it was a long time before it occurred to me that they might have actually written a model with more estimated parameters than data. As a scientist and a modeler, I find that shocking. I would find it beyond belief, that such a thing could be an accepted practice in a licensed profession, except that here it is and some licensed groundwater modelers seem to defend it.

12. The flaws in the groundwater model make it susceptible to abuse and it appears to have been intended to be used for the purposes of arbitrary governance.

I was told by a prominent individual in this County, that Steve Tharinger, who at that time was a Clallam County Commissioner and also chaired WRIA18, had boasted that the groundwater model could provide any outcome that was desired. Furthermore, I was told that he said that before the model was completed. That implies that the model's flaws were known and deliberate and that it was intended to provide a mechanism for arbitrary governance.

I have not named the individual who told me this, because, he is a private person. However, Steve Tharinger is an elected official and it is not slanderous for me to say anything about a public person that I believe is true. --- It is true that I was told this and I suspect that what I was told may be true, too, but whether it is or not is more than I could possibly know.

Although, what I was told is hearsay and, therefore, needs supporting testimony from the individuals who were directly involved, it should be evident from my criticisms of the groundwater model that it could be used that way.

I suggest that if that model is used, despite its flaws, there needs to be a public process conducted by an elected authority to prevent its parameters from being arbitrarily adjusted on a case-by-case or group-by-group basis. That might inhibit its being used for arbitrary governance.

An investigation by law enforcement might, also, be appropriate, to determine whether any violations of the law have already occurred and to prevent any related future violations.

13. The adoption of any new model or upgrades to an existing model should be done by an elected body through an open public process, instead of being under the department's authority.

Section WAC 173-518-070 3ai of the proposed rule says, regarding the 2008 model,

"If ecology determines a better method is available in the future, then ecology will apply the new method."

The concern that is expressed above in criticism #12, is that the non-uniqueness of the 2008 model provides the ability to arbitrarily adjust its outcomes and this sentence in the proposed rule, authorizes the department to do precisely that.

It should be replaced by requiring that any change be adopted through an open public process conducted by an elected authority, such as the Clallam County Board of Commissioners. To leave it under the department's authority would allow and authorize the implementation of arbitrary governance.

14. A Possible Strategy for Fixing the Flaws in the Groundwater Model.

What is really needed, is to correct the flaws in the groundwater model, before the rule is adopted.

One possible strategy for resolving it's problems is be to build a new model, by judiciously drawing from the various earlier studies, while avoiding the more serious mistakes, such as over-parameterization and compromised realism.

The 2003 and 2008 models are unlikely to provide a useful starting point, due to their severe over-parameterization and lack of realism.

In contrast, the 1999 model by Thomas et al. (ibid.) may be more suitable. It comes closer to meeting the standards of science. --- It is relatively realistic and, also, doesn't have many of the problems of the 2003 and 2008 models, because, he directly measured many of its parameters or took them from the literature, rather than fitting them. Nevertheless, there may have been some problems with some of his measurements and he also pointed out, that there remained a few issues that he thought couldn't be resolved. In particular, he was concerned about whether there was subsurface water inflow across the southern boundary of the study area. Nevertheless, as was mentioned above, that, also, remains a concern for the 2003 and 2008 models.

Although, the resulting initial model would probably have relatively low accuracy, it couldn't be any worse than the 2003 and 2008 models, as they have infinite standard errors.

Provided that the resulting model is realistic and has non-infinite confidence intervals, it could provide a starting point for a continuous process of upgrading, using a Bayesian approach. That would allow the incorporation of new data, as it becomes available, as well as the incorporation of new parameter estimates from independent studies, including ones that employed completely different methodologies. For example, in the context of realistic modeling, the parameters have real physical meanings. In that case, it may be possible to directly measure them or to estimate them from independent experiments.

15. Strike out "best available method"

In light of what I have said in comment #14, the phrase "best available method" in WAC 173-518-070 3ai should be removed, as it is undefined and misleading.

16. The 2008 groundwater model might be used for the limited legitimate uses of an empirical model

From a completely different perspective, the 2008 groundwater model could be regarded as an empirical model. In that case, many of the above criticisms are no longer applicable. The legitimate uses of an empirical model are to interpolate short distances within the range of observed data, provided that the underlying processes are known to be consistently applicable throughout that region, but their most appropriate use is to provide an algorithm for the regeneration of data. However, it is being used, as if it were a realistic or theoretical model. In particular, it is being used to make estimates and predictions and to extrapolate beyond the range of the observations or far from them. Those are not valid applications of an empirical model. Nevertheless, there is no reason why it should not be used for any of the *limited* purposes for which it is appropriate. However, that doesn't include most of the types of uses that are involved in supporting the instream flow rule or its implementation.

Nor is there a basis for hope that a continued use of empirical models will lead to an improved understanding.

17. The overall message of the above comments is that the 2008 groundwater flow model is not scientifically valid, it doesn't provide a reasonable basis supporting the rule, it can not reasonably be expected to predict needed mitigation, its outcomes are arbitrary, and it provides the opportunity for arbitrary governance. For these reasons, its use would probably violate due process. Nevertheless, it may be possible to correct its flaws. That needs to be done before the rule is adopted.

Sincerely
Dr. Robert N. Crittenden
June 23, 2012

From: robertc@harpub.com [REDACTED]
Sent: Monday, July 09, 2012 3:07 PM
To: Wessel, Ann (ECY)
Subject: formal comment on the proposed Dungeness Water Management Rule

Dr. Robert N. Crittenden
[REDACTED]

Ann Wessel
awes461@ecy.wa.gov
1440 10th st., Suite 102
Bellingham WA 98225
360 715-5215

July 9, 2012

Regarding: Formal Comment on the Proposed Dungeness Water Management Rule

Dear Ann,

Please consider this as a formal comment. Thank you.

Swift's Toewidth Method was used to estimate the flow in the small streams in the Eastern WRIA18, for which there were no stream gage data. However, there were several flaws in how that method was developed and applied, which render it scientifically invalid. There have been more recent studies of the flow in those streams, which may or may not replace the results from Swift's toewidth method. Nevertheless, to the extent that the proposed rule still rests upon the results of that method, that work needs to be replaced with something that is scientifically valid.

Swift's toewidth method and its application contain the following flaws:

1. It was originally developed using stepwise linear regression but there is not indication in their report that they discounted the alpha-levels for multiple comparisons. Although, that is a technical issue, it is a serious mistake. The result is that the model they developed has no scientific support.
2. They selected the rivers and streams they studied instead of randomly sampling them. Consequently, if their method was valid, it would only apply to those particular streams and rivers, rather than to streams and rivers in general.
3. Likewise, they selected the sites on those streams and rivers where they took measurements rather than randomly sampling. Consequently, if their method was valid, it would only apply to those particular sites on those particular streams and rivers, not to those rivers and streams in general.

4. The streams in WRIA18 to which it is being applied have smaller discharges than the rivers and streams for which the method was developed, or are near the limit of that range. The problem is that Swift's toewidth method is an empirical model and, as such, it is appropriate for interpolation within the range of the data from which it was developed. It is not appropriate to use it for extrapolation beyond that range. For this reason, the use of Swift's toewidth method on the small streams in eastern WRIA18 is a misapplication of that method.

5. There is, also, reasonable doubt as to whether the toewidth's that were measured on the small streams in Eastern WRIA18 were meaningful. --- Those streams were altered from their presettlement conditions, with the advent of irrigated agriculture and the draining of wetlands, during the early twentieth century. Later, at the time the measurements were taken for the application of Swift's method, although, agriculture was declining, there was still quite a lot of it, and many of the farmers were still using the older methods of irrigation. Flood irrigation, leakage from the irrigation ditches, and tail-water provided a lot of water for those streams. However, since that time, many of the irrigation ditches have been piped and the older irrigation methods have been replaced by more efficient methods. Furthermore, much of the irrigated agricultural has been replaced by homes. And homes use much less water per acre. The result of these changes is that the measurements that were taken reflect neither pre-settlement conditions nor current conditions.

I am inclined to think that the legal mandate is to maintain the instream conditions that exist at the time that the rule is adopted. In that case, new measurements need to be taken, if, the more recent studies don't serve this purpose.

Sincerely
Dr. Robert N. Crittenden
July 9, 2012

From: robertc@harpub.com [REDACTED]
Sent: Monday, July 09, 2012 4:12 PM
To: Wessel, Ann (ECY)
Subject: formal comment on the proposed Dungeness Water Management Rule

Dr. Robert N. Crittenden
[REDACTED]

Ann Wessel
awes461@ecy.wa.gov
1440 10th st., Suite 102
Bellingham WA 98225
360 715-5215

July 9, 2012

Regarding: Formal Comment on the Proposed Dungeness Water Management Rule

Dear Ann,

Please consider this as a formal comment. Thank you.

This comment deals with the egregious impacts that the proposed rule may be expected to have on me and my investment-backed business interests. I also address several other issues.

I am a biometrician and do consulting. That has occasionally included medical questions. --- Several years ago, I was asked by a local physician, why there was such a high cancer rate in Clallam County. She showed me, among other things, the blood and hair sample data for her patients. Most of them had very high levels of uranium. I also talked with several cancer patients. One particularly relevant fact that emerged was that when the patients stopped buying food at the grocery stores, but grew it in their own gardens, their cancer never recurred. Next, I spent several days at the medical school's library at the University of Washington. What I found was essentially complete agreement on what the non-military source of the uranium was. They said that it was added to fertilizer. That was how it got into the food supply.

The US Toxic Substances Act allows the EPA to certify alternative uses for industrial wastes. In particular, the uranium mining and manufacturing industry has a lot of contaminated phosphoric acid they need to dispose of. Uranium is soluble in phosphoric acid and that is how they extract it from the ore. The EPA allows them to add it to fertilizer. It is an excellent source of phosphorus, a broad-spectrum insecticide, and also increases the shelf-life of vegetables. They even certify it as "organic." The Washington State Department of Ecology, also, allows this to happen.

I bought a modern Geiger counter and measured radiation levels in foods that I bought in the local grocery stores. Almost all of them were significantly above the background rate.

However, they were only moderately radioactive, mostly around one-and-a-half to two times the background rate.

What I did, as my personal response to this knowledge, was buy a piece of property, with good soil and irrigation rights. My intention has been to grow vegetables, dairy and meat, that are free from that insidious source of contamination, and sell them, particularly to local cancer patients. I have spent the last few years developing the land, improving the soil, and learning how to grow these products.

Now, this proposed rule might be used to prevent me from doing, what I have invested in and spent several years of my life developing.

However, the worst impact is that PUD #1 intends to build a sewage treatment facility only a few hundred yards from me and infuse their treated water into the aquifer that my well goes into. The department of ecology would not allow them to infuse it into the creek, apparently because they are concerned of harm it might do to the fish. They insist that they use it to recharge the aquifer, instead.

However, the sewage treatment that is planned doesn't remove heavy metals (including uranium), some prescription drugs, viral spores, micoplasma, nor various other harmful micro-organisms. Furthermore, this is a huge point source that can be expected to eventually contaminate all three of the aquifers in the local area.

That would make everything I have worked for and invested in futile.--- During the irrigation season, I primarily use irrigation water but, after the season ends, I use well water to irrigate both my personal and commercial gardens. I also use it for stock watering and domestic uses. That well water during the late summer and fall is essential to maintaining a fall and winter garden. That is when fresh pure vegetables are in short supply.

Furthermore, that insidious plan is based on the aquifer recharge study. That was done conditional upon the parameters that were estimated using the static recharge study of the 2008 groundwater flow model. As I have stated in a previous comment, the static calibration study has zero degrees of freedom and infinite variances and, consequently, the aquifer recharge study, which was done conditional upon it, inherits those infinite variances. Thus, neither of them are scientifically valid, they are both arbitrary and to me, they are invidious. Thus, they violate my civil rights.

In addition, I find that the proposed rule, by controlling new uses, is far too intrusive into private life. It makes too many decisions for individuals and for how they may use their private property. The name for this is "totalitarian." That is certainly unnecessary, it can be expected to remove much of the pleasure of living, and it can not reasonably be expected to advance the legitimate objectives of the rule. Furthermore, it is entirely contrary to our legal traditions and heritage.

Another issue, that I will address in closing, is that the Department has not made their case. That is, they have not presented a comprehensive report that tells exactly how the various reports and

studies support their proposed rule. They leave the public to guess what their reasoning might be. The Department really needs to make their case.

Sincerely
Dr. Robert N. Crittenden
July 9, 2012

From: robertc@harpub.com [REDACTED]
Sent: Monday, July 09, 2012 4:46 PM
To: Wessel, Ann (ECY)
Subject: formal comment on the Dungeness Water Management Rule

Dr. Robert N. Crittenden
[REDACTED]

Ann Wessel
awes461@ecy.wa.gov
1440 10th st., Suite 102
Bellingham WA 98225
360 715-5215

June 27, 2012

Regarding: Formal Comment on the Proposed Dungeness Water Management Rule

Dear Ann,

Please consider this as a formal comment. Thank you.

I would like to add more substance to Marguerite Glover's comment that there is a lack of community buy-in for the proposed rule and the process that created it.

During the 1990's I formed a property owners association for individuals who owned river-front property along the Dungeness River. Its stated purposes were to protect their civil rights, property, and the environment from the programs that were being formed and implemented by the Dungeness River Management Team.

The name of that association was the "Dungeness Valley Association." We had slightly over one hundred members. That was a substantial proportion of the total community of river front property owners.

We were offered a seat on the DRMT only if we allowed them to appoint our representative. However, the members of the Dungeness Valley Association voted unanimously not to accept that seat, unless we elected our representative. Thus, they chose to be excluded from the process instead of allowing themselves to be mis-represented.

The suggestion that the various quasi-governmental committees, such as the DRMT, WRIA18, the Local Leaders Group, etc... in any way represent the public or have much public support, is very far from reality.

Sincerely
Dr. Robert N. Crittenden

From: Rhonda Curry [REDACTED]
Sent: Wednesday, July 04, 2012 11:12 AM
To: Wessel, Ann (ECY)
Subject: Independent economic study request - water usage Clallam County

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I, along with many in our county, am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12 which repeatedly referred to the corrupted economic analysis performed by the DOE.

I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Kind regards,

Rhonda Curry

[REDACTED]

[REDACTED]

Department of Ecology
Dungeness Open House / Public Hearing
PUBLIC COMMENTS

Name:	William Cutting
Company/Organization:	
Mailing Address:	
City, State, Zip:	
Email Address:	

Please print your comment(s) below:

I concur with the op-ed piece in the Sequim Gazette dated 6/27, written by the editorial staff at the Gazette.

Date Received:	_____
Facilitator:	_____
Page ____ of ____	

From: Pat Davis [REDACTED]
Sent: Wednesday, July 04, 2012 12:43 PM
To: Wessel, Ann (ECY)
Subject: Water usage

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Pat Davis

From: Diann Dickey [REDACTED]
Sent: Thursday, July 05, 2012 11:11 AM
To: Wessel, Ann (ECY)
Subject: WIRA 18 Proposed Water Rule

Ann: The water rule that you and your staff have worked so hard on is headed for problems for your staff and for the property owners of WIRA 18.

- There are so many inconsistencies in the proposed application of the rule that I don't think it will possibly accomplish what your department has intended it to do, preserve water rights for future users.
- If this rule is enacted as it is presently drafted, your staff will probably be completely occupied with defending the DOE rather than assisting communities in managing the water sources.
- Class action lawsuits against DOE are likely to result from property owners who feel they are being unfairly restricted from the water rights they expected to continue to have when they bought their property.

There has got to be a better way to accomplish the preservation of water rights for future property owners and to allow existing property owners to have water to use for normal household and garden functions. Conservation of water has not been addressed in the analysis that your staff has represented in public meetings. When asked about the storage of water and conservation practices, your staff has said that was not an area that was researched in the development of the proposed rule.

Please go back to refining the scientific data used to develop this rule and give a fair and objective assessment of whether it is necessary to restrict water use in the Dungeness River Valley. Is there really a problem with instream water flow? Has the water flow actually diminished over the recorded history?

Diann Dickey
Managing Broker
John L. Scott, Sequim



-----Original Message-----

From: L DONALDSON [REDACTED]
Sent: Monday, July 09, 2012 9:14 AM
To: Wessel, Ann (ECY)
Subject: Formal comment on Dungeness Water Management Rule

Please accept this as a formal comment on the proposed rule. My family has land in Carlsborg which could be impacted in the future by the proposed rule.

I have reviewed the letter/comment and attachments sent to your office on July 7, 2012 by the Association of Washington Realtors. Our family supports the comments and views in that letter.

Sincerely,

Lisa Donaldson
Carlsborg Village Properties, Inc.

[REDACTED]

[REDACTED]

From: muddyshoes [REDACTED]
Sent: Monday, July 09, 2012 1:08 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Water Rule

I am appalled by the arrogance of the DOE and this attempt to ban, restrict, meter, control and charge for a god given staple that is necessary for the existence of all life. Many rural landowners are not connected to water systems because it is not necessary. Our land provides this. No public system to pipe anything from anywhere. Private property owners are on **private** systems, from **their** private water resource from **their** private property. Rural areas pay for their private wells and pumps, maintenance and power to draw the waters off **their own** properties. DOE refers to this as a Commodity? WRONG.

The water world did fine before the DOE **created itself to create model projections**, from **model science**, that **create false alarms** around **false needs**. But then this allows DOE to stay in business and plunder the ones who are the REAL conservatives on water usage, Right? After all these areas receive an annual rainfall of many many feet. Water usage in these areas have never been proven to be taking or unbalancing anything from these lush rainforest climate eco-systems. Rural communities here have existed for over a century and they certainly have not grown. There is an over abundance of water on the Olympic Peninsula. God gave us Water. The DOE did not. Water is not a commodity. It is the necessity for life. Without it we can't exist. DOE is saying you must Pay or Die? Is DOE denying "we the people" who live rural do not have the right to live without collection? May I remind you western Washington is not the desert? Rivers do not resemble the San Diego. The DOE are meddlers of the worst kind, destroyers for the benefit of the Urbanite destroyees.

A Quote From DOE concerning CB:

*"Employing the **latest computer modeling tools**, the report incorporates factors such as climate change, population growth and regional and global economic conditions **into forecast calculations**. It also **leverages and further builds on modeling tools and datasets developed by** the University of Washington Climate Impacts Group."It will take innovative water solutions to meet existing and future water demands in the basin."*

"developed by"? Nowhere did it say anything **was scientifically studied or found by?** or provided by **persons of expertise in these geographical areas of study.**

WHERE ARE THE FACTS to back those statements up? Where is the evidence of this modeled projected prediction? Is DOE basing their findings on modeled **what if's?** done by forseeing Psychics?

These same methods and claims apply to the Dungeness Water area. Were there tests done by geologists? or hydrogeologists? Can a meteorologists make a proven factual statement about just what the climate will be doing in the future, without factual evidence of how all these other future projections would play true? NO I don't believe so.

I would suggest that the DOE might want to remove the pencils from their ears, remove themselves from their projected computer graph designer programs and look at reality. Proving what model science claims, is impossible and ridiculous. The future is unpredictable and projections are near fantasy until proven true. Denying that good clean rural living is the cause of urban created problems, pollution and shortages is untrue, unjustified. It is an unconstitutional and ungodly revenue grabbing scheme, along with a whole lot of hogwash. One size does not fit all. Enough is enough! Your way outta line on this one folks! Action needs to be taken to stop this in it's tracks. This "rule" is in direct violation of human rights. The majority of Olympic Peninsula citizens vs DOE? DOE is out numbered according to my polls so I would say the polls speak for themselves. No proof positive is a no go. A waste of time and money. Before long DOE will come up with a private air breathing tax. Will DOE then create a "rule" that we all wear air consumption meters? with a monthly bill attached? Pathetic.

Brooke Dorhofer
Resident Of the Very Wet and Wild Olympic Peninsula

From: Jerald Dow [REDACTED]
Sent: Wednesday, July 04, 2012 9:43 PM
To: Wessel, Ann (ECY)
Subject: Re; The Department of Ecology (DOE) proposing a number of significant limitations on water usage in our area.

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

I totally concur with this message,

Signed

Jerald R Dow
[REDACTED]
[REDACTED]

From: Larry Doyle [REDACTED]
Sent: Wednesday, June 27, 2012 10:39 AM
To: Wessel, Ann (ECY)
Subject: Sucking the River Dry

I support adoption of the proposed instream flow rule for the Dungeness River. However, I am concerned that the rule fails to adequately protect the Dungeness basin from the further over-appropriation of its water resources. The proposed rule allows for withdrawals of water, in the form of reservations for future use. Allowing those future uses, even if partially mitigated, will keep the river from achieving the 180 cfs minimum flow in late summer the rule sets to sustain fish and the river itself. I urge Ecology to adopt the rule but not the proposed reservations for future use until we know the minimum flow amounts will be met.

Obviously, the Department of Ecology policy is being politicaly driven here. Come on you guys, you are more intellegent than to being backed into a sucked dry river policy.

Sincerely,
Larry Doyle
Port Townsend
WA

From: jim drescher [REDACTED]
Sent: Thursday, July 05, 2012 2:27 PM
To: Wessel, Ann (ECY)
Subject: wria 18e rule

We have owned property in Clallam County for over eleven years. This property has an artesian well and double wide mobile home on it. We have had someone living there until June 2010. We had planned to build on this property but our plans changed and the property is for sale. We had the power turned off to the property in June 2010.

We don't believe our well rights should be jeopardized by a rule that economically and possibly constitutionally flawed. Since our well is a free flowing artesian well, we don't want to lose our rights due to it not being used right now.

We strongly urge for Ecology to stop the rule making timeline until an independent study is done.

Thank You,
Jim & Cathy Drescher

From: Jacques Dulin [REDACTED]
Sent: Thursday, June 28, 2012 1:16 PM
To: Wessel, Ann (ECY)
Subject: Ltr in Oppn to Rule 06-28-2012 Final
Importance: High

Ms. Wessel:

Please consider the attached opposition to the Rule. Look forward to seeing you and other DOE reps tonight in Sequim.

Regards,

Jacques Dulin

[REDACTED]

[REDACTED]

[REDACTED]

June 28, 2012

Ms Ann Wessel,
Instream Flow Rule Lead
WA Dept of Ecology
Olympia, WA
ann.wessel@ecy.wa.gov

Dear Ms. Wessel:

We are opposed to the DOE Rule being crammed down throats of our valley citizens in spite of extensive, knowledgeable opposition from PABA, The Dungeness Valley Association, Red Ink Revolt.org, CAPR, City of Sequim, Realtors groups, and individuals.

We as Basin residents add our voice, and vote, against the Rule, and the total lack of statutory due process in your cram-down rush to expropriate our water rights. This is nothing more than a raw exercise of bureaucratic power contrary to the wishes of the affected citizens.

The Rule, at best would protect .29 - .77 cfs, a trivial amount of water from the watershed, even assuming, arguendo, that DOE is justified in relying on the flawed baseline measurements of historic stream flow and toe width values. There is no proof that the Rule will save any fish, much less large quantities of fish. It also begs the question of for whom fish are being saved and for what purpose? For gil netting, or for looking at and saying "how wonderful"?

In addition to the well-articulated objections of the above-identified groups, the Rule and the DOE process do not meet the maximum net benefits test of WA Statute, RCW 90.54.020. Nor does it meet the legal requirements of the APA, RCW 34.05.328.

The DOE's reasons for rejecting Tryg Hoff's economic analysis showing the costs of the Rule to the Dungeness Valley would be \$41.9 Million (which far exceeds the benefits of possibly preserving an unknown number of fish that .77cfs additional water might support), is Steve North's erroneous assertion that "the value of the [water] use does not attach to the use until it is established". That is, he asserts that a prospective use has no value.

It is clear to me as a small farmer (organic wheat and rye; orchard and tree nursery) that Mr. North has no experience in futures markets, much less agriculture futures. We suggest he follow CNBC's morning financial news. We can sell the rights to our crop even before it is planted. Check out corn and wheat futures.

Further, if the Dungeness Basin is closed, something that DOE has no statutory authority to do, real estate values will take an even greater hit than the 35% drop of the past 3 years. If the loss in real estate value

was not a real economic taking, the concept of compensation for lost value, including eminent domain, would not be recognized at law. It is; Mr. North is wrong; Mr. Hoff is correct, and forcing Mr. Hoff out was political retaliation. DOE simply did not like the truth of the economic analysis because it wants to cram the rule down our throats.

Why the DOE would subject the citizens of the Dungeness Valley to pay \$42 million in mitigation costs for no proven benefit, whether to fish or habitat, much less benefit to the people, is beyond belief.

This is not an exercise of government of, by and **for** the people – this is arrogant politics. The rule, and DOE's incompetence in its rulemaking process in violation of state law and the APA, and leaving stakeholders out of the process (Sequim and small farmers to name two groups), is top-down waste of taxpayer money. It has been a 10-year exercise of governmental mismanagement – bureaucratic make-work by remote, un-affected government workers who ignore the inconvenient truth, that the Rule does not stand the smell test, much less the maximum net benefits test.

DOE politicians did not like the reality of the economic analysis, so you forced Mr. Hoff out and got a toady to tell you what you wanted to hear and needed to cram the rule down the throats of the citizens of the Dungeness Valley. It has to stop.

DOE needs to be repurposed from expropriation and taxation via unnecessary rulemaking, to finding other sources of water, if, as it claims but cannot prove, we are short and must close the Basin, contrary to your authority and State Law. The alleged Basin over-appropriation is merely on paper, and our work on tight-lining has shown that we can conserve without interference from DOE.

We urge you to withdraw the Rule and do not restart the process until you can meet the maximum net benefits test. Meantime, solve the real long term problem, figure out where we get more water if we truly need it, such as tapping deep aquifer water going directly into the Strait without beneficial use and tail water percolation into streams.

Sincerely, and seriously

Jacques M. Dulin



From: Jacques Dulin [REDACTED]
Sent: Friday, July 06, 2012 1:28 PM
To: Wessel, Ann (ECY)
Cc: 'Kaj Ahlburg'; 'Marguerite Glover'; 'earnest spees'
Subject: Ltr in Oppn to Rule 07-06-2012
Importance: High

Please see my attached additional comments and a series of questions I need answered. You may e-mail me at [REDACTED]

Jim Dulin

[REDACTED]

[REDACTED]

[REDACTED]

July 6, 2012

Ms Ann Wessel,
Instream Flow Rule Lead
WA Dept of Ecology
Olympia, WA
ann.wessel@ecy.wa.gov

Dear Ms. Wessel:

Further to my letter of June 28, we add our voice to the letter of Kaj Alburg of Port Angeles dated July 5, 2012.

The following are some additional comments and some questions for you to answer that we did not have a chance to state at the Hearing on June 28 due to the time limitations. Please include this letter in the public comments and opposition section of the Hearing records. Please answer the questions, and state whether the answers are binding on the DOE and enforcement officers?

We speak for ourselves and for many others in the Dungeness Valley who are attempting to preserve open spaces and grow organic crops on our small farms, farms of from 5 – 20 acres or so.

Indeed, we note that the issue of preservation of farms has not only not been addressed by the Rule, but that a subtle, unannounced change in the language and interpretation of the proposed Rule forecloses development of small and organic farms in the valley.

Originally, in the meetings a year or so ago at the John Wayne Marina, and then the private meeting with Mr. Sturdevant, you, others of DOE and Mr. Sturdevant insisted

that wells put to any beneficial use were exempt, and that the well-rights holders would be able to continue to draw 5000 gallons per day from those wells.

You now contradict that representation (or was it a deliberate mis-representation), stating in your literature at the June 28 Hearing, that all new uses even from existing wells will be subject to permitting and mitigation charges, so long as the basin or sub-basin is not closed. You go on to state, for example, that Cassellary Creek sub-basin is now closed.

We understand a basin closure means that even existing wells having rights to 5000 gal per day must cease use. Is that correct? Or does that mean no change in use is permitted, and no mitigation would be possible for changes in use?

Here is a typical example of the disastrous consequences of the Rule for small farms in the Dungeness Valley not having irrigation rights and attempting to operate off wells. As you know, or should know had DOE done a proper cost benefit analysis and an SBEIS, the Dungeness Valley has a growing organic farming industry. The Rule will absolutely stop that growth and the attendant new job creation.

Small farms start small. The capital and operating costs are enormous (hence the cost of organic produce is many times greater than giant corporate non-organic US and foreign farms). First, there is the cost of the land. It has been as high as \$260,000 for 5 acres in 2008, and runs on the order of \$95,000 to \$125,000 per 5 acres today. Add to that \$15,000 per well (we pay up front the capital cost of permits for well and the electrical transformer, meter base, meter, trenching and wiring for PUD which then charges us monthly for the electricity). The per well cost includes a minimal pump house and well completion). Then there is the tractor and implements some \$50,000. A modest 24' x 36' barn structure runs \$30,000. Even modest irrigation equipment: hoses and tripod sprinklers will run several thousand, and drip systems are even more.

Total capital investment is over \$200,000. No loans available from banks or the State of WA, much less the DOE or you personally are available.

Then we take the Mother Nature Risk ride. We have to prepare the soil (plow, disc, harrow), plant, weed continuously, and water sparingly hoping for enough rain. We have to guess what will sell. If you plant, say organic rye, you will have sown last fall and will harvest this Sept or October. No income in the meantime. Diesel fuel for the tractor over the last year has run from \$4 to \$5 per gallon; at a minimum of 400 – 500 hrs we are looking at \$2000 - \$3000 per year.

So assuming one has enough money to start an organic farm, it necessarily starts small, with the hope for survival until an income stream is established. Then you try to grow. If you started with 2 dozen fruit trees and did not use the 5000 gpd, may be second year you add 20 to 100 more. You expand the rows of berries and vegetables.

You have to generate outlets and hope for success by Nash's and Red Rooster Grocery.

But under the Rule, as you have recently changed the terms, if you are at the 20 fruit trees level now, you will not be able to add more next year because your use "will have changed". Is that true? How do you answer these small farmers and the local fruit growers association? Will they be able to add another ag well? What if they want to build a home on, say, an acre of their 5 – 20 acres?

Clearly the Rule prevents the establishment and growth of organic farming in our valley and stifles the jobs and healthy eating this farming creates, not to mention the

pressure to loose open space to more lucrative development, able to pay for mitigation rights. I note that 5000 gpd is 40 homes at the 125 gpd domestic use the Rule would permit.

We have heard a rumor that the Clean Air and Water Act of 1977 exempts all ag uses (both crops and stock watering) under the proposed Water Resources Management Program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18. Is that true?

Finally, you have not candidly addressed the 800# gorilla in the room. What role does the Tribes' assertion that treaty fishing rights are at risk play in DOE's drive to provide streams in WRIA 18 with a senior right to water? And how important has that role been in sacrificing the needs of non-tribal citizens of the Dungeness Valley to fish?

As I stated on the 28th, your Rule making initiative is not an exercise of government of, by and **for** the people – it is arrogant politics. The Rule, and DOE's incompetence in its rulemaking process in violation of state law and the APA, and leaving stakeholders out of the process (Sequim and small farmers to name two groups), is top-down waste of taxpayer money. It has been a 10-year exercise of governmental mismanagement – bureaucratic make-work by remote, un-affected government workers who ignore the inconvenient truth, that the Rule does not stand the smell test, much less the maximum net benefits test and is clearly discriminatory.

DOE needs to be repurposed from expropriation and taxation via unnecessary rulemaking, to finding other sources of water, if, as it claims but cannot prove, we are short and must close the Basin, contrary to your authority and State Law. The alleged Basin over-appropriation is merely on paper, and our work on tight-lining has shown that we can conserve without interference from DOE.

We urge you to withdraw the Rule and do not restart the process until you can meet the maximum net benefits test. Meantime, solve the real long term problem, figure out where we get more water if we truly need it, such as tapping deep aquifer water going directly into the Strait without beneficial use and tail water percolation into streams.

Sincerely,

e-signature /Jacques Dulin/

Jacques M. Dulin
For myself and those similarly situated



Dale A. Durrwachter

Dep. of Ecology
Bellingham Field office
Attn: Ann Wessel
1440 10th St. Suite 102
Bellingham, Wn. 98225-7028

July 2, 2012

RECEIVED

JUL 06 2012

DEPT OF ECOLOGY
BELLINGHAM FIELD OFFICE

Attn. Ann Wessel:

I own 5.acres at the end of Community Lane off
Woodcock Rd. in Sequim (joint ownership with sister Sylvia)
(Parcel 7 Survey V3P21 N2SW SWNW 5.01 A) owner ID 22545

The 15 pages acquired off The Internet is such an
overview of vague, non specific, generalization it
leaves an affected property owner unable to determine
the actual impact.

I have no problem with the need to address the
water issues of the area - but when government
impacts a landowner there is a responsibility to
indicate precisely that impact.

If I wished to build a single family dwelling on the
above property to include a modest summer garden
just exactly what I would need to do & what it
would cost. Please, no wishywashy maybe this or
maybe that. For your information, my neighbor has
an artesian well. My 5.a. is the only plot that size,
has no well, but does have an orchard.

Thank you for being direct & specific to my request.

Sincerely

Dale A. Durrwachter

July 2, 2012

Dept. of Ecology
Bellingham Field Office
Attn: Ann Wessel
1440 10th Street #102
Bellingham, WA 98225

RECEIVED

JUL 03 2012

DEPT OF ECOLOGY
BELLINGHAM FIELD OFFICE

Re: Dungeness Watershed

Sent via: snail mail and fax (360) 715-5225

Dear Ms. Wessel,

We were once known to be "The land of the free and the home of the brave". The land still exists but the free are being destroyed in record numbers by out of control government agencies such as the Dept. of Ecology. We are still the home of the brave.

Under state law, the waters of Washington collectively belong to the public and cannot be owned by any one individual or group. What is the state law on air? If the Department of Ecology and the tribes are not claiming ownership of the water then how are they able to transfer the quantity of it for anyone's use and ask for mitigation? How do you sell something you don't own? If the water belongs to all of us collectively, then collectively we should be able to choose.

You state that a "water right" is a legal authorization to use a certain amount of public water for a designated purpose. What is an air right? Will government soon decide that it is best for everyone to stop all sport activities that raise our heartbeats to a certain level because we are consuming more than our share of oxygen ?

It's been said that the definition of insanity is to keep doing something in the same way over and over but expect to get different results. You have heard testimony on the negative results of WRIA 17 and yet the Dept. of Ecology proceeds in the same way over again with WRIA 18 and expects different results.

There are many knowledgeable people living within the Dungeness Watershed as well as many who have invested in property here. The Dept. of Ecology has not proven that the Dungeness Watershed is in jeopardy of having a lack of water to fulfill the needs of all the households that could be built in the area verses the water use that was traditional to the area farms. It has been proven locally that the farms used far more water in the past and that Salmon not only survived but thrived.

If the Dept. of Ecology is concerned about the Dungeness Watershed and conservation of our water resource drives the proposed changes then why haven't conservation actions been applied by educating the community?

Why hasn't anyone explored the use of household Grey Water Systems? Instead we are encouraged to develop sewer systems verses our water efficient septic systems because septic systems can fail and cause pollution. When a single septic system fails there is minor pollution, but when a public sewer system fails there is major pollution.

Why is it that the Dept. of Ecology and those it deems worthy will be able to have a "Water Banking System" while all of the people who already have wells on their property but have not been using the water for a household are being punished for their conservation instead of being granted a banked amount of water? Logic says that by creating a legal well they have already opened their bank account, have made deposits and withdrawals but are being penalized for letting their investment earn interest because they have not built on the property. Aren't these people a part of the collective public water? It seems that they should have a banked amount of water sitting in their accounts for their use. The wells are installed and I'm sure they were counted as drawing wells when your study was created.

What do you think will happen when meters are installed on wells supposedly to just monitor the amount of water that is being used? Here's what I think; people will use/waste incredible amounts of water to establish that they need that amount for their personal use. Even if those people normally use water carefully and conservatively, they would feel justified in being concerned that they be *allowed* enough water. Ask yourself what you would do if your neighbor said he was going to monitor your water use because he wants to sell what you're not using. Sell? I would say, you don't own the water it belongs to all of us collectively.

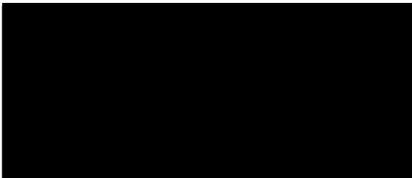
The idea of monitoring wells and mitigating water use is disturbing. It's disturbing because it's based on faulty science and an agenda that didn't include the collective who will be affected. It's disturbing because the infrastructure and access to the water is not being supplied by a public entity. If I lived in a city and water was maintained and delivered to my home through an infrastructure supplied by the city I would expect to pay for that service. Instead Ecology's expectation is that I will pay for the infrastructure and the maintenance of the water access so that Ecology and those deemed worthy can monitor and eventually charge for the use of the water. Where is the mitigation for my infrastructure? It's disturbing because there isn't science that says the ground water that is under my property comes from one of the rivers or goes back to one of the rivers that are subject to this rule. It is disturbing because I believe this is about government and those deemed worthy control; wrapped up as a gift to ourselves for our future.

In reality "We the people" are the endangered species. It's been said that what is right is right no matter who is against it. What is wrong is wrong no matter who is for it. What is legal is what politicians and lawyers decide more people are for than against.

Politicians often mistake or disregard what people are for or against and that can be changed by "We the people."



R. Doreen Emerson



From: Doreen Emerson [REDACTED]
Sent: Wednesday, July 04, 2012 9:35 AM
To: Wessel, Ann (ECY); [REDACTED]
Subject: Dungeness Watershed Rule WRIA 18

Happy Independence Day Ms. Wessel!

I am writing to address the current communication from our County Commissioners to the Dept. of Ecology.

I am asking/demanding/requiring/requesting/stipulating/ that the Dept. of Ecology spend more time cleaning up their own environment regarding the alleged and seemingly apparent manipulation of data for WRIA 18. It's time to stop the pretense and acknowledge that serious mistakes have been made and that the citizens of Clallam county will not ignore the errors and misinformation that has been presented to us. The integrity of your process has been damaged beyond repair from my point of view. How can you validate your position now that the emails and original economic analysis are public?

To say that an independent economic analysis is needed is an understatement of my thoughts on this matter. AN INDEPENDENT ECONOMIC ANALYSIS IS REQUIRED! The Dept. of Ecology is supposedly trying to do the right thing. There are many roads we can travel on our way to the right thing. The Dept. of Ecology has taken a wrong road in this journey. It's time to stop, take a look around, and find a path that all of us can travel together.

I applaud our County Commissioners for stepping up and hearing the citizens of Clallam county.

R. Doreen Emerson
Sequim, Washington

From: Jo Anne Estes [REDACTED]
Sent: Friday, July 06, 2012 8:16 AM
To: Wessel, Ann (ECY)
Subject: Dungeness Water Rule

Dear Ms. Wessel,

I believe the state of Washington is on its way to yet another decision to restrict people's rights to use their private property, the Dungeness Water Rule.

The policies and regulations in this rule leave people holding the title to their land and paying the property taxes, but losing their rights without compensation of any kind.

Furthermore, new standards and requirements often are implemented without current, valid, peer-reviewed science. I believe this to be the case with the Water Rule.

I am a 22 year resident of Clallam County. I am for a balanced approach to protecting our earth and environment.

However, I respectfully call for a demand for the Department of Ecology to stop the rule making timeline until an independent economic study is completed.

Sincerely,

Jo Anne Estes

From: Gene Farr [REDACTED]
Sent: Sunday, July 08, 2012 9:58 AM
To: Wessel, Ann (ECY)
Subject: WRIA 18

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Gene Farr

From: George or Pat Farren [REDACTED]

Sent: Sunday, July 08, 2012 7:17 PM

To: Wessel, Ann (ECY)

Subject: WRIA

It is my strong belief that WRIA should definitely be studied further before going ahead. An impartial scientific study in regard to impact on our economy , our environment, and the private citizen.

I want this measure to be postponed immediately!!!

Most Sincerely,

Pat Farren

[REDACTED]

From: Jeremy Fodge [REDACTED]
Sent: Monday, July 09, 2012 3:01 PM
To: Wessel, Ann (ECY)
Subject: WRIA18

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

--

In Christ alone,

Jeremy Fodge

From: Marnee Foldo [REDACTED]
Sent: Monday, July 09, 2012 4:10 PM
To: Wessel, Ann (ECY)
Subject: Proposed Dungeness Water Rule

To Ann Wessel and other Department of Ecology members responsible for the proposed Dungeness Water Rule:

I have attended several meetings over the past few years regarding WRIA 18 and the proposed water rule for the Dungeness Watershed. Although I am not a scientist, I am educated (undergraduate minor in Botany; Masters degree; and several teaching credentials from California and Washington). My husband and I have lived in Sequim for 9 years, having moved here from northern California.

This rule should not be adopted or put into force. As you are aware from the public meetings, there is overwhelming opposition to the rule as written. If it were indeed a good rule with clear benefits, and with benefits that clearly outweighed the costs, I believe there would be public support.

I am writing to voice my opposition to the proposed Water Rule for the Dungeness Watershed, WRIA 18. My opposition covers several aspects of this rule, including, but not limited to the following:

1. First and foremost is a glaring omission in the Cost Benefit Analysis. In the section on the costs of the rule, you neglected to mention any impact on property values. Once access to water is limited, the value of the property will decrease. Consequently, there will be a decrease in property taxes. Once this source of revenue declines, the State, as well as Clallam County, will either increase taxes, which will cause a burden on the taxpayer (and a further burden on those who have had their property devalued), or services will be cut and/or eliminated. This will cause a burden to the residents who access the services, as well as the employees who will have their work hours reduced or their jobs eliminated. The ramifications of this go on and on, and the financial cost will be huge. There will be a negative impact on price when owners want to sell their property. The cost of the potential decrease in property values needs to be accounted for and added to the cost benefit analysis.

2. Washington is the "Evergreen State." It is evergreen due to the abundance of rain. I have doubts about the necessity of restricting water usage. Although I have concerns about population growth (in California, I saw that it can destroy an area), I do not think this rule is appropriate. Metering water usage is a bad idea; it will only be a matter of time before an agency will start charging for water usage. The cost of drilling a well is significant. To have to pay for the water you draw out of the expensive well that you must drill is unfair and burdensome. The cost of paying for water from a well was not figured in the cost benefit analysis.

3. This rule discourages landscaping and gardening. Landscaping adds value to property. Trees can provide protection from wind, insulate from heat and cold, and mitigate the need (and cost) for heating and cooling. The cost of food keeps increasing, while the taste of produce keeps diminishing due to the depletion of minerals in soil. People should be encouraged, not

discouraged, to grow their own food and landscape their property. There are financial and health benefits to both, and detriments to letting landscaping die or not providing landscaping.

4. The limitations of consumptive use for property with a public sewer system seems too restrictive. It does not take into account the number of people who live in the home. Although I support family planning, I do not think limiting water usage is the appropriate method. We have low flow toilets. Washing machines use less water. There are many ways to conserve water. I lived through water rationing, water conservation, bricks in the toilet tank, and "if it's yellow, let it mellow." Due to health issues and physical limitations, bathing as opposed to showering may be a necessity, even though the water usage is higher. One hundred fifty gallons per day may not be adequate. It is not moral or logical to limit water usage when hygiene may be impaired. The cost of poor hygiene on emotional as well as physical health could be considerable.

5. The realtors in Clallam County, at their own expense, mailed postcards to residents with information about the water rule. Dissemination of information, including full disclosure of the impact on each property owner, should be the responsibility of the Department of Ecology and the State of Washington. Thousands of property owners will be potentially affected by this rule. Some live out of the area. Information this important should be delivered directly to each property owner, and not just noticed in the media. There is a cost involved with the full disclosure of this information. If you do not have the funds to provide this information, then this rule should not be approved.

All of these points of opposition have related costs which were not addressed in the Cost Benefit Analysis. Before moving further, I think it is imperative that you address the costs I have mentioned, as well as others which exist, of which I am unaware. I think that if you do a more thorough cost benefit analysis, you will find that the costs exceed the benefits, and that the rule should not be approved or implemented as is.

I understand that a lot of time and money has been invested in this project. I appreciate the efforts you have taken to meet with the public and listen to the opposition to the rule. This proposed rule will cause more harm than good. Please include my comments and opposition to the proposed rule as part of the public record.

Sincerely,

Marnee Foldoe



From: Bob Forde [REDACTED]
Sent: Saturday, July 07, 2012 9:52 AM
To: Wessel, Ann (ECY)
Subject: comments for the record on the proposed Water Resources Management Program

Ann Wessel
Washington State Department of Ecology
[REDACTED]

July 6, 2012

Please find following my comments for the record on the proposed Water Resources Management Program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18, Chapter 173-518 WAC.

Much has been written and said about DOE's desire to regulate/manage the people in the valley. You really can't manage the water. If you were serious about managing water, you would simply build a dam/reservoir.

Your science is flawed, your statutory authority lacking, and your economics completely incompetent.

We, the people of the Dungeness Valley, have risen up with one voice and one command - STOP!

The Supreme Law in the State of Washington is the State Constitution. May I simply remind you that Article I, Section 1, states: All political power rests in the people, and Governments derive their just powers from the CONSENT of the Governed, to protect and maintain INDIVIDUAL RIGHTS.

The framers of the 1889 constitution must have thought this was of supreme importance, making it the very first words they penned. Not public safety, not public unity, not patriotism, not clean air, water, or even public education. No. Individual rights! That is first! You exist by the CONSENT of the Governed. Please try to remember that is your first requirement.

This rule-making process must not continue. It is clearly a waste of time and money. Money we the taxpayer must pay you, even if it's a big boondoggle. It has now become a moral issue. We need less of your presence in our lives, not more.

Regards,

Bob Forde,
Sequim, WA
[REDACTED]

From: Sue Forde [REDACTED]
Sent: Monday, July 02, 2012 8:55 PM
To: Wessel, Ann (ECY)
Subject: Comment on WRIA 18 Rule

June 30, 2012

Please find following my comments for the record on the proposed Water Resources Management Program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18, Chapter 173-518 WAC.

The Rule proposed by the Washington State Dept. of Ecology (DOE) is flawed, will cost the people far more money than any benefit obtained, and should not be adopted.

For many years, the DOE has come forward with a proposed “well metering” scheme, and each time, has backed off because of public’s outrage and lack of scientific evidence that wells are causing any kind of problem for salmon. (History shows -according to local newspapers over the years- that salmon populations have fallen, then returned – it’s a natural cycle, some of which is caused by oceanic conditions, according to oceanographers.)

Now the DOE is back again, this time pushing even harder, with the metering idea to “measure” how much water is being used – and which will eventually cause a charge for the use of the water in addition to the burden of expenses on the owner of the land for the digging and maintaining of the well, and the cost to place a meter. The further “pile on” against the taxpayer/landowner is the idea of a mitigation fee for any “change” in use of the water – ie a garden, a greenhouse, etc.

And for what? For a minimal amount of water to be “saved” for fish? (About 0.77 cfs out of minimum instream flow of 180 cfs). It’s what the DOE’s recently removed economist calls “2/10 of 1% of the river over a 100 year build out”. This is all over an extremely small and immeasurable amount of water. Further the “studies” – which in fact use modeling rather than empirical science (and modeling can be skewed as we know – garbage in, garbage out), are over 20 years old and haven’t been updated. Some of the minimum flows Ecology requires historically have been met only 10% of the time, and some never. Rather than protecting the water actually in the rivers, the rule attempts to restore the rivers to flow levels never actually achieved.

RCW 34.5.328(1)(d) states that any “rule” is illegal if its benefits do not exceed its costs. According to Tryg Hoff, the Ecology in-house economist, the “rule” does not meet the legal requirements of the RCW. As quoted in the Sequim Gazette, “Tryg Hoff, the agency economist first assigned to create the rule’s cost-benefit analysis, argued repeatedly that the costs of the rule would far outweigh the benefits. Under Washington law the benefits of any new rule must be greater than the costs.” (Sequim Gazette, June 6, 2012). It’s no wonder Hoff was removed from the DOE rule-making team shortly after his statement, after not falling in line with the “predetermined outcomes”.

I have concluded that this Rule has nothing to do with fish – especially based on the above – and that it is a power grab of the people’s right to use their own property. The DOE is an agency out of control, should be reduced tremendously in size (currently over 1600 employees) and required to stay within the confines of the Washington State Constitution.

Sue Forde
[REDACTED]

Cc: Senator Jim Hargrove, [REDACTED]

Representative Kevin Van de Wege, [REDACTED]

Representative Steve Tharinger, [REDACTED]

Commissioner Jim McEntire, [REDACTED]

Commissioner Mike Chapman, [REDACTED]

Commissioner Mike Doherty, [REDACTED]

From: Bob [REDACTED]
Sent: Friday, May 11, 2012 10:20 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

Please leave the people's water alone and stop interfering with tax payer's lives. You are going beyond the limits of acceptance for a state regulatory agency.

Robert Fowler
Kennewick, WA
[REDACTED]

From: Dick French [REDACTED]
Sent: Monday, June 04, 2012 10:08 AM
To: Wessel, Ann (ECY)
Subject: Dungeness River

Why is the Dungeness River being given a water right for more water than it has often had, historically? Wouldn't less water than 180 CFS, in August through October, be enough for fish production? Have these scientific studies been widely peer-reviewed?

The world is 2/3 water and the Department of Ecology is trying to charge us for it. Looks like overkill to me.

**Richard French
Sequim, WA**

From: Dick French [REDACTED]
Sent: Thursday, June 07, 2012 1:32 PM
To: Wessel, Ann (ECY)
Subject: Sequim Gazette item

Interesting article and interesting how Mr. Hoff was ousted from his task.

Was he relieved for cause or for just telling the truth? Especially where he states in an e-mail "Like I said this rule smacks of anti growth."

In my opinion if Ecology wants to implement this rule, then Ecology should foot the bill.

http://www.sequimgazette.com/news/article.exm/2012-06-06_agency_economist_says_water_rule_will_cost_millions

Richard French
Sequim, WA
[REDACTED]

From: Dick French [REDACTED]
Sent: Thursday, June 07, 2012 10:29 AM
To: Wessel, Ann (ECY)
Subject: Water Rights

Ms. Wessel

In the 1940's, there were 949 working dairy farms cows, in the Sequim-Dungeness Valley. Irrigation was flood irrigation, with high withdrawals off the Dungeness River. Yet, there were plenty of fish. Even with the increase in population, the amount of water pulled from the Dungeness River now is FAR less than what was used in previous times.

Now the wild fish in the Dungeness River are few, caused not by lack of spawning water, but by nylon pollution. i.e. gill nets stretched across the river by commercial and tribal fisherman. Getting the wild fish back in the river, which was once a goal of fisherman and ecologists, is now a never ending occupation which we all pour money into, trying a different method every few years without success. Get rid of the nylon pollution and the fish will come back.

Richard French
Sequim

[REDACTED]

From: Dick French [REDACTED]
Sent: Sunday, July 08, 2012 9:32 AM
To: Wessel, Ann (ECY)
Subject: This is an official comment

This is an official comment

Dear Ms. Wessel,

A number of major limits on water usage in our area are being proposed by DOE.

These limits will probably decrease land values, lower the business-generated and real estate-related tax bases, and, very likely, result in lawsuits over what could be construed as a government "taking" of land. They will deprive citizens of the right to use their land.

DOE's scientists seem to assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation. All this when the Dungeness Valley has been decreasing water usage for the past several years.

DOE's economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits upon implementation. Shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department. Something smells bad here.

I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

**Richard and Martha French
Taxpayers
Sequim, WA**

From: Nancy Froh [REDACTED]
Sent: Friday, July 06, 2012 3:23 PM
To: Wessel, Ann (ECY)
Subject: DOE Water Rule

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

Nancy Louise Froh

From: Nathan [REDACTED]
Sent: Thursday, July 05, 2012 12:37 PM
To: Wessel, Ann (ECY)
Subject: Instream flow rule, Sequim

Hi Ann,

I spoke with you about 3 years ago and the Dungeness Bridge meeting concern the proposed in stream flow rule. I had to step away due to frustration at the process and the reasoning behind it. However, I want to again voice my concern at the overreach of government on private property and the consequences it will have. I have been a real estate appraiser(not agent) for 20 years in Sequim so I do represent another industry that has a strong knowledge of the needs of home owners in my city. I am very familiar with the history of the valley and the importance of our wells with family dating back to 1870. The piping of the ditches will have long term affects to our wells and was ill-advised, however, this new rule will destroy the lives of the families that have lived in their homes expecting water in this valley as many have invested money in future parcels and more regulation will only tie their hands.

If public water was available I still would still disagree with government telling private property owners what they can and cannot do with their property. However, at least there would be an option.

The citizens of Sequim and I am sure other areas are not interested in your political agenda and do not agree with the science behind it. I asked that you would revisit your decisions for this flow rule in Clallam County. The net gain will be far less than the enormous cost to our community. These decisions need to be made by the stakeholders of our community and not Olympia.

I know you have heard all the data that we have supplied supporting our viewpoint so in order to keep this brief I am simply stating my opinion as you likely know my reasoning.

Thank you for your consideration.
Nathan Funston

From: Daniel E. Gase [REDACTED]
Sent: Monday, July 02, 2012 11:25 AM
To: Wessel, Ann (ECY)

Subject: DOE Proposed Changes

Dear Ms. Wessel,

The Department of Ecology is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial.

Thank you for your attention.

Dan Gase

"Your Trusted Real Estate Advisor"



From: Ron Gilles [REDACTED]
Sent: Monday, July 09, 2012 6:10 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18

Hi Ann,

I have some questions regarding the over appropriation of water in the Dungeness Valley with respect to the Cost Benefit analysis.

1.)

We have a client who has a 1937 water right to draw water from Matriotti Creek. In the last year he finally obtained an approval to move a pump station location 50 feet on Matriotti Creek after waiting over two years. When this approval came back it has come with some new conditions in which the owner had to prove his watering history which he has done. But, it also came back with a reduction in the water right from .8 cubic feet per second (CFS) to .55 CFS. The water right number for this client is CS2-SWC993.

So the question is, has Department of Ecology completed an assessment of all unused or relinquished water rights in the analysis and provided this as a reduction in the Over Appropriation equation that is being sited?

Please respond to my question with a list of all the relinquished historic Water Rights in the Sequim - Dungeness Valley since the formation of the ditch companies and districts created over 100 years ago.

2.)

We have clients who have wells drilled into all 3 of the aquifers in the Dungeness Valley and we personally live in a home with a well. We know there is a substantial amount of water moving underground out to the Straits. Some of these clients do not live here yet on the property they own with wells drilled and some have property without wells.

My concern is that the WRIA 18 proposed rules are taking a "one size fits all approach" around the State of Washington and we know that is not the case with the Sequim - Dungeness Valley. It would appear that the Cost Benefit analysis is flawed and needs to be redone by a private third party entity for a fair and accurate analysis.

Please comment on the Cost Benefit analysis errors.

Thanks,
Ronald L. Gilles
Professional Real Estate
Designated Broker, GRI, CNE
ABR - Accredited Buyer's Representative



From: Clarence Glover [REDACTED]
Sent: Wednesday, June 27, 2012 5:18 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18 comment for the record.

I would like make a comment for the record against the WRIA 18 rule. The target flow rates have been set at levels that the Dungeness river historically has never achieved. Over the past 50 years much of the on paper water allocation has been relinquished due to non use. As irrigation has decreased over the years the river has not conversely picked up any significant flow. Experts have calculated that the impact of the exempt wells in the Dungeness water shed account for around .2 to .7 cfs. of flow. Several of the larger water rights that are no longer used were for amounts of 4 cfs. Yet the river flow has not increased proportionately. Therefore it makes no sense that any form of management or manipulation of the water is going to raise the flow of the Dungeness to that which has been proposed as the target rate.

My second objection involves the water exchange. You are attempting to implement a rule that includes an exchange with neither any water or mechanism ready to make the system work. All information about the exchange and the process is at this point is hypothetical. No solid information can be obtained in regards to cost, or process.

My third concern is in regard to cost-benefit. There is no way that the proposed WRIA 18 rule will be cost neutral. There will be property owners of currently recognized and taxed parcels of land in the Dungeness water shed that will eventually find that they have unbuildable property. These parcels will most likely be absorbed by neighboring properties for a fraction of their current value or will be repeatedly sold by tax auction to people who do not realize that they cannot build on them. The majority of people who move into the Dungeness water shed are retired. The people who want to live in the county area where wells are used want to have a yard or garden, or fruit trees etc. Properties without outside water will never achieve the value potential as properties that have outside watering ability. This will impact the tax base in a negative way.

Sincerely
Clarence Glover

[REDACTED]

August 3, 2012

Subject: Documents received but not linked as official comments on the rule

Marguerite Glover provided a big box of historical e-mail and reports as background for her comments.

Although important to her research they are not linked on this page.

From: Marguerite Glover [REDACTED]
Sent: Monday, July 09, 2012 4:13 PM
To: Wessel, Ann (ECY)
Subject: Formal Comment of the Dungeness Water Management Rule--lack of community buy-in

Ann Wessel, Instream Flow Rule Lead

Dear Ann,

I have mentioned these things before, but not to Ecology, formally.

Over decades, I have seen what many people in Jefferson County have referred to. They felt that there was not a community buy-in, with the WRIA 17 Water Rule.

When the Elwha-Dungeness Watershed Plan was in process, and finally approved, people in this community HAD gone on record, to say that they did not agree with the 180 cfs, planned as a water right for the River, for August, September, and October. This is NOT a flow that the River was able to achieve, often, historically. I thought that Ecology had a duty to make sure that there was water for People, Farms, and Fish. That was what one of your flyers said. We know that a flow of less than 180 cfs is enough to sustain fish, as in the past, there were lots of fish, with a Dungeness River flowing far less than that. And, aren't your rules supposed to set "minimum" instream flows? In the water groups I attended, we often talked about compromising, and doing something between minimum and 180 cfs.

The signators on the Elwha-Dungeness Watershed Plan include the Olympic National Forest. Yet, most of the proposed Rule is about limiting exempt well usage in the Dungeness Valley. How would new wells or new water uses, to the North, impact wilderness lakes, like Gladys Lake or Moose Lake or Moose Lake? I would think that most of their water would come from snow melt and rainfall in the mountains and foothills. Yet, ONF had input. So did the City of Port Angeles, which is not part of the Dungeness Watershed. Fish and fishermen were represented by the Lower Elwha and Jamestown S'Klallam Tribes, and by two sports fishermen. The Environmental Caucus and Protect the Peninsula's Future were there. An interested individual was there. The DRMT and Clallam County were represented. The Department of Ecology was represented. Gary Gleason represented "Education," I'm not sure what the exact group was. The Clallam Conservation District was there, as well as the Dungeness Water Users. Peter (Pete) Schroeder is shown as a "Riverside Property Owner." I like and respect Pete. But, he is an environmentalist, who happens to own some property on the River. The Economic Development Council was represented. So, there would have been some input for business. But, what about the small farmers? Where were they? I don't see them there. The well drillers? The people who represented those with hobby farms, and exempt wells? They weren't on the group. A representative did come from the City of Sequim. But, he was not a powerful player, as the City of Port Angeles was the larger water purveyor. Where was the PUD? They are a major water purveyor in WRIA 18.

Every water group I have been on, has had much influence and "pushing" from agencies. The agencies are always the ones who present the ideas for the "stakeholders" to talk about. They set the table, then try to get the people at the table to all buy in to their agenda. These directed consensus groups are time-consuming, and draining. It is hard to get salient points across when you are facing the disapproval of a group that knows where they are going, ahead of time. That is one of the reasons that people who work, simply aren't willing to invest the time in coming to the table.

Those of us on the Water Working Group, for the WRIA 18 East tried to have some good discussions, and make some good points. And, there was a well driller on that group. But, we didn't get to take any votes. We didn't get to know much about what the Executive Committee was doing. They didn't have any minutes for us, or the public, to read. And, none of us, or the public, was invited to any of Executive committee meetings, until late in the process. I don't think there were any business people on that committee; and, I don't know how any of them were chosen.

Yet, we hear that the Rule must be promulgated, as the Dungeness Watershed Management Plan laid out all of these things. I still remember, at one of the later meetings, long after the Plan had been adopted, when the specific idea of the "reserves," and how much water would be in them, was floated. No one had any idea that this would be part of the Rule. Maybe some people on the Executive Committee knew. But, those of us on the Water Working Group had not heard of it.

This has now become the Dungeness Water Management Rule. This Rule is not the ELWHA-Dungeness Watershed Rule. Don't you think the people who live and work in the Sequim-Dungeness Valley should have more of a say? They now have, in their public testimony, and their written comments.

I support our County Commissioners, the letter from our REALTOR(R) Association, and so many of the excellent letters which have been written from individuals and groups. I sincerely hope that Ecology will listen to all of us.

There are too many questions which are still unanswered. We need the answers BEFORE the Rule is in place, not after. And, if there is not community buy-in, then, who is it that you represent?

Thank you very much for listening to us. I'm sure that every one of us could have written many, many more comments.

Sincerely,

Marguerite A Glover



From: Marguerite Glover [REDACTED]
Sent: Wednesday, June 27, 2012 3:55 PM
To: Wessel, Ann (ECY)
Subject: Formal Comment for the Dungeness Water Management Rule

The Cost-Benefit Analysis for WRIA 18 East was done very quickly, by two new economists. The Benefits of this proposed Rule most certainly do not outweigh the Costs. We do not know if there would have been a lawsuit from the Tribe or anyone else, without the Rule. The percentage given for the "possibility of a lawsuit" was 14.1 to 27.7--less than a one-third chance.

The Cost of this Rule is estimated at \$7.7 million to \$23.1 million, over 20 years. Not taken into consideration was the devaluing of property. All real estate agents know that water is incredibly important in marketing a piece of property. Currently, anyone with an exempt well has the ability to

- ** Use up to 5,000 gallons per day for their own domestic use, and
- ** Water up to 1/2 acre of lawn or garden, and
- ** Provide stock water in unlimited quantities, and
- ** Use up to 5,000 gallons per day for commercial or industrial uses.

While all of these uses are very valuable, I don't really think the last one was given much thought, in the CBA. We are a rural area. Most of us have a garden, or tomatoes, or berries, or flowers. Many of us buy fruits or vegetables or flowers from farm stands, and farmers' markets. The ability to have greenhouses on your property, to provide produce for Sunny Farms, or restaurants, farm stands, street fairs, etc., is huge. The ability to water orchards, to sell fruit, from your own farm stand, or otherwise, is huge. The ability to water beautiful plants and flowers, and sell them, is huge. You can water a small nursery, with water from your exempt well. Without the Rule, this can be done. And, without the Rule, someone with a well, who wanted to expand to that use, could do also do it.

Also very valuable is garden/home orchard/berry watering part of the exemption. People enjoy their own produce, without pesticides. A garden is part of our rural lifestyle. And, the stockwatering portion of the exemption is also very valuable. Many of us buy local, organic beef, from farmers, or from Sunny Farms. We eat it, at local restaurants. We eat our own eggs from chickens, or buy eggs from farm stands. Some people raise rabbits or chickens or sheep or cows, for their own food. Without the ability to stock water, that choice is gone.

In the future, if this Rule passes, as proposed, real estate agents will be asked which properties have the ability to water outside. Which properties have the ability to have greenhouses. Which ones will be able to have, and water, an orchard. Those properties that do not have these grandfathered features, will most definitely go down in value. They will have to ask far less, for their property, than what they could today. Most certainly, they will ask the County Assessor for relief from their taxes. And, as their taxes are reduced, other taxes must go up. Grandfathered water properties will increase in value.

How much water could we buy, with the Cost of this Rule? A LOT. How many restoration or storage projects could we undertake? Quite a few.

The Benefits absolutely do not outweigh the Costs.

Sincerely,
Marguerite A Glover

[REDACTED]

From: Marguerite Glover [REDACTED]
Sent: Tuesday, June 26, 2012 9:22 PM
To: Wessel, Ann (ECY)
Subject: Formal Comment on the Dungeness Water Management Rule

Ann Wessel, Instream Flow Rule Lead

Dear Ann,

We all know that the Dungeness River naturally gains and loses, along its course. Simonds and Sinclair (2002) discovered that the Dungeness mostly loses water, between River Miles 11.8 and 3.6. This is a natural condition for the River. It has always lost water, and fed the groundwater. It will continue to do so. In the Dungeness Watershed Plan, Page 2.8-11, it is noted about the Simonds and Sinclair studies, and the Thomas studies, that "the general picture to emerge from their work is that the Dungeness River gains predominantly in its lowest 3 miles; gaining reaches are localized, and are associated with locally unique conditions (e.g., a clay layer found at Schoolhouse Bridge)." Dave Nazy also looked at the difference in flows, between the USGS gage (R.M. 11.8) and the Ecology gage (River Mile 0.8) near the mouth of the River. In a March 01, 2012 email, to Tryg Hoff and Bob Barwin, Dave said, "reduction in stream flow between the gages is in part, related to groundwater withdrawals and consumption although I think this impact is small when compared to several other factors." Man's impact on the River, via wells, is small. The benefits that we are obtaining from this Water Management Rule are miniscule, compared to the costs. We are not putting any more water back in the River. We could make as much impact, by having more education programs, for well users, about proper water use and conservation. On the other hand, this Rule is taking value away from property, and giving us large costs in terms of more Ecology staff, county staff, oversight, salaries for people in the Washington Water Trust, transfer and administration fees, etc.

It is peculiar that, when you use Ecology's mitigation calculator, to find your well's impact on the River and streams, you find a higher impact in the deeper aquifer, with coastal wells. Why is that? When you are on Jamestown Road, or Marine Drive in Sequim, how are you affecting the River much at all. Do the artesian wells take water from the River and the streams? Or, was that water that would have gone to the Strait? What are the margins of error for the mitigation calculator? And, how was it proofed?

The Dungeness Watershed Plan talks about flows in Matriotti Creek. It states that "Occasional measurements of Matriotti Creek have shown values as high as 20 cfs, but more frequently in the range of 5 to 10 cfs (DQ Plan 1994). Matriotti Creek listed for low flow on the Surface Water Source Limitation (SWSL) list in 1952." I will make a comment about Matriotti that I had previously made about Casselary Creek and Bell Creek. Why do we have to try to compensate for creeks that would not have carried water, consistently, year-round, without help from leaking irrigation ditches, and/or direct input from

irrigation ditches? Note the following, from a Technical Memorandum to Ann Soule from Peter Schwartzman of the Pacific Groundwater Group:

In 2005, when irrigation diversions were reduced to zero or very low levels during late summer to restore Dungeness streamflow for fish passage, Matriotti Creek was dry at Woodcock Rd. (approximately RM 3). The Agnew District tightlined laterals that previously fed into the Creek, especially in the past 2-3 years. After Sept 15th, the end-date of the irrigation season, much of the middle and upper creek dries up. (pers. comm., Hals and Jeldness, 2007). Bedrock is absent in the Matriotti Creek channel, except near its headwaters (**Plate 2**).

Yet, in the Dungeness Water Management Rule, the Instream Flows set for Matriotti Creek are: 14 cfs for January, 10 cfs for February, 27 cfs each for March and April, 18 cfs each, for May and June, 5 cfs each, for July, August, September and October, and 14 cfs for November and December. When Matriotti Creek "frequently" had 5 to 10 cfs, and dried up at times, how can we give this creek these water rights? Due to the method used, toe width, which often comes up with a figure larger than real life, we have this problem for most, if not all, of the smaller streams.

The well usage in the Sequim-Dungeness Valley has very little to do with stream flow, in the creeks, or in the River. The focus should be on irrigation usage, and large withdrawals, such as the City of Sequim and the PUD. But, this has obviously become a political issue. One that, if successful, will take rights from many citizens, to use their water beneficially, for gardens and domestic use. To foist this Water Management Rule on well users, will cost them much more than the perceived benefit. We saw no threatened lawsuits. If there were threatened, then, bring them forward, into the light. With the Rule, there will be lawsuits from property owners, who will see their rights dwindle. Why was that not considered?

Sincerely,

Marguerite A Glover



From: Marguerite Glover [REDACTED]
Sent: Saturday, June 23, 2012 11:59 AM
To: Wessel, Ann (ECY)
Subject: Formal Comment on the Dungeness Water Management Rule--Diversions are far less now

Ann Wessel, WA State Department of Ecology
Dear Ann,

Please consider this as a formal comment. Thank you.

The first Dungeness River water diverted for agricultural irrigation was the Sequim Prairie ditch of 1896. The 1924 adjudication of Dungeness Water Rights allocated the potential for 581 cubic feet per second of surface water to be withdrawn from the Dungeness River, with a potential to irrigate up to 26,000 acres (information is from the July 2007 Jamestown S'Klallam Tribe Report called "Protecting and Restoring the Waters of the Dungeness." (Note that "The History of the Dungeness Area," by Welden and Virginia Clark, says it was 518 cfs. Bob Caldwell's research said that it was 518.16 cfs.)) Obviously, this was more water than was in the River, and was not sustainable.

In 1998, an MOU between the WA State Department of Ecology and the Dungeness Water Users Association was established. In it, the irrigators agreed to not withdraw more than 50% of the River flow, at any time. They also agreed to maximum acreage and diversion amounts. The legal limit was set at 0.02 cfs draw/acre. This is far less than many water rights certificates have on them. Many of those old water rights have been relinquished, due to non-use.

Currently, the WA State Department of Ecology and the Members of the Dungeness Water Users Association are working on a new Memorandum of Agreement. In 2011, the total acres irrigated in the Sequim-Dungeness Valley was 6,559. In recent history, irrigation withdrawals have hit up to 93.5 cfs, for some individual ditches. But, the normal withdrawal, per Gary Smith, in the last five years, is 40-50 cfs. At the March 14, 2012 DRMT meeting, Cynthia Nelson (DOE) said that with all the irrigation and conservation improvements, even with evaporation in some parts, peak diversion has only been about 70-75 cfs. This is certainly far less than the "over-appropriation" of 518 cfs! Each year, due to irrigation efficiencies, relinquishment, piping, and less withdrawal from the Dungeness River and other streams, the Dungeness Watershed has seen less usage/consumption of river and stream water.

At the March 14, 2012 DRMT meeting, Bob Caldwell reported that 45.6 cfs was conserved, and put into trust (See page 3 of the approved meeting notes for that date.). 1/3 of this water will be available for the Water Users Association to use or to sell. 2/3 of the conserved water was "given" to instream flow. Why is this water not a credit towards our entire water budget? Why are we setting up a complex and expensive mitigation system, enforcement system, and Water Exchange, when the amount of exempt well buildout for the next twenty years was expected to be a maximum of .3 CFS (from an email written by Tryg Hoff, previous Ecology economist for the Dungeness Rule, on March 01, 2012)? Even if the expected consumption by all new wells in the Valley would be 2 CFS, this number is very insignificant, compared to the 15.2 cfs that was just saved for instream flow, for the Dungeness River.

Looking at the Fourth Final Draft of the new MOA, Ecology acknowledges that the "conserved and saved water as of December 31, 2010 is 45.6 cfs, representing 13,904 annual acre feet (AF)...""Concurrently with execution of this MOA Ecology will provide the WUA members a written decision acknowledging and documenting the 15.08 cfs and 4598 annual AF in temporary trust for WUA members for future uses as provided in this MOA."..."the WUA members shall execute necessary deeds or water right conveyances to Ecology for the purpose of transferring from temporary trust to **permanent** (my bolding) trust for instream flow purposes 2/3 of the saved water (30.52 cfs, 9306 AF)."

30.52 cfs for the river. And, we are going to be penalized for "taking" from the River how many cfs? It's negligible, and has already been compensated for, thanks to the hard work of the irrigators. The new MOA will allow the irrigators to take up to 93.5 cfs, as long as that is no more than 50% of the River. They will also be allowed to irrigate up to 7,000 acres (Estimates of historic peak irrigated acreage was from 8,800 to 14,000 acres (Entrix, 2005)). In addition to the 50% agreement, the WUA members (irrigators) will not allow the River to fall below 60 cfs, below the USGS Gage (which is above the irrigation diversions). So, when the River is at 99 cfs, the irrigators will be allowed to take no more than 39 cfs.

In addition to these stipulations, when the WUA members take any water out of their temporary trust, to sell to the Water Exchange, or otherwise use for mitigation for groundwater uses, that same amount of cfs will be added to their actual diversion amounts. Using our previous example, the irrigators could now not take 39 cfs; instead, they would be allowed up to 37 cfs (if the River was at 99 cfs). So, the benefit is mostly going to the River. The River, its fish and habitats,

are very important. Equally important, should be the continued life and livelihood of large farmers, hobby farms, and all the people who live in the Sequim-Dungeness Valley. All of them trying to enjoy our beautiful rural lifestyle, complete with fresh eggs, organic vegetables, fruit, beef, and other animals--nourished by water. Tryg Hoff, in a February 29, 2012 email said that "exempting in-house domestic use would only consume 2/10 of 1% of the river over a 100 year build out." This man was an accomplished economist for Ecology, for decades. I certainly agree with him that the impact on property values (and parallel reductions in taxes for some properties, that will have to be made up by the rest of the taxpayers), quality of life, the cost of the mitigation, water right transfers through the Water Exchange, additional staff and hours needed at our County Department of Community Development, and much more, certainly outweigh the small benefit achieved from this proposed Dungeness Water Management Rule. The benefits we all attain without the Rule are much more tangible, than what is written in the Cost Benefit Analysis.

Sincerely,

Marguerite A Glover



From: Marguerite Glover [REDACTED]
Sent: Thursday, June 14, 2012 9:22 AM
To: Wessel, Ann (ECY)
Subject: A formal comment for the Dungeness Water Management Rule, about water restoration efforts

Ann Wessel, Washington State Department of Ecology

Dear Ann,

In the Final Environmental Impact Statement for the Dungeness River Agricultural Water Users Association Comprehensive Water Conservation Plan, November 2003 (the piping project), we are told that some of the Exempt wells would no longer produce a reliable yield. (Environmental Impacts 5-55). This means they would go dry--and, have to be drilled deeper. And, even "Non-Exempt (Public) Water Supply Wells" would experience a loss in yield, due to the piping. In the authors' estimation, this would not severely impact their production, but isn't this an impairment of a senior right, in the name of saving federally threatened or endangered species, in the Dungeness River? The cite below is just from one of the alternatives. But, certainly, there were wells that "went dry," or had to be drilled deeper, in the Silberhorn and Carlsborg areas. In the Silberhorn area, many people blamed this on the City of Sequim's wellfield. But, it appears, from the FEIS that much of that could actually have been from ditch piping. Why weren't people told? The Clallam Conservation District is obtaining a grant, to help the irrigators pipe even more miles of ditches. With the advent of this Water Rule, there should be parallel pipes--one, a line of perforated pipes, which would allow infiltration/aquifer recharge/stream enhancement, at the times of the year when there is more than enough flow in the River. Otherwise, these piping actions will further impact senior private and public well uses, along with small streams. In addition, small streams have, and will be, impacted greatly. For example, "The total 1997 average seasonal tailwater discharge to Matriotti was measured at 1.16 cfs." (5-23, in the FEIS) There are no tailwaters, with piping of the ditches.

A number of public water systems were looked at; and, it was determined that piping the irrigation ditches would create a decrease in well yields, for the City of Sequim wells; Port Williams Well #1 and #2, and Silberhorn Wells #2 and #3; for PUD wells, Mains Farm Property Association Wells #2 and #3 (inactive), Smithfield Drive Wells #1 and #2, Loma Vista Wells #2 and #3; and PUD #1 Clallam County Carlsborg Well; and, for the Sunland Water District Domestic Wells, #1 and #2. I'm assuming that there was no compensation for this impact on senior water users' rights, nor an ability to sell to the River or the Water

Exchange, some of the water there were about to lose, and will lose, under additional piping.

My understanding is that the "restoration" plans/process for the Dungeness River and the small streams has run, and will run, concurrently with the Rule process. Is there any public input allowed for these actions, or this that opportunity over? Certainly, reductions in water supply (and, in small stream flow, which I will have to address in a separate formal comment), are an economic impact, and are not a "benefit." Below is one of the discussions about the impact of the piping on existing water rights, from the FEIS:

Non-Exempt (Public) Water Supply Wells

Under the water level declines predicted by the Ecology 2003 model, non-exempt (public) water supply wells will lose a portion of their yield, but will still maintain production capacity yields. While this is different than for exempt wells (a percentage of which will lose their yield entirely, as discussed above), for non-exempt (public) water supply wells whose yields are larger, the implications and impacts of any of the action alternatives are significant. Silberhorn Wellfield production wells were estimated to lose a cumulative production capacity of 62 to 68 gpm. The Loma Vista Wellfield is predicted to experience a total decline in production of 196 to 214 gpm, and the Carlborg Well could experience a 57 to 72 gpm decline in capacity. The cumulative decline in well yield for the Sunland Water District (Domestic Wells #1 and #2) is predicted to be approximately 45 to 55 gpm.

(Environmental Impacts, 5-55)

Sincerely,

Marguerite A Glover





From: Marguerite Glover [REDACTED]
Sent: Thursday, June 07, 2012 11:21 AM
To: Marguerite Glover; Wessel, Ann (ECY)
Subject: Correction to my SBEIS statement

Dear Ann, my fingers were going faster than my brain! I meant to say that Ecology figures that a household on a well, in the Sequim-Dungeness Area, uses about 150 gallons per day, of water, of which 15 would be consumptive, if the people are on a septic system. Sorry about the error. Marguerite

From: [REDACTED]
Sent: Thursday, June 07, 2012 8:33 AM
To: [Ann Wessel](#)
Subject: Dungeness Small Business Economic Impact Statement

To: Ann Wessel, Instream Flow Rule Lead
WA State Dept of Ecology

Dear Ann,

In the unincorporated areas of Clallam County, there are many small home businesses and home-based industries. There are also some commercial businesses, on well and septic--but, not that many. Most of those would be on City water or PUD water. Most of all of our small businesses would have a recharge to the aquifer, from their septic systems. These are not hazardous, toxic wastes (ie, no dry cleaners, out in the county). There are a number of fruit and vegetable stands, nurseries, small engine repair (they capture their oil, anti-freeze, and freon--it does not go down the drain), bookkeepers, greenhouses (to serve commercial nurseries, not on site), a couple (or few) breweries or wine producers (some bring the product to other sites), day cares, bakers (who mostly sell to restaurants or bakeries), chainsaw carvers, clay pot makers, weavers, painters, photographers, crafts or hobby creators (generally sell on-line, or at arts and crafts fairs), etc. Many different types of home-based endeavors, which we are very happy that our county encourages.

The Small Business Economic Impact Statement uses a report out of California (Gleick, et al), about "**Urban**" Water Conservation, to determine water use, per employee, by industry. How is this pertinent to the Sequim-Dungeness area--with the exception of those portions in commercial zones, on sewer?

Any hotels that we have or might have, would be on City or PUD water or community water, and sewer. We have the Growth Management Act, in our State. These types of businesses could not exist on a well and septic. Bed and breakfasts, do. Would they fall under "rooming houses", or "camps"? Since most of these operate like a large family would (bathing, washing, cooking), how could each employee use 302 gallons of water per day? In these modern times, we generally use water efficient dishwashers, wash machines, showers, and toilets. And, these bed and breakfasts are on a well and septic system. When Ecology has figured the water use for a household, they have figured about 105 gallons per day, per house/well, consumptive. Of course, under the proposed Rule, new bed and breakfasts would have to buy some outside water, to water their gardens, lawns, and flowers. In some areas, they will not be able to do this. And, in the areas in which they can, they will not be able to have the size of landscaping that existing bed and breakfasts do. This may impact their plans to the point where they will just decide not to do the project.

What is included in the businesses that provide "personal services"? Bookkeepers? Lawyers? Hair Stylists? Counselors? Investment people? Surveyors and Engineers? If it is most of these, out in our rural areas, they will be small shops/offices, on well and septic, or on community water and septic. How and why, would they be using 1,091 gallons of water per day? This is an incredible figure!

Maybe there would be a small business who would let you know how much water they typically use. Or, you can find a few of them on small water systems--and, you could determine the gallons per day of the system. Alternatively, there must be some kind of a rural water use report, with estimates out there. I do not find most of these estimates to be realistic, for our area.

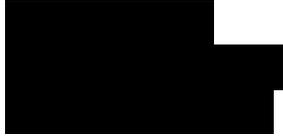
In this report, it is mentioned that Ecology has determined that "the proposed rule will not likely have disproportionate impacts on existing businesses." The reason that the impacts would not be disproportionate is because all well users will have to suffer, in the same way. If a family adopts some kids, or they add on a bathroom, or add an orchard, or a business wants to expand, they will all have to mitigate, and spend money to buy additional water from the Water Exchange--if it is allowed and available. We don't even know for sure, how the Water Exchange will work, or what the costs will be! This is ludicrous. We are in a watershed where the irrigators now use far less water than they had in the past. A watershed where many stream and river water rights have been relinquished. The remaining minor impacts from the well users, most of whom replenish the aquifer with clean water, from their septic

systems, does not warrant all of these new regulations and costs. It is disingenuous to say that there will be no impacts on small businesses, and that the benefits of the Rule outweigh the costs. They most certainly do not.

Thank you for your consideration, and your time.

Sincerely,

Marguerite A Glover



From: Marguerite Glover [REDACTED]
Sent: Thursday, June 07, 2012 8:34 AM
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Thank you for your consideration, and your time.

Sincerely,

Marguerite A Glover





From: krys gordon [REDACTED]
Sent: Sunday, July 08, 2012 6:01 PM
To: [REDACTED] Wessel, Ann (ECY)
Subject: Re: Formal comments WIRA 18

scott good response hope someone reads it dad

----- Original Message -----

From: [REDACTED]
To: [REDACTED]
Sent: Saturday, July 07, 2012 1:16 PM
Subject: Formal comments WIRA 18

Dear Anne & the Department of Ecology, County Commissioners,

these are the formal remarks of

Scott Gordon
[REDACTED]

Thank you all for you work on protecting the environment and our way of life. Please add an additional comment period after you have revised the WIRA 18 based on feedback from the community.

- 1, Within the purpose of the rule, allowing water storage projects is mentioned, please begin work on a reservoir, it takes ten to twenty five years to complete, lets get started.
- 2, "Change of use" is not defined within the glossary. This is totally unbelievable, and allows anyone within ecology to set and use a subjective vague and changing standard of use and change of use. PLEASE define change of use.

Leaving change of use undefined allows any change or alteration of use, loss of family member, births, change of landscaping, change of livestock to poultry, leaving a house vacant for a year or more, to fall within the definition of change of use. It also encourages a ridiculous level of monitoring by the state. Several times employees from the department of ecology have mentioned monitoring electric usage, and checking historical use from satellite photographs, but only when a complaint comes in? The whole idea is completely to Orwellian to be believed.

Here is a livable definition. -

Those uses allowed by county zoning , at the time original building permit was applied for should be allowed under the rule.

Example; So if I have a home on 1.5 acres and want to add a guest house, and it was allowed by the County and planning department rules when I applied for the building permit for my existing home, then adding a guest house should not be a change in use. It is the use that the property was intended for and does not substantially increase water utilization, and adds no increase in outdoor water use.

3, Department of ecology employees stated that violation of the rule could result in fines of up to \$5,000 per day. Please have a specific standard for fines, based on volume and time. Fines are also supposed to be affordable and not cost someone their home. Most people in this community could not afford a \$5,000 fine.

4, Venue - all fines, must be payable within the county where the violation took place. All hearings or challenges to fines and notices of violation must be heard within the county where the violation took place. Residents cannot afford to fight the department of ecology if they have to traveling to Olympia.

5, water rights transfer - please place a fixed rate on the cost of the water right transfer, Ecology, the water bank, nor the irrigators know how much water will cost or how much the transfer fee will be. Based on what the department of ecology / water Bank has already paid for the 25 CFS for the river, the mitigation fee should be less than \$1,000 per house hold well. Please fix a reasonable transfer fee. I would suggest a cap of \$500 for the transfer fee.

time - we have no idea how long it will take for a person to apply for mitigation and have it approved. Please fix the response time. This should be a reasonable time, not more than 60 days. We all know that the County, state and federal agencies have a tendency to use all the time they have to respond, even if they could respond sooner, keep the time short.

6, Domestic water use - your definition specifically precludes gardening and lawns! At every meeting department of ecology employees state that existing house holds with wells, and new mitigated house holds with wells, will be able to irrigate a portion of their property and have a garden. YOU MUST include gardening and lawns are part of domestic use. You can and should define how large an area can be water. But to state the domestic water use precludes gardening and lawns is to deny how people have lived for thousands of years. Domestic pertains to house holds and non commercial activities.

7, Defining utilization - It would be easier to define volumes of water utilization allowed and forget about how people use their water ? This makes allot of sense, as some people will be collecting rain water, using irrigation systems etc, which could confuse where water if coming from. If your are metering utilization, then that should meet the level control you desire, as it meets the goals for reduction and monitoring. This also allows individuals to change their water use within allocation without needed permits or ecology or nosey neighbors from intruding on a peaceful existence.

8, on Page 5 of Chapter 173-518 WAC (OTS-3228.9 Under New Section (5) new uses are subject to interruption - does this apply to new wells, if so how do you intend to stop people from using their water. How far bellow the minimum flows, and how long, does the river have to drop before you impose an emergency closure? Will this closure be imposed on only new wells?

9, New section WAC 173-518-070 Future ground water appropriations. Page 7-8

Section - 2, While requiring someone to connect to existing water supplies is fine. Forcing someone to prove that a water connection to water system does not exist is impossible. Please revise or remove that section of the rule, or make it the responsibility of the county Environmental Health Department to provide the letter to ecology within a reasonable period of time like 7 business days.

Section (5) Requiring that owners allow department of ecology employees on the property when ecology is not doing the metering is not reasonable. Land owners have a reasonable right to privacy, and should not have to grant an easement that is so ill defined in order to get water. If there are specific reasons why ecology should have access to private property please define the reasons. Otherwise you should ask permission of the landowner, who should be able to allow or deny access without recourse. This provision could be construed as extortion. The City of Port Angeles tried something similar, when the city was trying to force the Public Utility district (PUD of Clallam County) into making new users agree to be part of the city of Port Angeles if they wanted a water connection. People here remember and appreciate PUD's defense of our civil rights. The department of ecology should respect those rights. The only apparent reason could be to shut off someone's well.

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WAC 173-518-080 Reserves of water -

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would best serve the community by allocating state funds to procure enough water to allow all build out within WIRA 18 scope. New users could be charged a simple fee to offset the cost, paid to the county building department or the County department of environmental health. This would reduce the cost of the entire system and still allow monitoring and exchange of water for mitigation.

Lastly I feel that you must revise the rule based on community input, then allow for an additional comment period on the revised rule. Please do not put the rule into effect until such time as the Dungeness water bank is functional.

Thank you for your time and consideration of my remarks

Sincerely

Scott Gordon

From: [REDACTED]

Sent: Tuesday, July 03, 2012 3:54 PM

To: Wessel, Ann (ECY)

Subject: wells

Dear Anne,

we are very disappointed in the economic analysis of the well impacts on the community. Please halt the rule making process until a new economic analysis is complete in an open and independent way.

Thank you

Scott Gordon, [REDACTED]

From: [REDACTED]
Sent: Thursday, June 28, 2012 11:59 AM
To: Wessel, Ann (ECY); [REDACTED]
Subject: Costs of the Water Rule to the Community

Dear Ann, Margarite etc.

I wanted to reiterate Margarite's comments and in addition add a few of my own.

I was Fisheries director for the Summit Lake Paiute tribe in NV, and was responsible for Lahonton Cutthroat trout management. I also assisted in the planning development of housing in ecologically sensitive environment.

I am surprised by the high and unattainable level of river flow being used as the standard. The whole idea is to protect fish populations and retain the ability to provide water for multiple other uses. Most of the decline in fish populations seems directly attributable to ocean catch and influences other than freshwater habitat. Given the history of the fish population in the river at historic flows, and even greater historic irrigation use, it seems illogical to assume that greater water flow will do anything to increase or sustain the fisheries. Lastly given the amount of irrigation water reductions that you and the irrigators have been able to effect, (thank you), it seems that the mitigation of buildout is inconsequential, and the costs are not justifiable.

In the light of when you intend to apply the rule without first having an mitigation process currently available, it you are showing no regard for the existing community, including those who intend to build in the future.

PLEASE do not make the rule law until AFTER the water bank or some other entity is available to make getting a building permit possible. If not all future development is halted and dependant on the whim of the people who have water to sell.

Also, please allow individuals to purchase mitigation water for existing parcels, in the absence of building permit, you could tie the water mitigation to a specific parcel of land. That way people who own land can reasonably expect to be able to use it, and people who want to subdivide and could purchase mitigation water and protect the properties ability to be developed in the future.

By tying the ability to purchase mitigation to a building permit you are discouraging retention of undeveloped land, reducing values, increasing the urgency to develop by creating a fear that water will not be available later. While the lack of water may be an inevitable future, why cause so much stress, and loss of property values when it is easily avoided.

The least expensive and best management practice, would be to include in the rule a mechanism for the state to fund the purchase of mitigation water and a pass through fee for the end users of the water. It is the department of ecologies responsibility to monitor the river, and transfer water rights, giving that power over to the water bank or making them the only facilitator makes them a private utility. The Public Utility district #1 of Clallam county, (PUD) is a public utility with transparent and public records. They have a long history of protecting the environment and the community, and are part of our community. You could easily

enter into a agreement with PUD, train thier employees on how the effect the transfer of water and they already do water metering. Again, why recreate what we already have in a utility company?

Lastly while ecology has stated that it is not thier intention to have all wells metered and pay for mitigation, your rule obviously states otherwise.

Thank you for protecting the environment on our behalf and working with us in this endeavor

Sincerley
Scott Gordon [REDACTED]

-----Original Message-----

From: [REDACTED]
Date: 6/27/2012 3:54:54 PM
To: awes461@ecy.wa.gov
Subject: Formal Comment for the Dungeness Water Management Rule

The Cost-Benefit Analysis for WRIA 18 East was done very quickly, by two new economists. The Benefits of this proposed Rule most certainly do not outweigh the Costs. We do not know if there would have been a lawsuit from the Tribe or anyone else, without the Rule. The percentage given for the "possibility of a lawsuit" was 14.1 to 27.7--less than a one-third chance.

The Cost of this Rule is estimated at \$7.7 million to \$23.1 million, over 20 years. Not taken into consideration was the devaluing of property. All real estate agents know that water is incredibly important in marketing a piece of property. Currently, anyone with an exempt well has the ability to

- ** Use up to 5,000 gallons per day for their own domestic use, and
- ** Water up to 1/2 acre of lawn or garden, and
- ** Provide stock water in unlimited quantities, and
- ** Use up to 5,000 gallons per day for commercial or industrial uses.

While all of these uses are very valuable, I don't really think the last one was given much thought, in the CBA. We are a rural area. Most of us have a garden, or tomatoes, or berries, or flowers. Many of us buy fruits or vegetables or flowers from farm stands, and farmers' markets. The ability to have greenhouses on your property, to provide produce for Sunny Farms, or restaurants, farm stands, street fairs, etc., is huge. The ability to water orchards, to sell fruit, from your own farm stand, or otherwise, is huge. The ability to water beautiful plants and flowers, and sell them, is huge. You can water a small nursery, with water from your exempt well. Without the Rule, this can be done. And, without the Rule, someone with a well, who wanted to expand to that use, could do also do it.

Also very valuable is garden/home orchard/berry watering part of the exemption. People enjoy their own produce, without pesticides. A garden is part of our rural lifestyle. And, the stockwatering portion of the exemption is also very valuable. Many of us buy local, organic beef, from farmers, or from Sunny Farms. We eat it, at local restaurants. We eat our own eggs from chickens, or buy eggs from farm stands. Some people raise rabbits or chickens or sheep or cows, for their own food. Without the ability to stock water, that choice is gone.

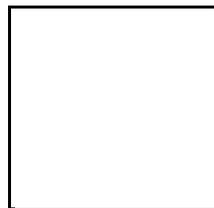
In the future, if this Rule passes, as proposed, real estate agents will be asked which properties have the ability to water outside. Which properties have the ability to have greenhouses. Which ones will be able to have, and water, an orchard. Those properties that do not have these grandfathered features, will most definitely go down in value. They will have to ask far less, for their property, than what they could today. Most certainly, they will ask the County Assessor for relief from their taxes. And, as their taxes are reduced, other taxes must go up. Grandfathered water properties will increase in value.

How much water could we buy, with the Cost of this Rule? A LOT. How many restoration or storage projects could we undertake? Quite a few.

The Benefits absolutely do not outweigh the Costs.

Sincerely,

Marguerite A Glover



From: Deborah Groesbeck [REDACTED]
Sent: Monday, July 09, 2012 5:37 AM
To: Wessel, Ann (ECY)
Subject: Strongly against proposed WRIA 18E Rule

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Deborah Groesbeck
Bob Conklin

[REDACTED]

From: Ray Gruver [REDACTED]

Sent: Thursday, July 05, 2012 5:18 PM

To: Wessel, Ann (ECY)

Subject: The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

Dear Ms. Wessel,

DOE's recent actions regarding the restriction on water usage in the Dungeness area are alarming for many reasons. As a past Planning Commissioner, I am familiar with environmental impact statements and quality planning processes. A fundamental element in all considerations is the economic impact of the proposed actions to be taken. As reported in the media and other sources the economic analysis provided by your department, for your proposed regulations, is at best questionable and corrupted.

Like most in my community, I am concerned that DOE's desired restrictions and limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Perhaps most importantly, your department proposes to deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

Beyond the questionable science DOE is relying upon at this time, your own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far outweighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12 which repeatedly referred to the corrupted economic analysis performed by the DOE. It should be especially noted that the 3 Clallam County Commissioners unanimously agreed to challenge your intended actions on this matter.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

Ray Gruver
[REDACTED]

From: [REDACTED]
Sent: Tuesday, July 03, 2012 5:54 PM
To: Wessel, Ann (ECY)
Subject: comment on WRIA 18E Rule

This rule is an example of government run-a-muck.

Martin Gutowski
Homeowner, Sequim

From: Doug Hale [REDACTED]
Sent: Thursday, July 05, 2012 12:36 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18

Ann,
I know you have been put in the difficult position of being the “front person” for the Department of Ecology and their Dungeness River In stream Flow Rule proposal. Having said that, I would like to voice my concern as a resident of the Dungeness Valley as well as being a Realtor who has sold property and hopes to continue to do so.

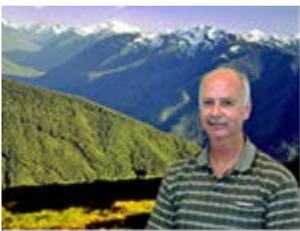
The rule as proposed will separate property into a world of “haves” and “have nots” Future sales of non-exempt property will be subject to a tax or “mitigation” fee that has yet been undetermined. There are many parcels of undeveloped properties that out of area people purchased with the idea of building a home in the future when they will be retiring. They purchased these lots knowing that water would be available to them either through a private well, a community well, or a public water system. I would expect these owners will be filing a class action law suit if the rule is adopted as written because in some cases, water may not be available to them. It is my understanding that Ecology has made no attempt to contact these owners, even though the information is readily available through the Clallam County Assessor’s Dept. As a taxpayer, I would be extremely unhappy about tax payer dollars being wasted on the defense of a flawed plan and negligence on the part of Ecology informing owners that there property may become worthless.

I am also concerned that there has been no outside study of the plan to check the “science” (remember historically the river has never flowed at the rate the rule is mandating) even though historically there have been salmon runs with much larger yields than currently seen. This suggests that outside forces are responsible for the depleted salmon numbers. Commercial fishing in the ocean, the practice of netting near the mouth of the river during the fall run (I have personal observed a trawler dragging a net in Dungeness Bay during last year’s fall run) and possibly environmental issues in the strait may be the cause of depleting numbers rather than the flow rate.

The firing of the economist who questioned the data smacks of a government entity that is trying to “pull one over on the public” and could also be seen as a direct threat to any Ecology employees who share our concerns about the validity of the study.

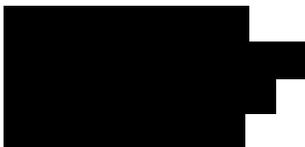
I hope Ecology will take another look at this proposal, and delay enactment until an outside source, agreed upon by not just the water users group, the tribe, and ecology, but Clallam County as well.

Thank you,
Doug Hale



Doug Hale REALTOR®/BROKER

Coldwell Banker Town & Country



Referrals are always appreciated

From: Richard Hale [REDACTED]
Sent: Wednesday, July 04, 2012 1:55 PM
To: Wessel, Ann (ECY)
Subject: DOE must use independent study and seek local approval

Dear Ms. Wessel,

This form letter says all that mirrors our positions on the following;

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department. The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention. Richard and Ruth Hale [REDACTED]
[REDACTED]
[REDACTED]

From: Wilbur Hammond [REDACTED]
Sent: Sunday, July 08, 2012 9:32 PM
To: Wessel, Ann (ECY)
Cc: [REDACTED]
Subject: Dungeness Water Management Rule (WRIA 18) - Chapter 173-518 WAC

Dear Ms Wessel,

I attended and testified at the Public Hearing held last Thursday, June 28. I was overwhelmed by the outpouring of opposition to the proposed rule. Many educated and qualified individuals presented evidence that raises questions regarding the validity of the (CBA) that was conducted by your department to substantiate implementing the rule. I request you delay the rulemaking timeline until an independent economic study is completed and the results are made available for review by all affected by your decision.

I am a landowner that will be directly affected by this rule and stand to lose my irrigation rights and will be forced to pay a mitigation fee for a well permit on 13 acres that I have owned for 8 years. I purchased this particular property for my retirement home and the ability to be self-sufficient from a small farm operation. I feel you are proposing to take a portion of my property rights without just consideration or compensation.

I am not one who wishes to litigate but if this rule is forced on our district without independent facts and figures that clarify and justify its implementation, I will join the many landowners who are considering a class action suit to protect our property rights.

Wilbur F Hammond Jr
[REDACTED]

From: Junko Harbord [REDACTED]
Sent: Tuesday, July 03, 2012 1:16 PM
To: Wessel, Ann (ECY)
Subject: Dungeness water rule

Hello,

Just finished reading the text of the new water rule for the dungeness water basin. I understand ecology's attempt to regulate water use in this basin but have a few questions.

1. How are surface waters (streams and lakes) connected to underground aquifers, and thus connected by this rule? Geologically speaking, I understand that surface water percolates into the ground to recharge aquifers, but I do not understand how surface water closure should effect how many wells are allowed to be connected to an underground aquifer. Increased withdrawal from an aquifer does not change the amount or rate of water percolating into the aquifer from surface water sources. Yet the two seem to be related via the management rule. If they are not related should that not be clearly stated by the rule? Is this rule attempting to address two separate water issues with one water exchange? Realistically it seems that there should be a more prescriptive definition of how aquifer water will be "banked," "exchanged" and "mitigated." Why all the focus on stream flow alone?

2. How can ecology say that irrigation of surface soils, ie. watering lawns or gardens, results in 100% consumption, but that domestic use attached to an on site septic system results in only 10% consumption? An OSS just concentrates the area where the water is applied. In fact evaporation of the water is a large portion of how a septic system works, that is why you are supposed to keep the grass growing over a drainfield mound, and also why above ground (mound) systems exist, to increase the amount of surface area that can evaporate water used in the household. If evaporation through a drainfield is considered non-consumptive, transpiration and evaporation due to irrigation of landscapes/gardens should also be considered non consumptive.

3. What of the fact that the glaciers that feed our streams, rivers and lakes are slowly dissipating? The rule does not acknowledge this, nor does it have a "mitigation" plan for the lower stream levels due to disappearance of glaciers in the mountains. Should this exchange in fact have a water right uptake rule? Where it has a set goal to take back over appropriated water, due to the shrinkage of "water storage" at the peaks of our mountains? If this reality lies in our future, then this rule should address the possibility and have an action plan for it.

Thank you,
Junko

From: J Hardie [REDACTED]
Sent: Monday, July 09, 2012 8:15 AM
To: Wessel, Ann (ECY)
Subject: WIRA 18 Rule - Formal Public Comment

Dear Ms. Wessel,

I believe that that the conclusions of the Dept. of Ecology economic impact study for the implementation of the WIRA 18 Rule are seriously flawed. I believe it will have a catastrophically negative impact on our community. I also believe that the litigation resulting from the WIRA 18 rule has been greatly underestimated by the Dept. of Ecology. I recommend that the Dept. of Ecology delay implementation the WIRA 18 rule until they have conducted another independent third party economic impact study for the WIRA 18 Rule. Thank you for your consideration.

Jim Hardie

From: Randy Hatfield [REDACTED]
Sent: Sunday, July 08, 2012 8:24 PM
To: Wessel, Ann (ECY)
Cc: [REDACTED]
Subject: Commisioner McEntire Letter

Dear Ms. Wessel,

I thoroughly support Commissioner McEntire letter objecting to the water policy proposal that your department is suggesting. I am not going to go into any further details on my own , reasons why I do not agree with the plan, the studies, etc, because I believe Commissioner McEntire has explained our concerns. The last paragraph in his letter states that more information is needed to determined the impact on the community, economic and social. In other words it time for the DOE to coordinate with the local government and the public.

Thank You

Randy Hatfield

-----Original Message-----

From: Dan Hendrickson [REDACTED]
Sent: Monday, July 09, 2012 8:19 PM
To: Wessel, Ann (ECY)
Subject: Re: New water program

Ann...thank you for your response ..

I reread my comment and realize that my emotions were coming through..I apologize for that...

I guess I just don't see what problem you are trying to solve, how you know its a problem, and how you know that your solution will work and not just make everything worse ...thank you...Dan

On 7/9/2012 6:02 PM, Wessel, Ann (ECY) wrote:

> Thank you for your comment

>

> -----Original Message-----

> From: Dan Hendrickson [REDACTED]
> Sent: Sunday, July 08, 2012 4:46 PM
> To: Wessel, Ann (ECY)
> Subject: New water program

>

> Dear Ann Wessel...I'm am writing to let you know that I OPPOSE the new
> water rules you are going to put into effect..

>

> my research shows that your assumptions are flawed and you will do doing
> nothing to save any salmon

>

> All you will do is set up a draconian water exchange program that will
> harm the taxpayers of this area and create a huge, costly government
> oversight organization

>

> I simply ask that you cease and desist until you can prove the cause and
> effect and evaluate the economic consequences of your proposed water program

>

> sincerely

>

> Dan Hendrickson
[REDACTED]

From: Dan Hendrickson [REDACTED]
Sent: Sunday, July 08, 2012 4:46 PM
To: Wessel, Ann (ECY)
Subject: New water program

Dear Ann Wessel...I'm am writing to let you know that I OPPOSE the new water rules you are going to put into effect..

my research shows that your assumptions are flawed and you will do doing nothing to save any salmon

All you will do is set up a draconian water exchange program that will harm the taxpayers of this area and create a hugh, costly government oversight organization

I simply ask that you cease and desist until you can prove the cause and effect and evaluate the economic consequences of your proposed water program

sincerely

Dan Hendrickson
[REDACTED]

From: Bill Hermann [REDACTED]
Sent: Thursday, July 05, 2012 10:28 AM
To: Wessel, Ann (ECY); [REDACTED]
Subject: re: Wira 18

To whom it may concern

I am asking that you please follow the provisions and stop implementation of this action. First- the need for an economic benefit have not been determined. You cannot show that the benefit is greater than the cost. Second-this action will put a very high cost on development with no evidence of a return. You do not even know if we have a problem. Third-as the land use changes to less agriculture (a sign of land use that is changing) thus water use is changing. The water needs are changing . We do not need a fix for a problem that doesn't exist.

Bill Hermann
[REDACTED]

From: pearl hewett [REDACTED]

Sent: Sunday, July 08, 2012 12:01 PM

To: Wessel, Ann (ECY); [REDACTED]

Subject: THE MORAL ISSUE OF THE DOE Dungeness Water Rule.

This is my comment on the MORAL ISSUE OF THE DOE Dungeness Water Rule.

It is a outrage, when a government agency (DOE) CONTROLS Job 36:27,28 even the collection of the small drops of water: that pour down rain according to the vapour thereof: That the clouds do drop and distil upon man abundantly.

God.Ecclesiastes 1:7 - All the rivers run into the sea; yet the sea is not full; unto the place from whence the rivers come, thither they return again.

As Brooke Dorhofer has written in her comment on the Dungeness Water Rule, I too, am appalled by the arrogance of the DOE and this attempt to ban, restrict, meter, control and charge for a GOD given staple that is necessary for the existence of all life.

[1 Peter 5:8 - Be self-controlled and alert. Your enemy the devil prowls around like a roaring lion looking for someone to devour](#)

Psalm 104:14-21 - You cause the grass to grow for the cattle, and plants for people to use, to bring forth food from the earth, and wine to gladden the human heart, oil to make the face shine, and bread to strengthen the human heart. The trees of the LORD are watered abundantly, the cedars of Lebanon that he planted. In them the birds build their nests; the stork has its home in the fir trees. The high mountains are for the wild goats; the rocks are a refuge for the coney. You have made the moon to mark the seasons; the sun knows its time for setting. You make darkness, and it is night, when all the animals of the forest come creeping out. The young lions roar for their prey, seeking their food from

Jeremiah 51:16 - When he utters his voice, there is a multitude of waters in the heavens; and he causes the vapours to ascend from the ends of the earth: he makes lightnings with rain, and brings forth the wind out of his treasures.

Job 37:6 - For he says to the snow, Be thou on the earth; likewise to the small rain, and to the great rain of his strength.

Psalm 1:3 -They are like trees planted by streams of water, which yield their fruit in its season, and their leaves do not wither. In all that they do, they prosper.

Psalm 24:1-2 - The earth is the LORD's and all that is in it, the world, and those who live in it; for God has founded it on the seas, and established it on the rivers.

Psalm 65:5-13 - By awesome deeds you answer us with deliverance, O God of our salvation; you are the hope of all the ends of the earth and of the farthest seas. By your strength you established the mountains; you are girded with might. You silence the roaring of the seas, the roaring of their waves, the tumult of the peoples. Those who live at earth's farthest bounds are awed by your signs; you make the gateways of the morning and the evening shout for joy. You visit the earth and water it, you greatly enrich it; the river of God is full of water; you provide the people with grain, for so you have prepared it. You water its furrows abundantly, settling its ridges, softening it with showers, and blessing its growth. You crown the year with your bounty; your wagon tracks overflow with richness. The pastures of the wilderness overflow, the hills gird themselves with joy, the meadows clothe themselves with flocks, the valleys deck themselves with grain, they shout and sing together for joy.

Pearl Rains Hewett

From: pearl hewett [REDACTED]
Sent: Friday, July 06, 2012 9:14 PM
To: Wessel, Ann (ECY); [REDACTED]
Subject: Dungeness Water Rule I support Kaj Ahlburgs' comment - we want answers

Dungeness Water Rule

I support Kaj Ahlburgs' comment - we want answers

Pearl Rains Hewett

Kaj Ahlburg
[REDACTED]

Ann Wessel
Washington State Department of Ecology
ann.wessel@ecy.wa.gov

July 5, 2012

Dear Ms. Wessel,

Please find following my formal comments on the proposed Water Resources Management Program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18, Chapter 173-518 WAC. I will first offer some fairly broad comments, followed by more specific comments on the language of the rule and a list of questions. The questions submitted are part of my formal comments and I request they be answered in your Concise Explanatory Statement. The questions also serve as comments to make the appropriate changes to the extent the questions can not be satisfactorily answered.

General Comments

1. The cost benefit analysis (CBA) is flawed and needs to be redone. It does not include, or even consider, decreases in property values that would result from the proposed rule. It does not include, nor even consider, the diminution in economic activity as fewer people choose to engage in the now more expensive pursuit of building a house and landscaping a garden in the covered area. It also does not include or analyze the resulting loss of sales and property taxes and decrease in employment. It double counts the benefits from "avoided fish losses" and protecting salmon restoration: the only benefit of salmon restoration is avoiding fish losses. It uses an arbitrary and outlandishly high amount of over \$20 million for benefits from avoiding litigation and increased certainty of development if the rule is passed, even though no litigation is pending or even threatened and the only uncertainty of development currently is the one caused by the threat of this rule. On the other hand it ignores the very real cost of the likely litigation if the rule is implemented as now written.

Ecology's own economist, Mr. Tryg Hoff, is on the record with a formal notice that the costs of the rule exceed its benefits and that it fails under RCW 34.05.328 (1)(d). The economic

analysis now served up by Mr. Hoff's successor is indeed a "cooked' analysis" that is "ignoring the economic evidence", as Mr. Hoff was pressured, but refused, to prepare. The approach suggested in comment 2. below would go far to bring benefits and costs more into balance.

The rule making process needs to be put on hold while an independent economic cost benefit analysis is done. Only if such analysis results in benefits exceeding costs should the rule making process continue. Any other result would almost certainly result in lengthy and expensive litigation in which Ecology's position would be very shaky.

2. Instead of requiring "mitigation" payments, Ecology should follow the Skagit County approach of having the State purchase the required water rights through an appropriation in its capital budget. This would also constitute a less burdensome alternative, as required by RCW 34.05.328 (1)(e), and cure the most serious problems with the cost/benefit analysis for the proposed rule currently being upside down, as described in comment 1. above.

3. RCW 19.85.040(1) requires the Small Business Economic Impact Statement (SBEIS) to "consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue". The proposed rule will have material adverse effects on the revenues and profits of realty, building, landscaping and well drilling small businesses. To comply with RCW 19.85.040(1), the SBEIS needs to be revised to reflect that.

4. The metering requirement runs afoul of the RCW 34.05.328 (1)(e) least burdensome alternative rule. There are now sophisticated techniques for estimating well pump usage through residential electric metering, something that would clearly be less burdensome than spending \$1.4 to \$2.1 million on well meters and millions more on monitoring and administration. Your employee Robert Barwin's e-mail dated March 12, 2012, in which he wrote "Given the relatively low costs of the metering requirement, I didn't even bother with describing a metering v. no metering alternative", shows there never was the serious consideration of less burdensome alternatives required by RCW 34.05.328 (1)(e) with respect to a requirement expected to cost property owners millions of dollars.

5. There is insufficient peer reviewed scientific data on the hydrologic continuity between all private exempt wells and the streams in the Dungeness basin, particularly wells that draw water from the second or third aquifer down. Ecology claims that the confining beds separating these lower confined aquifers from the uppermost aquifer and the river beds are, in fact, permeable, but there is no peer reviewed scientific study supporting that assertion.

Section 90.54.030 (3) requires Ecology to "Develop such additional data and studies pertaining to water and related resources as are necessary to accomplish the objectives of this chapter". Ecology should commission such a study, and incorporate its results into the rules before proposing any final version of the rules.

Furthermore, in WRIA 17 a study performed, I believe, by the USGS showed that a very significant amount of water travels directly from the mountains underground through deep confined aquifers to the sea. If this were the case in the Dungeness basin, the focus should shift to attempting to bring some of this water up to the surface to allow it to replenish stream flows when they are low. A similar study should be performed for WRIA 18 East before implementing any rules.

Ecology should produce peer reviewed scientific studies that show which wells in which specific areas, and drilled at what depths into which aquifers, have hydrologic continuity with

streams in the Dungeness basin. Only those wells for which hydrologic continuity with rivers in the Dungeness Basin has been proven to have a material and adverse effect on stream flows, reducing them below required minimum instream flows, should the proposed rules subject to the restrictions you want to impose on all wells (metering, reduction in allowed daily withdrawals below 5,000 gpd, restrictions on outdoor watering, mitigation payments, etc.). Ecology has no statutory authority to regulate wells that can not be proven to be hydraulically connected and such an approach would violate the least burdensome alternative requirement.

6. RCW 90.54.020 (1) states that “*Uses of water for domestic, stock watering, ... irrigation, ... are declared to be beneficial.*” Ecology’s attempt to discriminate against outdoor water uses in the future is directly inconsistent with this statement. Such outdoor uses, which are an essential component of the rural life style of Clallam County, under the statute need to be given equal priority to “domestic use”.

7. Ecology’s internal e-mail correspondence (Tryg Hoff, Dave Nazy) on the rule making process shows that the estimated impact of permit-exempt well water withdrawals on the Dungeness is relatively de minimis – as little as 0.77cfs, an amount so small that is inside the error of measurement of the stream flow gauges used. This needs to be kept in mind when balancing the advisability of imposing severe restrictions on land use, development, and availability of affordable housing (restricting supply drives up price) against the benefits for fish habitat that might be achieved.

In “Findings – Purpose 1997 c 360 § 1” in connection with RCW 90.03.255 the legislature found that “*It is the goal of this act to strengthen the state's economy while maintaining and improving the overall quality of the state's environment.*” The draconian restrictions on water use your draft rule would impose in the Dungeness Valley are directly contrary to the legislature’s mandate in the Water Code to balance environmental protection against strengthening the state’s economy. These restrictions also violate the maximum net benefits rule in RCW 90.54.020(2), which mandates that allocation of water resulting in maximum “*total benefits less costs including opportunities lost ... for the people of the state*” (and not the fish of the state, whose interests have to be balanced with, and can not override, the interests of the people).

8. The draft rule exceeds Ecology's statutory authority and contradicts common sense. This authority only extends to requiring instream flows equal to the stream flow derived from groundwater inflow or discharge, protecting currently existing instream flows, but not to requiring flow levels, as this draft rule does, that may be desirable from a fish habitat perspective but that in actuality have rarely been achieved. In some instances the minimum instream flows you propose to set have been achieved historically less than 10% of the time, and in others never. Required minimum instream flows for each stream and each month should be set at levels that for the last 10 years have actually been achieved a high percentage of the time (I suggest 80% or 90%).

WAC 173-518-020 states that the purpose of the rule is “*retain natural surface water bodies ... with stream flows at levels necessary to protect instream values and resources*”. Please explain from where Ecology derives the statutory authority for such a purpose.

9. You propose that the priority date for an exempt well will be the date that water is put to beneficial use, and distinguish between the different subcategories of beneficial uses (e.g., prior domestic use does not give the right to water a garden in the future). Such a rule would be bad public policy.

It would tell a landowner who has a permitted well for future use that he must place it in use now, even if not needed, to avoid losing its use in the future when it will be needed. It would tell a landowner who owns land without a well on it that he perhaps plans to build on later, that he must immediately drill a well and begin using it. This would result, in addition to unnecessary consumption of electricity from running a well pump 24/7 (and think how hard our utilities are working to get everyone to save electricity) in over 1.8 million additional gallons of water (at 5,000 gpd) being extracted from the aquifer every year for each well. Surely this would be a result directly opposed to the goals of the proposed rule. A common sense adjustment is needed.

10. In WAC 173-518-085 (4) (c) you propose that 90% of outdoor water use should be assumed to be consumptive, compared to 10% for indoor use in a house served by a septic system. Instead of penalizing those who use their irrigation water efficiently, you should make allowances for the fact that much more water that flows through a drip system used at night returns to the aquifer, than, for example, would be the case for a sprinkler system used during the day. In fact, the recharge rate for an underground drip system should be no different than that for a septic tank drain field. Your own internal correspondence refers to a recharge rate of about 75% for water in irrigation ditches. The rate should be even higher for water discharged underground by a buried drip system. Any average percentage must be based on scientific evidence and take into account different means of irrigating and different recharge rates.

11. Pursuant to the Watershed Planning Act, Ecology must show deference to the will of the people of Clallam County, as expressed in their comments to you, and through their elected Board of Commissioners and Director of Community Development.

Section 90.82.005 states that *"The purpose of this chapter is to ... provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development."*

Section 90.82.010 states that *"The local development of these plans serves vital local interests by placing it in the hands of people who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources."*

Finally, in "Findings -- 2003 1st sp.s. c 4 § 1" in connection with this RCW 90.82.040 the legislature stated that *"The legislature declares and reaffirms that a core principle embodied in chapter [90.82](#) RCW is that state agencies must work cooperatively with local citizens in a process of planning for future uses of water by giving local citizens and the governments closest to them the ability to determine the management of water in the WRIA or WRIs being planned."*

During the June 28 public hearing you heard universal public opposition from almost 300 citizens, the only person in favor of the rule being an employee of a state environmental agency. The Board of County Commissioners is on record as unanimously being opposed to the rule as drafted, as is the City of Sequim, the major town in the area covered by the rule, and the Director of Community Development. A multitude of business and industry organizations from the affected area also are on record opposing the rule as now proposed. Ignoring this opposition and these statutory requirements and legislative intent can only lead to unnecessary litigation and lengthy delays in the implementation of any rule.

Specific drafting comments

1. WAC 173-518-070(2) - Specify under what statutory authority the RCW 90.44.050 right for permit-exempt well water withdrawals can not be exercised if connection to a public water supply is available, even if only at exorbitant cost. In the absence of such authority, remove this provision. Specify precisely what written evidence that connection is not available will be acceptable under the rule.

2. WAC 173-518-070(3)(a)(i) – Specify exactly how drilling to the middle or deep aquifer is encouraged. Given per foot drilling costs, doing so may well cost the homeowner thousands or tens of thousands of dollars extra. How will he be compensated for, or incentivized to incur, such an expenditure?

3. WAC 173-518-075, line 5: add after “ecology approval”, “which shall not be unreasonably withheld”.

4. WAC 173-518-075(3): delete in line 2 “, for any reason,” and add after “adequate” in line 3 “in its reasonable judgment”.

5. WAC 173-518-075(3)(g): add after “ecology”, “in its reasonable judgment”.

6. WAC 173-518-080, 2. paragraph, line 2: add after “supply”, “and outdoor irrigation of an area not exceeding ½ acre per residence” (see general Comment #6 above).

7. WAC 173-518-110(3), line 3: add after “causing”, “material”.

8. WAC 173-518-120: add a subsection (3) reading “Ecology shall initiate a review, and if necessary amend, this rule if requested by the Clallam County government at any time more than five years after its implementation.”

Questions

1. What section in the state statutes provides Ecology with the authority to override RCW 90.44.050 with an agency rule? Since in the proposed rule it seems the availability of reserves or mitigation can not be assured in all cases, the rule if adopted would override RCW 90.44.050 in those cases.

2. Why didn't Ecology examine depreciated land value as a result of the rule? Land with use of the exemption outlined in RCW 90.44.050 is clearly worth more than when you have to pay for water, or in some cases have the uncertainty as to whether water from reserves or mitigation will be available at all. Why did your economists fail to describe and analyze this?

3. P. 20 of the CBA states that existing state law requires metering of all new withdrawals, including permit exempt ones, in the Dungeness watershed (WRIA 18). Are you referring to all of WRIA 18 or just the area affected by this rule? What section in the RCWs contains that requirement? Where in state law is the area affected by this rule, constituting only a portion of WRIA 18, defined?

4. Pp. 20 – 21 of the CBA introduces the concept of “maximum depletion amounts”, which you admit “is new to instream flow rules”. On what section of the RCWs does Ecology base its statutory authority to create this new concept now and use it in a rule?

5. P.21 of the CBA states that “new permit-exempt well use may not occur where an existing municipal water supplier can provide service”. What constitutes the statutory authority that overrides permission to withdraw public groundwaters under RCW 90.44.050, which contains no such qualification?

6. P.27 of the CBA states that the cost of foregoing outdoor water use, where neither reserves nor mitigation credits are available, is \$1,000 per household. Given the common rule of thumb of spending about 10% of the value of the house on landscaping, and given that the mean price for a detached home in the Sequim area is over \$250,000, how did you arrive at a “cost” of a mere \$1,000 for not being able to have outdoor landscaping for which the homeowner on average would have been willing to pay over \$25,000?

7. Why is litigation part of the “baseline”? What evidence supports this assumption?

8. Do you have hard factual proof for the assertion that “permit-exempt uses are at an elevated risk of being litigated”?

9. Why does the assumption of litigation also include an assumption that development throughout the entire basin would be brought to a halt?

10. How exactly was the \$19.9 to \$62.1 million cost of avoided litigation arrived at?

11. Who exactly would have borne the assumed cost of litigation?

12. How is the assumed cost of litigation divided between attorneys’ fees, judgments for damages and reduced property values of the parties assumed to be losing?

13. On what are the assumptions regarding who would win or lose the lawsuits, and the likelihood they would be settled rather than litigated to conclusion, based?

14. Please set forth in detail: (a) the amounts of irrigator water rights (p. 10 of the preliminary CBA mentions 518 cfs in 1924), (b) when they were established, (c) where applicable, the dates on which failure to beneficially use each of those rights led to their automatic extinction, and (d) quantify in cfs rights for how much irrigation water were extinguished on what dates due to lack of beneficial use, and what rights are still in existence (with last known date of beneficial use). It is important to understand that water rights purchased by a water bank from irrigators actually are water rights that have been in recent enough beneficial use to still be valid. It also is important to understand by how much senior withdrawal rights have diminished since 1924 simply through non-use and relinquishment.

15. What is the expected cost in terms of agricultural production and jobs of agricultural land taken out of production as a result of no longer being able to be irrigated because the irrigation water rights were sold to the water bank to be used for mitigation? Why is this cost not included in the cost/benefit analysis?

16. Why does the proposed rule and analysis involve your agreement with the Jamestown S'Klallam Tribe and the proposal to restore stream flows? What legal authority does Ecology have to *restore* stream flow, rather than just requiring instream flows equal to the stream flow derived from groundwater inflow or discharge?

17. Why does Ecology utilize hypothetical impairment claims? Where is the statutory authority to do so?

18. If all the rivers are hydraulically connected, how can you close some year round and not others?

19. What is "administratively closed", what was the authority and basis for such an action and when was it taken, and why does Ecology believe this has legal significance as part of the baseline if there currently are no restrictions on permit-exempt wells in the affected area?

20. What statute authorizes the definition of "closure"?

21. What statute authorizes "mitigation" as utilized as part of the definition of "closure"?

22. What statute or legal precedent authorizes the definition of "hydraulically connected"?

23. Why does your least burdensome alternative analysis ignore many less burdensome alternatives, such as the wholesale purchase of water rights by the state or another entity, or impounding excess spring run off water and releasing it back into the rivers in late summer, when stream flows are lowest?

24. How does Ecology decide to close a basin that historically shows less water use every year? Why wasn't historic water use presented in the analysis? Why are water available and water used not described?

25. Who formulated the Overriding Considerations of the Public Interest determinations?

26. Who do you expect will sue claiming that the benefits of this rule don't exceed the costs? What do you expect the plaintiffs' causes of action to be?

27. Table 3 in the CBA projects 162 to 403 new domestic uses per year. How can this be accurate when Clallam County estimates an average of 65 new building permits per year outside a service area? Please explain the calculations.

28. RCW 19.85.040(2)(d) requires that the Small Business Economic Impact Statement include an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule. Why was this not done?

29. RCW 19.85.040 requires the agency to describe in the Small Business Economic Impact Statement the additional costs to businesses, how the agency reduced regulatory requirements, how small businesses were involved in the development of the rule, a description

of the steps to reduce the costs on small businesses, and a variety of other items that must be analyzed. Why was this not done?

I look forward to your responses. I strongly urge you to place the rule making process on hold while an independent economic cost benefit analysis is prepared. Thank you for your consideration.

Sincerely,

Kaj Ahlburg

From: pearl hewett [REDACTED]
Sent: Friday, July 06, 2012 10:37 AM
To: Wessel, Ann (ECY); [REDACTED]
Subject: Extortion \$5000.00 if you exercise your right to refuse a meter

COMMENT ON DOE'S DUNGENESS WATER RULE AND INSTREAM FLOW RULE

EPA DOE power grab

“It’s time to get EPA (and the DOE Dungeness Water Rule and SMP) out of Americans’ backyards,”

This is just my **totally biased opinion** after attending only one **March 2012** meeting on **DOE's red hot new rule**.

Appointed DOE employees' verbally threaten, bully and try to intimidate private property owner's.
Only \$500.00 if you let DOE meter your private well on private property.
Extortion \$5000.00 if you exercise your right to refuse to let DOE put a meter on your private well.

Email comment March 2012

I just spent 2 1/2 hours at a **March 2012**, Clallam County Commissioners work session/meeting on **DOE's red hot new rule** on instream flow. DOE is going to into the stock broker, mitigation and banking business, the stock is 100% of our confiscated ground and surface water. They are going into the buying and selling of water stock reserves, options and rights to the highest bidder.

Private property owners will be charged exorbitant mitigation and permit fees so the DOE can have a financially self sufficient DOE controlled program of all of our water. **ALL PROFITS AND INCOME WILL become the THE DOE'S operating fund.**

Don't forget, we all have riparian water rights, 150 gallons of water a day. **And**, we have the assurance of DOE that existing wells do not have to be metered. **But**, don't forget DOE **can extort your right to no meter** on your private well by charging you \$5000.00 for your right to **NOT PUT A WATER METER** your private well.

However, if you let DOE put a meter on your well, it will only cost you \$500.00.

Don't think for one minute that a private well on undeveloped property is safe from the DOE.

While the DOE can calmly sit and admit to their incompetence on the 20 or more years of backlogged requests for permits/water rights, They are ever moving forward to control, regulate, medigate, penalize, charge and seize more rights to **OUR water and asking at the same time, for more funding for, more then the 1616 employs, and the billion dollar budget they have now, to catch up on the backlog.**

They actually say, "If you got the Money Honey step to the front of the line."

When asked who will enforce this new RULE? Wow, not one mention of the "Water Master". The Neighborhood watch can now be known as the "**DOE Neighborhood Water Watching Whistle Blowers**". (actually the DOE and the state)

Last but not least, the mention of the instream flow, historically unrealistic, unattainable, levels of water for the FISH. (restricted water usage for we the people?)

Their best available science is from as far back as 1970.

Sheila stood up for private property owners, **let Clallam County take care of it's self.**
New County Commissioner Jim McEntire made points for us too.
Mike Doherty asked for BRIEF public comments. (there weren't any)

Pearl Rains Hewett

From: pearl hewett [REDACTED]
Sent: Friday, July 06, 2012 9:33 AM
To: Wessel, Ann (ECY); [REDACTED]
Cc: [REDACTED]
Subject: "It's time to get EPA - DOE Dungeness Water Rule and SMP out of Americans' backyards,"

EPA power grab to regulate ditches, gullies on private property

"It's time to get EPA lawyers (and the DOE Dungeness Water Rule and SMP) out of Americans' backyards,"

[EPA power grab unleashes bipartisan backlash](#)

[By: Audrey Hudson](#)
[Human Events](#)

6/11/2012 08:05 A

Lawmakers are working to block an unprecedented power grab by the Environmental Protection Agency to use the Clean Water Act (CWA) and control land alongside ditches, gullies and other ephemeral spots by claiming the sources are part of navigable waterways.

These temporary water sources are often created by rain or snowmelt, and would make it harder for private property owners to build in their own backyards, grow crops, raise livestock and conduct other activities on their own land, lawmakers say.

"Never in the history of the CWA has federal regulation defined ditches and other upland features as 'waters of the United States,'" said Rep. John Mica (R-Fla.), chairman of the House Transportation and Infrastructure Committee, Rep. Nick Rahall (D-W.Va.), the ranking committee member, and Rep. Bob Gibbs (R-Ohio), chairman of the Subcommittee on Water Resources and Environment.

"This is without a doubt an expansion of federal jurisdiction," the lawmakers said in a May 31 letter to House colleagues.

The unusual alliance of the powerful House Republicans and Democrat to jointly sponsor legislation to overturn the new guidelines signals a willingness on Capitol Hill to rein in the formidable agency.

"The Obama administration is doing everything in its power to increase costs and regulatory burdens for American businesses, farmers and individual property owners," Mica said in a statement to Human Events. "This federal jurisdiction grab has been opposed by Congress for years, and now the administration and its agencies are ignoring law and rulemaking procedures in order to tighten their regulatory grip over every water body in the country."

"But this administration needs to realize it is not above the law," Mica said.

The House measure carries 64 Republican and Democratic cosponsors and was passed in committee last week. A companion piece of legislation is already gathering steam in the Senate and is cosponsored by 26 Republicans.

“President Obama’s EPA continues to act as if it is above the law. It is using this overreaching guidance to pre-empt state and local governments, farmers and ranchers, small business owners and homeowners from making local land and water use decisions,” Sen. John Barrasso (R-Wyo.) said in announcing their measure in March. “Our bill will stop this unprecedented Washington power grab and restore Americans’ property rights.”

“It’s time to get EPA lawyers out of Americans’ backyards,” Barrasso said.

Republicans say the proposal is peppered with loopholes. It suggests that roadside and agricultural ditches will be excluded; however, it also notes several exceptions, such as a connection to navigable or interstate waterways, ditches “that have relatively permanent flowing or standing water,” or a “bed, bank and ordinary high water mark.”

The EPA and Army Corps of Engineers drafted the new guidelines to implement Supreme Court decisions in the *Solid Waste Agency of Northern Cook County* case in 2001 and the *Rapanos* case in 2006 after the decisions removed some waters from federal protection and caused confusion about what remained protected.

However, the lawmakers say the jurisdictional limits set by the court are being ignored in order to justify the expansion of the agencies’ control.

The new language is intended to protect smaller waters that could potentially feed pollution downstream to larger bodies of water, but because it is not a formal rule, it cannot be enforced in the courts.

“Although guidance does not have the force of law, it is frequently used by federal agencies to explain and clarify their understandings of existing requirements,” the new guidelines say.

From: pearl hewett [REDACTED]
Sent: Thursday, July 05, 2012 12:35 PM
To: Wessel, Ann (ECY); [REDACTED]
Subject: DOE Dungeness Water Rule and DOE Shoreline Management Update

DOE Dungeness Water Rule and DOE Shoreline Management Update

CLALLAM COUNTY CODE Title 15 PUBLIC PEACE, SAFETY, MORALS

15.02.120 PUBLIC NUISANCE

Compliance with the terms and conditions of this chapter shall constitute minimum health, sanitation and safety provisions and material noncompliance with said terms and conditions shall constitute a public nuisance and be subject to all criminal, civil and equitable remedies as such.

Chapter 15.30 PUBLIC DISTURBANCE

Disturbing the **PUBLIC PEACE** in Clallam County

Since Jan. 26, 2011 the Clallam County Commissioners and elected WA State Representatives have been aware that the presence of **Federal and State Agencies have been DISTURBING THE PUBLIC PEACE** and become a **PUBLIC NUISANCE** to the private property owners in Clallam County.

With the WA State DOE invasion of Clallam County for the **DOE Dungeness Water Rule and DOE Shoreline Management Update**, they are guilty of both. **DOE is DISTURBING THE PEACE** and they have become a **PUBLIC NUISANCE** to the private property owners in Clallam County.

To date, **no action has been taken to protect us, by the following elected officials**, WA State representatives, Rep. Van De Wege, Rep. Tharinger, or Senator Jim Hargrove.

Or by our Clallam County elected officials, Mike Doherty, Mike Chapman or Sheriff Benedict.

**We the People of Clallam County have documented grievances against.
WA State DOE Dungeness Water Rule and SMP taking of property value
Olympic National Park as Inholder and (Wild Olympics)
WA State Dept of Fish and Wildlife unconstitutional trespass and search
Our unresponsive elected officials.**

Can Clallam County Home Rule Charter help us?

Washington statutes allow counties to adopt, by public vote, a "Home Rule Charter." Adopting a charter allows counties to adopt a **"constitution" that can change their form of**

government and/or create requirements for the operation of government beyond those required in the State constitution.

Pearl Rains Hewett
ONP Inholder
Private property owner Lake Sutherland
Marine and Freshwater shoreline owner

(read on if you are interested)

The testimony of the Lake Sutherland home owners at the Jan. 26, 2011 SMP Forum with regard to the surveillance of their private property by unidentified white boats, aircraft and the unconstitutional trespass of the **WA State Dept of Fish and Wildlife** certainly disturbed their peace.

The denial of entry by Olympic National Park employees, to the Rains Family Inholder property at the Elwha, "**Access Denied**", certainly disturbed the peace of that family.

The unconstitutional trespass and search of private property by the **WA State Dept of Fish and Wildlife** on Lake Sutherland was reported to Commissioner Mike Chapman, the Sheriff of Clallam County and at a Commissioners meeting.

The WA State Dept of Fish and Wildlife employees did knowingly, without probable cause, without permission of the property owner and without a search warrant trespass and search all private property around Lake Sutherland.

The DOE Dungeness Water Rule taking of water rights and metering of well is vigorously opposed by private property owners of Clallam County.

The designation of the Wild Olympics and Wild and Scenic Rivers is vigorously opposed by private property owners of Clallam County.

The DOE SMP taking of use and value of private property is vigorously opposed by private property owners of Clallam County.

All of the Violations and TAKINGS are from Privates Property Owners.

From: pearl hewett [REDACTED]
Sent: Tuesday, July 03, 2012 6:26 PM
To: Wessel, Ann (ECY)
Subject: DUNGENESS WATER RULE Government monopoly -Coercive monopoly

My Comment on the Dungeness Water Rule Government Monopoly

Subject:
DOE DUNGENESS WATER RULE - Government monopoly - Coercive monopoly

According to economist Murray Rothbard

"A coercive monopolist will tend to perform his service badly and inefficiently."

DEBT of US Postal Service US: \$15,724,907,364,995 - as of June 2012

DEBT OF FEMA \$18,000,000,000 under water (will be doubling rates 100% in 4 years)

In economics, a **government monopoly** (or **public monopoly**) is a form of coercive monopoly in which a government agency or government corporation is the sole provider of a particular good or service and competition is prohibited by law. It is a monopoly created by the government.^[1] It is usually distinguished from a government-granted monopoly, where the government grants a monopoly to a private individual or company.

A government monopoly may be run by any level of government - national, regional, local; for levels below the national, it is a local monopoly. The term **state monopoly** usually means a government monopoly run by the national government, although it may also refer to monopolies run by regional entities called "states" (notably the U.S. states).

In addition to the Dungeness Water rule, the DOE intends takeover of 80 private and municipal water districts. The Dungeness Water Rule is an APPOINTED STATE AGENCY LOOKING FOR A BUSINESS OPPORTUNITY, it will provide the DOE with unconstitutional authority and we the people will be leaving ourselves open to all of the following.

Anti-competitive practices

- Monopolization
- Collusion
 - Formation of cartels
 - Price fixing
 - Bid rigging
- Product bundling and tying
- Refusal to deal
 - Group boycott
 - Essential facilities

- [Exclusive dealing](#)
- [Dividing territories](#)
- [Conscious parallelism](#)
- [Predatory pricing](#)

Examples

In many countries, the [postal system](#) is run by the government with competition forbidden by law in some or all services. Also, government monopolies on [public utilities](#), [telecommunications](#) and [railroads](#) have historically been common, though recent decades have seen a strong [privatization](#) trend throughout the [industrialized world](#).

In Scandinavian countries some goods deemed harmful are distributed through a government monopoly. For example, in [Finland](#), [Iceland](#), [Norway](#) and [Sweden](#), government-owned companies have [monopolies for selling alcoholic beverages](#). [Casinos](#) and other institutions for [gambling](#) might also be monopolized. In Finland, the government has also a monopoly to operate slot machines.

Governments often create or allow monopolies to exist and grant them patents. This limits entry and allow the patent-holding firm to earn a monopoly profit from an invention.

Health care systems where the government controls the industry and specifically prohibits competition, such as [in Canada](#), are government monopolies.^[2]

Coercive monopoly

From Wikipedia, the free encyclopedia

Jump to: [navigation](#), [search](#)

This article includes a [list of references](#), but **its sources remain unclear because it has insufficient [inline citations](#)**. Please help to [improve](#) this article by [introducing](#) more precise citations. (July 2008)

*In [economics](#) and [business ethics](#), a **coercive monopoly** is a business concern that prohibits competitors from entering the field, with the natural result being that the firm is able to make pricing and production decisions independent of competitive forces.^[1] A coercive monopoly is not merely a sole supplier of a particular kind of good or service (a [monopoly](#)), but it is a monopoly where there is no opportunity to compete through means such as price competition, technological or product innovation, or marketing; entry into the field is closed. As a coercive monopoly is securely shielded from possibility of competition, it is able to make pricing and production decisions with the assurance that no competition will arise. It is a case of a [non-contestable market](#). A coercive monopoly has very few incentives to keep prices low and may deliberately [price gouge](#) consumers by curtailing production.^[2] Also, according to economist [Murray Rothbard](#), "a coercive monopolist will tend to perform his service badly and inefficiently."^[3]*

Advocates of free markets say that the only feasible way that a business could close entry to a field and therefore be able to raise prices free of competitive forces, i.e. be a coercive monopoly, is with the aid of government in restricting competition. It is argued that without government preventing competition, the firm must keep prices low because if they sustain unreasonably high prices, they will attract others to enter the field to compete. In other words, if the monopoly is not protected from competition by government intervention, it still faces [potential competition](#), so that there is an incentive to keep prices low and a disincentive to price gouge (i.e., competitive pressures still exist in a non-coercive monopoly situation).

Competition law

Basic concepts

- [History of competition law](#)
- [Monopoly](#)
 - **Coercive monopoly**
 - [Natural monopoly](#)
- [Barriers to entry](#)
- [Herfindahl–Hirschman Index](#)
- [Market concentration](#)
- [Market power](#)
- [SSNIP test](#)
- [Relevant market](#)
- [Merger control](#)

Anti-competitive practices

- [Monopolization](#)
- [Collusion](#)
 - Formation of [cartels](#)
 - [Price fixing](#)
 - [Bid rigging](#)
- [Product bundling](#) and [tying](#)
- [Refusal to deal](#)
 - [Group boycott](#)
 - [Essential facilities](#)
- [Exclusive dealing](#)
- [Dividing territories](#)
- [Conscious parallelism](#)
- [Predatory pricing](#)
- [Misuse of patents](#) and [copyrights](#)

Enforcement authorities and organizations

- [International Competition Network](#)
- [List of competition regulators](#)

This box:

- [view](#)
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In [economics](#) and [business ethics](#), a **coercive monopoly** is a business concern that prohibits competitors from entering the field, with the natural result being that the firm is able to make pricing and production decisions independent of competitive forces.^[1] A coercive monopoly is not merely a sole supplier of a particular kind of good or service (a [monopoly](#)), but it is a monopoly where there is no opportunity to compete through means such as price competition, technological or product innovation, or marketing; entry into the field is closed. As a coercive monopoly is securely shielded from possibility of competition, it is able to make pricing and production decisions with the assurance that no competition will arise. It is a

case of a [non-contestable market](#). A coercive monopoly has very few incentives to keep prices low and may deliberately [price gouge](#) consumers by curtailing production.^[2] Also, according to economist [Murray Rothbard](#), "a coercive monopolist will tend to perform his service badly and inefficiently."^[3]

Advocates of free markets say that the only feasible way that a business could close entry to a field and therefore be able to raise prices free of competitive forces, i.e. be a coercive monopoly, is with the aid of government in restricting competition. It is argued that without government preventing competition, the firm must keep prices low because if they sustain unreasonably high prices, they will attract others to enter the field to compete. In other words, if the monopoly is not protected from competition by government intervention, it still faces [potential competition](#), so that there is an incentive to keep prices low and a disincentive to price gouge (i.e., competitive pressures still exist in a non-coercive monopoly situation).

Pearl Rains Hewett

From: pearl hewett [REDACTED]
Sent: Tuesday, July 03, 2012 5:59 PM
To: Wessel, Ann (ECY); [REDACTED]
Subject: This is my comment on the Dungeness Water Rule

This is my comment on the Dungeness Water Rule

What we all can look forward to?

THE BRAND NEW, STATE controlled "DOE depravation of Water to the PUBLIC Dept."

Appointed DOE takes all of our water, including private and municipal water districts.

Appointed DOE restricts our private water right usage.

They have a new Appointed DOE agency, financed by charging us with inflated fees to meet DOE'S cost to run their NEW depravation to the PUBLIC Water Dept.

Who will the Appointed DOE sell our WATER to? the highest bidder? California? Japan?

Who will reap the profits? The Appointed DOE.

What will Appointed DOE use the profits for? To expand the Appointed DOE.

Is there any benefit to the residents/taxpayers/ citizens? NO.

Physical DOE Commodity Trading

Why do commodity houses exist? They exist for the same reason that hedge funds exist--they provide increased liquidity and someone decided to start trading commodities with their own money that eventually became a large operation. They also invest in and build

storage capacity which they use in their operations or can rent out. At the end of the day, they exist for the reason that any corporation exists....because they can make money.

WHAT IF THERE WAS AN INITIAL PUBLIC OFFERING (IPO) OF PUBLIC WATER?

An initial public offering (IPO) or stock market launch.

IF WASHINGTON STATE WATER WAS A STOCK MARKET COMMODITY?

Everything DOE is doing would be illegal.

What Does It Mean To Corner The Market?

When somebody tries to manipulate the market by illegally hoarding a particular commodity, it means that he is trying to 'corner the market'. In this process, the buyer tries to stockpile the

maximum amount of that commodity available, **to create an artificial shortage and drive up the price before selling the commodity back into the market.**

Front running is the illegal practice of a [stock broker](#) executing [orders](#) on a [security](#) **for its own account** while taking advantage of advance knowledge of pending orders from its customers. When orders previously submitted by its customers will predictably affect the price of the security, purchasing first for its own account gives the broker an unfair advantage, since it can expect to close out its position at a profit based on the new price level.

By front-running, **the broker has put his or her own financial interest above (or in front of) the customer's interest and is thus committing [fraud](#). In the U.S. he or she might also be breaking laws on [market manipulation](#) or [insider trading](#).**

Price fixing

Physical Commodity Trading

Why do commodity houses exist? They exist for the same reason that hedge funds exist--they provide increased liquidity and someone decided to start trading commodities with their own money that eventually became a large operation. They also invest in and build storage capacity which they use in their operations or can rent out. **At the end of the day, they exist for the reason that any corporation exists....because they can make money.**

Is it **legal** to "Corner the Market on water?" by a US or state government agency?
Is "Front running on water" **legal** for a US or state government agency?

How does "Cornering the market on water" and "Front running on water" apply to the Dungeness Water Rule?

read on if you are interested

What Does It Mean To Corner The Market?

[InvestorGuide University](#) > [Subject: Investing](#) > [Topic: Investing Basics](#) > What Does It Mean To Corner The Market?

by InvestorGuide Contributor ([Write for us!](#))

When somebody tries to manipulate the market by illegally hoarding a particular commodity, it means that he is trying to 'corner the market'. In this process, the buyer tries to stockpile the

maximum amount of that commodity available, to create an artificial shortage and drive up the price before selling the commodity back into the market.

The attempt by the buyer to corner the market depends a lot on his financial strength and knowledge about market trends. Apart from legal problems, he might also find himself in a mess if his intentions are exposed. He will then have other traders trying to oppose his move and make it difficult for him to sell back the commodity at the high price that he would have hoped to get. In some cases, other traders might actually benefit from the buyer's mistake.

One of the early examples was the cornering of the silver market in the 1970's where two brothers, William Herbert Hunt and Nelson Bunker tried to corner the silver market by buying silver in huge quantities. They managed to buy around 200 million ounces, which at that time was about half the world's silver, before being check mated. They had managed to raise the price of silver from 2 dollars per ounce to 54 dollars per ounce. They were forced to sell the silver back into the market at a substantial loss in the 1980's and eventually went bankrupt.

One more example of cornering was the conviction and 8 year sentence for Hamanaka, who tried to corner the Copper market in 1996, which resulted in the loss of 1.8 billion dollars to Sumitomo Corporation. Some large corporations have run into trouble with trying to corner the market. BP was ordered to pay a fine of over 300 million dollars in exchange for dropping the civil suit and criminal investigation against it for illegally trying to corner the U.S. Propane market in February 2004 and previously in April 2003. Unfortunately for BP, it got cornered by the CFTC and The Department of Justice.

Cornering the market is similar to buying stocks or shares of a particular corporation with the sole intent of raising the prices of those stocks artificially, before selling them off to make a huge profit. According to the U.S. Government Statute, no person can attempt to manipulate the price of any commodity or the commodity futures market. If the person is found guilty, he may be imprisoned or force to pay monetary damages. Cornering the market was widespread in the 1900's when there were hardly any regulations in place, but now with the CFTC keeping a watchful eye it has become very difficult for traders to engage in such malpractices. Also, with the advent of computerization, it is very easy for traders and authorities alike to keep an eye on the prices of all commodities. The markets also have circuit breakers in place, i.e. if the price of any commodity fluctuates beyond set price parameters or if there is a high fluctuation in the price of any commodity as compared to the previous day's price, then trading in that commodity is immediately suspended, till the cause of the fluctuation is found out. Even though cornering is illegal, there will always be someone trying to grab a major chunk of the commodities market with the hopes of increasing their return.

Physical Commodity Trading

Why do commodity houses exist? They exist for the same reason that hedge funds exist--they provide increased liquidity and someone decided to start trading commodities with their own money that eventually became a large operation. They also invest in and build storage capacity which they use in their operations or can rent out. At the end of the day, they exist for the reason that any corporation exists....because they can make money.

Front running

From Wikipedia, the free encyclopedia

Jump to: [navigation](#), [search](#)

This article is about the financial practice. For the practice as applied to domain names, see [domain name front running](#).

This article includes a [list of references](#), but **its sources remain unclear because it has insufficient [inline citations](#)**. Please help to [improve](#) this article by [introducing](#) more precise citations. *(February 2011)*

Front running is the illegal practice of a [stock broker](#) executing [orders](#) on a [security](#) for its own account while taking advantage of advance knowledge of pending orders from its customers. When orders previously submitted by its customers will predictably affect the price of the security, purchasing first for its own account gives the broker an unfair advantage, since it can expect to close out its position at a profit based on the new price level. The front running broker either buys for his own account (before filling customer buy orders that drive up the price), or sells (where the broker sells for its own account, before filling customer sell orders that drive down the price).

Allegations of front running occasionally arise in stock and commodity exchanges, in scandals concerning [floor brokers](#) and exchange specialists.

Pearl Rains Hewett

Freedom of speech in the United States is protected by the [First Amendment](#) to the [United States Constitution](#)

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Explanation

For example, suppose a broker receives an order from a customer to buy a large block of 400,000 shares of some stock, but before placing the order for the customer the broker buys 20,000 shares of the same stock for his own account at \$100 per share, then afterward places the customer's order for 400,000 shares, driving the price up to \$102 per share and allowing the broker to

immediately sell his shares for, say, \$101.75, generating a significant profit of \$35,000 in just a short time. This \$35,000 is likely to be just a part of the additional cost to the customer's purchase caused by the broker's [self-dealing](#).

This example uses unusually large numbers to get the point across. In practice, computer trading splits up large orders into many smaller ones, making front-running more difficult to detect. Moreover, the U.S. [Securities and Exchange Commission](#)'s 2001 change to pricing stock in pennies, rather than fractions of no less than 1/8 of a dollar, facilitated front running by reducing the extra amount that must be offered to step in front of other orders.

By front-running, the broker has put his or her own financial interest above (or in front of) the customer's interest and is thus committing [fraud](#). In the U.S. he or she might also be breaking laws on [market manipulation](#) or [insider trading](#).

Other uses of the term

Front-running may also occur in the context of insider trading, as when those close to the [CEO](#) of a firm act through [short sales](#) ahead of the announcement of a sale of stock by the CEO, which will in turn trigger a drop in the stock's price. Khan & Lu (2008: 1) define front running as "trading by some parties in advance of large trades by other parties, in anticipation of profiting from the price movement that follows the large trade". They find evidence consistent with front-running through short sales ahead of large stock sales by CEOs on the [New York Stock Exchange](#).

While front-running is illegal when a broker uses private information about a client's pending order, in principle it is not illegal if it is based on public information. In his book *Trading & Exchanges*, Larry Harris outlines several other related types of trading. Though all these types of trading may not be strictly illegal, he terms them "[parasitic](#)".

A third-party trader may find out the content of another broker's order and buy or sell in front of it in the same way that a self-dealing broker might. The third-party trader might find out about the trade directly from the broker or an employee of the brokerage firm in return for splitting the profits, in which case the front-running would be illegal. The trader might, however, only find out about the order by reading the broker's habits or tics, much in the same way that poker players can guess other players' cards. For very large market orders, simply exposing the order to the market, may cause traders to front-run as they seek to close out positions that may soon become unprofitable.

Large limit orders can be "front-run" by "order matching" or "penny jumping". For example if a buy [limit order](#) for 100,000 shares for \$1.00 is announced to the market, many traders may seek to buy for \$1.01. If the market price increases after their purchases, they will get the full amount of the price increase. However, if the market price decreases, they will likely be able to sell to the limit order trader, for only a one cent loss. This type of trading is probably not illegal, and in any case, a law against it would be very difficult to enforce. Harris still considers it "parasitic".

Other types of traders who use generally similar strategies are labelled "order anticipators" by Harris. These include "sentiment-oriented technical traders," traders who buy during an asset [bubble](#) even though they know the asset is overpriced, and squeezers who drive up prices by threatening to corner the market. Squeezers would likely be guilty of [market manipulation](#), but the other two types of order anticipators would not be violating any US law.

Hostile takeovers

A hostile takeover allows a suitor to take over a target company whose [management](#) is unwilling to agree to a [merger](#) or takeover. A takeover is considered "hostile" if the target company's board rejects the offer, but the bidder continues to pursue it, or the bidder makes the offer directly after having announced its firm intention to make an offer.

A hostile takeover can be conducted in several ways. A [tender offer](#) can be made where the acquiring company makes a public offer at a fixed price above the current market price. Tender offers in the United States are regulated by the [Williams Act](#). An acquiring company can also engage in a [proxy fight](#), whereby it tries to persuade enough shareholders, usually a [simple majority](#), to replace the management with a new one which will approve the takeover. Another method involves quietly purchasing enough stock on the open market, known as a creeping tender offer, to effect a change in management. In all of these ways, management resists the acquisition but it is carried out anyway.

The main consequence of a bid being considered hostile is practical rather than legal. If the board of the target cooperates, the bidder can conduct extensive [due diligence](#) into the affairs of the target company, providing the bidder with a comprehensive analysis of the target company's finances. In contrast, a hostile bidder will only have more limited, publicly-available information about the target company available, rendering the bidder vulnerable to hidden risks regarding the target company's finances. An additional problem is that takeovers often require loans provided by [banks](#) in order to service the offer, but banks are often less willing to back a hostile bidder because of the relative lack of information about the target available to them.

From: Don & Ella [REDACTED]
Sent: Wednesday, July 04, 2012 3:48 PM
To: Wessel, Ann (ECY)
Subject: Water usage

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Donald & Ella Hoffeld

From: [REDACTED]
Sent: Sunday, July 01, 2012 7:22 PM
To: Wessel, Ann (ECY)
Subject: re: DWR formal comment

To: Ann Wessel, WA State Dept. of Ecology

From: Beth Garrison/Randy Holtkamp

Re: Dungeness Water Rule formal comment

Date: July 2, 2012

In 2000, my husband and I bought a 2.5 acre parcel of land in Sequim, WA for our future retirement home. From 2000 to 2005, we cleared approximately one acre, installed a well, a pressurized septic system, and underground plumbing and electricity to the building site. Total costs for these improvements were \$25,000. We also seeded the property with hay and wildflowers to help deter thistle infestations. In 2005 we parked a 26 ft. 5th wheeler on our property which we have used as a “cabin” a few weeks every September and April. Over the years, we have had many friends and family stay with us on our property. We strongly feel that our property qualifies as “beneficial use”.

In August 2008, we were ready to build our future home and had spent \$5,000 in building permits and engineer’s reports. Subcontractors were ready to start. Unfortunately, the sale of our current home in Alaska fell through at the last minute, and the housing market took a downturn nationwide. While our plans to build our retirement home have been put on hold, the value of our property has decreased, and our property taxes have quadrupled.

In our opinion, the proposed Dungeness Water Rule is flawed and has too many unknowns. How much would it cost property owners to buy water rights for their wells? Who would be responsible for installing and checking metered wells? How will the proposed rule affect future landowners who want to start small home businesses on their land with metered wells? The current DWR plan would further depreciate the land values of properties (not grandfathered), therefore causing a further decline in the economic health of Clallam County. The quality of life for all residents in the Dungeness Valley would be negatively affected if the proposed DWR takes effect. We hope you will reconsider.

Sincerely,

Beth Garrison/Randy Holtkamp

[REDACTED]

[REDACTED]

From: Zoe Horlick [REDACTED]

Sent: Monday, July 09, 2012 4:47 PM

To: Wessel, Ann (ECY)

Cc: [REDACTED]

Subject: Formal comments WIRA 18

Dear Anne & the Department of Ecology, County Commissioners,

I have been reading the comments from our association members. I have to say how disappointed in the ecology I am, the way you are trying to take the people in Sequim down a road to despair. When there are easier ways to handle the issue. The state should buy the water, fix a low fee, have public organization do the monitoring, and stop trying to tell us how to use our water. Are you going to install cameras to watch us.



**Zoe Horlick - REALTOR
Broker- Agent**

Schwab Realty

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Joyce Horner [REDACTED]
Sent: Tuesday, July 03, 2012 5:39 PM
To: Wessel, Ann (ECY)
Subject: Water

Please end this now - we do not need more government. Water is not a god, it is a resource to be used not manipulated. Keep the government out of this Joyce

--

Soli Deo Gloria

From: Karen Huber [REDACTED]
Sent: Sunday, July 01, 2012 11:56 AM
To: Wessel, Ann (ECY)
Subject: Re: Automatic reply: against water restrictions in Dungeness

I am another citizen of Sequim living in the Dungeness Village community against the proposed water restrictions. We do not need anymore government restrictions on what we can do on our property.
ENOUGH IF ENOUGH!!!

Citizens who haved purchased property for future use or hope to sell their property will feel the financial penalty.

Sounds like another way to create more government jobs and expense accounts for the cost of state employees using SUV's to drive around and spy on local citizens.

If indeed there is a need to reduce water usage, then look at limiting water amounts used by the golf courses, large box stores, school districts, state and government offices and the new multi apartment unit complexes. Put meters on all of them and offer incentives for reducing water consumption. Do not restrict individuals who own their homes, plant gardens and orchards. Our rights as citizens of this country and tax payers of Clallam County are slowly eroded.

Stop this ridiculouos pursuit of yours!
Karen Huber
[REDACTED]

From: dhupfer [REDACTED]
Sent: Thursday, May 10, 2012 9:35 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

This rule is absolutely preposterous. There is no reason for this government intervention. Residents are able to afford to live and grow food and raise animals under the protection of the constitution, without government control of water. No one owns the water and no one should have to pay the government for the use of well water! For many, living on the Olympic Peninsula in a rural or semi-rural lifestyle is the **ONLY** way life is financially possible.

As a senior citizen of Clallam County I have concerns as follows:

How does increasing the river flow cause more salmon to spawn when the tribe are allowed to take half of the salmon, but there is no accountability as to how much they take or how many fish are available?

Tourism encourages much needed places for visitors to stay along with places for them to eat. Hotels/motels and restaurants use lots of water.

Plans for Sequim to enlarge by bringing in “big box” stores also uses our water. Not to mention the housing industry that seems to grow daily. Those who live in those homes use water.

In consideration of putting meters on our wells shouldn't the above be restrained instead of going full speed ahead? Most of us are water use conscious and do not need government restrictions.

Thank you for the opportunity to express my opinions.

Jorita Jensen

Department of Ecology
Dungeness Ope. House/ffd/i_., 1/ea.r III'IB
PUBLIC COMMENTS

Name:	Richard Tepsoyi
Company/Organization:	
Mailing Address:	
City, State, Zip:	
Email Address:	

Please print your comment(s) below:

While the effort to look ahead to a growing population and the possibility of changing precipitation patterns and temperature variation at high altitudes that could snow pack ~~duration~~ ^{duration} is all commendable, in order to gain wide-spread acceptance and compliance it must be seen to be fair. Priority of use based on type is sensible. A farm needs more than a residence, but two users of the same type e.g. two residences should be treated the same regardless of when they got there. To issue permission to subdivide for residential development and a permit to a buyer to drill a well and then tell them "Sorry, you can't take any water from it" is simply not acceptable under any test of reason.

I, as I understand, you are constrained by this century-and-a-half old water rights law, I think you have to find a way to work around the inevitable results that accrue from it before promulgating anything.

Date Received:-----
Facilitator:-----
Page_of_

From: Edwin Johnson

To: Department of Ecology
Ann Wessel, Bellingham, Wash.

Subject: WRIA 18 East water rules
Dungeness River watershed.

There is connections between ground water and rivers. When working for the Fisheries Dept. back in 1989 on the Clearwater River, we learned some hard lessons there, that when the river rose and fell, ~~the~~ a pond adjacent to the river rose and fell ~~in~~ correspondingly. We had a smolt trap on a creek that drained the pond. ~~So~~

So I would imagine that a reduction in ground water from

RECEIVED

NOV 15 1991

NOV 15 1991

too many people living on the Dungeness watershed could cause problems for salmon migration in August, September, and October. That problem did occur before they changed the irrigation intake. I saw that with pink salmon.

Now the problem is too many people - overpopulation which feeds constant pressure from land developers and realtors.

The way to solve this is no more development in the Dungeness watershed. No more growth. End growth!

Respectfully

Edwin R. Johnson

RECEIVED

JUL 02 2012

DEPT OF ECOLOGY
BELLINGHAM FIELD OFFICE

From: Carol Person [REDACTED]
Sent: Friday, June 08, 2012 12:39 PM
To: Wessel, Ann (ECY)
Subject: Re: Dungeness Proposed Rule Comments

I'm sorry, but I didn't quite understand your email. But to reiterate, I am fundamentally opposed to government infringement upon individual property rights. Metering private well water would be one of those infringements. I simply want you to consider my dissenting opinion and ask that you contemplate carefully individual property rights and any encroachments and erosion to them in your decision making process.
Thank you for your consideration and time.

Sent from my iPhone

On Jun 8, 2012, at 12:11 PM, "Wessel, Ann (ECY)" <awes461@ECY.WA.GOV> wrote:

> The Department of Ecology has received your comment about the proposed Water Resources Management Rule for the Dungeness portion of WRIA 18, Chapter 173-518 WAC. We are currently in the formal public comment period for the proposed rule. We will be responding to all comments received during the public comment period in a document titled the Concise Explanatory Statement (CES). The CES is published when the final decision is made on the rule.

>

> If your question is a clarification request and you would like a response in order to prepare your formal comment, please send a response to this email that expressly states that the question is not a formal comment and you understand that the response will not be included in the Concise Explanatory Statement. (You may also resubmit your questions as part of your formal comment if you would like the answer included in the CES.)

>

>

> Ann E. Wessel
> Department of Ecology, Bellingham Field Office
> 360-715-5215
> awes461@ecy.wa.gov

>

>

>

> -----Original Message-----

> From: Carol Person [REDACTED]
> Sent: Friday, May 11, 2012 10:34 AM
> To: Wessel, Ann (ECY)
> Subject: Dungeness Proposed Rule Comments

>

> To Whom It May Concern

>

> Do not start metering well water! It is fundamentally wrong and is completely incomprehensible.

>

> Carol Person

From: Edwin Johnson

To: Department of Ecology
Ann Wessel, Bellingham, Wash.

Subject: WRIA 18 East water rules
Dungeness River watershed.

There is connections between ground water and rivers. When working for the Fisheries Dept. back in 1989 on the Clearwater River, we learned some hard lessons there, that when the river rose and fell, ~~the~~ a pond adjacent to the river rose and fell ~~in~~ correspondingly. We had a smolt trap on a creek that drained the pond. ~~So~~

So I would imagine that a reduction in ground water from

RECEIVED

NOV 20 1989

NOV 20 1989

too many people living on the Dungeness watershed could cause problems for salmon migration in August, September, and October. That problem did occur before they changed the irrigation intake. I saw that with pink salmon.

Now the problem is too many people - overpopulation which feeds constant pressure from land developers and realtors.

The way to solve this is no more development in the Dungeness watershed. No more growth. End growth!

Respectfully

Edwin R. Johnson

RECEIVED

JUL 02 2012

DEPT OF ECOLOGY
BELLINGHAM FIELD OFFICE

From: Kelly Johnson [REDACTED]
Sent: Monday, July 02, 2012 12:37 PM
To: Wessel, Ann (ECY)
Subject: proposed new water regulations

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial.

Thank you for your attention.

Signed,

Kelly Johnson
Realtor, SRS, SFR

[REDACTED]

[REDACTED]

From: Kent Johnson [REDACTED]
Sent: Thursday, July 05, 2012 8:03 PM
To: Wessel, Ann (ECY)
Subject: Formal Comments on Ecology WRIA 18

Ann,

I was not able to attend the meeting in Sequim, but did want to share my concerns with WRIA 18 potential rulings.

I am a landowner of a 3.3 acre parcel that is currently on the corner of Macleay Rd and Wheeler Road. It has a well in place, power transformer installed, and a septic system designed and installed. However, due to the impact we have felt from the current economy, we have been unable to build so have put the property up for sale. Now the Dept of Ecology comes forward with this ruling that makes absolutely no sense to me and I believe will have significant impact on the value of my property. Is the State prepared to compensate me for my loss? If so, I am less concerned, but in all I have read and heard, the State has no plan to compensate for loss of value on property affected by the Dept of Ecology ruling. I would urge you to not move forward on this decision until a reasonable plan to help landowners like myself retain the value of their property. We have invested over \$200,000 in this land. There is a substantial risk to the State if that value is compromised as a result of your water policy rulings. My wife and I stand up against this ruling and ask you not to move forward with it.

Thanks for your consideration of my comments.
--Kent

Kent Johnson

[REDACTED]

From: Nola Judd [REDACTED]
Sent: Wednesday, July 04, 2012 10:49 PM
To: Wessel, Ann (ECY); Wessel, Ann (ECY)
Subject: Water Usage Rules Deprive Right to Use Land - STOP!
Importance: High

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area and, in my opinion, way over-stepping their bounds.

I am concerned that these limitations will ultimately (among *many* other things) deprive citizens of the right to use their land.

The assertion that there is hydrological connectivity between aquifers and the waters flowing in streams and rivers is, at best, an hypothesis that has yet to be proven. Moreover, *if* (and I consider that a B-I-G *if*) such a connectivity does exist, the affects of wells on the flow levels *is* minimal and, therefore, the hardships (inflicted on the general populace and land owners in particular) will far outweigh any potential benefits - a fact that DOE's own economist, Mr. Hoff avows. [As an aside, the fact that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department bespeaks harassment of a "whistle-blower".]

I contend that the town meeting held on June 28, 2012 should be seen as evidence that the majority of the citizens, We The People, (many of whom will be severely impacted by these limitations) are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on July 3, 2012.

Accordingly, I request that you suspend the implementation of these rules until such time as you can convince me and your other constituents (as well as the population immediately affected – *and* our elected representatives) that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

Nola Elise Judd

[REDACTED]

From: Deb Kahle [REDACTED]
Sent: Thursday, July 05, 2012 8:26 AM
To: Wessel, Ann (ECY)
Subject: WRIA 18E Rule

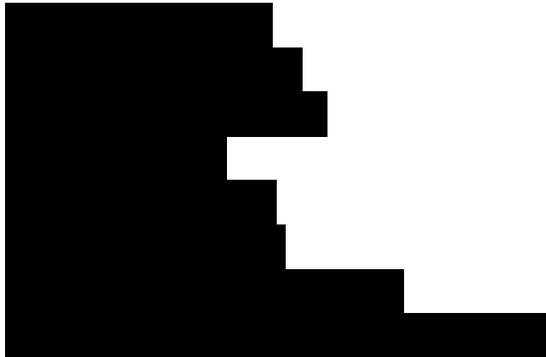
Hi Anne,

I've put off writing any comments or asking questions because I know you are inundated with issues. However, I am concerned about the new water program proposed. Currently there are laws that forbid denying access to property so that property owners can enjoy and take full advantage of uses on their properties.

Why, then is the DOE allowed to deny property owners access to water? It seems to me that we are going back in time where whoever owned the water had the power to dictate prices and uses for everyone. I really hate to see this step backwards. Property owners should be allowed to use water to enjoy their properties. Systems are in place for conservation and are working.

Please reconsider this new rule.
Thank you for your consideration,
Deb Kahle

Deb Kahle, Managing Broker
Windermere SunLand



Dungeness River Basin Plan

Technical Comments on the Instream Flow issues within

Proposed 173-518 WAC - July 9th, 2012 (FINAL)

Kris G. Kauffman, PE – President, Water Rights Inc.

BACKGROUND

The State of Washington water resource planning directions came initially from 90.54 RCW known as the Water Resource Act of 1971. Included in this act were fundamentals of allocation of water within the state and provisions for setting forth “Base Flows” in all perennial streams of the state. Separately, in 1969, the water code provided, under 90.22 RCW, that “Minimum Flows” may be adopted for protection of specific values related to stream flow. The language associated with the 90.54.020(3)(a) RCW included within a “Declaration of Fundamentals” that “Perennial Rivers and Streams ... shall be retained with Base Flows necessary for the preservation of ... values”. The Base Flow provision was later set forth in more detail under 173-500 WAC, with a specific hydrological methodology set forth in the Western Washington Instream Resource Protection Programmatic EIS document at Appendix D (see Attachment 1). Under said Water Resources Act of 1971 nineteen major river basins in the state had some level of planning activity completed including the setting of “Instream flows”. All of these basins, including the Columbia and Snake Rivers, incorporated the adoption of Base Flows, or a combination of Base and Minimum Flows, dependent upon the degree to which the stream system was a natural flow system or a system that had available stored water for release.

Much later 90.82 RCW was passed, enabling another broad-based water resource planning activity led, to some degree, by a variety of public and private interests in the given watershed planning area. This currently proposed 173-518 WAC is one effort within what came to be known as the 2514 water resource planning activity named after the legislative bill number. At this stage the 2514 water resource planning effort had the mandatory provisions for considering water quantity for existing and future water use and water supply and the option to address water quality, instream flows, aquatic and riparian habitat and water storage issues. Subject basin took the option to address all the noted issues. The State provided funding for a variety of study efforts relating to these functional water resource elements. The currently-proposed 173-518 WAC (see Attachment 2), inclusive of the Dungeness River Basin, is under the auspices of a 2514 planning effort.

These comments include the review by the undersigned of several background reports, obtaining certain background data used to determine the proposed instream flow regimes, and historic planning and administration considerations relative to said instream flows.

FOCUSING ON WATER ALLOCATION TO INSTREAM FLOWS

Basin water resource planning efforts may routinely include an allocation of waters to specific use categories, duly recognizing the first-in-time, first-in-right administration of Water Rights under Western Water Law generally and 90.03 RCW specifically for Washington State. Examples of water allocation budget elements to specific instream flow uses related to an average annual water year are set forth for four separate Washington State river basins. These are just four of several examples that could be used. In all cases the downstream gage or most appropriate gage data related thereto is used.

1. The Okanogan River of North central Washington (WAC 173-549 adopted 7/76).
Average annual flow (34 years - Malott) 2,300,000 Acre Feet
Instream flow protected (173-549) 1,043,000 Acre Feet
Drainage area above RM 17 = 8,080 sq-mi
Instream flow (base) as a % of average annual flow = 45 % actual¹.

2. The Newaukum River of Southwestern Washington (WAC 173-522 adopted 7/76).
Average annual flow (58 years) 365,000 Acre Feet
Instream flow protected (173-522) 110,662 Acre Feet
Drainage area above RM 4.1 = 155 sq-mi
Instream flow (base) as a % of average annual flow = 30 % actual².

3. The Deschutes River of Southwestern Washington (WAC 173-513 adopted 6/80).
Average annual flow (24 years) 299,400 Acre Feet
Instream flow protected (173-513) 173,860 Acre Feet
Drainage area above RM 2.4 = 162 sq-mi
Instream flow (base) as a % of average annual flow = 58 % actual³.

4. The Dungeness River of the Olympic Peninsula (WAC 173-518 proposed 7/12).
Average annual flow (69 years) 278,600 Acre Feet
Instream flow proposed (173-518) 322,370 Acre Feet⁴
Drainage area above RM 11.8 = 156 sq-mi
Instream flow (proposed) as a % of average annual flow = 116% proposed

-
- 1 The Okanogan River Basin may have the largest salmon runs in over 70 years this year (this may not relate to the Instream flow-setting; however, flows may have played some role). The Instream flow as adopted **ratio** to the average annual river flow is less than 45%; and, **less than 40%** of the ratio **proposed** for the Dungeness.
 - 2 The Newaukum River drainage area is virtually the same as the Dungeness, with the Instream flow adopted **ratio** to the average annual river flow is about 30 %; or, **only 26%** of the ratio **proposed** for the Dungeness.
 - 3 The Deschutes River drainage is less than 4% larger than the Dungeness yet the Instream flow **ratio** to the average annual river flow as adopted is ~58%; or, **one-half (50%)** of the ratio **proposed** for the Dungeness.
 - 4 The Dungeness Instream flow proposed in 173-518 is about **1.16 times larger** than the average annual flow for the Dungeness River and is 2.0 to 3.3 times greater as a ratio to historic adopted instream flow examples above.

INSTREAM FLOW SETTING ON THE DUNGENESS RIVER

The instream flow-setting methodology being employed on the Dungeness River does not follow either the Base Flow or Minimum Flow processes set forth in earlier efforts; but, rather, is combined as "Instream Flows as necessary to meet the water resource management objectives..."; and, "The term "instream flow" means "base flow" under ...90.54..., "minimum flow" under ...90.03 and ...90.22...and "minimum instream flow" under ...90.82...."

Specifically, the "minimum instream flow" for the Dungeness River, in fact, keys off of an optimum or near maximizing habitat flow analysis as depicted graphically in the technical background information. (see Attachment 3, pgs. 1, 10, 14, 21 and 32).

The concept embodied in the 90.54 RCW Base Flow relates directly to the hydrologically-defined Base Flow, that is the dry period recessional flow component of streamflow. The afore-mentioned Appendix D derives the regulatory Base Flow by developing actual duration hydrographs for the involved stream reach throughout the year and then applying specific criteria to suggest a variable Base Flow hydrograph throughout the year. Part of this analysis includes a qualitative rating of the functional uses of the stream. The end product relates directly to the basic stream characteristics under normative flow ranges and conditions.

The methodology used for the Dungeness River as proposed in 173-518 WAC takes the fluvial geomorphically defined river system formed by high energy (flow) events and then assesses habitat functions (spawnable areas, juvenile rearing conditions, adult passage, etc.) without regard to normative flow conditions, thereby obtaining significantly higher flows than have historically occurred under a sustained natural flow condition. The primary authors of the Instream Flows for the Dungeness River note that:

"Even though Chinook spawning habitat is maximum at 575 cfs, biologists chose 180 cfs for Chinook spawning based on the hydrograph showing the streamflow did not reach 575 cfs with enough frequency during September."

This statement displays clearly the flawed methodology relative to natural flow conditions and the development of minimum or base flows: if the objective function is to define **maximum or optimum fish flows, then the applied methodology currently used in 173-518 WAC is appropriate**; however, the allocation of water to Instream flows directly relates to the policy decisions relative to water available for other uses and users other than fish and the historic language spoke to Base or Minimum flows, not maximum or optimum fish flows.

Comparing these two methodologies as represented in the examples in the prior section provides the apparent following differences: "The Dungeness Instream flow proposed in 173-518 WAC is about 116 % larger than the average annual flow for the Dungeness River and is 2.0 to 3.3 times greater as a ratio to historic adopted instream flows...." noted above.

By optimizing/maximizing the flow for fish, significant additional resources are allocated thereto as compared to providing a Base Flow amount. Simply defining "Instream

flow” to include all flow related methodologies is not appropriate when, in fact, a maximizing methodology is relied upon. An analysis using the developed data with the PHABSIM model used for the lower Dungeness site and comparing, for example, the specific habitat (not actual fish use or production) functions displayed for 100 cfs (the 1994 and 1998 Agreement's Target Flow) rather than the 180 cfs recommended showed that the 100 cfs still provides 97%, 92%, and 67% spawning habitat function values for Coho, Pink, and Chinook salmon species respectively, when compared to the 180 cfs (83%, 97% and 98% respectively) specified for August to October. See Table 1, page 5 herein for a more complete display and Attachment 4 for a graphical representation of this data interpretation. Since this analysis did not find any correlation data between the flow figures recommended for adoption in the proposed 173-518 WAC and actual historic fish run sizes, it is assumed that that data does not exist and that we are only reviewing the theoretical interpretation of actual measured field habitat environments in the Dungeness River Basin.

HYDRAULIC CONTINUITY

The result of statutory and case law application to Water Right Administration directs that the relationship of ground and surface waters, one to the other, must be considered. The 173-518 WAC planning activity and process has the option to set forth specific ways for that consideration to take place and be implemented. The work in assessing the stream gaging network as to accuracy was well done with clearly delineated results by gage; however, the proposed 173-518 WAC depends nearly entirely on mitigation strategies to accommodate any underlying potential hydraulic continuity of ground waters with surface waters in the planning area. Options not fully considered, in my judgment, include a de minimis or otherwise non-measurable impact area for (specified) quantities of ground water withdrawals; the use of interface ground waters that would not impact surface waters or induce salt-water intrusion; or, the importation of fracture zone ground waters (not deep aquifer zones that are referenced) into the defined hydrologic drainage basin.

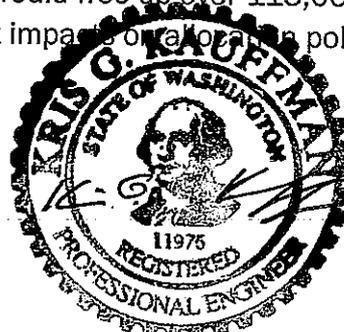
The limited optional approaches noted above may provide a broader opportunity for general access to public ground waters than the total reliance on mitigation requirements proposed in the current draft.

CONCLUSIONS (7/9/12)

It is my considered opinion that viable options other than the currently-proposed 173-518 WAC exist for an efficient water resource management regulation, or guidance document, to be adopted for the Dungeness River Basin and that these options will provide for a more efficient water management framework going forward. It is my conclusion that, for example, a reduction of the Instream flow allocation to the highest ratio of the previously adopted examples used (30 + years in place) would free up over 115,000 Acre Feet per year (0.42 X 278,600 AF) with attendant significant impacts on policy decisions.

Respectfully submitted,

Kris G. Kauffman, P. E.



EXPIRES 5/15/13

TABLE 1
A Comparison of Habitat Functions for Two Flow Levels*
for the Lower Dungeness Test Reach**

Habitat function	Species					
	COHO		PINK		CHINOOK	
	<u>100 cfs</u>	<u>180 cfs</u>	<u>100 cfs</u>	<u>180 cfs</u>	<u>100 cfs</u>	<u>180 cfs</u>
Spawning	<u>97%</u>	<u>83%</u>	<u>92%</u>	<u>97%</u>	<u>67%</u>	<u>98%</u>
Juvenile	<u>84%</u>	<u>59%</u>			<u>91%</u>	<u>68%</u>
Adult					<u>78%</u>	<u>89%</u>

* Note that there are significant variations by species and habitat functions related to flow level, ie. 100 cfs provides 14% more spawning habitat and 25% more rearing habitat for Coho and 23% more rearing habitat for Chinook than does the 180 cfs; however, the 180 cfs provides 5% more spawning habitat for Pinks, 31% more for Chinook and 11% more adult passage for Chinook. This data is not numbers of fish, but does reflect habitat availability. The Biologists weigh this data and recommend the higher flow as the requirement and the 100 cfs as inadequate and indefensible.

**The Lower Reach is at River Mile 2.3 and is a non-braided channel as opposed to the Upper Reach that is a braided channel.

ATTACHMENTS:

1. Appendix D of WAC 173-500, Western Washington Instream Resources Protection Programmatic IES; June 1979; contact person - Ken Slattery, DOE
2. WAC 173-518 (proposed) comments due July 9, 2012.
3. Instream Flows for the Dungeness River; pgs. 1, 10, 14, 21 and 32; no date; Brad Caldwell (DOE) and Hal Beecher (WA Fish and Wildlife Dept.); 36 pages total.
4. Ibid; page 14 expanded and annotated by Kris G. Kauffman; Graphs 14 A - Coho; 14 B - Pink; and, 14 C - Chinook

ATTACHMENT 1
COMMENTS ON 173-518 WAC
BY KRIS G. KAUFFMAN, P. E.
July 9, 2012

173-500 WAC

Appendix D

Base flow determination, consists of the following steps:

Stream system analysis i.e., concurrent selection of streamflow measurement stations and stream management reaches

Stream rating

Conversion of stream rating to percent-of-time flow duration

Discharge-duration hydrograph construction

Base flow hydrograph construction

Each of these steps is discussed below.

Stream System Analysis

Fundamental to sound base flow management is the need for a well designed streamflow measurement network that is capable of adequately controlling water diversions in all parts of each basin. Since the effectiveness of a flow control station is inversely related to the size of the drainage system it measures and, similarly, to distance from the various diversions within that drainage system, it is necessary to employ enough flow measurement stations to obtain a reasonable degree of sensitivity to the water diversions being monitored.

Considering the critical nature of the monitoring network, the initial step in base flow analysis is to examine existing streamflow records to identify those sites best suited for flow management. Generally, existing or former continuous record stream gaging stations will be used for base flow control whenever possible while, in areas lacking such record, sites are selected where miscellaneous flow measurements have been made. Usually it is preferable to select flow control sites that are located near the mouth of the mainstem stream and the mouths of major tributaries.

Concurrent with streamflow station selection, the basin is subdivided into logical segments (tributary drainages or stream reach units) that can be managed by each control station. Ideally, flow from or through each management unit should be controlled by a station at or near its downstream end or outlet. With control at such locations, all diversions above the station are reflected in flows measured at the station.

Upstream control (control station located above all or some of the diversions in a management unit), while possible, presents some complex management problems. Unlike downstream control, water diversions below an upstream control station do not affect flows at the station. Consequently with this type of control, different regulatory flow levels are necessary for each affected diversion. Therefore, upstream control stations should be avoided whenever possible and employed only where downstream control is not feasible.

For purposes of clarity and organization, designated control stations and management units are identified on WRIA base maps and tabulated in downstream order on forms developed for the stream rating process. An example of a stream system analysis as prepared for the Upper Chehalis River Basin, (WRIA 23) is shown in Figures D-1 and D-2 and Table D-1.

In the control station sections of Table D-1, each management unit is identified by stream name, reach description, control station number, and location of the station by river mile, section, township, and range. If a management unit is described by stream name only, the entire stream system from headwaters to mouth, including tributaries, is included within the unit. Abbreviated description, in addition of the stream name (nonstandard reach description), is provided if the unit consists of only a part of the total named stream basin.

Small triangles on Figure D-1 identify beginning and end points of stream reaches or end points of entire streams and tributaries described in the stream system analysis.

Figure D-2 shows the location of flow measurement sites, designated as control stations, and some information about the type of streamflow record that is available for each site. Numbers assigned to each station generally correspond to the middle four digits of identifying numbers for United States Geological Survey stream gaging stations.

Stream Rating

Since stream and watershed environments vary widely, not only among different stream systems but also within each drainage, it is reasonable to assume that some streams will require higher levels of base flow than others to adequately preserve their environmental values. Therefore, a procedure was developed whereby these differences could be identified and, in turn, used as a foundation for defining appropriate levels of base flow.

As discussed previously, RCW 90.54.020(3) requires that base flows be retained in perennial streams to preserve various environmental and navigational values. Following this guidance, a simple stream rating system was devised for differentiating the relative value of these parameters. These parameters are defined as follows:

Wildlife Values include use values for wild animals and birds; exclude fish.

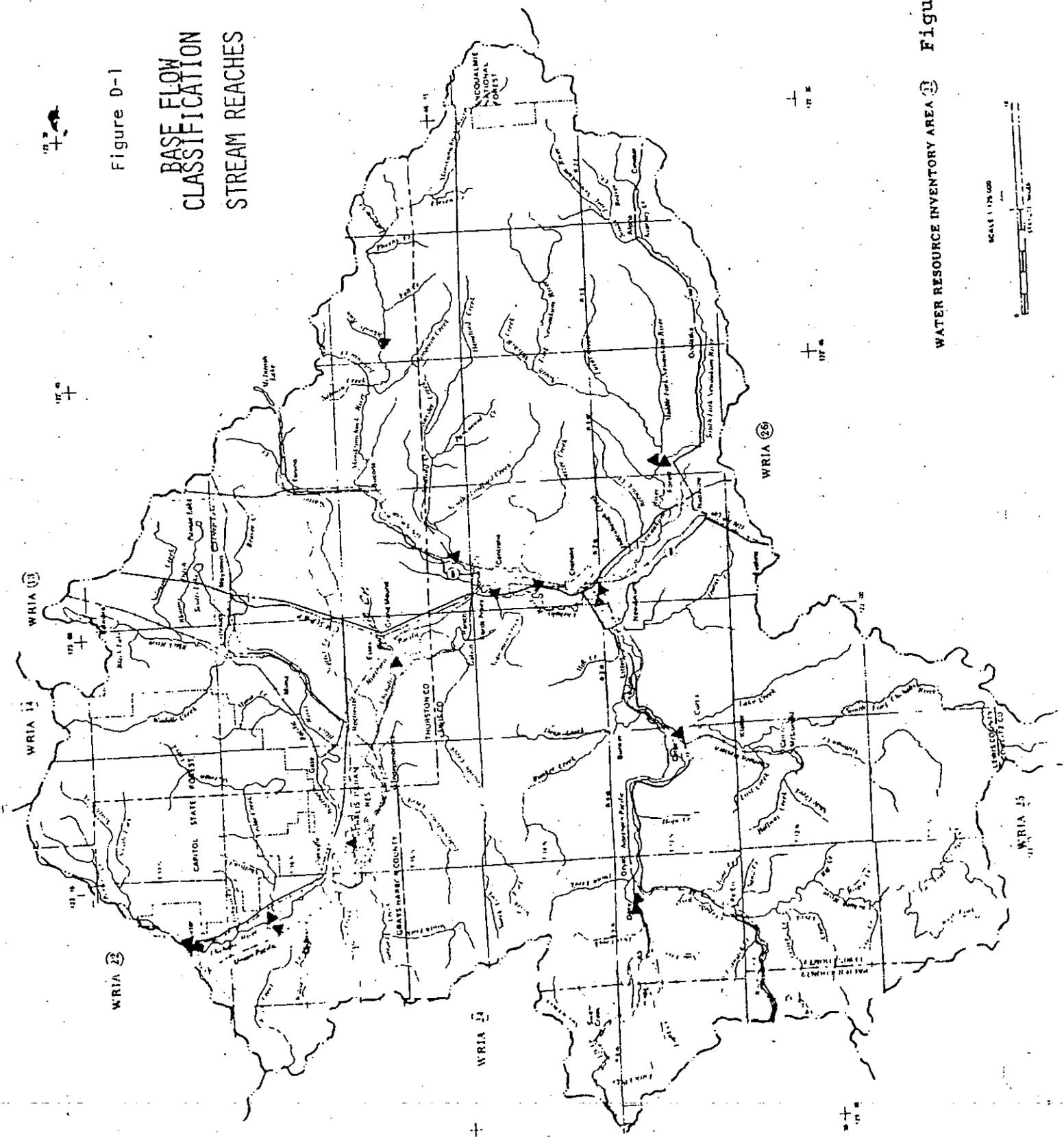
Fish Values include use values for propagation, rearing, and migration of fish, and values of streams for fishing.

Scenic and Aesthetic Values include audible and visual values of natural beauty associated with flowing streams and their surroundings, including recreational enjoyment of these values.

Navigational Values refer to commercial and recreational boating, including canoeing, kayaking, and rafting.

Figure D-1

BASE FLOW CLASSIFICATION STREAM REACHES



WATER RESOURCE INVENTORY AREA 23 Figure D-1



BASE FLOWS in WRIA-23

Control Station	Stream Name	River Mile Section	Stream Rating						Required Quantities								
			Wildlife	Fish	Scenic Area	Navigation	Other Envir.	Quality	Total Rating (Flow Levels)	Jan	Feb	Mar	Apr				
(New Standard Reach Description)	Number								May	Jun	July	Aug	Sept	Oct	Nov	Dec	
5. Fk. Chehalis R. (Alternate Control)		1A-OR-N-50	30	A	17	10	15	30	14	2	200						
		2A-13-AM							(79)	145	105	75	55	40	29	21	15
									(95)	15	15	21	28	56	105	200	200

Table D-1 (Continued)

Other Environmental Values refer to other miscellaneous environmental values not covered under the above parameters and include other forms of recreation, such as swimming and wading.

Water Quality Standards refer to Washington State Water Quality Standards.

The parameter rating system is presented in Table D-2.

To maintain a reasonable degree of uniformity and balance in the rating process, a stream rating committee was formed consisting of representatives of the state agencies that have a general interest or responsibility in stream related activities, namely the following:

Department of Ecology
 Department of Fisheries
 Department of Game
 Department of Natural Resources
 Department of Highways
 Interagency Committee for Outdoor Recreation
 State Parks and Recreation Commission

The representative of the Department of Ecology serves as chairman of this group.

Prior to the actual rating process, member agencies are assigned those parameters most closely associated with their area of interest and authority. Each committee member then rates these parameters for the management units identified through stream system analysis. In geographic areas where member agencies lack authority or background, a committee member may choose to withdraw from the rating process for that particular area or stream system. Finally, after all rating forms are submitted to the chairman, composite total rating values are prepared for each management unit, by adding average rating values for each parameter.

A stream classification rating for the Upper Chehalis River Basin is shown in the right half of Table D-1. The maximum possible rating for a stream management unit is 24 while the lowest score would be 1.

TABLE D-2

STREAM RATING SYSTEM

<u>Parameters</u>	<u>Basis of Rating</u>	<u>Rating Value</u>
Wildlife Values)	(Very high value or usage	4
Fish Values)	(High value or usage	3
Scenic and Aesthetic Values)	(Moderate value or usage	2
Navigation Values)	(Low value or usage	1
Other Environmental Values)	(No value or usage	0
Water Quality Standards)	Class AA	4
)	Class A or Lake Class	3
)	Class B	2
)	Class C	1

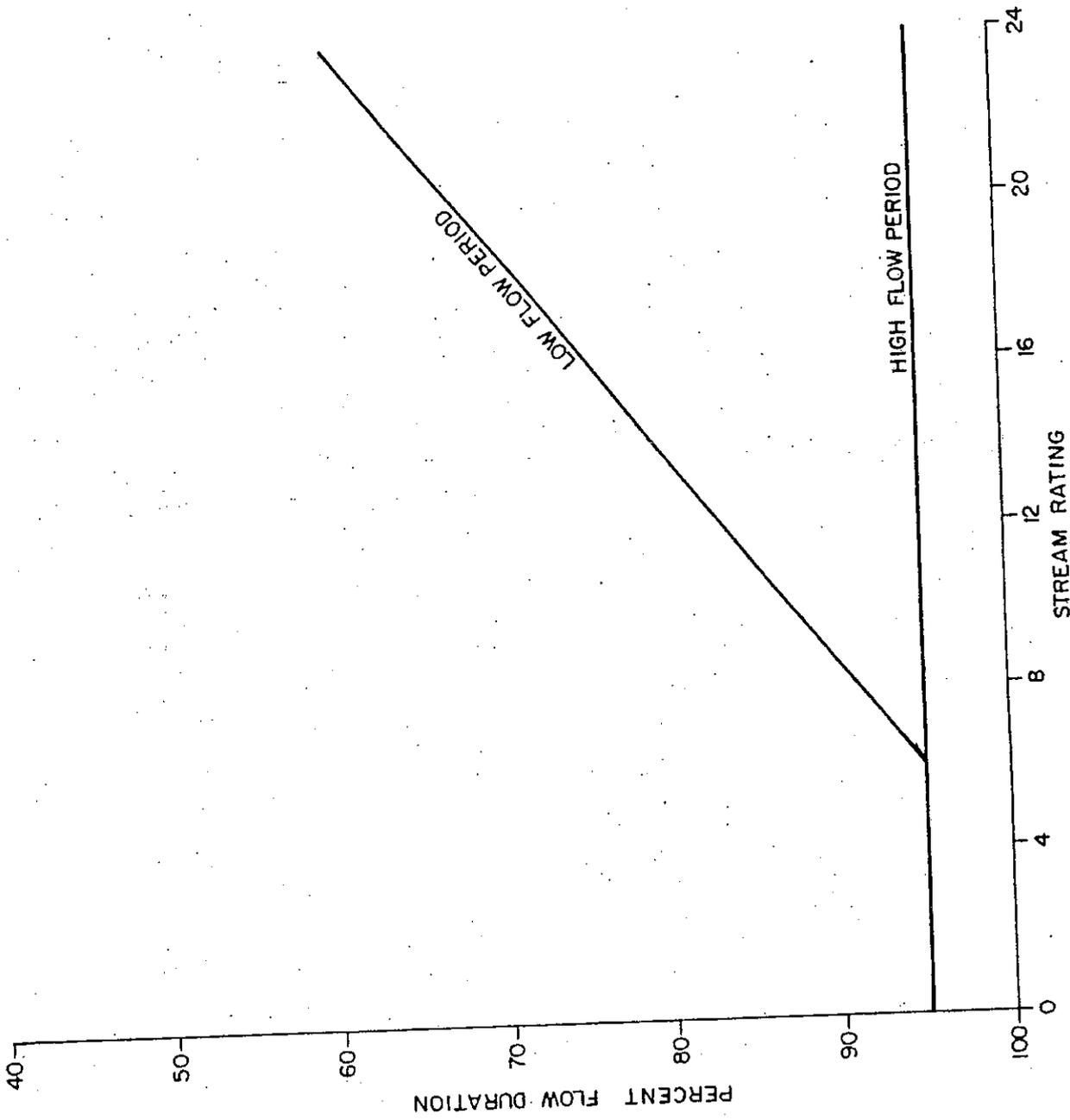


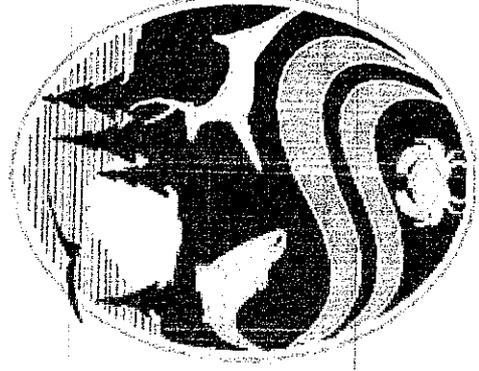
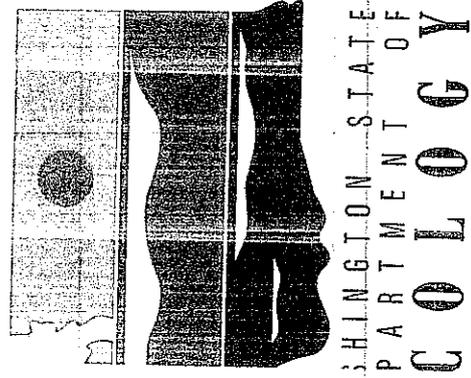
Figure D-3 CONVERSION CURVE
STREAM RATING TO PERCENT FLOW DURATION

ATTACHMENT 2
COMMENTS ON 173-518 WAC
BY KRIS G. KAUFFMAN, P. E.
July 9, 2012

173-518 WAC

Instream Flows for the Dungeness River

- **Brad Caldwell**
 - Washington Department of Ecology
- **Hal Beecher**
 - Washington Department of Fish and Wildlife



2) Characterize stream bed and banks (survey, measure & categorize)

- Multiple transects to represent habitat types

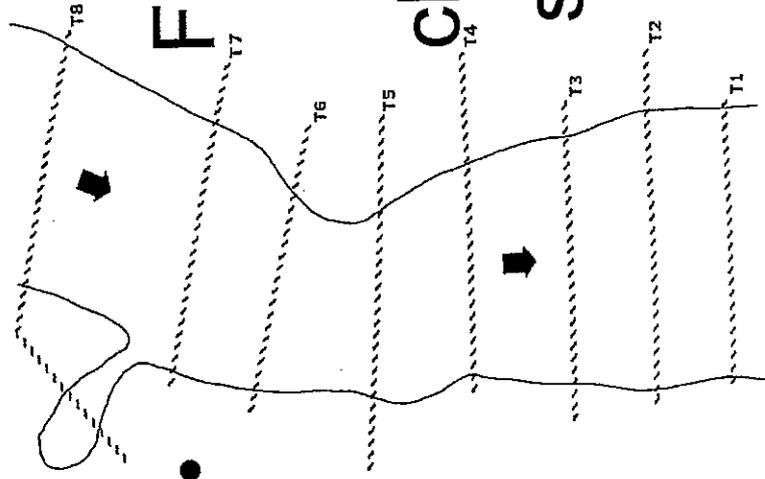


Figure 7. Plan view of the lower IFIM study site at river mile 2.3 on the Duganssa River.

Fixed points (on transects)

characterized by substrate and relative elevation (surveyed)

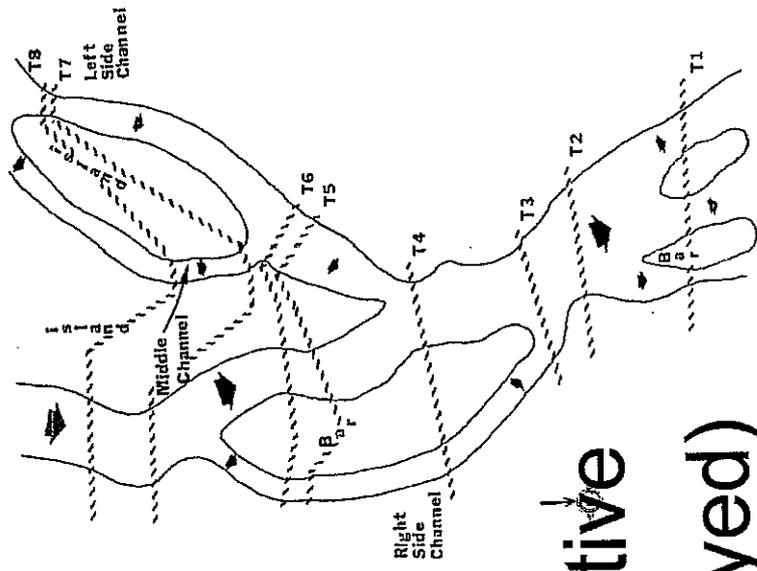


Figure 6. Plan view of the upper IFIM study site at river mile 4.2 on the Duganssa River.

Fish Habitat (WUA) results from PHABSIM model for lower site

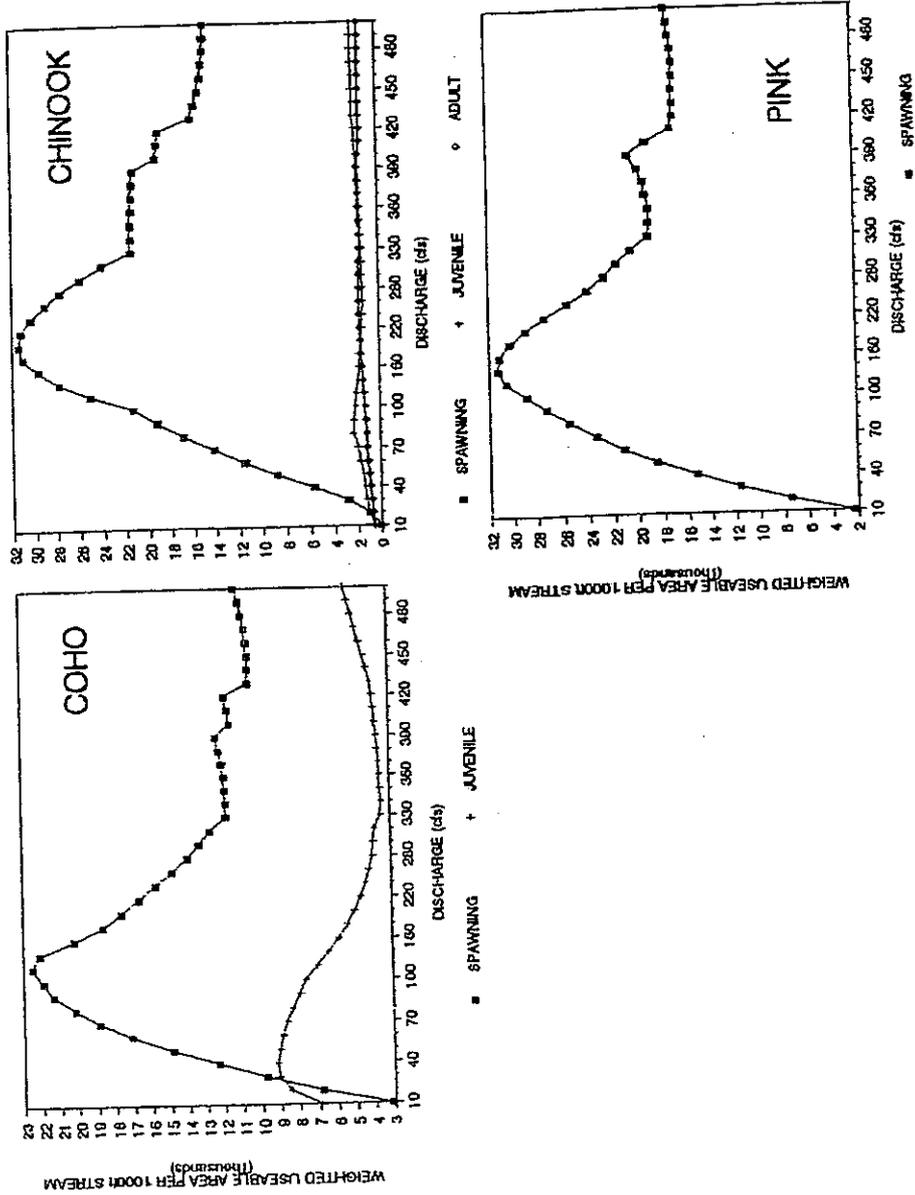


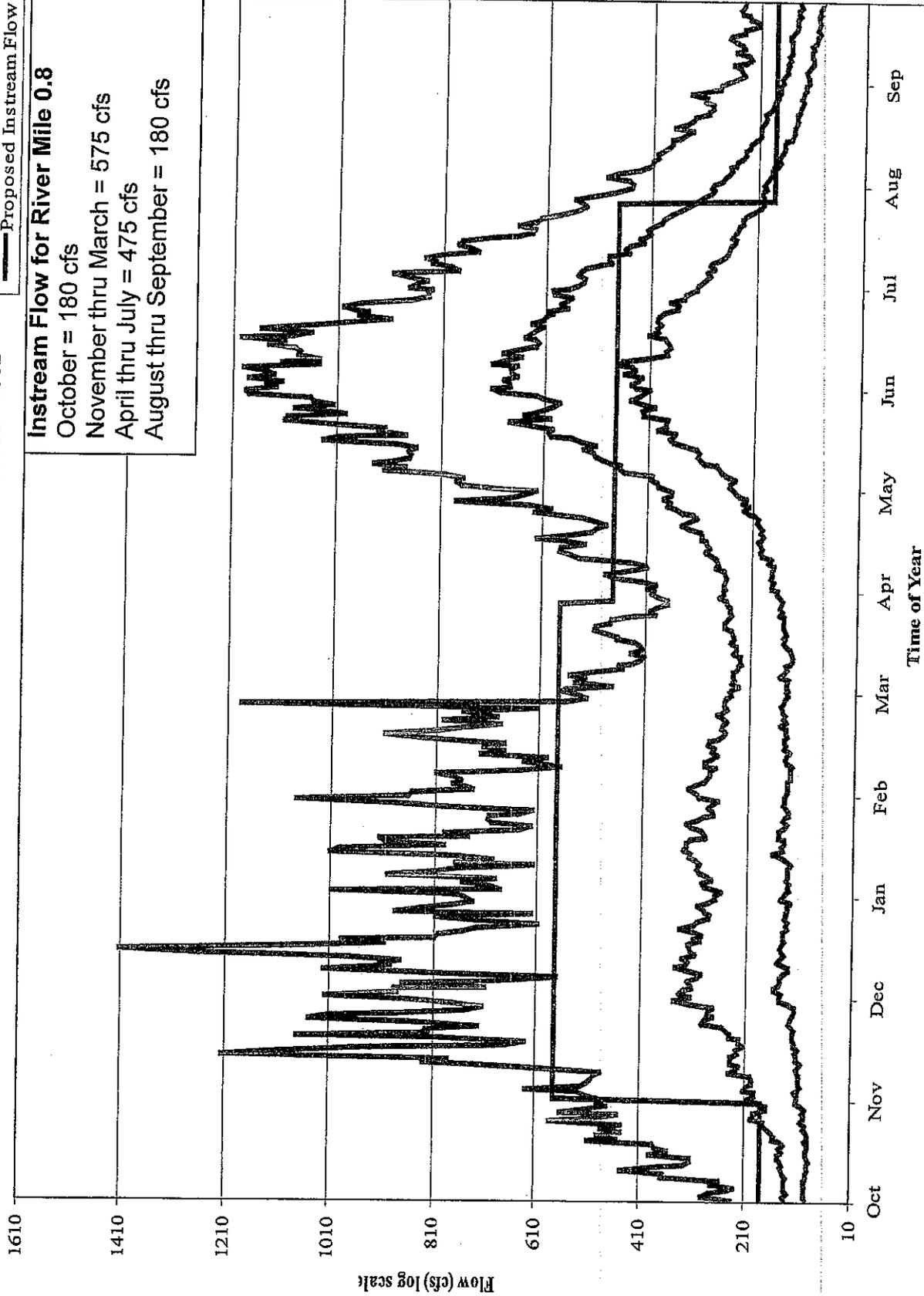
Figure 22. Predicted WUA of habitat for coho, chinook and pink salmon, from the combined models for the lower study site, river mile 2.3.

DUNGENESS RIVER NEAR SEQUIM, WA
Flow Exceedence Probability Hydrograph
USGS Gage 12048000; RM 11.8; Period of Record: 1923 - 2002

- 10% Exceedence
- 50% Exceedence
- 90% Exceedence
- Proposed Instream Flow

Instream Flow for River Mile 0.8

October = 180 cfs
November thru March = 575 cfs
April thru July = 475 cfs
August thru September = 180 cfs



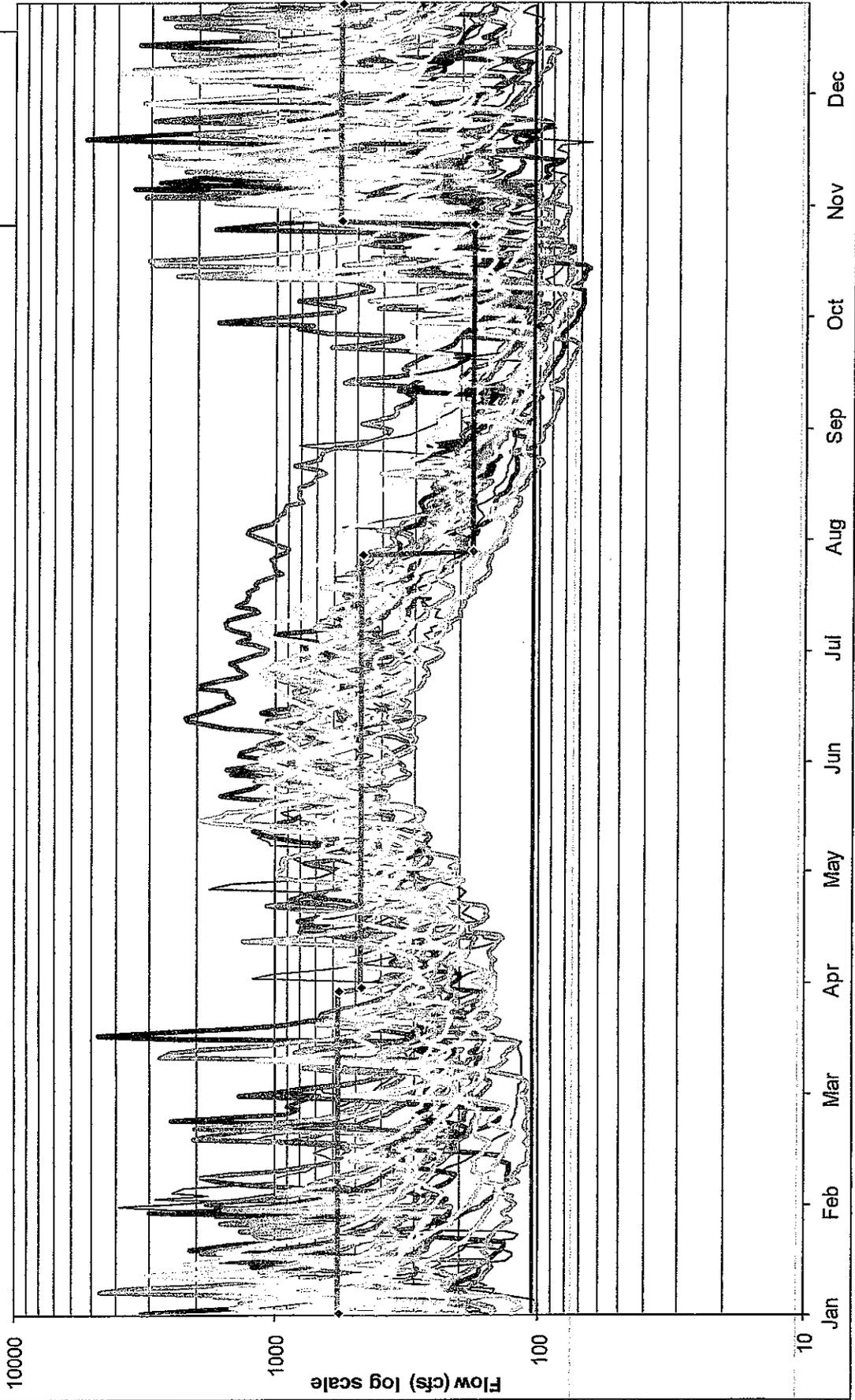
DUNGENESS RIVER NEAR SEQUIM, WA

Average Daily Flow Hydrograph

USGS gage 12048000; RM 11.8; Period of Record: 1990 - 2011

— Instream Flow

— Target Flow



Fish Habitat (WUA) results from PHABSIM model for lower site

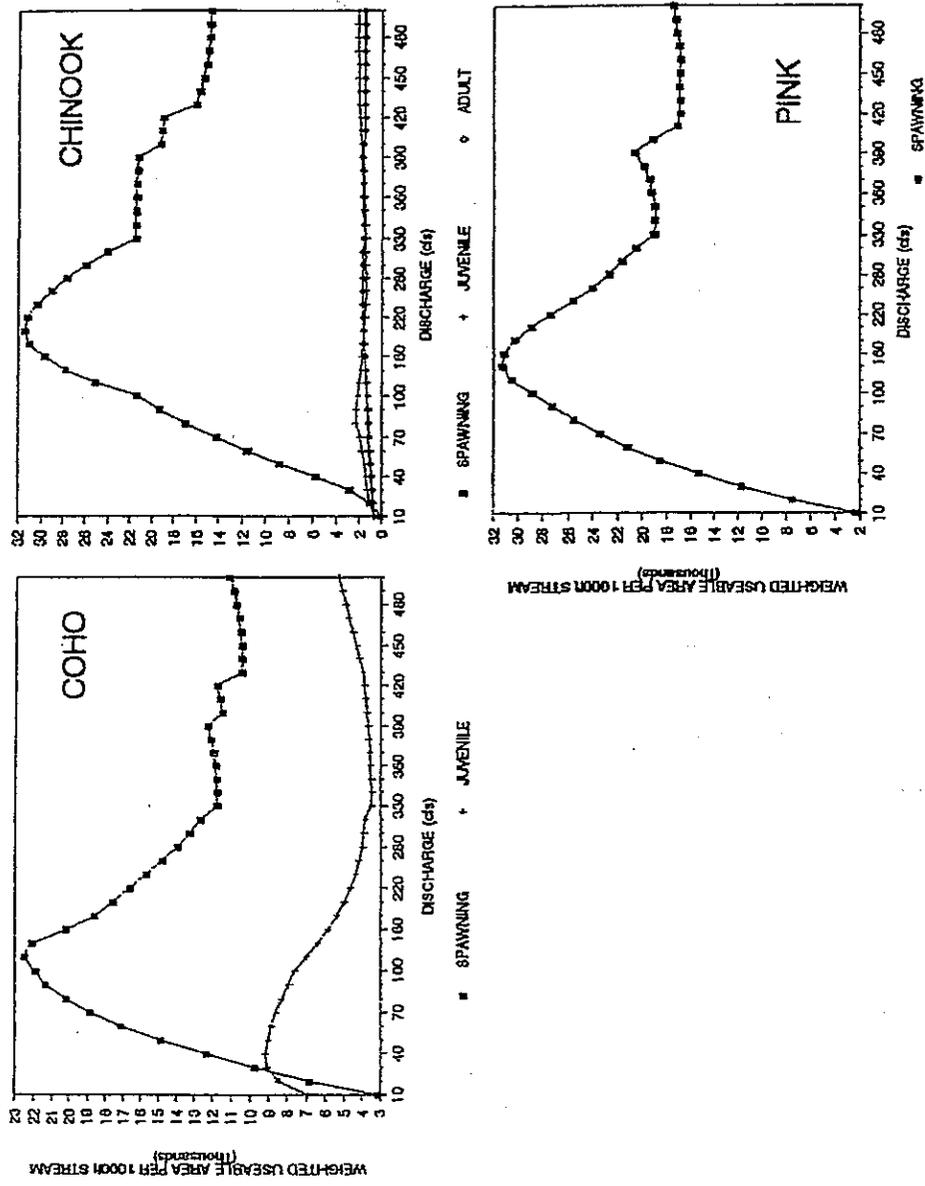


Figure 22. Predicted WUA of habitat for coho, chinook and pink salmon, from the combined models for the lower study site, river mile 2.3.

ATTACHMENT 4

COMMENTS ON 173-518 WAC
 BY KRIS G. KAUFFMAN, P. E.

July 9, 2012



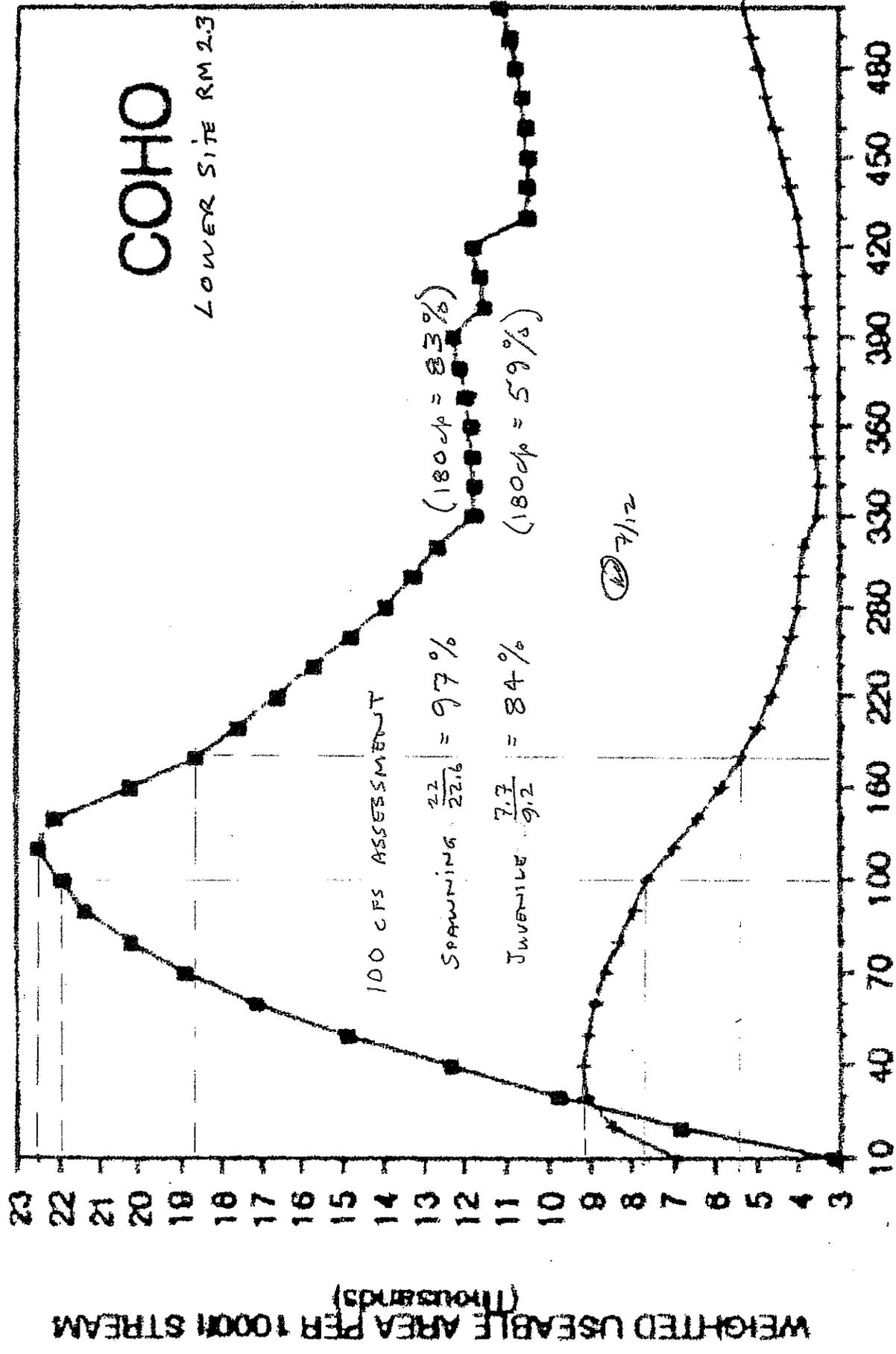
WATER RIGHTS, Inc.

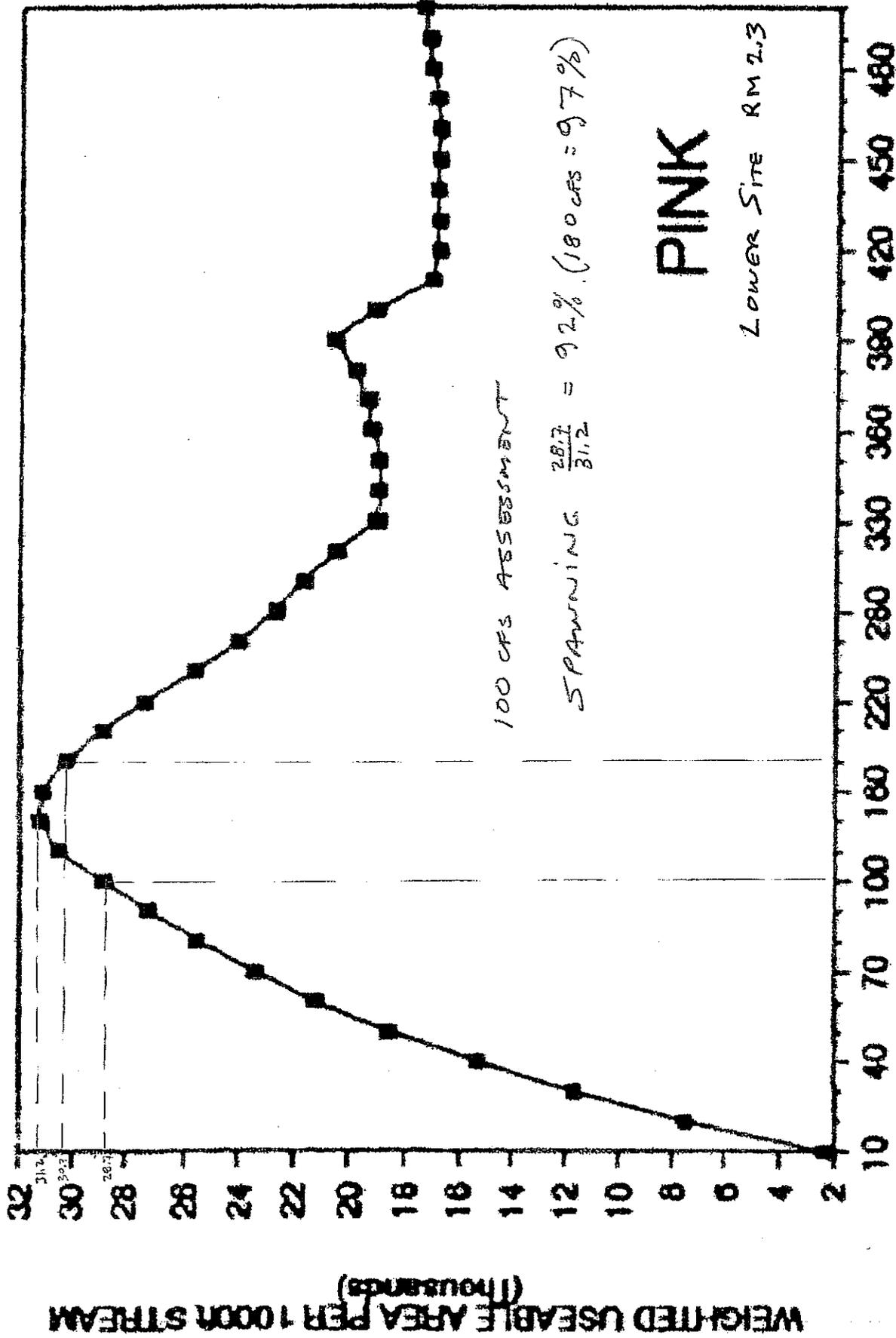
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7/12

GRAPH 14-A COHO

DISCHARGE (cfs) ■ SPAWNING + JUVENILE

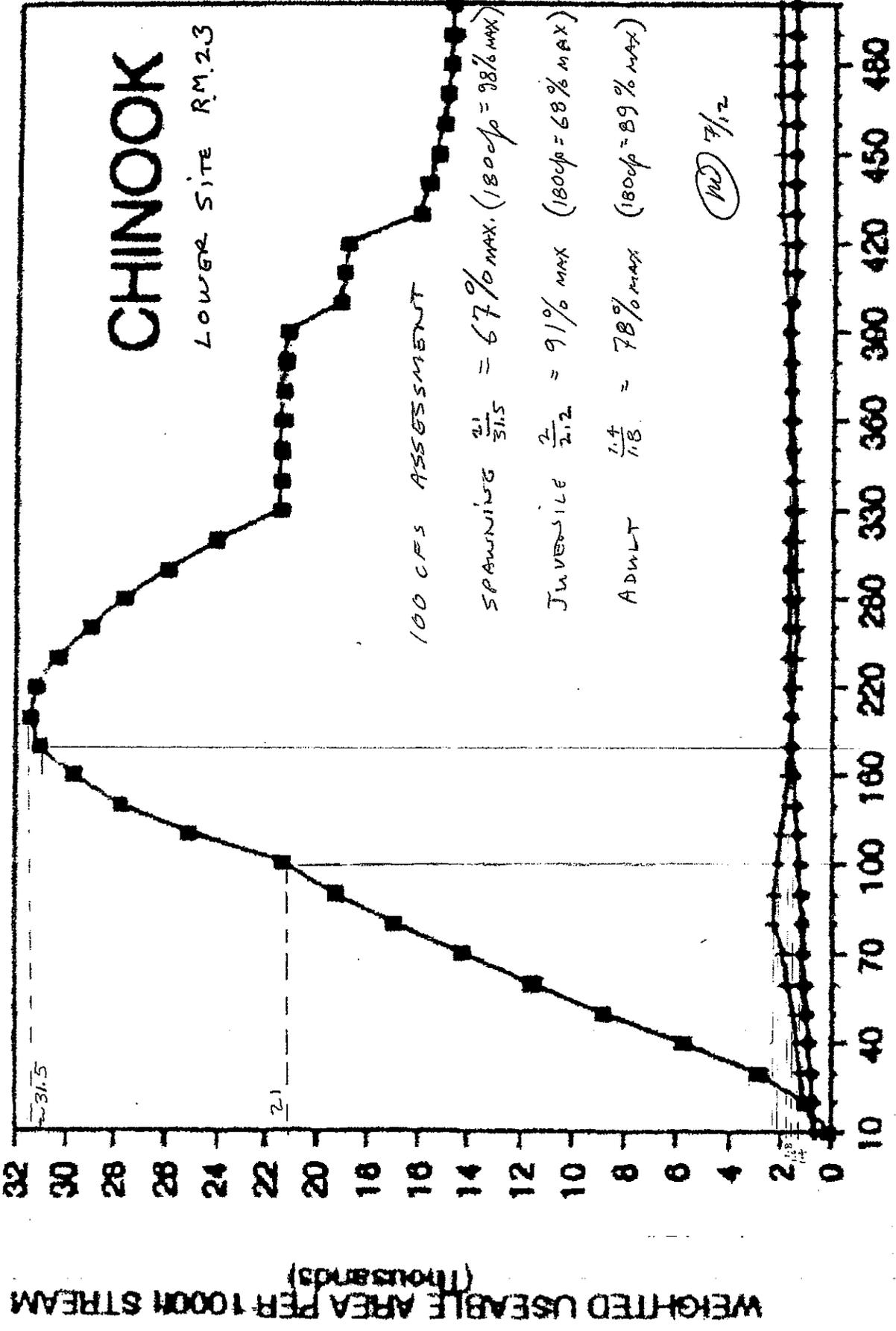




WATER RIGHTS, Inc.

GRAPH 14-B PINK

DISCHARGE (cfs) SPAWNING



DISCHARGE (cfs)

WATER RIGHTS, Inc.

SPAWNING
 JUVENILE
 ADULT

GRAPH 14-C CHINOOK

From: [REDACTED]
Sent: Thursday, July 05, 2012 12:07 PM
To: Wessel, Ann (ECY)
Subject: Dungeness watershed issues

Dear Ms. Wessel,

I used to own a home along the Dungeness River. In 1997 the so-called "Pinnacle Express" visited the peninsula and created extreme flooding along the river. The flooding caused a dead, very large Cottonwood tree at the western edge of the river to uproot and opened a hole in a very professionally constructed built dike to fail. The high water flooded my property and several others along the river but my residence was not flooded.

My neighbors and I wanted to rebuild the dike to protect our properties. We were met with much opposition by various organizations including the Department of Ecology. I do not remember the DOE person who was assigned the project but I can tell you that we were able to prove that the science your agency was quoting was extremely flawed. To top that, the man was so out of his mind with a water issue that I, and my neighbor forcefully escorted him to my gate and told him to never return. He never returned and to my knowledge no other DOE official showed up. To be fair I also ordered a Clallam County Planner off of my property because he was overly unprofessional. He left County employment shortly afterward. We did obtain a permit and rebuilt the dike.

This brings me to my point of this message. It would appear that DOE is still acting in an unprofessional manner with this WRIA 18 issue. Instead of reassigning the DOE economist who found fault with the DOE position, he should have been promoted and conducted a peer-review study for the good of the citizens. The bottom line is for DOE to walk away from your rule-making timeline until a thorough and professional economic study has been done and presented to our County Commissioners for review by the citizens.

Thank you for your time.

Robert Kavanaugh

From: Sarah Kincaid [REDACTED]
Sent: Thursday, July 05, 2012 2:45 PM
To: Wessel, Ann (ECY)
Subject: Fw: CALL TO ACTION RE: DOE

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

[REDACTED]

Dick Pilling

Managing Broker

Coldwell Banker Uptown Realty

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

-----Original Message-----

From: jmcentire1@wavecable.com [<mailto:jmcentire1@wavecable.com>]

Sent: Tuesday, July 03, 2012 2:49 PM

To: Dick Pilling; Kaj Ahlburg; Eric Foth; Dan Shottthafer; Karl Spees; Pearl Hewitt; Sue Forde; Lois Perry; Norm MacLoud; Marguerite Glover; Jerry Sinn; Pete Church-Smith; Bill Paulbitski; Harry Bell; Carol Johnson; Steve Marble; Jerry Stiles

Subject: Need an avalanche of comments on the WRIA 18E Rule

Folks:

We, and I really mean we, won a huge battle at the County Commission meeting this AM - we got all 3 Commissioners agreed on a statement questioning the integrity of the process leading up to the economic analysis for the rule, and therefore its validity.

To bring this point home, we need every living, breathing person in Clallam County to send a comment to Anne Wessel of the Dept of Ecology, referring to either the media reports on the emails, or referring to the emails themselves, and how they show a corrupted process and economic analysis.

Say it however you want to, but conclude your comment with a demand for Ecology to stop the rulemaking timeline until an independent economic study is done.

One of my campaign promises was to stand in the way of any regulation that does economic harm. I've been doing just that in this instance.

If a new economic study is positive, I have a plan for the State budget to fund the water mitigation cost, so rule or no rule, land owners should be held harmless.

Please forward this to your lists, and ask folks to send an email to:

awes461@ecy.wa.gov

with comments by 5:00 PM, July 9th.

Thanks to everyone who will comment, and for showing up at the public hearing on the 28th, and at this morning's Commission meeting.

Best,

Jim

Sent from my Verizon Wireless BlackBerry



Dick Pilling

Managing Broker

Coldwell Banker Uptown Realty

Cell: [360 460 7652](tel:3604607652)

Office: [360 417 2811](tel:3604172811)

Email rightguy@olypen.com

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Sue Forde

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Sue Forde

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Sue Forde, Secretary
Clallam County Republican Party
www.clallamrepublicans.org

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.455 / Virus Database: 271.1.1/5112 -

From: Al King [REDACTED]
Sent: Friday, May 11, 2012 8:57 AM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

This is over reach, pure and simple.

From: Richard Kott [REDACTED]
Sent: Monday, July 09, 2012 4:54 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18 In Stream Water Flows for Dungeness Area

Dear Ms. Wessel:

The proposed instream flows for the Dungeness River which includes Bagley Creek and Siebert Creek is not based upon peer reviewed sound science. The proposed rules should be held in abeyance until such studies are performed and adequately presented to the public and affected property owners in appropriate meetings. The public meetings to date have not presented proof that such studies have been made resulting in clear and unequivocal evidence that instream flows are necessary for fish protection. This in turn has led to proposed well restrictions and the potential of a water bank controlled by a company or other authority not responsible to local officials.

An example of the shallow scientific analysis is including both Bagley and Siebert creeks in WRIA 18. There is no evidence that they are connected to the Dungeness system. I have written to you earlier about this during WRIA 18 hearings and you summarily dismissed my concerns by saying they are hydrologically connected but with no proof. Other streams with unique qualities have also have been similarly impacted. If you proceed with the rulemaking for the Dungeness you should exclude these watersheds with special characteristics.

It is shameful that DOE is planning to implement instream flow rules and water rights restrictions for us local residents under the sham of it being good science. If you proceed call it what it is, a political solution to a perceived problem. The economic consequences will be devastating to our economy. As chairman of the board of a local bank I regularly see the results of the economic impact of the uncertainty created by the proposed rules. Businesses, home owners and property owners waiting to build their dream homes are all affected.

I urge you to place on hold the rule making process until a satisfactory peer reviewed scientific analysis is performed. This should be coupled with an economic cost benefit analysis. Furthermore to ease the burden of economic stagnation on residents DOE should implement a temporary plan that allows new construction to move forward without future consequences until the new rules are implemented.

Sincerely,

Richard G. Kott

From: Charles Kramer [<mailto:cekramer@me.com>]
Sent: Wednesday, June 27, 2012 8:20 AM
To: Wessel, Ann (ECY)
Subject: Comments on WRIA 18

To whom it may concern:

The latter: Under RCW 34.05.328 (1)(d) any rule is illegal if its benefits do not exceed its costs. The cost benefit calculation for this rule only passes muster because Ecology assumes benefits of \$20 million or more from avoiding litigation and \$20.5 million from "protecting" past investment in salmon restoration if the rule is passed.

If this is an accurate statement, it fails to include the high potential that private citizen groups will in fact litigate to overturn the Rule should it be passed in its current form.

I for one, and others I am aware of, will in fact financially support such litigation.

Before warned,

Charles E. Kramer, Ph.D.
743 Finn Hall Rd.
Port Angeles, Wa. 98362

From: F. Michael Krautkramer [REDACTED]
Sent: Friday, June 29, 2012 12:49 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Instream Flow and Water Management Rule

Ann,
I was present at the Sequim Community Church meeting last night. First, I want to thank you for a very good summarization of the rule as it currently stands (and will likely be adopted). I thought Ecology staff did a fine job of both speaking and listening.

The reason I am sending this, however, is that I saw a basic disconnect with many in the audience regarding the concept of the "impact" of the rule and am afraid that something obvious to those who work with water law regularly (including those of us in the private sector) is being missed by many in the regulated community.

Many of the assertions of "impact to property values" or believing there is a "constitutional taking" issue or that "you rethink your economic impact assessment" seem to believe that the status quo (the situation as it now exists without the rule) is that they would have unfettered access to water on their property. They are unaware that the findings of the Watershed Plan is that there is no water to allocate and that the appropriate response to applications lacking a mitigation plan under the non-rule condition would be denial of the application. It seemed equally unknown that a request for a moratorium on the groundwater exemption by any of several affected parties would likely need to be taken serious by Ecology. Even if Ecology were to resist the moratorium, armed with the findings of the watershed plan a court would likely impose it.

The rule is the solution to the "brave new world" that the Dungeness Basin finds itself in. There are many (myself included) who take exception with the methods used to set instream flows and the numbers assigned to subbasins. That does not change the fact that a statutorily created Watershed Planning Unit has created a legal document finding these numbers to be appropriate.

I suggest that your responses to those who feel their property values are diminished by the rule should explain the current situation so that these people use the correct base upon which to measure an assertion of diminished value. Many in the audience viewed the rule as something that will take away their ability to access water. The fact is the rule will reestablish access that would otherwise not be available to them under the proper administration of water law as it currently applies to the Dungeness situation (as described in the watershed plan).

Good luck with a very difficult sociological situation.

Mike

F. Michael Krautkramer LHG, RG, CPG | Principal Hydrogeologist

[Robinson Noble, Inc.](#) | [Hydrogeologists](#). [Geotechnical Engineers](#). [Environmental Scientists](#).

[REDACTED]

From: [REDACTED]
Sent: Monday, July 09, 2012 9:58 AM
To: Wessel, Ann (ECY)
Subject: Water rights Sequim

To; DOE Ann Wessil,

Once again the Department of Ecology is trying to impose a water rule on the citizens of a watershed that they don't want or need. They are misusing their power to enact a Rule that is flawed, in the same way they did in WRIA17 (WAC 173-517).

The Cost Benefits and Least Burdensome analysis and Small Business Economic Impact Statement are flawed, incomplete and incorrect. The DOE employees who wrote this proposed law and accompanying 'justification' reports, have ignored many of the actual costs of the rule and exaggerated the benefits to economically justify passing the rule. These employees have shown a complete disregard for professional honesty and integrity. Consideration should be given to the future of their employment in a state agency. These analyses are flawed just like the analyses prepared for the WRIA17 Rule 173-517. Attached are our (Olympic Stewardship Foundation) comments on WAC 173-517 (WAC 173-5-7 DAS), analyses of the documents (SBEIS Analysis DAS, Benefit Analysis DAS), and DOE's response to our petition to DOE to repeal the WRIA17 Rule (DOE Response WRIA17). Also attached is our petition to the Legislative JARRC Committee to review the rule and the Committee's reply (WA Petition SBEIS 12-30-9 and JARRC Reply 6030-100001). We agree with the letter to DOE by Dick Pilling, Port Angeles Business Association, and the comments presented by Kaj Ahlburg at the public comment meeting 6/28/12.

The problems with the proposed stream flow levels in WAC Rule 173-518 are the same as those raised in the Letter about WAC 173-518 from Bill Riley, President, Washington Realtors, to Cynthia Nelson, DOE, dated January 10, 2010. (See attached 'Comments on Dungeness Instream Flow Rule.')

RCW 90.54.020 (1) states that "Uses of water for domestic, stock watering, ... irrigation, ... are declared to be beneficial." Ecology's attempt to discriminate against outdoor water uses in the future is directly inconsistent with this statement. The definition of 'domestic use' as the only beneficial use of a well is in direct contradiction with the RCW. Again a repeat of the error in WAC 173-517. We disagree with DOE rewriting the State Water laws - see the attached copy of the State Attorney Generals Opinion (2009_AOG Permit Exempt Opinion) with regard to DOE restricting the use of the legal 'Permit Exempt Well' water allowances.

In "Findings - Purpose 1997 c 360 § 1" in connection with RCW 90.03.255 the legislature found that "It is the goal of this act to strengthen the state's economy while maintaining and improving the overall quality of the state's environment." The draconian restrictions on water use your draft rule in WRIA17 have reduced land values, caused lost jobs, restricted agricultural growth and construction. Now you are planning on imposing similar restrictions on the Dungeness Watershed.

Section 90.82.005 of the RCW states that "The purpose of this chapter is to ... provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development." And Section 90.82.010 states that "The local development of these plans serves vital local interests by placing it in the hands of people who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources." And finally, in "Findings -- 2003 1st sp.s. c 4 § 1" in connection with this RCW 90.82.040 the legislature stated that "The legislature declares and reaffirms

that a core principle embodied in chapter 90.82 RCW is that state agencies must work cooperatively with local citizens in a process of planning for future uses of water by giving local citizens and the governments closest to them the ability to determine the management of water in the WRIA or WRIsAs being planned.”

In 2005 the residents of WRIA17 stopped DOE from implementing a terrible water rule. At that time Joe Stohr, representing the Director of DOE promised WRIA17 that DOE would work closely with the community in writing a new rule. DOE was repeatedly asked in the WRIA17 Watershed Planning Group meetings, "When would DOE work with the community?" DOE repeated ignored these requests and wrote the rule without any community input. Now they have ignored the requirement in formulating WAC 173-518.

Please cancel this proposed WAC and rewrite it, jointly with the community it affects.

Ross Krumpe - Sec. Treas. , CAPR-13 chapter
IN GOD WE TRUST

From: [REDACTED]
Sent: Sunday, July 08, 2012 9:44 AM
To: Wessel, Ann (ECY)
Subject: DOE's Sequim water perposel

I urge you to stop the land/water grab!!!!

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far outweighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed
Mr. Ross Krumpe
Port Angeles Washington

From: [REDACTED]
Sent: Wednesday, July 04, 2012 3:14 PM
To: Wessel, Ann (ECY)
Subject: DOE water preposel

To Ann Wessel,

If the Clallam County commissioners are questioning the integrity of the Department of Ecology's(DOE) economic analysis of the Dungeness Water Rule how could you possibly go any further until an independent economic analysis is done?

You can't!

Most private property owners on the Olympic Peninsula have, for the past several years, questioned the integrity of your agency. It is about time that we now see our elected officials doing the same.

Trust me; this is going to be a much more common occurrence statewide when your agency oversteps its jurisdiction in the future. And as taxpayers we cannot afford to pay for both voodoo science and questionable economic facts from the DOE.

Before your department attempts to impose any further restrictions on ANY land within Clallam County OR Washington state you had better get your ducks in a row before coming to us with more of this gobbledegook!

I demand that the Department of Ecology stop the rulemaking timeline until an independent economic study is done.

Hopefully with a new governorship we will be able to trim both your staff and your funding.

Ross Krumpe
Olympic Peninsula Resident

From: [REDACTED]
To: "ROSS K" [REDACTED]
Sent: Wednesday, July 4, 2012 10:12:01 AM
Subject: DOE Meeting 6/28/12 Protest

Attn:
Ann Wessel Department of Ecology

July 4, 2012

Happy Independence Day! And on this day July 4 th. 2012 , I submit this letter of protest to the DOE :

With 99% of WE THE PEOPLE in attendance of the 6/28/12 meeting & by the show of hands and testimony that highly appose the DOE's proposed water rule..

To whom it may concern:

We object to the Dungeness Water Management Plan (DOE) , and the "Rules" projected by DOE.

The process for the project is not credible nor based on true science.

It is laced with much pseudo science. The models are not valid. Your determination of hydraulic continuity, is not true.

Your economic analysis is completely corrupted and our tax dollars are being wasted .

The money spent between the Dungeness/Quilcene Project and the Chelan Agreement, (from late 80's) , linking our Peninsula, via the Dungeness River Management Team (DRMT) has been astronomical and we do not need to continue supporting your DOE staff, which has cost us thousands of dollars and millions are still projected.

We do not want and do not need your very expensive, "Rules" experimental project.

We can and always have successfully done our own resource management.

Please consider our comments. We agree with June 28th testimony, in Sequim, with Dick Pilling, Steve Marble, Marguerite Glover, and Kaj Ahlburg and many of those who testified against this process, which was recorded by DOE.

Ross Krump - Sec. Treas. , CAPR-13 chapter
[REDACTED]

IN GOD WE TRUST

From: David Kruth [REDACTED]
Sent: Thursday, July 05, 2012 12:09 PM
To: Wessel, Ann (ECY)
Subject: Wria 18 formal comment

This is a formal comment.

The largest city in your proposed WRIA 18 rule was supposed to have a vote at the Table. The revised basin excluded Port Angeles, so Sequim was the largest city. How come Sequim was not given a voting position in forming your rule? Doesn't this make your rule invalid since you didn't follow the legislative rule? Isn't this going to open up lots of court challenges and expenses to the State (taxpayers) because of law suits? You might consider adding to your Economic Benefit Analysis that you probably will keep all of the Peninsula lawyers fully employed for a long time fighting your rule. Can you rename this rule "The full employment act for Peninsula Water lawyers"? That may help the flawed Economic Benefit Analysis justify the expense.

David Kruth
[REDACTED]

From: David Kruth [REDACTED]
Sent: Thursday, July 05, 2012 12:00 PM
To: Wessel, Ann (ECY)
Subject: Wria 17

This is a formal comment.

The largest city in your proposed WRIA 17 rule was supposed to have a vote at the Table. The revised basin excluded Port Angeles, so Sequim was the largest city. How come Sequim was not given a voting position in forming your rule? Doesn't this make your rule invalid since you didn't follow the legislative rule? Isn't this going to open up lots of court challenges and expenses to the State (taxpayers) because of law suits? You might consider adding to your Economic Benefit Analysis that you probably will keep all of the Peninsula lawyers fully employed for a long time fighting your rule. Can you rename this rule "The full employment act for Peninsula Water lawyers"? That may help the flawed Economic Benefit Analysis justify the expense.

David Kruth
[REDACTED]

From: David Kruth [REDACTED]
Sent: Thursday, June 14, 2012 4:25 PM
To: Wessel, Ann (ECY)
Cc: 'Bruce Larsen'
Subject: Wria 18

Formal question for the record.

How will Wria 18 save Litigation costs? Lawyers here will consider that a “taking” that will have to be compensated by the State and will likely result in thousands of lawsuits. Please explain fully.

David Kruth

From: David "Coastal" Kruth [REDACTED]
Sent: Wednesday, June 06, 2012 10:03 PM
To: Wessel, Ann (ECY)
Subject: wria18

How come the tribal rights are not being adjudicated before implementing WRIA 18? Are you going to magically come up with more water rights when they are given 50% thru the Boldt decision later. I think wria 18 is going to cause more lawsuits than it solves particularly when the tribal rights are determined after the fact. Determine the tribal rights before you implement wria18. What is the reason its not being done now? Get it all up front and in the public eye and not behind closed doors.

David Kruth
Sequim WA

From: Bob Lampert [REDACTED]

Sent: Monday, June 18, 2012 3:05 PM

To: Wessel, Ann (ECY)

Subject: This is intended to be a part of the formal decision-making record

We own a one acre parcel with a well that abutts our home but have not yet started using it.

We are opposed to being charged a fee for it's use on our property. Since we have not yet started pumping water we should not be penalized for a delay in starting it as we are saving water while waiting.

*Alicia and Bob Lampert
Woodland Heights, Sequim*

From: Bruce Larsen [<mailto:pwddc@me.com>]
Sent: Monday, July 09, 2012 3:40 PM
To: awes461@ECY.WA.GOV
Subject: Wria 18

Formal questions for the record follow:

How many people were anticipated to attend the public hearing in Sequim? The bureaucrats seemed surprised by the attendance – first by having to have a larger facility and second by not being prepared with audio-visual equipment to adequately provide for the size of the facility. Since the equipment was inadequate for viewing from a major part of the room, how can the meeting meet the requirements?

Was there sufficient notice in the change of venue?

What was the count in Sequim? A bureaucrat stated that the number was 100 but a member of the public in later public comments noted a count approaching 300. And how many more cycled through during the meeting because of other prior commitments?

What is the estimate (or budget) for the Department of Ecology employee time needed to promulgate the new Dungeness water rule? There were at least ten bureaucrats in attendance at the Sequim hearing, so this cost has to be large. At what employee level is that time and what is the financial cost including the benefits provided to the employees? Was this a factor in the cost benefit analysis of this project?

What is the estimated operational cost of the non-profit water bank? What will be the cost to the people that need to purchase mitigation rights and also to the local governments? Will any shortfall be covered by property tax revenues?

Who will be entitled to financial statements for the operation of the non-profit water bank?

What are the appeal rights for determination of value of the mitigation to be purchased from the water bank?

If the public is not satisfied by the operation of the water bank, how can the leaders be voted out?

Who or what entity will be the successor to any profits or assets of the water bank should it fail to continue in existence?

Why is this done by a non-profit instead of a state agency?

How do open meeting laws apply to the proposed water bank?

How can the public review compensation for the employees and directors of the proposed water bank?

Who will provide professional services to the non-profit water bank? How will the contracts be allocated?

How will domestic use be examined for structures where use is alleged? What forms of proof will be required?

The existence of loss of expectation rights in the use of the property was acknowledged by multiple bureaucrats at the Sequim hearing to multiple questions. How will those expectation rights be measured?

How will the loss of the expectation rights be compensated? Where will the money for this be found? Who will pay? Why should they pay? Has the legislature prepared a reserve for this possible cost? What did the Department of Ecology estimate for this cost – both in dollars and employee hours requirement? For example, will it require hiring additional lawyers and professional staff to defend? And what is the estimated cost of this?

Prior appropriation has been the rule since before territorial days. Why is administrative appropriation now necessary?

What is the proposed budget for the settlement of the compensation of the expectation rights?

Why are the loss of the expectation losses not a takings under both the US and Washington Constitutions?

The attorney general's office has a takings analysis for state actions. Was this analysis completed for this project? If so, will the analysis be made public so that the public can evaluate the litigation risk? Even if it is not made public in the textual form, should it be public in financial terms in the cost benefit analysis?

Considering that the property owners are paying property tax and the state does have addresses for the all of the property owners, with merely a notice and hearing are these people receiving due process when their expectation rights are being taken?

If the allocation of prior usage of rights is to work, how can this be done without metering of the prior usage? And how much time will be required for measurement of this prior usage?

The agency no doubt has estimates of support for its actions. While the Sequim paper quoted a bureaucrat stating that supporters were not expected to show, how will the agency determine if the proposed rule has any local support? What is the agency's means of determining if any support exists?

From: Bruce Larsen [REDACTED]
Sent: Monday, July 09, 2012 3:46 PM
To: [REDACTED]
Subject: WRIA 18

Formal question for the record:

At the Sequim hearing, one of the bureaucrats stated that funding for the reimbursement of loss of expectation rights had been investigated. What has been done in this regard? Where are the details of this investigation?

From: Bruce Larsen [REDACTED]
Sent: Monday, July 09, 2012 3:40 PM
To: awes461@ECY.WA.GOV
Subject: Wria 18

Formal questions for the record follow:

How many people were anticipated to attend the public hearing in Sequim? The bureaucrats seemed surprised by the attendance – first by having to have a larger facility and second by not being prepared with audio-visual equipment to adequately provide for the size of the facility. Since the equipment was inadequate for viewing from a major part of the room, how can the meeting meet the requirements?

Was there sufficient notice in the change of venue?

What was the count in Sequim? A bureaucrat stated that the number was 100 but a member of the public in later public comments noted a count approaching 300. And how many more cycled through during the meeting because of other prior commitments?

What is the estimate (or budget) for the Department of Ecology employee time needed to promulgate the new Dungeness water rule? There were at least ten bureaucrats in attendance at the Sequim hearing, so this cost has to be large. At what employee level is that time and what is the financial cost including the benefits provided to the employees? Was this a factor in the cost benefit analysis of this project?

What is the estimated operational cost of the non-profit water bank? What will be the cost to the people that need to purchase mitigation rights and also to the local governments? Will any shortfall be covered by property tax revenues?

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How will the loss of the expectation rights be compensated? Where will the money for this be found? Who will pay? Why should they pay? Has the legislature prepared a reserve for this possible cost? What did the Department of Ecology estimate for this cost – both in dollars and employee hours requirement? For example, will it require hiring additional lawyers and professional staff to defend? And what is the estimated cost of this?

Prior appropriation has been the rule since before territorial days. Why is administrative appropriation now necessary?

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The attorney general's office has a takings analysis for state actions. Was this analysis completed for this project? If so, will the analysis be made public so that the public can evaluate the litigation risk? Even if it is not made public in the textual form, should it be public in financial terms in the cost benefit analysis?

Considering that the property owners are paying property tax and the state does have addresses for the all of the property owners, with merely a notice and hearing are these people receiving due process when their expectation rights are being taken?

If the allocation of prior usage of rights is to work, how can this be done without metering of the prior usage? And how much time will be required for measurement of this prior usage?

The agency no doubt has estimates of support for its actions. While the Sequim paper quoted a bureaucrat stating that supporters were not expected to show, how will the agency determine if the proposed rule has any local support? What is the agency's means of determining if any support exists?

From: Kathi Larsen [REDACTED]
Sent: Wednesday, June 27, 2012 10:10 AM
To: Wessel, Ann (ECY)
Subject: Formal Comment on the Dungeness Water Management Rule

Please add this as a formal comment:

I am very concerned about this pending water rule as there are still too many questions for which there are no answers.

It seems as though this is a “throw it against the wall and see if it sticks” notion.

Too many unanswered questions remain and above all that, **there has never been sufficient or prior notification of the people impacted to allow this to be implemented as planned.**

Thank you for your time.

Kathi Larsen
Loan Officer, AVP
Sequim Avenue Branch



Making a difference. Together.

Protect the Peninsula's Future Delegate Comments

Protect the Peninsula's Future (PPF) is a nonprofit public benefit corporation registered in Washington State since 1973 and dedicated to environmental protection, so as to enhance the quality of life for present and future citizens of the North Olympic Peninsula.

Included in PPF's efforts to monitor various public agencies regarding proposed land and water uses that could impact our environment has been ongoing participation by a member of its board in the watershed stewardship provided by the Dungeness River Management Team (DRMT).

As the current PPF delegate to the DRMT, I appreciate the opportunity to summarily provide comments on the Dungeness Instream Flow Rule, Chapter 173-518 WAC.

- 1) Besides the extensive and intensive work provided by Ecology staff to provide an understanding of this rule and its intent to manage our watershed's water resources consistent with the prior adopted Plan recommendations, Ecology's assistance in directing public funding for watershed projects is acknowledged and appreciated.
- 2) Based on background information (such as provided in the series of Dungeness Water Watch publications), the proposed rule appears to be properly founded on use of BAS and IFIM.
- 3) Some concerns regard: i) the validity of the rule's economic analyses (County has noted salient concerns of impact on property values for undeveloped parcels); ii) where is the verification of referenced "reserves" and the metrics used for accounting; iii) complexities of mitigation procedures – and again the metrics needed for the accounting – seem overly burdensome.
- 4) Regarding seasonal closures (which per BAS are justifiable), has DOE been enforcing certificated water users such as City of Sequim to reduce use of DR Infiltration Beds during critical periods? <A recent review/calculation of 2010 and 2011 data seemed to indicate Sequim getting ~16% of its supplies from this DR main-stem source, even though a condition was placed on its water certificate to reduce use from this source; please check data on this matter.>
- 5) County has plans to have Carlsburg UGA develop to such an extent as to justify costly STP. Where is the water to come from that will need the treatment?
- 6) One local water resource reference noted that water lost to CARAs was consumptive use. How do urban areas, or those with extensive impervious surfaces mitigate for their impacts on the watershed?

Ecology has been instrumental in having water user stakeholders come together to discuss and solve problems. (Witness DRMT, LLWG, and the incredible improvements to water management developed by/with the Sequim-Dungeness Water Users Association.) Is there a possibility the Rule could set a "target" and let the locals agree on plans to try strategies, measure success, and reiterate as needed - true adaptive management?

PPF will continue to support protection of our environment in the public interest and looks forward to Ecology's response to these and others' comments regarding the proposed rule.

Submitted July9, 2012 by Judy M. Larson

From: Sandy and Nick Larson [REDACTED]
Sent: Sunday, July 08, 2012 11:38 AM
To: Wessel, Ann (ECY); Sandy and Nick Larson
Subject: IN STREAM FLOW RULE

TO ECOLOGY,

MY HUSBAND AND I HAVE 1 1/4 ACRE OFF GUPSTER RD. ON GULL LANE IN CARLSBORG, WA. WE BOUGHT THIS AS A NEST EGG A FEW YEARS AGO. ONE OF THE REDEEMING FEATURES WAS A GURGLING IRRIGATION DITCH THAT WAS OUR OWN CREEK WITH BIRDS AND ALL THE WILDLIFE THAT ABOUNDED. THIS IS NOW PIPED UNDERGROUND AND A HUGE VALUE/ESTHETIC LOSS TO US AS THE VALUE HAS PLUMMETED. THANK YOU NOT VERY MUCH!!

WE HAD A DEEP WELL DRILLED A FEW YEARS AGO SO WE WOULD HAVE THAT OUT OF THE WAY FOR US OR FUTURE BUILDERS ON THE LOT. NOW YOU ARE TAKING AWAY MORE OF OUR PROPERTY RIGHTS/VALUES BY METERING/MITIGATION TACTICS AND PUNISHING THOSE OF US WHO PLANNED AHEAD, TO AVOID PROBLEMS OF BUREAUCRACY IN THE FUTURE. WELL, THERE THAT GOES. SITUATIONS SUCH AS OURS SHOULD BE EXEMPT FROM THE NEW RULING. WE ARE NOT BUSINESSES THAT USE HUGE AMOUNTS OF WATER. MOST OF US ARE RETIREES WHO HAVE NO MORE THAN TWO PERSONS USING WATER IN A DWELLING. WE ALSO HAVE ACCESS TO AN "UNDERGROUND" IRRIGATION PIPE WITH WATER SHARE RIGHTS. YOU NEED TO QUIT GOING AFTER THE LITTLE GUY AND REGULATE IN A LOGICAL /COMMON SENSE WAY. GRANDFATHER US IN AND LEAVE US THE HECK ALONE. OTHERWISE YOU'VE DEVALUED OUR PROPERTY ONCE AGAIN. IF YOUR RULE IS BASED ON FACTS NOT THEORY IT WOULD HAVE MORE RESPECT AND LEVERAGE.

WE HAVE PAID TAXES FOR MANY YEARS, SO IN WHAT WAY DO YOU PLAN TO COMPENSATE US FOR OUR LESS VALUE, THUS MONETARY COSTS AND LOSSES? YOU SHOULD ALL HANG YOUR HEADS IN SHAME. WE ARE YOUR PARENTS, GRANDPARENTS, GREAT GRANDPARENTS WHO HAVE WORKED HARD AND SAVED ONLY TO BE TREATED THUS. ONCE AGAIN THANK YOU NOT VERY MUCH.

SANDRA K. LARSON
NICK L. LARSON

From: Lee Lawrence MBA [REDACTED]
Sent: Sunday, July 08, 2012 10:36 AM
To: Wessel, Ann (ECY)
Subject: Comment - WRIA18

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Sincerely,

Lee Lawrence
Sequim WA
[REDACTED]

From: LESTER stu [REDACTED]
Sent: Thursday, May 10, 2012 6:03 PM
To: Wessel, Ann (ECY)
Subject: Proposed rule regarding the Dungeness water Shed Area.

Your proposal for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA), of restricting new water use to 120-150 gallons/day, with additional restrictions on livestock and irrigation is a major move to the Communism that the current administration has been forcing on this Country for over three years. I only must assume this plan in conjunction with your Nazi plan to move everybody off of the peninsula and allow it to return to nature.

Just because we have a Socialist/Communist in the White House now does not mean he will be there forever. Perhaps you are counting on him creating a dictatorship before his next four years are up, and you will not have to return to realism. In any case, your plans are right out of the Nazi play book, and you may find that the citizenry will not tolerate it.

-----Original Message-----

From: Noelle [REDACTED]
Sent: Tuesday, June 26, 2012 11:29 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Feedback via Ecology's Contact Us web page (WR)

DOE.

Please BACK THE HELL OFF OF WATER RULES FOR CLALLAM!
Hell NO to the requirement of mitigation & metering!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!
We, the residents of Clallam do not need this crap rammed down our throats!
NO WELL METERING, EVEN IF THE WELLS ARE 20 YRS OLD!!!!!!!!!!!!!!
THIS IS NOTHING BUT UN AGENDA 21 AND THIS CRAP AS TO STOP!
NO 'Dungesness water rule'!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!
The DOE does not need this power or control!!!!!!!!!!!!!!!!!!!!!!
I do NOT want this NOR do I want to be charge for my
water!!
BACK OFF OF THIS!

--
Noelle Levesque
Serquim WA [REDACTED]
[REDACTED]

From: Litch [REDACTED]
Sent: Saturday, July 07, 2012 9:06 PM
To: Wessel, Ann (ECY)
Cc: Kevin; Tharinger, Steve
Subject: Wira 18 -Dungeness water management program

Ann,

Thank you for the opportunity to provide comments/testimony regarding the proposed Wira 18 - Dungeness water control program. The 28 June Sequim presentation was definitely informative for all attending. Hopefully the plan is not already predetermined to implement. See attached comment/testimony for consideration in the proposed program. - Sincerely, --- Warner (Litch) Litchfield

July 18, 2012

Comments to Wira 18 – Dungeness water management program

The education program has been very beneficial:

1) Ecology with their open presentations and meetings is doing a good job up informing/educating the Sequim residents on good water management practices. This education process has already significantly reduced the amount of water being used for irrigation purpose, thereby making much more water available for use by private wells.

2) Per Ecology publication #10-11-018 dtd June 2010, Water diversion for irrigation has been reduced from 100 cfs to 55 or 50 cfs. The reduction in use, at least 45 cfs, equals 162,000 cf per hour. If this water reduction is from an irrigation supply line which runs 24 hours a day, that equates to almost 4 million gallon of water a day that has already been saved in the past few years. This should provide ample water for a minimum of 8000 additional homes, assuming each uses not more than 500 gallons of water a day each with none of it being used to recharge the ground aquifer. Note: Ecology uses 150 gallons for home use per day with a 90% reduction for aquifer recharge through a septic system.

As farm land is sold and turned into residential home sites with septic systems, the use of water should continue to decrease and the available ground water should increase. Keep up the education process and continue learning. Come back in another 10 years and to see if we need to implement a water management program at that time.

Comments on Specific Paragraphs:

WAC 173-518 -030 Definitions: 1) Existing water rights: Please explain further. What are perfected riparian rights and perfected inchoate appropriative rights? What federal rights were actually given to

Indian and non-Indians. Is this trying to imply that Indians have the right to 50% of the water (as might be interpreted by a "Judge Bolt")? Is Ecology saying that a river or stream has always had a certain amount of water so, it has a right to this amount. Do the plants, fish and wildlife have implied stream or river water right along with owners of waterfront property? I don't trust what I don't understand.

2) Timely and reasonable: This vague definition must have been recommended by a lawyer to ensure continued legal participation. Timely and reasonable to me means within 2 weeks and at a cost less than \$1,500. Do government agencies have a sliding scale to fit their desired definition at any given time. Explain further or delete "timely and reasonable" from the water rule text.

3) WAC 173-518-040 Establishment of Instream flow: (Para 3) The instream flow is already impacted at certain times of the year. Does this mean no new businesses or homes, except on existing exempt water systems until the river flow meets the optimum desired flow for fish? (Para 5) Exceptions --- any new water uses --- will be subject to interruption when flows drop below flow levels of Table IIA. Does this say that any new water use to homes or businesses will be shut off or be litigated when stream flow is below the flow rates established by this new rule. This is for flow rates which we do not currently meet all the time. This is a good way to kill new business development. Do new water rights just cease water use during drought periods.

4) WAC 173-518-06 metering and reported water use: once metering is established for new uses, it is just a matter of time before all wells are metered and owners charged for water usage. Why not just tell us up front, that eventually all existing wells will also be metered? First the controls and monitoring must be established, then we can meter and charge for all water use to cover the cost of the program.

5) WAC 173-518-076 Expedited processing: Delete this paragraph or make it read "May or may not be expedited". This is a useless paragraph unless it is included for the purpose of bribes or extortion.

Economic analysis:

Cost benefit: Ecology can always find someone who will provide the desired cost/ benefit results.

The cost benefit analysis currently used is a very superficial, one sided analysis. If one computes the cost per each lost fish caused by not implement the rule, one should also compute the number of jobs lost x (times) the income per job x (times) the same number of years that would be lost from the community with implementation of the rule. With fewer homes in the county, based on the supposed lack of water for the fish, there is also a lack of business revenue. Each new home would bring in about \$300,000 in construction and material cost to the county. It would also add close to \$30,000 per new home per year just in living expenses and taxes. The new residents would also employ more people for their desired services.

Just 1000 new homes would generate \$300,000,000 in construction/material income plus \$30,000,000 **per year** in living expenses. This doesn't even take into account the living expenses of the additional people who would be supporting these new families.

Land values: The land values will drop precipitously for potential home sites if water is not allowed without purchasing a water right allotment, if in fact water is actually available. The water rule says that water can be shut off when the water level is below the desired optimum stream flow for fish. Who would want to purchase property when the water flow is already occasionally below the desired stream flow rate? See note 1 below (DOE land value losses – personal example which affected me)

Litigation costs: Based upon my experience, the cost of litigation involving ecology would far outweigh the cost of litigation among home owners or businesses by not having the new rule. Does Ecology just ignore all litigation expenses among ecology and the litigants disagreeing with Ecology? See note 2 below Ecology litigation – personal example which affected me)

Small business impact: the cost analysis shows that the impact per small business employee to be greater than that for a larger business.

Questions/proposed alternatives :

1) Is excess irrigation water currently being pumped back into the aquifer at a beneficial recharge location rather than being discharged back into a river or stream near the mouth? If not, this would be a good project for Ecology to consider funding.

2) Existing water purveyors: I fail to see the logic in allowing city water purveyors to continue to provide water for new residences while requiring mitigation for new rural homes on septic systems. If the goal is to keep maximum water in the aquifers, Cities should clean/purify their sewer water and discharge it into beneficial recharge locations. Residential homes on a well already recycle water through the septic system.

3) I recommend that if additional water is really needed in the Dungeness aquifers, that the City be funded by the state to purify the liquid portion of their sewage and pump it back into the Aquifer at the most beneficial location.

4) Mitigation - water for money: If as implied, there is water available to sell, then water must currently be available. So, there is no water shortage -- rights!. Why is this rule being considered?

General comments to Ecology:

1) Several of my neighboring land owners live in California. They have purchased property for building a home after retirement or as an investment. All land owner should be notified of these proposed changes to their land water use rights at least a year before any proposed affective date. These proposed changes can drastically affect their proposed use or value of their property. The county has property tax records that can identify owners mailing address. My property taxes always seem to find me.

2) Because of past and continuing practices, ecology has a deserved reputation of being, untrustworthy, unreasonably controlling, dictatorial and taking without compensation. Ecology has a long way to go to be trusted by citizens living in rural areas. Ecology takes away our livelihood, take away our land and make us pay more so that they can better monitor and control us. Right now Ecology is trying to force three separate programs on us in Clallam county. 1) Mandatory Frequent Septic system testing (\$20 million cost in 10 years) paid for by 20,000 private home owners; 2) Increase restricted use set-backs for all waterfront property (started out wanting 75-100 feet, it became 150 feet, now Ecology want 200 feet; 3) Water use management: We all know that 10 years from now, Ecology will want all private wells to have water meters and that we will be paying a use fee. Is this long term objective?

Notes:

Note 1) My father, about 30 years ago, purchased a small saltwater front lot in Allyn, and also a partially treed, saltwater view property (with a stream) near Manchester as retirement investments to support my mom after he passed away. About 7 years ago, shortly before my mom died she gave both properties away free because of DOE rule changes which made her property worthless. Yet, she still had to pay taxes on this view and waterfront property. It crippled her finances and none of us three children wanted to pay the taxes on this property which DOE wetland/ waterfront rules made it useless.

Note 2) I owned a waterfront home on Lake Tahuyeh (Kitsap County). During the late 90's, Ecology caused our community to spend over \$200,000 in legal fees on three issues related to removal of decayed Peat matter which was popping up from the bottom of the lake. At the same time the Dam Safety department said we had to remove the peat matter which was a hazard to the dam. The Community along with the Dam Safety eventually prevailed against Ecology but ecology did not totally back off until they first extorted a portion of the community property to be left natural (no development). In the same time frame, Ecology records said there was an endangered "Club moss" on the undeveloped community land, but ecology did not know right where the endangered club moss was located. The community, at our expense, had to hire a botanist to do an extensive search for this "Club moss" which never existed before we could use or develop that portion of our community property. (Christine Greguare, attorney general at the time, may remember this Ecology :VS: Dam Safety issue)

These comments are from a cursory review of a of Chapter 173-518 WAC, as well as additional information obtained during your recent June 28 presentation at Sequim.

During the Sequim meeting/testimony, Ecology was very informative and appeared to be taking notes during the brutal testimony. We all benefited from the exchange. Although it is probably a state mandate, I do appreciate the solicitation of comments. Hopefully, Ecology had not already predetermined that this Water Management Policy will be implement.

Sincerely

Warner J Litchfield



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Lower Elwha Klallam Tribe

ʔəʔtɬˈwə nəxˈsɬʰay əm "The Strong People"

2851 Lower Elwha Road
Port Angeles, WA 98363

360.452.8471
360.452.3428

July 9, 2012

Ann Wessel
Instream Flow Rule Lead
Department of Ecology
1440 10th Street, Suite 102
Bellingham, WA 98225

Re: Comments on the Dungeness Instream Flow Rule for east WRIA 18

Dear Ann,

In 1967 the State of Washington passed the Minimum Water Flows and Levels Act to address the need to protect instream flows for anadromous fish, wildlife, and recreational uses. This legislation was based on the recognition that increasing population pressures associated with rapid development have adverse impacts on water availability for human consumption, salmon habitat requirements, and other uses. In 1998 the state passed Watershed Planning legislation (ESHB 2514) as a means of addressing water management planning on a local level. Two watershed planning units were established for Clallam County, the Dungeness River Management Team (DRMT) and the Elwha-Morse Watershed Management Team (EMMT), to develop recommendations for managing water resources that address quantity, quality, instream flows, and fisheries habitat. The Lower Elwha Klallam Tribe has participated in Watershed Planning in Water Resources Inventory Area (WRIA) 18 (EMMT) for over 12 years. This effort culminated in the Elwha-Dungeness Watershed Plan in 2005.

We cannot continue the misguided approaches and policies of seeking water resources from distant watersheds to satisfy the water resource needs of rapidly growing populations. The preferred strategies for sustainable management of water resources must involve water conservation, minimization of exempt wells, and sensible water allocations during periods of low flows that minimize impacts to fisheries resources.

The Lower Elwha Klallam Tribe applauds the tireless efforts of the Department of Ecology in working with members of the public during the instream flow rule making process and developing a plan that is appropriate and site specific to the needs of the Dungeness watershed. We support this plan which will help to ensure sensible and sustainable water resource management that balances the needs of people with that of fisheries habitat requirements during periods when water is most limited. Thank you for your time and effort in the culmination of this multi-year local planning effort.

Sincerely,

Doug Morrill
Natural Resources Director

Matthew Beirne
Environmental Coordinator

From: Colleen Lyons [REDACTED]
Sent: Friday, July 06, 2012 8:13 AM
To: Wessel, Ann (ECY)
Subject: Well rights in Clallam Co

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.
Signed,
Colleen and David Lyons
Clallam Co Property Owners

From: John and Cindy Mackay [REDACTED]
Sent: Saturday, July 07, 2012 7:34 AM
To: Wessel, Ann (ECY)
Subject: Re: WRA 18

Ann,

Questions are usually given answers. Am I to surmise that the statements are true and no answers will be given? My personal experience is that people with the fortitude to speak up when wrong is being done are dealt with harshly.

I have, since I wrote my letter to you, heard that where the plan has been put in place it has had a very negative impact on that area. Just what are you trying to accomplish as you "save the fish"?

John Mackay

From: [Wessel, Ann \(ECY\)](#)
Sent: Friday, July 06, 2012 12:08 PM
To: [REDACTED]
Subject: RE: WRA 18

Thank you for your comment

From: John and Cindy Mackay [REDACTED]
Sent: Monday, July 02, 2012 9:58 AM
To: Wessel, Ann (ECY)
Subject: WRA 18

It is of real concern to our family how the Department of Ecology reacted when confronted with opposition to WRA 18 by one of its own. As we understand it, your in-house Economist on March 19th wrote a memorandum to the 'rule making team' that the evaluated draft proposal DID NOT MEET THE LEGAL REQUIREMENT OUTLINED IN RCW 34.05.328 (1) of the Administrative Procedures Act.

Then, two days later this same individual sent written notice to his supervisor informing him that he found that he could not support the proposal as it was unlawful and he could not keep his professional integrity intact by supporting it.

The Department of Ecology responded by removing this person from the team. (Probably worse than that actually!--my supposition).

So how are we to believe that this proposal has merit when your own people who oppose it are handled in this manner?

Is this indeed a solution looking for a problem by an out-of-control agency? If not, when might we expect to see some technical proof of that?

John Mackay
[REDACTED]

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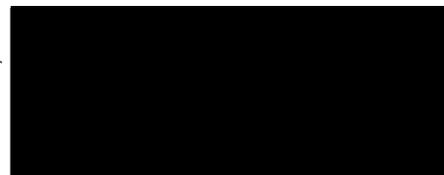
So how are we to believe that this proposal has merit when your own employees who oppose it are handled in this manner? Is this indeed a solution desperately looking for a problem by an out-of-control agency? If not, when might we expect to see some technical proof of that?

RECEIVED

JUL 03 2012

DEPT OF ECOLOGY
BELLINGHAM FIELD OFFICE


John Mackay 7/2/12



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Sent: Monday, July 02, 2012 9:58 AM
To: Wessel, Ann (ECY)
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Is this indeed a solution looking for a problem by an out-of-control agency? If not, when might we expect to see some technical proof of that?

John Mackay
[REDACTED]
[REDACTED]

From: Jane Manzer [REDACTED]
Sent: Tuesday, July 03, 2012 11:18 PM
To: Wessel, Ann (ECY)
Subject: Stop rule making

I am not one to write letters to public officials, having been a congressional staffer to a Congressman for 7 years, but I find I must now. I have watched this process over the past several years and am increasingly skeptical of the process itself, the science, the population growth projections, etc. And the revelation of e-mails from a high-ranking official are especially unsettling. PLEASE carefully consider the statement from the Clallam County Commissioners, those closest to the residents impacted. Ecology should serve people too!! Jane Manzer

WRIA 18 Public Comment June 28, 2012

We are here tonight to comment on a rule born by an agenda, built on flawed assumptions, and jammed through by biased committees. Removing the economist writing the economic impact report because they didn't like his assessment is symptomatic of the whole water rule process. The committee was stacked with agency personnel and environmentalists. People actually impacted by the rule need not apply.

The first assumption is that low river flows are the cause of endangered salmon populations. Never mind that salmon population crashes have been reported as far back as the nineteenth century in local papers and prior to that in Native legend. Never mind that most oceanographers attribute large fluctuations in salmon populations to oceanic conditions. Never mind that large population swings can be a natural phenomenon augmented by bad management decisions.

DOE has put a ton of money and effort into ratcheting down on domestic users for what their sacked economist calls "2/10 of 1% of the river over a 100 year build out". In other words, all this concern and excitement is over a negligible immeasurable amount of water.

With all the work in water conservation in the basin over the past several decades and the downward trajectory of water use this rule would seem unnecessary. Country living will certainly take on a new normal for newcomers to the valley: No outside watering and rationed indoor use. Move to Sequim but don't plan to water the animals, grow a garden, or wash the car. Except for those tax payers living where they can take advantage of a vague mitigation scheme; more of their funds extorted. "We have to pass it to see what's in it" process does not create good policy. Nor does it engender confidence in our public servants. Did DOE ever say how many salmon we're saving?

The impact these wells have on the river is conjecture based on models, not empirical science. Were DOE's computer models crafted with the same lack of scruples demonstrated by their Economic Impact Statement? Are flow thresholds that are rarely if ever met appropriate in the real world?

Department of Ecology (DOE) contends that the river is over allocated and they throw around big numbers. They then turn around and tell us the water rights which have not been used for five years, a significant portion of their bandied about big number, are gone. Which is it DOE? You can't have it both ways! You have to subtract out the rights extinguished through non-use to arrive at the real allocation number.

Similarly, in the phony Economic Impact Statement they attribute large arbitrarily derived numbers to lawsuits that have never been threatened as justification for this rule. Why no large arbitrarily derived counter-balancing number for the law suits bound to occur should this rule be adopted?

With science conducted like their economic impact statement and assumptions that don't hold water, what we're witnessing is a naked power grab by an out of control agency. Their real ambition appears to have nothing to do with fish populations. Honest discussion of these issues cannot occur with a deceptive, disingenuous, and devious agency like the Department of Ecology.

My recommendation is that this rule is flawed beyond redemption and should not be adopted. Any new rule process should require Ecology to perform a full SEPA analysis, just as they as they would require of anyone else proposing changes as sweeping as this rule. Clearly this agency has demonstrated crying need for close oversight.

Steve Marble 

From: Harvey Martin [REDACTED]
Sent: Sunday, July 08, 2012 2:23 PM
To: Wessel, Ann (ECY)
Subject:

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

--

Harvey & Margaret Martin <[REDACTED]><

[REDACTED]

From: Eric Matthews [REDACTED]
Sent: Wednesday, June 27, 2012 3:53 PM
To: Wessel, Ann (ECY)
Subject: Proposed instream flow rule for the Dungeness River

Dear Ms. Wessel,

I support adoption of the proposed instream flow rule for the Dungeness River. However, I am concerned that the rule fails to adequately protect the Dungeness basin from the further over-appropriation of its water resources. The proposed rule allows for withdrawals of water, in the form of reservations for future use. Allowing those future uses, even if partially mitigated, will keep the river from achieving the 180 cfs minimum flow in late summer the rule sets to sustain fish and the river itself. I urge Ecology to adopt the rule but not the proposed reservations for future use until we know the minimum flow amounts will be met.

Sincerely,

Eric E. Matthews

From: E. Michael McAleer [REDACTED]
Sent: Thursday, June 21, 2012 11:11 AM
To: Wessel, Ann (ECY)
Subject: Dungeness Water Rule

Ann,

The proposed rule is going to take untold millions of dollars of value away from property owners who have yet to develop their land or who have yet to put their well to beneficial use. With the stated goal being that this is an effort to protect the in-stream flows in the Dungeness River, the benefit of the proposed rule would need to be monumental to justify the cost to the owners who will be devastated by this rule. Are the anticipated benefits monumental? Will they outweigh the financial devastation they will create? What about the cost to taxpayers to manage all of this? Will the benefits to the river justify that cost as well?

This rule is an overreach of power by well intentioned people. Please delay the rule so that you have time to weigh the benefits vs. the harm it will cause.

Please consider this an official comment to be included in the public record. Thank you.

E. Michael McAleer
[REDACTED]

Michael E. McAleer

Ann Wessel, Instream Flow Rule Lead
Washington State Department of Ecology
1440 10th Street, Suite 101
Bellingham, WA 98225

Ted Sturdevant, Director
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Wessel and Mr Sturdevant:

Over the years, significant resources of time, staff and taxpayer funds have been invested in meeting the requirements of RCW 90.82.020, 90.71.010, and 90.74.010. I believe the proposed final administrative rule 173-518 is seriously flawed. There are far too many questions that have yet to be addressed. The following are questions that are of utmost importance to our community:

1. The rule would take away free water from more than 5,000 parcels of land. Why does the Cost Benefit Analysis (CBA) ignore the economic impact of doing so?
2. Using county data there appears to be about 65 new uses per year. This translates into a very small amount of water use. Why hasn't Ecology just mitigated this water use? It appears economically unsound to create a "water exchange" for such a small use of water. How is this justified?
3. Why did Ecology use in the CBA a discount rate that is inconsistent with their other instream flow rule analyses?
4. The CBA predicts over 400 new uses per year. This is 8 times more than county records show for building permits. Did you base fish savings benefits on this? If so your fish impacts/losses are 8 times what they should be. How does this affect the imagined fish savings benefits?
5. How does Ecology calculate avoided fish losses? You credit a \$6.8 million dollar benefit. Please provide the documentation.
6. "Increased Certainty in Development" is entirely speculative. Do you believe it will stand up in court?
7. How is protecting existing restoration investment a function of this proposed rule? How this is achieved isn't spelled out in the rule but is still included as a benefit.

8. The Small Business Economic Impact (SBEIS) statement should include an analysis of those who are required to comply with the rule. Why wasn't this included?
9. How can the SBEIS state not find disproportional impacts if businesses vary in size, hours of labor and sales?
10. Why doesn't the SBEIS examine new businesses that would be required to follow the rule?
11. As described in your "executive summary" to the SBEIS, existing businesses would be affected by the proposed rule. Why was this not analyzed?
12. Why does the SBEIS say there won't be costs at times, then contradict itself by saying there will be costs?
13. The assumption that all industries would have equal water use per employee is clearly false. Why did you use that assumption?
14. Why is present value calculated in the SBEIS if costs only accrue in the first year?
15. RCW 19.85 requires a description of how the agency will involve small businesses in the development of the rule. Why was this not done?

Please consider the above as my formal comments on the proposal.

Sincerely,



Michael E. McAleer

From: Joe McDermott [REDACTED]
Sent: Wednesday, July 04, 2012 9:30 AM
To: Wessel, Ann (ECY)
Subject: Water rights

Hello,

My name is Joe McDermott. I am a building contractor in the area for the last 17 years. I am originally from California. I also was a contractor down there. I completely understand the urgency to slow the growth down in the area. As you know California had a population explosion that they are still suffering repercussions. What I don't understand is why, as down there the county or state can place a building moratorium releasing measured amount of permits in order to organize the water situation. All, this creating water rights seems like the long way around the issue or something sneaky is going on. I would like to know more about how the water rights are formed? Who already owns some of them? How they can be acquired? How is the Jamestown tribe involved and how many shares do they own? I know the tribe somehow say they own the fish, now do they own the water in the river also? If so, Is this how all of the studies indicate that the entire basin that the tribe once occupied is now directly relating the river water to our well water? My well is West of the river 6 miles and is one half a mile from the shoreline. How could my well water possibly affect the river from my location? I'm not a hydrologist, but I'm not a fool either! I would like answers to my questions, answered thoroughly. I'm not pointing fingers at anyone but something is not adding up here. Joe McDermott

From: Bob McGonigel [REDACTED]
Sent: Tuesday, July 03, 2012 8:16 PM
To: Wessel, Ann (ECY)
Subject: WRIA18

Ms. Ann Wessel
WA State Department of Ecology

I was in attendance the WRIA18 at the Sequim Community Church on 6/28/12. I was furnished with a copy of the Tryg Hoff e-mails that were sent within the Dept of Ecology and after reviewing them I was horrified at the attitude of most of your employees toward the peoples' business. Your comment on page 107, that Tryg is "not a believer" is most shocking. He is a government employee and he appears to rightly believe that working in behalf of the citizenry is a government employee's first concern. His personal belief system doesn't enter into the discussion.

The facts that came out at the meeting indicated that extremely shoddy work was done by your agency and give one the impression that perhaps some laws are being broken by Ecology employees in the furtherance of this agenda and also the No Net Loss program being shepherded through the process by the well compensated ESA Adolphson group.

In these hard financial time your agency ought to be cutting back on programs and employees the way citizens and the private sector has to, instead of spending millions on projects of questionable value to the taxpayer.

Bottom line is that I am a retired FBI agent and was involved as a participant on several public corruption cases and I have spoken with six other retired Federal, State and Local investigators in our county about what is going on within "our" Dept. of Ecology. The consensus of their opinion is that if WRIA18 is put in place, we intend to look into the matter at our own expense, turn the light of public scrutiny on any results we achieve and then and only then, we provide the results to the media WA AG and every logical federal agency.

Robert C. McGonigel
Sequim, WA

From: Jim McRoberts [REDACTED]
Sent: Monday, June 25, 2012 4:39 PM
To: Wessel, Ann (ECY)
Subject: Dungeness River

Dear Ms Ann Wessel:

Thank you for allowing me to comment on this ruling.

I support adoption of the proposed instream flow rule for the Dungeness River. However, a concern I have is that the rule fails to adequately protect the Dungeness basin from the further over-appropriation of its water resources. The proposed rule allows for withdrawals of water, in the form of reservations for future use. Allowing those future uses, if partially mitigated, will prevent the river from achieving the 180 cfs minimum flow in late summer which the rule sets to sustain fish and the river itself. I urge Ecology to adopt the rule but not the proposed reservations for future use until we can show that the minimum flow amounts will be met.

Sincerely,

Mr James C. McRoberts
[REDACTED]

From: Russ Mellon [REDACTED]
Sent: Friday, June 22, 2012 10:24 AM
To: Wessel, Ann (ECY)
Subject: Pending Dungeness Water Rule and Endangered Species

Dear Ann,

Please include the following question and comments as part of the public comments regarding the Proposed Washington State Department of Ecology Dungeness Water Rule. There appears to be two major issues: (#1) maintaining sufficient water flow in the Dungeness River for the survival of endangered species; and (#2) the protection of those species.

Question: How is the irrigation water in the Dungeness Valley, that is now enclosed in pipes, being allowed to flow back into the Dungeness River to help with instream flows?

Comment #1: For over 100 years the aquifer underlying many residential wells and small streams such as Bell, Cassalery and Matriotti Creeks benefitted from the seepage from the unlined open irrigation ditches meandering through the valley. If the Department of Ecology's theory is that residential wells are using water that would normally eventually seep through the aquifer into a small feeder stream or directly into the Dungeness River, it would hold that the water from the unlined ditches would also end up back in the river. **I feel the remaining unlined ditches should remain that way, with further piping terminated.**

I assume that during low flow periods the irrigation ditches are closed at the headgates, but during the Winter and Spring, open unlined irrigation ditches would add significantly to the supply of ground water available for the drier months. **Perhaps those irrigation ditches in pipes should be re-opened.**

Comment #2: I have lived in the Dungeness area since 1977 and as an ardent fisherman, have had a keen interest in health of the fish stock in the various area rivers and small streams. Until the Bolt Decision, there were tremendous runs of Chinook, Coho, Chum and Pink Salmon in the Dungeness River through about 1987. The tribal fishermen heavily netted the river for several seasons significantly reducing the number of native species returning to spawn. Certainly the non-tribal sportsman have had an impact as well, but netting the mouth of the river and Dungeness Bay was not a select fishing method, with the very species we are trying to protect, being prey to the nets. Fishing in Dungeness Bay and in most of Area 6 (east of Port Angeles to almost Port Townsend) is not open for Chinook fishing in the Summer and Fall for non-tribal and only clipped fin (non-native) Coho may be retained. Tribal fisherman can and do net inside Dungeness Bay in the Fall and retain and sell 14 to 20 pound native Coho salmon. If these are truly protected fish, the tribes should not be allowed to fish with nets which intercept, catch and retain protected stocks. Tribal fisherman should have to troll for salmon using barbless hooks and release native stock just as the non-tribals; or use fish wiers or other methods of catching and sorting fish without killing the native stocks. **This State and DOE needs to work closely with the Tribes and discountinue all gill netting in all State waters if we are really serious about saving the native stocks.**

It should be noted that we had near record returns last Fall of Pink salmon in the Dungeness River. These are native fish which demonstrates the water quality and conditions have been sufficient for survival. The main reason the Pink runs have been so strong is that they were and are not targeted by the tribal fishers and netted to any significant extent. Again, you cannot protect native fish if nets are going to be allowed. So it does not matter how much water is in the river. If the DOE really wants to fight for the protection of native fish stocks, please work with all the stakeholders, and put an end to all gill net fishing in State waters.

Please feel free to call me for validation of comments.

Sincerely,

Russ Mellon

[REDACTED]

[REDACTED]

From: Roland Miller [REDACTED]
Sent: Friday, July 06, 2012 9:49 AM
To: Wessel, Ann (ECY)
Subject: Water Rule for Dungeness Watershed

Dear Ann,

Please enter this email into the record as an official comments on the proposed Water Rule.

Scroll down to see the email that I received from a client who was very interested in purchasing a 5 acre property but decided not to do so when informed of the Water Rule. This is only one of hundreds of similar situations that will occur as a result of the Rule. Has this been factored into the Economic Cost/Benefit Analysis?



HAVE A GREAT DAY!!!!

Roland Miller
Managing Broker
Coldwell Banker Town & Country



From: Michael Williams [REDACTED]
Sent: Thursday, July 05, 2012 10:32 PM
To: Roland Miller
Subject: RE: 9999 Vine Maple

Roland,

This [the Rule] would seem to have a serious impact on the property - basically would have land with little value other than hay pasture - at a price of about \$24000 per acre - would take a lot of hay to pay the bill. So, I guess I will hold off on leaping on that property or any other one without an existing well and home. Makes me think that maybe Washington is as whacky and socialist as California.

Mike

From: Roland Miller [REDACTED]
Sent: Thursday, July 05, 2012 5:35 PM
To: Wessel, Ann (ECY)
Subject: Proposed Water rule for Sequim Valley area

Please enter this email as a formal comment on the Rule.

Dear M. Wessel,

I note that the County Commissioners of Clallam County have proposed an independent review of the Economic Benefit Analysis of the subject Rule, which is what I have stated, in a previous comment, should be done. If the Department of Ecology is so sure that their Economic Benefit Analysis is correct, why are they afraid of an independent review? Yes, it might delay the Rule for a few months, but the making of the Rule has been going on for more than 10 years; so why not a few more months? I would like a formal answer to these question.

Respectfully submitted,



Roland Miller
Managing Broker
Coldwell Banker Town & Country



From: Roland Miller [REDACTED]
Sent: Friday, June 29, 2012 10:33 AM
To: Wessel, Ann (ECY)
Subject: Proposed water rule

Dear Ms. Wessel:

The following are my comments on the proposed rule, which I wish to put into the record:

I attended the hearing on the proposed water rule on June 28, and was absolutely astounded at some of the things that I heard. In a response to one of the questions, the DOE representative stated that this was about water and not land. That is ridiculous. Land is dependent upon water and without water, land is useless, which is why water was brought into the valley approximately 113 years ago.

I noted that of all the people that gave testimony (30 – 40?), only one person was in favor of the rule. That should be a wakeup call to DOE that the rule should not proceed as planned. Because of all the flaws and illegalities in the proposed rule, I believe that it is time for DOE to go back to the drawing board and come up with a rule that makes sense for the Dungeness watershed, even if that means starting all over again.

However, before wasting any more of the tax payers money, the Cost/Benefit Analysis should be re-done to include the following items

- a. The result of devalued land prices due to the rule. In doing this, appraisers and REALTORS® should be involved. They are the only ones that really know what will happen if the rule proceeds forward – not a desk jockey who has never been in the business.
- b. The loss of revenue to the County in tax money due to the devalued land and home prices, which will in turn affect the economy.
- c. The loss of money to the County in loss of sales tax revenue when small businesses dependent upon water cannot operate. This should include the loss of sales tax revenue that will result from business going elsewhere because the Dungeness watershed area is no longer conducive to development.
- d. The cost of lawsuits that will be brought by hundreds (class action) who object to the uncompensated taking of their property, which is what DOE will be doing when you cause it to devalue.
- e. The cost to the State, and therefore to the tax payers, if the aforementioned lawsuits result in the courts awarding huge sums when the suits are successful.

All of these factors, and probably others, should be included in a true Cost/Benefit Analysis, such as has already been done by one of DOE's own economists, but was discarded because it didn't agree with DOE's incorrect preconceived notions. If this is done I believe that it will show that you need to look at other options for preserving water, and there are many that would be less expensive and less harmful to individuals and the economy of this area,

Respectively submitted,



Roland Miller
Managing Broker
Coldwell Banker Town & Country



From: Roland Miller [REDACTED]
Sent: Wednesday, June 27, 2012 1:51 PM
To: Wessel, Ann (ECY)
Subject: Water Rule

Dear Ms. Wessel,

I am a REALTOR® IN Sequim that has clients planning to buy land. I also have clients that own undeveloped land. Both of them are asking me how the water exchange will work and how much it will cost them for inside and outside water. I have perused the rule but have been unable to find the answer to my clients' questions, which makes it difficult to do my job intelligently. I have been told that you do not know the answers to these questions. If that is true, how can you put the rule into effect? Isn't that like giving someone a blank check and hoping that he/she will not fill in too high an amount?

Please provide me with the answers to these questions and make this email and your response part of the official comments on the rule.

Respectfully submitted,



Roland Miller
Managing Broker
Coldwell Banker Town & Country



From: Jim Mitchell [REDACTED]
Sent: Sunday, July 08, 2012 1:10 PM
To: Wessel, Ann (ECY)
Subject: DoE Proposed Water Usage Plan for Sequim and Clallam County

Dear Ms. Wessel:

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years which is a fundamental constitutional right.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Respectfully,
Jim Mitchell

[REDACTED]
Clallam County Property Owner

From: [REDACTED]
Sent: Sunday, July 08, 2012 7:48 PM
To: Wessel, Ann (ECY)
Subject: Water rights

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Mary Mitchell

From: Gary Mitzner [REDACTED]
Sent: Friday, July 06, 2012 2:57 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Water Rule

July 6, 2012

Ann Wessel
Department of Ecology
1440 10th St., Suite 102
Bellingham, WA 98225

The proposed Dungeness Water Rule significantly negatively affects our building plans. We currently live at 193 Letha Lane in Sequim. We also own a parcel across the road from our place at 200 Letha Lane which has a non-active well and septic system in place. We built a detached garage on that property in 2011. We are currently planning on either building a house on the property or else sell it. The value of this property goes down significantly if the Water Rule goes into effect. I will not have full access to the well and it will be more difficult to sell the property if water is not readily available.

We had access to the water when we purchased the property and the price of the property included the use of the water. If we are now told that we do not have full access to our well our property value goes down.

What is going to be done to reimburse us for lost value and what is going to be done to lower our tax base since this property will be worth much less than all of the surrounding lots (all surrounding property is currently developed)? We can be contacted by e-mail or at:

Gary and Carol Mitzner

[REDACTED]

From: Carolyn [REDACTED]
Sent: Sunday, July 08, 2012 10:47 AM
To: Wessel, Ann (ECY)
Subject: Water usage in Clallam County

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

**Sincerely,
Carolyn Money**

From: The Muir's [REDACTED]
Sent: Monday, July 09, 2012 5:47 AM
To: Wessel, Ann (ECY)
Subject: water rules

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

Jim and Bea Muir

From: The Muir's [REDACTED]
Sent: Friday, July 06, 2012 11:37 AM
To: Wessel, Ann (ECY)
Subject: water management rule

Dear Ms. Wessel:

Re: Water Management Rule.

We agree with the City Council, the Sequim Gazette editorial staff , the Businessmen's Association, and general citizens, that the management rule as written must be re-done. The timeline is too constrictive since the information we're given is sketchy and incomplete—some which may even be outdated.

We are property owners who have lived here for 16 years. We use water responsibly, but at some date we may have to sell our nearly 2 acres. We believe a sale would be restricted and/or reduced by the intimidating procedure regarding water rights. We believe property sales, especially for small gardeners and farms, would be severely impacted. This rule is introducing negatives that don't currently exist. Why fix what isn't broken? Except to break it first!

According to the commentaries we have read, the answers to their questions were vague and situationally dependent. That's not good enough!

Please stop the rulemaking timeline now. An independent study needs to be done first. Considering the complaints from Jefferson County after the fact, this current rule is very harmful to our community.

Thank you.

Sincerely,

Jim and Bea Muir

[REDACTED]

[REDACTED]

From: Cathe Muller [REDACTED]
Sent: Thursday, July 05, 2012 6:11 PM
To: Wessel, Ann (ECY)
Subject: New water management proposal

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

NONSENSE!

Many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

Our area is sparsely populated - if flow levels are affected then why aren't densely populated areas showing this problem??

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department. This action does not instill trust in the DOE.

I do not trust the federal government or their agencies any more to have the good of the people and environment their top priority. Probably they are just looking for control to extend their power ... that is their historical legacy and getting worse daily.

Accordingly, I request that you delay the implementation of these rules until such time as you can, beyond a doubt, prove what you are asserting to the affected population - as well as our local elected representatives - that these rules are logical, lawful, and indeed necessary.

Sincerely,
C. M. Muller

[REDACTED]

From: Debi Munro [REDACTED]
Sent: Monday, July 09, 2012 3:15 PM
To: Wessel, Ann (ECY); Nelson, Cynthia (ECY)
Subject: Dungeness water rule

To whom it concerns at the Department of Ecology:

I own an acre of undeveloped land within WRIA 18, in the outskirts of Sequim, which I bought for an investment and hope to sell one day to someone that wants to build a house. I feel very unfortunate to be in this position and am not happy about the new Dungeness water rule that will be imposed on landowners with undeveloped land. One of the things I have been unhappy about during this process over the last few years, is the lack of concrete information by the Department of Ecology on how this will be affecting people like me, bottom line: what is this going to cost a future homebuilder?

After attending the question and answer session before the meeting in Sequim on June 28th, I became aware that a mitigation fee will have to be paid before a building permit will be issued. The fee will range from \$500 to \$3500 with three levels that have not been determined yet. As a past resident of the same area, living on an acre with vegetable and flower gardens, I propose that the middle level of mitigation fee be set at \$1500 for the potential to use that amount of outside watering.

Another issue I am unhappy about is the fact that existing wells will not be metered at all, and existing homeowners are not held accountable at all for the amount of water that they use. A new homeowner would have to be restricted for their outside use while the existing neighbors have free rein over how much water they are allowed to use. This is inequitable and unfair. I encourage the Department of Ecology to implement some kind of standard to existing well owners to conserve on their water usage.

Deborah Munro

From: [REDACTED]
Sent: Monday, July 02, 2012 12:56 PM
To: Wessel, Ann (ECY)
Subject: Fwd: [PAAR] Call to Action re proposed new water regulations

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial.

Thank you for your attention.

Signed,

Terry Neske Owner

Windermere Real Estate

Port Angeles, Sequim Estate & Sequim Sunland Offices

[REDACTED]

[REDACTED]

[REDACTED]

From: Steven Neugebauer [REDACTED]
Sent: Sunday, July 08, 2012 5:27 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

Bellingham Field Office
Attn: Ann Wessel
1440 10th Street, Suite 102
Bellingham, WA 98225-7028

RE: Dungeness [Water Management - Proposed Rule](#)

<http://www.ecy.wa.gov/programs/wr/instream-flows/dungeness-rule.html>

Dear Ms. Wessel:

I have reviewed the “scientific” studies that Ecology is basing its findings for the proposed in Dungeness Water Management Rule (I have also reviewed this proposed rule) and fail to find adequate, peer reviewed studies that suggest Ecology has adequate information on the characteristics of the ground water aquifers in the Dungeness portion of the Elwha-Dungeness Water Resource Inventory (WRIA) 18 to make decisions and determinations on the ground water availability in this area. There have been NO geophysical studies conducted, including electromagnetic inductance, seismic reflection and refraction, or microgravity studies to identify potential sources of ground water, structural controls, and the recharge areas for the aquifers in this area. In fact, none of the studies I have reviewed were actually conducted to identify potential sources of ground water (to identify ground water availability for the entire Dungeness portion of WRIA 18), with most studies simply verifying what is already known, that perennial and seasonal streams are interconnected with ground water and that ground water does typically provide stream or river baseflow when there is no headwater source to maintain the surface water flow.

Considering Ecology is making finite determinations on a resource it knows very little about and the impacts of these determinations on the citizens of this portion of WRIA 18 can be profound and costly, it is unclear why Ecology did not conduct the detailed, comprehensive studies necessary to fully identify all potential ground water resources in this area and conduct the detailed stream and river studies (by licensed specialty geologists) necessary to establish the instream flow rule base lines for the rivers and streams in this portion of WRIA 18. The studies Ecology currently has are inadequate to make any definitive interpretations of the hydrogeology in this area or to determine how ground water withdrawals affect any surface water feature in this area (streams, rivers, ponds, lakes, etc.).

Additionally, I did not observe any hydrogeologic, hydrologic, geomorphologic, fluvial geomorphologic, and other geologic studies that would have had to be conducted on every stream and river to determine what aquifer(s) is providing the base flow for all reaches of these “streams” and rivers and how these aquifers are connected to domestic and agricultural use of the aquifers in this area of WRIA 18. Additionally, what peer reviewed scientific studies were conducted to determine what the minimum instream flows are for each of these streams and rivers? These studies would need to be signed and stamped by the specialty geologist who conducted or oversaw these studies and there would need to be clear evidence that independent peer review had been conducted (truly independent, using USGS or GSA peer review standards).

It is unclear where Ecology derived the flow rates presented Tables II A and B and how these correlate to ground water withdrawals in this portion of WRIA 18 considering virtually nothing is known about the subsurface hydrology in this area and no concerted effort has been made to learn anything about the ground water aquifers in this area or how they actually interact with surface water features. It is clear that Ecology has deviated from its mission in the 1960 when the water supply bulletins were being prepared and studies were being conducted to learn more about the available water supplies (ground water supplies) to a mission of completely inadequate studies to allow Ecology to apply the precautionary principal when establishing restrictions on ground water (and surface water) rights.

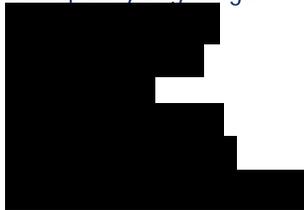
It is clear that Ecology has chosen to rely on the precautionary principal in lieu of conducting sound, comprehensive scientific studies to identify all potential sources of ground water in this area of WRIA 18 and that the agency chooses to remain ignorant of the actual conditions in this area as a convenience to impose these restrictions, rather than funding the studies that are necessary to fully understand the availability of ground water in this area and how this ground water interacts with all surface water features. It is unclear why Ecology believes it has conducted adequate scientific studies, but it is clear that the level of study and the types of study are inadequate to make the determinations the Agency proposes in this Rule.

Ecology must put science and the citizen's rights first and abandon internal policies, agendas, and the precautionary principal completely because incorrect determinations that result in direct harm to the citizens or the loss of use of their property could be considered to be violations of the citizen's civil rights (federal and state) and takings and if these takings are not fully supported by comprehensive scientific study that meets the peer review criteria of the GSA and USGS, the agency could be liable for significantly more costs than the agency realizes, however, these costs are not only to the citizens, but will also be realized in the State trying to defend itself in civil rights actions and in inverse condemnations cases.

Ecology should not proceed until it has conducted due diligence to the maximum extent possible with comprehensive scientific studies that include a full array of geophysical studies.

Sincerely,

Steve Neugebauer
SNR Company
Principal Hydrogeologist



From: Jim Newton [REDACTED]
Sent: Wednesday, June 27, 2012 2:52 PM
To: Wessel, Ann (ECY)
Subject: well rules

Ms. Wessel,
Just one more person tired of not being able to answer my clients (and my own) questions about using a well. Come on! Let's try and rise above typical government procedures and practices. (Make a law and worry about the consequences later). please

Jim Newton
REALTOR®



From: Shirley Nixon [REDACTED]
Sent: Friday, June 29, 2012 9:41 AM
To: Wessel, Ann (ECY)
Cc: Nelson, Cynthia (ECY)
Subject: Comment on Dungeness Rule

This is one of several comments that I intend to submit on the proposed Dungeness Rule. I am sending it before submitting other comments because I would like Ecology to be able to consider the context of a number of comments submitted by others that essentially repeat the views of Clallam County resident Kaj Ahlburg on the issue of mitigation for new water rights in the basin.

In a June 21, 2011 email directed to "Dear Friends", Mr. Ahlburg urged recipients to attend last night's rule hearing, and he listed certain talking points for those desiring to comment. Among them:

"2. Commissioner McEntire has proposed a solution that, while not as good as abandoning the rule entirely (not very likely in the absence of a political change at the top of Ecology) would remove its most serious adverse effects on property owners and the local economy. This would involve the State of Washington, with money appropriated through its capital budget, purchasing the mitigation rights required by the rule from existing senior water rights holders and not charging individual home owners for domestic or garden watering use."

Mr. Ahlburg has espoused a similar view in a recent letter to the editor published in The Peninsula Daily News: that is, that the public and not new water users should bear the cost of providing mitigation for those who wish to expand their water use or develop land in the Dungeness Valley. In other words, Mr. Ahlburg supported spending taxpayer money (state dollars) to subsidize costs for newcomer junior water right holders so that they might enjoy, for free, the uninterrupted use of a scarce public resource: water.

Mr. Ahlburg's position on the mitigation provision in the Dungeness Rule is in striking contrast to his view on other government subsidies. In today's Peninsula Daily News is an article about yesterday's US Supreme Court Ruling on the constitutionality of the Affordable Care Act.

<http://www.peninsuladailynews.com/article/20120629/NEWS/306299986/peninsula-residents-disappointed-related-by-health-law-ruling> Mr. Ahlburg was an individual plaintiff in that lawsuit, reportedly because he objected to the ACA's provision that citizens must, by 2014, obtain health insurance coverage or pay a penalty. Expressing disappointment in the Supreme Court's ruling, he is quoted as saying:

"I believe the federal government should not have the power to make us buy health insurance or any other product. I don't believe we should be forced to do something simply because they want us to subsidize the cost for others."

I for one strongly disagree with Mr. Ahlburg's views that the public should pay for mitigation water on behalf of new water users in WRIA 18. And, it is puzzling to me why someone with such strong opposition to "government subsidies" would suggest to so many of his friends and neighbors that state-supplied mitigation is preferable to the terms of the proposed Dungeness Rule.

Thank you for considering my comments.

Shirley Nixon
PO Box 178



From: [Wessel, Ann \(ECY\)](#)
To: [Inman, Rebecca \(ECY\)](#)
Subject: FW: Shirley Nixon Comments - Set #2 - Dungeness Rule
Date: Tuesday, July 10, 2012 5:27:00 PM

From: Shirley Nixon [REDACTED]
Sent: Monday, July 09, 2012 12:08 PM
To: Wessel, Ann (ECY)
Subject: Shirley Nixon Comments - Set #2 - Dungeness Rule

Dear Ann Wessel,

This is a second set of comments on the proposed Dungeness Rule, Chapter 173-518 WAC. Thank you for considering these along with previous comments emailed to you on June 29, 2012.

Shirley Nixon
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Shirley Nixon Comments on Proposed Dungeness Rule (comment set # 2; July 9, 2012)

- I. **A rule to protect aquatic resources in the Dungeness Basin is vitally needed and long overdue.** If this proposed water management rule fails to be adopted for some reason, Ecology should immediately adopt the instream flow portions of the rule separately. Ecology's failure to thus far adopt instream flow rules for the Dungeness Basin highlights the failure of local planning processes to adequately protect public water resources. Ecology has deferred IF rule-making far too long, wasting precious time trying to appease special interests and garner local political support. Ecology has a statutory duty to establish and enforce resource-protective flow regimes, and should do so despite vocal local opponents who do not understand or who deliberately misconstrue tenets of Western Water Law and Washington's Water Codes.
- II. **Reliable science underlies the rule's prescribed instream flow levels.** The Dungeness is one of most scientifically studied fish-critical basins in Washington State.
 - A. Although some of the studies relied-upon are a decade or more old, there is no credible evidence that instream values or aquifer levels have improved since the studies were conducted. If these studies were repeated today they would likely show that more protective flow levels are needed than set forth in the proposed rule, due to factors such as burgeoning regional development, changed land use patterns, and the effects of climate change.
 - B. The groundwater model developed to predict stream flow impacts from new groundwater withdrawals is an excellent and contemporary peer-reviewed tool, and will be valuable in applying the water availability, impairment, and public-welfare prongs of the RCW 90.03.290 "four-part-test".
- III. **The Economic Analyses fail to adequately quantify the benefits of the proposed rule; these benefits are much higher than enumerated.**

- A. An instream flow rule with appropriate flow protections will increase the financial health of public water systems, increase property values for those served by public water systems, discourage sprawl, improve the ecosystem services and benefits of open space, and encourage water conservation. Such benefits were improperly excluded from the economic reviews.
- B. The benefits of water metering are likewise not enumerated; only costs are shown. Benefits include the ability of the meter-owner to monitor leakage in the water system and thereby reduce costs of pumping, the ability to prove the continuous use of a specific quantity of water if faced with a legal challenge to the user's water right (such as in an adjudication or a civil lawsuit), and the ability to pass along quantity and time-specific water use information to successors in interest.
- C. Certainty of water availability increases the value of property. The economic analyses focus too much on "lost opportunities" to develop rural land, and not enough on how much the value of land with existing water rights or more certain future water rights will increase. As has been shown elsewhere around the West where local water supplies are scarce, lenders who are knowledgeable about water law and the value of water-right certainty (unfortunately First Federal is not among these enlightened lenders, based upon their CEO's recent misguided statements to Ecology about the water rule) are much more likely to finance transactions when written records support the quantity and validity of a water right.
- D. The heightened values of improved public health were improperly devalued or excluded from the economic analyses. The proposed rule encourages new development to tie into a public water system where the availability of such a water source is timely and reasonable. Public water systems are mandated to supply safe drinking water and undergo strict oversight by the Department of Public Health. Thus, not only will the rule encourage newcomers to develop property where safe drinking water is assured, the rule also discourages them from "drilling holes in the ground" that pose a risk of further contaminating existing aquifers.
- E. Larger public water suppliers such as the City of Sequim and Clallam PUD will also benefit from a broader customer base. The City of Sequim, especially, seems poised to be able to gain financially from selling its reclaimed water. Such economic benefits to water utilities were improperly omitted from the economic analyses.
- F. Senior water right holders stand to gain financially in a number of ways under the proposed rule, yet these gains were not adequately quantified. Among the ways that senior water right holders in the basin will economically benefit:
 - 1) Increased property values due to water right certainty in a water scarce basin.
 - 2) The ability to sell all or a portion of their water rights to new users.

From: Shirley Nixon [REDACTED]
Sent: Monday, July 09, 2012 4:49 PM
To: Wessel, Ann (ECY)
Subject: Shirley Nixon Comments - Set #3 - Dungeness Rule

Dear Ann Wessel,
This is my third and final set of comments on the proposed Dungeness Rule, Chapter 173-518 WAC. Thank you for considering them along with previous sets of comments emailed on June 29 and earlier today.
I would be happy to discuss all of these with you and others on the Dungeness Rule team.
Best regards,

Shirley Nixon
[REDACTED]

Shirley Nixon Comments on Proposed Dungeness Rule (comment set #3; July 9, 2012)
This third set of comments includes those specific to certain provisions of the proposed rule.

I. WAC 173-518-030 – Definitions.

- A. “Interruption” is defined as referring to water rights *issued* after the effective date of the rule. The term “issued” should be changed to “acquired”. Permit exempt water groundwater rights are not generally thought-of as “issued”; they are acquired via beneficial use. Such rights should clearly be subject to interruption under the rule, however.
- B. “Water budget neutral” is defined too broadly to include out-of-kind mitigation (non-water) mitigation for new consumptive uses. Remove the “either/or” language and change the definition of “water budget neutral” to that found in the November 2010 draft rule. That is:

“Water budget neutral” means an appropriation for a project where withdrawals of ground water are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use for the project.

Reasoning: In a watershed such as the Dungeness where recovery of ESA-listed salmon is limited by low flow conditions and water quality concerns, there is no practical substitute for water-for-water (bucket for bucket) mitigation for new water uses.

- II. **WAC 173-518-040 (3) –Priority Date of Rule.** I am unaware of any unanimous agreement among members of the Planning Unit that the priority date of the Dungeness Instream Flows will be the date of rule adoption. If there is no such agreement, then the priority date of the flows should be back-dated as prescribed in RCW 90.03.080(2)(a).

- III. **WAC 173-518-060 – Metering.** Metering and recording of all water use in the basin is important to successful water management, and this section should be expanded to include metering and reporting to Ecology of all future as well as existing water uses. This section should also be strengthened to clearly state that each water user is responsible for keeping and producing on request all historical metering records applicable to each water right.
- IV. **WAC 173-518-070 & WAC 173-518-075– Future groundwater appropriations and Mitigation Plans.** I disagree with this and future sections’ implications that it is possible to prospectively “mitigate” for new permit exempt groundwater uses through purchasing mitigation credits from a Water Exchange or elsewhere. A new use is either permit exempt (meaning no interaction with Ecology before putting water to use), or it is not. The only way the rule’s mitigation provisions would make legal sense to me in the context of an exempt well would be if the project proponent is required to submit a water right application under RCW 90.03.260, as allowed under the Ground water Code: *PROVIDED, FURTHER, That at the option of the party making withdrawals of groundwaters of the state not exceeding five thousand gallons per day, applications under this section... may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.* RCW 90.44.050. Only upon receiving such a water right application would Ecology then be able to consider a tendering of mitigation. Ecology would apply the four-part-test, and issue a permit with appropriate mitigation conditions for the desired amount of domestic water. Just as with any other water right permit, the priority date would be the date of the water right application. A development schedule would be one of the conditions shown on the permit, a metering provision would be required and not optional, and the permittee would later return and “prove up” the amount of actual beneficial use.

Given case law, Attorney General Opinions, and my reading of the RCW’s, I believe that the only way that Ecology can legitimately – via rule - prevent new exempt well users from using a full measure of up to 5000 gallons of water per day would be to prohibit new exempt wells entirely and close the watershed. Assuming that a basin is closed, Ecology may then require by rule that each prospective new water user --- even a small domestic user --- submit a water right application and a mitigation plan to be processed under RCW 90.03.290. If such an application is received without a mitigation plan or the applicant refuses to mitigate, then the permit application must be denied. If the permit application passes muster via the groundwater model with the mitigation tendered by the applicant, then a new permit, and later a certificate for an amount less than 5000 gallons per day may be issued.

- V. **WAC 173-518-080 – Reserves of Water for Domestic Use & WAC 173-518-085 – Maximum Depletion Amounts.** I strongly disagree with the creation of such reserves, and disagree with Ecology’s citation to statutory OCPI to justify them. It is contrary to the public interest to continue to deplete flow-degraded rivers and streams – especially in fish-critical basins. Furthermore, it is bad enough that elsewhere in the proposed rule are reliances upon the assumption that indoor domestic water use will consume only 15 gallons of water per day, and that “septic recharge” will adequately mitigate for the rest of the daily water withdrawn. It is even more troubling that Ecology would adhere to this arbitrary consumptive quantity figure when guessing how much to “debit” a Reserve. The rule should eliminate all references to Reserves, and close the affected streams instead.
- VI. **WAC 173-518-090 – Future Maximum Allocation from the Dungeness Mainstem.** It is important to include a flow regime designed to protect high flows, which have their own important ecological functions. This provision should remain in the rule.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington State Habitat Office
510 Desmond Drive SE, Suite 103
Lacey, WA 98503

RECEIVED

July 10, 2012

JUL 12 2012

DEPT OF ECOLOGY
BELLINGHAM FIELD OFFICE

Ann Wessel
Washington State Department of Ecology
1440 10th St., Suite 102
Bellingham, WA 98225

Dear Ms. Wessel:

The National Marine Fisheries Service (NMFS) is pleased to support the proposed water management rule for the Dungeness River by the Washington Department of Ecology. Undertaken with the assistance of a number of partners, including state agencies, Tribes, local government and water-users, the new rule will establish regulatory minimum instream flows for the Dungeness and nearby streams that support recovery of federally-listed species while providing for current and future water needs of local water users.

We believe this is a good example of a coordinated approach to a difficult issue. Congratulations on completing the proposed rule. We look forward to continued collaboration on this and other water management activities around the state.

The NMFS staff for Dungeness water discussions is Randy.Mcintosh@noaa.gov, 360-534-9309.

Sincerely,

Steven W. Lino
Washington State Director
for Habitat Conservation



From: [REDACTED]

Sent: Sunday, July 08, 2012 12:02 PM

To: Wessel, Ann (ECY); [REDACTED]
[REDACTED]
[REDACTED]

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

John and Morgan Nolan

Sequim, WA.

Deborah Norman
[REDACTED]
[REDACTED]

July 8, 2012

Ann Wessel
Washington State Department of Ecology
[REDACTED]

Dear Ms. Wessel,

I am writing to present the following written comments and questions on WRIA 18.

I am a full time resident of Sequim. I am a Real Estate Broker and business owner in downtown Sequim. I believe respecting our environment and protecting our natural resources is imperative. I have endeavored to better understand how this proposed water rule and new mitigation process will benefit my family, my clients and the community which I serve.

As a result of attending the June 28th meeting I have concerns with the numerous issues brought to the table regarding the legitimacy of the CBA, the lack of the rule's constitutional integrity, and the overall benefit this plan will actually provide for the residents of our communities after its implementation. DOE could not make any guarantees this new water rule, once implemented, would enhance, protect, improve or add an ounce of water to our existing water situation. It appears that this rule, which is designed to serve the environment and the people, may not have been thoroughly researched, accurately prepared or ethically processed. Also, I have to ask, Is this rule being pushed through without a true voice from those it is clearly intended to serve? Time appears to be the factor here. I believe DOE needs more time to ethically reevaluate more verified data obtained by experienced area-knowledgeable experts. It is my experience that a small modification or correction in just one area of an evaluation can vastly change the final outcome. Governing a natural resource for the people is a huge responsibility, and one definitely worthy of whatever amount of time is needed to get it right. Moving forward ignoring many legitimate concerns voiced by experts in the field just seems reckless when dealing with such an important resource as our water. The internal behaviors by DOE recently brought to light in regards to the removal and replacement of key player Hoff was altogether disappointing. It is a sobering slap in the face to the people and a perfect example of cronyism. Any attempt at this point by DOE to try to exonerate their exposed action would only appear as a governmental whitewash at best. I believe if DOE and our elected officials choose to look away while WRIA 18 moves forward without heeding the cry of constituencies, the advice of local area experts, and the written comments made by DOE's own former analyst Tryg Hoff, then the people by default have embraced a government control driven regime. If no action is taken to make this right by those sworn to defend the people against internal governmental corruption, and WRIA 18 is adopted *in this manner*, our Commissioners and Elected Officials will also be painted with the strokes of DOE's unscrupulously dipped brush here in Clallam County. As area property owners personally experience the ramifications of this rule and realize for themselves the lack of due process and the history of its manipulated inception, it will bleed further distrust into our local government leaving disgruntled property owners with no choice than to seek legal remedies which will open up the entire rule process & protocol to future litigation. Which we understand will target non-constitutional issues as well. So DOE, now is the right time for you to correct this, not later.

I would ask that you take time to complete the work on this before re-approaching us with a governmentally controlled sunny forecast, only a chance of a brighter future, and costly water mitigation fees moving over the horizon. Beyond the issues of mitigation fees on the homeowner, isn't the protection of this natural resource far too valuable to allow a flawed system to move forward without bona fide proof of success. After all, this is our water we're talking about. Can DOE provide better odds to the people than the present uncertainty this will/can even help our

water flows? Some still may want this to go through quickly believing it will genuinely protect our natural resources; others do not, because like me, they now recognize serious problems and have become concerned there may be more hidden snakes in the boot. However, NONE would choose to create a fiasco that will have to be legally mopped-up later with our taxpayer dollars.

The over simplistic responses by DOE on June 28th to questions on loss of property values only solidified my concerns of inaccurate analysis for our area.

My comments and questions on this subject are stated below.

1. When evaluating the loss of property values here in Clallam County, were local real estate experts (professional real estate brokers, lenders and appraisers) contacted for evaluation / opinion / information on this matter?

2. If not, Why? *It would seem prudent that a panel of local experts in those specialized fields would prove beneficial to your genuine analysis of the impact to local property value.*

Scenario/question: I have two one acre land listings, BOTH in the same neighborhood, BOTH equal size and view. BOTH are in your area of purchase interest, both offering you a little bit of land to grow your own veggies and some flowers when you retire here. #1 offers exterior irrigation share, but #2 does not. Both are currently assessed by the county at the same value and both are offered to you at the same price...

3. Which one would you choose to purchase?

Respectfully Ms. Wessel, any competent buyer will choose property #1. *Leaving our Seller#2 who has no share for their property to try and compete with those properties who do. Seller#2, when they eventually do obtain an offer will most likely receive a low one to compensate for the loss of exterior watering.*

This is a very simplified demonstration of how loss of property value can develop. WRIA 18 is a catalyst that will change the dynamic of property value here in our area. DOE has casually deemed there will be little or no loss of property value. Dealing with property value firsthand I 100% disagree. It will affect property owners and property value. Several recent experiences prove we are already discussing loss of perceived value with informed buyers on sales of properties in the WRIA 18 affected areas. Unlike DOE, as a Realtor®, I cannot excuse myself from taking the time to appropriately disclose to buyers who may be affected by this rule, because that would be illegal. Furthermore doing so while in a position of public service would be morally perverse and grossly self-serving.

The above scenario only utilized an exterior irrigation water share as an example of decreased property value. However...

4. Do you believe that a domestic water share would be less important to the average real estate buyer than an exterior share? ...and thus a mitigation fee for domestic use would present less of an impact to property value?

Using normal methods of evaluation it is clear that having mitigation fees to secure domestic water use does not remove the negative effect WRIA 18 will have on property values.

5. How do you calculate this in order to openly attest to the people that WRIA 18 will NOT affect their property values because they can mitigate domestic water use? *This seems casually and dangerously presumptuous—that every affected owner here in our community will have a handful of money to reconcile their domestic water use with the DOE at the time it is needed. This will certainly be a problem for many and inadvertently impose an unjust disadvantage on lower income residents.*

6. What financial restitution will be implemented by the DOE (or other government agency) to provide for those owners who cannot afford to pay for this new water mitigation fee?

7. What about recompense for owners of existing wells, which in good faith, have already been paid for? Many sellers paid all the required fees and costs to have a well drilled and to be lawfully permitted per current county regulation in order to secure their future potable water use – what about them? Will they be given fair restitution, or will they be required to stand in line with the rest who have never invested in drilling, improving or permitting a currently approved well?

8. If there will be fair restitution for those owners mentioned in questions 7 & 8, will the taxpayers be funding it?

Lastly in regard to values, I would like to propose that you explore the decrease of value, sales and build-outs we've seen on vacant Sequim City Lots from the time the City Impact Fees were imposed on those properties. Current local property statistics like these render area specific data which would better assist in the overall representation of property value for this area. Sequim being a high senior retirement area presents a very different dynamic of value than Port Angeles, Port Townsend and surrounding areas.

So, there is a lot of work still to be done before a plan like WRIA 18 should be approved.

#1. DOE needs to immediately address and correct obvious internal integrity issues and processes.

#2. The CBA must be thoroughly re-evaluated and include pertinent local data by reputable, knowledgeable, local experts in field.

#3. Doe must re-present to the people an analytically cohesive plan which more accurately addresses the direct effects of WRIA 18 for our area dynamic AND includes a reasonable allotment of time for those in the affected area to review, make comments and vote.

On such a critical issue as this, I am challenging the DOE to respond to the legitimate concerns of the people in order to demonstrate and establish a genuine partnership with our community.

From: Anne Notman [REDACTED]
Sent: Monday, July 09, 2012 3:57 PM
To: Wessel, Ann (ECY)
Subject: Proposed limitations on water rights

Dear Ms. Wessel,

It appears to us that the Department of ecology is barging ahead with water limitations that will probably be detrimental to the economy of the area. We think it would be more prudent to do a thorough economic study which shows no or minor economic impact on the area.

Thank you for your attention.

William and Anne Notman
Sequim Wa.

From: Tom and Jindy [REDACTED]
Sent: Thursday, July 05, 2012 12:06 PM
To: Wessel, Ann (ECY)
Subject: Water usage/Rules Proposed

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

I am very concerned that the DOE's proposal on limitations on usage of water will also eventually impact the citizens of Port Angeles. The city does not need the state government/DOE telling its people how to manage their water. The city can deal with its citizens, concerning water usage, in its own way.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

Virginia A. O'Donnell
Port Angeles

From: Harley Oien [REDACTED]
Sent: Monday, July 09, 2012 10:12 AM
To: Wessel, Ann (ECY)
Subject: Support for DOE policy on Dungeness Water Resources (WRIA 18)

Dear Ms Wessel,

I support DOE efforts to create a sane use of water resources in the Dungeness River watershed. See my attached note of support. Primary reference is the Clallam County Commissioners letter sent to you recently.

Harley M. Oien
[REDACTED]

9 July 2012

To: Washington State Department of Ecology

Subj: Support for DOE Policy on Dungeness Water Issues

I STRONGLY support your efforts to establish a sensible water resources policy for the Dungeness (WRIA 18) Watershed. A policy strongly resisted by local developers, realtors and pandering politicians.

Reference the Clallam County Commission letter of support for "business as usual" on those water resources submitted to DOE.

My comments:

Let me see if I have this right. Dick Pilling = develop every square foot of earth, pave it over and paint trees on the buildings. Pilling supports Commissioner's letter.

My interpretation of the tenor of the Commissioner's letter is as follows: "My expert says there is no connection between water in wells and water in the creeks and rivers." It would be nice if Commissioner McEntire identified his expert so that it can be determined if he/she/it is truly an expert or just a figment of Commissioner McEntire's imagination. This unidentified expert argument is continually repeated by those who ignore facts. Use of this tactic should not be allowed sway of the issue.

The Commissioner's letter continues, "But, just in case someone vocally disagrees (like in court action) there may be a connection of well water to creek/river water, so if there is a connection you (DOE) have to prove it before I will agree to limit use of water from the creeks"

In the meantime I (McEntire, Pilling, developers lobby) will grunt and snort in our efforts to exploit the environment to the fullest, just like we have done in the past with development and its impact on the Salmon. After all we are doing just fine without all those damned fish.

Wetlands are another good example of current policy. Locally, we have successfully ignored the law and have fully developed some of the swampiest, worthless wetlands and filled them in with pit run to create very livable homes, albeit a bit damp in the rainy season.

Furthermore, the massive dumping of garbage and toxics into the streams and the Strait shows not visible effects to my use of those resources, afterall the water is still blue and my yacht moves through it, same as in the good old days before those environmentalist nuts started all of that ballyhoo.

Burning all that leftover "wood junk" in the forests after tree harvest will not impact future tree growth, besides my expert assures me that trees are not plants and do not need replenishment of soil nutrients.

We deserve 'lectricity for our computer games. After we get that unregulated utility electric plant up and running, we figure it is Grandfathered and no court will reverse our actions.

The Commissioner's letter concludes: However, if all of that subterfuge won't work for my interests, then let's conduct a baseless economic study with phony assumptions and string it out for years and years, until no one cares about this issue anymore, while we make "best and most profitable development use" of the land. We were here first and we have the right to exploit our land any way we want to.

Summary of Commissioner's letter: THE FUTURE BE DAMNED. YOU BETCHA! WE WON'T BE HERE THAT LONG ANYWAY!!

So Sad,

Harley M. Oien



From: Keith Olson [REDACTED]
Sent: Wednesday, July 04, 2012 1:28 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Water Rule

If the Clallam County commissioners are questioning the integrity of the Department of Ecology's(DOE) economic analysis of the Dungeness Water Rule how could you possibly go any further until an independent economic analysis is done?

You can't!

Most private property owners on the Olympic Peninsula have, for the past several years, questioned the integrity of your agency. It is about time that we now see our elected officials doing the same.

Trust me; this is going to be a much more common occurrence statewide when your agency oversteps its jurisdiction in the future. And as taxpayers we cannot afford to pay for both voodoo science and questionable economic facts from the DOE.

Before your department attempts to impose any further restrictions on ANY land within Clallam County OR Washington state you had better get your ducks in a row before coming to us with more of this gobbledegook!

I demand that the Department of Ecology stop the rulemaking timeline until an independent economic study is done.

Hopefully with a new governorship we will be able to trim both your staff and your funding.

**Keith Olson
Olympic Peninsula Resident**

From: Dennis Schultz [<mailto:dschultz@waypoint.com>]
Sent: Sunday, July 08, 2012 3:14 PM
To: Wessel, Ann (ECY); Wessel, Ann (ECY)
Subject: WRIA18 Rule Comments 173-518

As President of the Olympic Stewardship Foundation, I represent over 400 families that reside or have property on the North Olympic Peninsula.

Once again the Department of Ecology is trying to impose a water rule on the citizens of a watershed that they don't want or need. They are misusing their power to enact a Rule that is flawed, in the same way they did in WRIA17 (WAC 173-517).

The Cost Benefits and Least Burdensome analysis and Small Business Economic Impact Statement are flawed, incomplete and incorrect. The DOE employees who wrote this proposed law and accompanying 'justification' reports, have ignored many of the actual costs of the rule and exaggerated the benefits to economically justify passing the rule. These employees have shown a complete disregard for professional honesty and integrity. Consideration should be given to the future of their employment in a state agency. These analyses are flawed just like the analyses prepared for the WRIA17 Rule 173-517. Attached are our (Olympic Stewardship Foundation) comments on WAC 173-517 (WAC 173-5-7 DAS), analyses of the documents (SBEIS Analysis DAS, Benefit Analysis DAS), and DOE's response to our petition to DOE to repeal the WRIA17 Rule (DOE Response WRIA17). Also attached is our petition to the Legislative JARRC Committee to review the rule and the Committee's reply (WA Petition SBEIS 12-30-9 and JARRC Reply 6030-100001). We agree with the letter to DOE by Dick Pilling, Port Angeles Business Association, and the comments presented by Kaj Ahlburg at the public comment meeting 6/28/12.

The problems with the proposed stream flow levels in WAC Rule 173-518 are the same as those raised in the Letter about WAC 173-518 from Bill Riley, President, Washington Realtors, to Cynthia Nelson, DOE, dated January 10, 2010. (See attached 'Comments on Dungeness Instream Flow Rule.')

RCW 90.54.020 (1) states that "*Uses of water for domestic, stock watering, ... irrigation, ... are declared to be beneficial.*" Ecology's attempt to discriminate against outdoor water uses in the future is directly inconsistent with this statement. The definition of 'domestic use' as the only beneficial use of a well is in direct contradiction with the RCW. Again a repeat of the error in WAC 173-517. We disagree with DOE rewriting the State Water laws - see the attached copy of the State Attorney General's Opinion (2009_AOG Permit Exempt Opinion) with regard to DOE restricting the use of the legal 'Permit Exempt Well' water allowances.

In "Findings – Purpose 1997 c 360 § 1" in connection with RCW 90.03.255 the legislature found that "*It is the goal of this act to strengthen the state's economy while maintaining and improving the overall quality of the state's environment.*" The draconian restrictions on water use your draft rule in WRIA17 have reduced land values,

caused lost jobs, restricted agricultural growth and construction. Now you are planning on imposing similiar restrictions on the Dungeness Watershed.

Section 90.82.005 of the RCW states that *“The purpose of this chapter is to ... provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development.”* And Section 90.82.010 states that *“The local development of these plans serves vital local interests by placing it in the hands of people who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources.”* And finally, in “Findings -- 2003 1st sp.s. c 4 § 1” in connection with this RCW 90.82.040 the legislature stated that *“The legislature declares and reaffirms that a core principle embodied in chapter 90.82 RCW is that state agencies must work cooperatively with local citizens in a process of planning for future uses of water by giving local citizens and the governments closest to them the ability to determine the management of water in the WRIA or WRIs being planned.”* In 2005 the residents of WRIA17 stopped DOE from implementing a terrible water rule. At that time Joe Stohr, representing the Director of DOE promised WRIA17 that DOE would work closely with the community in writing a new rule. DOE was repeatedly asked in the WRIA17 Watershed Planning Group meetings, "When would DOE work with the community?" DOE repeated ignored these requests and wrote the rule without any community input. Now they have ignored the requirement in formulating WAC 173-518.

Please cancel this proposed WAC and rewrite it, jointly with the community it affects.

Dennis Schultz
President
Olympic Stewardship Foundation
250 N. Jacob Miller Rd.
Port Townsend, WA 98368
360-379-0338
dschultz@waypt.com



WATER—WATER RIGHTS—WELLS—INTERLOCAL COOPERATION ACT—Interpretation of statutes exempting certain withdrawals of groundwater from permitting requirements, and authorizing the Department of Ecology to withdraw waters from appropriation

1. The statutory exemption from the permitting requirement for use in watering lawns and noncommercial gardens is not included within the exemption for domestic use.
2. The Department of Ecology lacks the authority to impose lower or different limits on exempt withdrawals of groundwater than are provided in statute by “partially withdrawing” the waters from additional appropriation.
3. The authority of the Department of Ecology to withdraw waters from new appropriations applies to both permitted and permit-exempt uses of groundwater.
4. The Interlocal Cooperation Act is not an independent source of agency authority.

September 21, 2009

The Honorable Gregory L. Zempel
Kittitas County Prosecutor
205 West Fifth, Room 213
Ellensburg, WA 98926-3129

**Cite As:
AGO 2009 No. 6**

Jay J. Manning, Director
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Dear Prosecutor Zempel and Director Manning:

By two letters previously acknowledged, you both have requested our opinion on several questions related to groundwater. Prosecutor Zempel initiated this request by asking for our opinion on four questions. Director Manning subsequently posed three additional, but related, questions. Combining your questions into a single list, very slightly paraphrasing them, and placing them into the order in which we respond, your questions are:

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1. Does RCW 90.44.050 restrict groundwater withdrawals without a permit for lawn and noncommercial gardening purposes to a subpart of the 5,000 gallons per day allocated to single or group domestic use, and thus also limit those domestic uses of the exemption to a remainder?
2. If RCW 90.44.050 does not limit groundwater withdrawals for lawn and noncommercial gardening purposes to a subpart of the 5,000 gallon-per-day limit imposed upon single or group domestic use, may the Department of Ecology implement a rule imposing such a limit by permanently adopting the third version of WAC 173-539A, the Upper Kittitas Groundwater Rule?
3. Does the Department of Ecology have authority under RCW 90.54.050(2) and related statutes to withdraw groundwater of the state from new appropriations for permitted uses and permit-exempt uses under RCW 90.44.050, but allow an exception for new appropriations that are mitigated in an equal or greater amount by existing trust water rights?
4. If the answer to question 3 is "yes," does the Department of Ecology have authority, under RCW 90.54.050(2) and related statutes, to withdraw groundwater from new permit-exempt appropriations under a condition that withdraws water for new exempt uses above a certain quantity from appropriation, unless the amount of use above this quantity is mitigated in equal or greater amount by a trust water right?
5. Does RCW 90.44 preempt the local legislative authority of a county from setting a numeric gallon-per-day limit or group-use limit upon the lawn and noncommercial gardening exemption from permitting?
6. Does RCW 90.44.050 preempt a county from using its available authority to limit new residential uses of groundwater (including both permitted and permit-exempt uses) proposed as part of a subdivision or building application to a specified quantity, unless the consumptive amount of use above this quantity is mitigated in an equal or greater amount? For purposes of this question, consumptive use is the amount of water by which the withdrawal would reduce flows or levels of any surface water.
7. Could the Department of Ecology and a county impose such a limit by entering into an agreement?

Prosecutor Zempel posed questions 1, 2, 5, and 7 above, while Director Manning posed questions 3, 4, and 6.

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BRIEF ANSWER

State law allows for certain withdrawals of groundwater that are exempt from its general permitting requirement. These “exempt withdrawals” can be used for certain limited purposes, including water for lawns and noncommercial gardens not exceeding one-half acre, and for single or group domestic uses not exceeding 5,000 gallons per day. State law also provides the Department of Ecology with the authority to withdraw water from further appropriation if the department lacks sufficient information upon which to make sound decisions. Based upon these provisions of state law, we conclude:

1. In response to your first question, the use for watering lawns and noncommercial gardens is not included within the 5,000 gallon-per-day limit for single or group domestic uses.
2. In response to both your second and fourth questions, we conclude that the Department of Ecology lacks the authority to impose lower or different limits on exempt withdrawals by “partially withdrawing” the waters of the applicable area from additional appropriations.
3. We also conclude, in response to your third question, that the authority of the Department of Ecology to withdraw water from new appropriation applies to both permitted and permit-exempt uses. This means that the withdrawal of water from further appropriation has the effect of precluding new exempt withdrawals, except that new appropriations that are mitigated for any consumptive use in equal or greater amount by existing trust water rights may be authorized.
4. We are unable to respond to your fifth and sixth questions because they inquire about an issue pending in litigation.
5. Finally, in response to your seventh question, we conclude that the Interlocal Cooperation Act is not an independent source of agency authority, and that therefore the authority for Ecology and the county to enter into an agreement is limited based upon their statutory authority.

BACKGROUND

As a general rule, anybody who wants to use public groundwater must receive a permit from the Department of Ecology (Ecology) before drilling or digging a well or withdrawing water. RCW 90.44.050. The statute imposing this requirement also recognizes an exception for certain withdrawals of water that are exempt from this permitting requirement. A second statute allows Ecology to “withdraw various waters of the state from additional appropriations” based

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upon Ecology's conclusion that it lacks sufficient information and data to make sound decisions. RCW 90.54.050(2). That is, Ecology may determine that no new appropriations of water rights may occur until it acquires sufficient information to support its decision-making process. RCW 90.54.050(2). Your questions relate to both of these statutes.

You both pose your questions with regard to groundwater in an area referred to as "Upper Kittitas County," an area that includes Cle Elem, Roslyn, and the surrounding area on the east slope of the Cascades to the King County line. This region forms a part of the headwaters of the Yakima River Basin, in which an action seeking a general adjudication of surface water rights has been proceeding for over thirty years. *Dep't of Ecology v. Acquavella*, 100 Wn.2d 651, 652-53, 674 P.2d 160 (1983). Although that litigation concerns surface water, Ecology has also had an administrative moratorium on the issuance of any groundwater permits in effect throughout the Yakima basin for a number of years. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 6, 43 P.3d 4 (2002). We understand that this moratorium remains in effect, and that Ecology has not issued any new groundwater permits in the Yakima River Basin since 1993. *See id.* Until recently, that moratorium was not applied to withdrawals that are exempt from the general permit requirement. RCW 90.44.050. Such exempt withdrawals¹ were, accordingly, the only method available for obtaining a new appropriation of groundwater in the Upper Kittitas.

Several years ago a private organization petitioned Ecology to preclude the drilling of any new exempt wells. The petition asked Ecology to withdraw the waters of the Upper Kittitas from further appropriation, citing insufficient information regarding the availability of groundwater in the area. Ecology rejected this proposal, and instead agreed with Kittitas County to a series of interim measures, short of withdrawing the basin from all new appropriations. Under that agreement, new residential construction could continue to take place, obtaining water using exempt withdrawals. Those withdrawals, in some cases, would be restricted to using less water than the 5,000 gallons per day that are exempted from permitting under RCW 90.44.050.

Ecology and the county entered into a Memorandum of Understanding describing these interim measures. To implement that agreement, Ecology adopted WAC 173-539A as an emergency rule. Wash. St. Reg. 08-15-020 (July 8, 2008; adopting first version of WAC 173-539A as an emergency rule). An administrative rule adopted on an emergency basis is valid for only 120 days, and expires at the end of that period. RCW 34.05.350(2). When the first set of rules expired, Ecology adopted a second set of emergency rules on the same subject, also denominated as WAC 173-539A. Wash. St. Reg. 08-23-012 (Nov. 6, 2008; adopting second

¹ Our discussion of necessity uses forms of the word "withdraw" in very different ways. The word can be used to mean the act of removing groundwater through a well; however, RCW 90.54.050(2) authorizes Ecology to "withdraw various waters of the state from additional appropriations" using the word in the sense of making water no longer available for appropriation. In order to respond to your questions, we must discuss both withdrawal of water from the ground, and withdrawal of groundwater from availability for appropriation. Context makes the differing uses of the word clear.

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version of WAC 173-539A as an emergency rule). When those rules, in turn, expired at the end of 120 days, Ecology adopted a third version of WAC 173-539A, also as an emergency rule. Wash. St. Reg. 09-07-068 (Mar. 13, 2009; adopting third version of WAC 173-539A as an emergency rule). Like the first two versions, the third version of WAC 173-539A restricted, but did not prohibit, the use of water from new exempt withdrawals for residential purposes. WAC 173-539A-055.

At the time Prosecutor Zempel posed his questions, the third version of WAC 173-539A, was in effect. Prosecutor Zempel attached copies of them to his opinion request, and his questions specifically reference the approach to groundwater in the Upper Kittitas set forth in those rules.

Director Manning's questions are based on changed circumstances. After Prosecutor Zempel posed his questions, the third version of the emergency rules expired. Ecology adopted a fourth version of WAC 173-539A, which was dramatically different than the prior three. Wash. St. Reg. 09-15-107 (July 16, 2009; adopting fourth version of WAC 174-539A as an emergency rule). The fourth version states: "Beginning on the effective date of this rule, all public groundwaters within the upper Kittitas County are withdrawn from appropriation." WAC 173-539A-040 (fourth version, adopted July 16, 2009). Rather than continuing to authorize new exempt withdrawals under certain restrictions, as provided in the first three versions of WAC 173-539A, the fourth version withdraws the groundwater of the basin from new appropriation. This rule thus sets forth a moratorium against new exempt withdrawals within the Upper Kittitas for the duration of the fourth version of the emergency rules. "No new appropriation or withdrawal of groundwater shall be allowed, *including those exempt from permitting . . .*" WAC 173-539A-040 (emphasis added). The fourth version of the rule provides an exception to the prohibition against new uses for "water budget neutral projects" using a "trust water right program to offset the consumptive use associated with the proposed new use of groundwater." WAC 173-539A-050(2) (fourth version, adopted July 16, 2009). Like the earlier versions, however, the fourth version of WAC 173-539A is also an emergency rule, and we understand that consideration of permanent options continues. Director Manning's questions assume the fourth version of the rule as background, but ask about other options that might be considered.²

Accordingly, we consider both sets of questions together, because they seek our views regarding the legal options open to both Ecology and the county. Our role in providing this opinion is to address the legal issues you have asked about, but not attempt to resolve a specific dispute or comment on particular facts. We understand that your discussion of available options has continued while we have considered your opinion requests. The full range of legal options

² On July 31, 2009, Ecology adopted a fifth version of the rule that maintained the provisions of the fourth version discussed in this opinion, but added definitions and a clarification regarding the applicability of the rule. Wash. St. Reg. 09-16-075 (July 31, 2009).

you ask about remain appropriate for our consideration, even though the approach Ecology has taken in temporarily adopting emergency rules has evolved.³

ANALYSIS

- 1. Does RCW 90.44.050 restrict groundwater withdrawals without a permit for lawn and noncommercial gardening purposes to a subpart of the 5,000 gallons per day allocated to single or group domestic use, and thus also limit those domestic uses of the exemption to a remainder?**

No. RCW 90.44.050 provides four different purposes for which groundwater may be withdrawn without a permit. Each of those purposes is a separate exemption from the permit requirement. Use of water for lawns and noncommercial gardens not exceeding a half-acre in area does not count against the 5,000 gallon-per-day limit for single or group domestic use.

Prosecutor Zempel posed this question based on the third version of Ecology's administrative rules. That version included a provision that limited the amount of water that could be used for both domestic uses, and lawn and noncommercial garden use, to 5,000 gallons per day. WAC 173-539A-050(3) (third version).

Water law in Washington is premised upon the doctrine of "prior appropriation." *Campbell & Gwinn*, 146 Wn.2d at 7-8. "Under the prior appropriation doctrine, a water right may be acquired where available public water is appropriated for beneficial use, subject to existing rights." *Id.* at 8 (citing RCW 90.03.010). This is true of both surface water and groundwater. *Id.* "Subject to existing rights, all natural ground waters of the state . . . are hereby declared to be public ground waters and to belong to the public and to be subject to appropriation for beneficial use under the terms of this chapter and not otherwise." *Id.* (quoting RCW 90.44.040).

Statutes governing rights to groundwater date from legislation enacted in 1945. In part, those statutes extend prior law governing rights to surface water to the appropriation and beneficial use of groundwater. RCW 90.44.020. Applications for permits for rights to groundwater are accordingly governed by the same principles as applications for rights to surface water. "Thus, before a groundwater permit may be issued to a private party seeking to appropriate groundwater, Ecology must investigate and affirmatively find (1) that water is available, (2) for a beneficial use, and that (3) an appropriation will not impair existing rights or (4) be detrimental to the public welfare." *Campbell & Gwinn*, 146 Wn.2d at 8 (citing RCW 90.03.290).

³ Because both the third and the fourth versions of WAC 173-539A are relevant to different questions, we attach both versions for ease of reference, and indicate which version we cite in our analysis below.

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Your questions relate to a statutory exception to this requirement for a permit to withdraw groundwater:

After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: *EXCEPT, HOWEVER*, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: *PROVIDED, HOWEVER*, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: *PROVIDED, FURTHER*, That at the option of the party making withdrawals of groundwaters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.

RCW 90.44.050.⁴

Under this statute, exempt withdrawals can be used for four different purposes. As explained in a recent appellate decision:

The overall scheme of [RCW 90.44.050] is to require a permit except for certain “small withdrawals.” The 1945 legislature defined a “small withdrawal” as (1) any amount of water for livestock, (2) any amount of water for a lawn or for a noncommercial garden of a half acre or less, (3) not more than five thousand

⁴ We recently summarized this statute as stating four points:

- (1) a general rule requiring a water right permit for any withdrawal of public groundwater;
- (2) a proviso excepting identified categories of withdrawals from the general rule—i.e., allowing them without a permit;
- (3) a second proviso allowing Ecology to require persons making withdrawals excepted from the permit requirement to provide information about the means and amounts of such withdrawals; and
- (4) a third proviso giving persons, authorized by the statute to withdraw less than 5,000 gallons a day without a permit, the option to obtain a water right through the generally applicable permit process.

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gallons per day for domestic use, and (4) not more than five thousand gallons per day “for an industrial purpose.”

Kim v. Pollution Control Hearings Bd., 115 Wn. App. 157, 160, 61 P.3d 1211 (2003).

In his first question, Prosecutor Zempel asks whether withdrawals of water for the second listed purpose, “the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area,” are included within the 5,000 gallon-per-day limit for the third listed purpose, “single or group domestic uses.” RCW 90.44.050. The Court of Appeals’ explanation of the statute in *Kim*, quoted above, would seem to answer this question in the negative. As the court explained, the statute allows four separate exempt uses, and the use for watering lawns or noncommercial gardens is not limited by volume. *Kim*, 115 Wn. App. at 160.

Kim involved using water from an exempt withdrawal for purposes of a commercial nursery. *Id.* at 158. The question before the court was whether this constituted “an industrial purpose” within the meaning of the fourth-listed purpose in the statute. *Id.* at 160. We therefore do not rest our answer to the first question on *Kim* alone, since the quoted passage from that case is not the court’s holding.

It does, however, correctly reflect the ordinary language of the statute. As we explained in an earlier opinion, of the four categories of exempt withdrawals, “the third (single or group domestic use) and the fourth (industrial use) are expressly limited to withdrawals of less than 5,000 gallons a day.” AGO 2005 No. 17, at 4. We contrasted this phrasing with the statutory description of the exemption for stock watering, noting the absence of any language limiting the amount of water. AGO 2005 No. 17, at 4. The same is true for the exemption for watering lawns and noncommercial gardens. RCW 90.44.050. Our earlier conclusion that the 5,000 gallon-per-day limitation for domestic and industrial uses does not apply to stock watering would accordingly apply equally as well to the watering of lawns and noncommercial gardens. AGO 2005 No. 17, at 4.

Prosecutor Zempel’s question raises a slightly different issue, however.⁵ It asks not merely whether the 5,000 gallon-per-day limitation could be applied to the watering of lawns and gardens, but whether one exempt use is a subset of another exempt use. Prosecutor Zempel asks whether the use for watering lawns and noncommercial gardens comes within the exemption for domestic use, such that it would count toward the 5,000 gallon-per-day domestic limit. From a certain perspective, it would make sense to think of the watering of a lawn or garden as a type of domestic use of water. The word “domestic” can be used to mean, “connected with the supply,

⁵ We note that the question of whether the 5,000 gallon-per-day limit does or does not apply to stock watering is currently at issue in a pending case. “The attorney general has, since statehood, consistently declined to issue opinions on questions already in litigation before the courts, or where litigation is imminent, believing that in such a case the proper tribunal to resolve the question is the court itself.” AGLO 1971 No. 129, at 2. As noted in text, however, your question is subtly, but significantly, different than the question of whether the 5,000 gallon-per-day limit applies to stock watering. Not only do you ask about a different exemption, but you ask whether one exemption is subsumed within another.

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service, and activities of households and private residences,” a concept that could include watering the lawn or garden. *Webster’s Third New International Dictionary* 671 (2002). The Legislature listed lawn and garden watering as a separate exemption from domestic uses, however, and so we cannot reasonably conclude that one is included within the other. To do so would render the exemption for lawn and garden watering meaningless, and the Legislature is presumed not to include unnecessary language within a statute. *McGinnis v. State*, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004). We therefore conclude that the exempt use for watering lawns and gardens is not limited to some portion of the 5,000 gallons per day that are allowed for domestic use.

This does not mean that the exemption for watering lawns and noncommercial gardens is unlimited. While the statute does not limit the volume of an exempt withdrawal of waters for this purpose, it does limit the acreage to which the water can be applied. The statute permits the use of an exempt withdrawal “for the watering of a lawn or of a noncommercial garden *not exceeding one-half acre in area.*” RCW 90.44.050 (emphasis added).

2. **If RCW 90.44.050 does not limit groundwater withdrawals for lawn and non-commercial gardening purposes to a subpart of the 5,000 gallon-per-day limit imposed upon single or group domestic use, may the Department of Ecology implement a rule imposing such a limit by permanently adopting the third version of WAC 173-539A, the Upper Kittitas Groundwater Rule?**

No. Prosecutor Zempel asks question 2 in the context of the third version of Ecology’s administrative rules. This question requires us to determine whether RCW 90.54.050(2) gives Ecology the authority to impose lower or different limits on the amount of exempt withdrawals of groundwater, rather than precluding new exempt withdrawals entirely. RCW 90.54.050(2) gives Ecology the authority to withdraw waters from availability for further appropriation, and not the authority to modify the statutory provisions addressing exempt withdrawals set forth by the Legislature in RCW 90.44.050.

The third version of the rule continued to allow new exempt withdrawals, but restricted the use of water differently than does RCW 90.44.050. As described in response to the first question, RCW 90.44.050 makes four types of uses of groundwater exempt from permitting requirements, limiting two of those types of uses to not more than 5,000 gallons of water per day and limiting a third based on acreage. *Kim*, 115 Wn. App. at 160. The third version of the rules restricted exempt withdrawals differently, including counting the use of water for purposes of lawns and noncommercial gardens within an overall limit on all domestic residential water use at a particular parcel. WAC 173-539A-050(3) (third version).

Ecology relied upon RCW 90.54.050(2) as its authority to restrict new exempt withdrawals without banning completely all new exempt withdrawals. WAC 173-539A-020 (third version). Prosecutor Zempel asks whether Ecology had the authority to do this.

The statute reads:

In conjunction with the programs provided for in RCW 90.54.040(1), whenever it appears necessary to the director in carrying out the policy of this chapter, the *department may by rule* adopted pursuant to chapter 34.05 RCW:

(1) Reserve and set aside waters for beneficial utilization in the future, and

(2) *When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available.* Before proposing the adoption of rules to withdraw waters of the state from additional appropriation, the department shall consult with the standing committees of the house of representatives and the senate having jurisdiction over water resource management issues.

Prior to the adoption of a rule under this section, the department shall conduct a public hearing in each county in which waters relating to the rule are located. The public hearing shall be preceded by a notice placed in a newspaper of general circulation published within each of said counties. Rules adopted hereunder shall be subject to review in accordance with the provisions of RCW 34.05.240.

RCW 90.54.050 (emphasis added).⁶

Ecology described its action in the third version of the rules as a “partial withdrawal” of the basin from new appropriations. WAC 173-539A-010(2) (third version); *see also* WAC 173-539A-020 (third version). However, the import of RCW 90.54.050 is that some water that was available for appropriation before Ecology acts will no longer be available after Ecology acts. RCW 90.54.050(2) (authorizing Ecology to withdraw water from “additional appropriations,” not to restrict the size of appropriations). This is not what happened under Ecology’s “partial withdrawal” approach. Both before and after Ecology adopted the third version of its rule, characterized as “partially withdrawing” the Upper Kittitas basin, new exempt withdrawals could commence. The only difference was how many wells it would take, and how many parcels would need to be developed, to pump the same amount of water. *See* AGO 1997 No. 6, at 6–7 (“Applying the permit requirement should not turn on an artificial choice of drilling several holes in the ground rather than one, where the withdrawal is for a single purpose.”). Ecology’s “partial withdrawal” did not “withdraw” the waters from availability for appropriation at all; it merely changed the amount of water available for particular parcels, potentially dividing the water among more parcels. All else being equal, it may be that Ecology’s approach would result

⁶ The statute cross-referenced in RCW 90.54.050 directs Ecology to adopt administrative rules to, among other things, “develop and implement . . . a comprehensive state water resources program which will provide a process for making decisions on future water resource allocation and use.” RCW 90.54.040(1).

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in a reduction in the overall amount of new groundwater uses in an area. However, RCW 90.54.050(2) does not give Ecology the authority to reduce groundwater use by whatever means it determines; rather, the statute provides to Ecology the authority to withdraw groundwater from appropriation.

This is not to say that exempt withdrawals are exempt from regulation. As discussed more fully in the context of your third question, RCW 90.44.050 merely exempts certain uses of groundwater from the *permitting* requirement. RCW 90.44.050 (merely exempting such uses from “this section”). Exempt withdrawals are not exempt from other regulatory authority found elsewhere in the water code. This principle, however, should not obscure the distinction between withdrawing water from new appropriations, on the one hand, and regulating the allocation of water among users, on the other. A water right obtained through a permitting process or by way of exempt use are equivalent. RCW 90.44.050 (right obtained through exempt use is “a right equal to that established by a permit”). We do not address Ecology’s regulatory authority applicable to all such rights after a water right is acquired, but we do conclude that Ecology lacks the authority to regulate the volume of a water right that may be obtained through the use of exempt withdrawals.

The “partial withdrawal” concept is also inconsistent with RCW 90.54.050 in that the statute authorizes the withdrawal of groundwater “*when sufficient information and data are lacking to allow for the making of sound decisions.*” RCW 90.54.050(2) (emphasis added). The lack of available information to make sound decisions relates to the decision-making process in which Ecology would ordinarily engage when evaluating applications for water rights, or in deciding to permanently close the basin. Other than in the context of exempt withdrawals, for which no permit is required, Ecology would ordinarily evaluate the availability of water and the potential for a new appropriation to impair an existing right, among other factors. *Campbell & Gwinn*, 146 Wn.2d at 8. The Legislature would not likely have intended to authorize Ecology to regulate the amount of water that may be withdrawn based upon a *lack* of information relevant to the subject, when the Legislature has exempted those withdrawals from the permitting process in the first place. RCW 90.44.050; *see also State v. Alvarez*, 128 Wn.2d 1, 11, 904 P.2d 754 (1995) (the court’s fundamental objective in construing a statute is to ascertain and carry out the intent of the Legislature).

Ecology’s approach of “partially withdrawing” waters from availability for appropriation might be defended based upon an argument that its authority to “withdraw various waters of the state from additional appropriations” (RCW 90.54.050(2)) necessarily includes the lesser authority to restrict those withdrawals. *See Johnson v. Horizon Fisheries, LLC*, 148 Wn. App. 628, 637, 201 P.3d 346 (2009) (concluding that a trial court’s authority under CR 41(d) to stay all proceedings included the lesser power to stay part of the proceedings); *see also State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 680, 409 P.2d 458 (1965) (“because the greater includes the lesser” the state’s constitutional authority to classify cities and enlarge their limits by annexation includes the power to delegate annexation decisions to cities). The “partial withdrawal” contemplated by the third version of Ecology’s rules—that is, establishing lower limits on exempt withdrawals than those set forth in RCW 90.44.050—is not something lesser than, but

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included in, a complete withdrawal. Here, the third version of WAC 173-539A did not close the area in question to further appropriation, fully or partially. The rules merely limited the amounts of exempt withdrawals without any limit on the total amount of water withdrawn.

Finally, our task is not merely to construe RCW 90.54.050 in isolation; we must harmonize it with RCW 90.44.050. "The construction of two statutes shall be made with the assumption that the Legislature does not intend to create an inconsistency. Statutes are to be read together, whenever possible, to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes." *State ex rel. Peninsula Neighborhood Ass'n v. Dep't of Transp.*, 142 Wn.2d 328, 342, 12 P.3d 134 (2000) (alteration in original) (citation and internal quotation marks omitted). RCW 90.54.050 and RCW 90.44.050 are best harmonized by concluding that RCW 90.54.050 authorizes Ecology to "withdraw various waters from the state from additional appropriations" (RCW 90.54.050(2)), but does not imply the authority to impose different limits upon exempt withdrawals than are stated in RCW 90.44.050.

3. **Does the Department of Ecology have authority under RCW 90.54.050(2) and related statutes to withdraw groundwater of the state from new appropriations for permitted uses and permit-exempt uses under RCW 90.44.050, but allow an exception for new appropriations that are mitigated in an equal or greater amount by existing trust water rights?**

Yes. Ecology has the statutory authority to withdraw groundwater in an area entirely from appropriation if it lacks sufficient information and data to allow for the making of sound decisions regarding water rights. This includes both new permitted and permit-exempt uses. Ecology may, at the same time, issue permits for new water rights or authorize new exempt withdrawals where the new appropriations of water are mitigated by existing trust water rights.

Director Manning asks about Ecology's authority to withdraw the Upper Kittitas from further appropriation of groundwater under RCW 90.54.050(2).⁷ This statute authorizes Ecology to withdraw water from availability for further appropriation when it lacks sufficient information and data upon which to make sound decisions. RCW 90.54.050(2).

Director Manning asks whether the withdrawal of water from new appropriations would apply to exempt uses, in addition to permitted uses of groundwater. It is readily apparent that if Ecology withdraws water from new appropriation under RCW 90.54.050(2), no new permits can be issued authorizing new appropriations. RCW 90.54.050(2) (referring to withdrawing waters from further appropriation). As discussed above, however, RCW 90.44.050 exempts certain uses of groundwater from the permitting requirement, and so we must consider whether the withdrawal of waters from appropriations applies to new exempt withdrawals.

⁷ RCW 90.54.050 is set forth in full in response to your second question.

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The plain language of RCW 90.44.050 makes clear that the withdrawal of water from further appropriation under RCW 90.54.050(2) applies to new exempt uses.⁸ RCW 90.44.050 begins by requiring a permit from Ecology before anybody can use groundwater, or drill or dig a well. The statutory provision for exempt uses is stated as an exception to that rule. RCW 90.44.050. The statute, however, exempts the exempt withdrawals only from “the provisions of *this section*.” RCW 90.44.050 (emphasis added). That is, exempt withdrawals are only exempted from the requirement of obtaining a permit; they are not made exempt from other laws governing groundwater rights. RCW 90.44.050. Furthermore, if Ecology exercises its authority under RCW 90.54.050, the water is withdrawn “from additional appropriations.” RCW 90.54.050(2). The right to an exempt withdrawal of groundwater is a water right equivalent to a right obtained through a permit. RCW 90.44.050; *see also Campbell & Gwinn*, 146 Wn.2d at 9 (referring to party making an exempt withdrawal as an “appropriator” of a water right). Since RCW 90.44.050 treats an exempt use as an “appropriation” of water, we therefore conclude that Ecology’s exercise of its authority to withdraw water from additional appropriation under RCW 90.54.050(2) affects future exempt wells in the same way as it affects other future appropriations of water rights.

Director Manning also asks whether a rule that withdraws water from further appropriation could also authorize new exempt withdrawals if the new withdrawals are mitigated in an equal or greater amount by existing trust water rights. This aspect of the question addresses the fourth version of Ecology’s rules for the Upper Kittitas. They provide that even though the waters of the basin have been withdrawn from availability for further appropriations, certain “water budget neutral” appropriations may still be made if the amount of consumptive use is offset by mitigation from trust water rights. WAC 173-539A-050 (fourth version).

Ecology is authorized by statute to acquire water rights by various means, other than condemnation, and apply them to a “trust water rights” program. RCW 90.38.020. The purpose of the program is to use the waters of the Yakima basin more efficiently, “to better satisfy both present and future needs for water in the Yakima river basin.” RCW 90.38.005(1)(c). The program makes water available for new uses by encouraging more efficient use of water by the holders of existing water rights. A “trust water right” is statutorily defined to mean “that portion of an existing water right, constituting net water savings, that is no longer required to be diverted for beneficial use due to the installation of a water conservation project that improves an existing system.” RCW 90.38.010(3). The term also includes any other water right acquired by Ecology under the authority of RCW 90.38 for the management of a trust water rights program in the Yakima River Basin.⁹ RCW 90.38.010(3). Trust water rights can be exercised if Ecology determines that “no existing water rights, junior or senior in priority, will be impaired[.]” RCW 90.38.040(5)(a).

⁸ RCW 90.44.050 is set forth in full in the course of our response to the first question.

⁹ RCW 90.38 is limited in its application to the Yakima River Basin. RCW 90.38.005(3).

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The rule provides that a person desiring to use groundwater shall either apply to Ecology for a permit, or if seeking to commence a permit-exempt use, submit a request for a determination that the proposed exempt use would be "water budget neutral." WAC 173-539A-050 (fourth version). In either case, the applicant would need to identify one or more water rights that would be placed into the water right trust program in order to offset the consumptive use that would result from the proposed new use of water, or show that the state already holds a suitable trust water right that has been designated for the proposed use. WAC 173-539A-050 (fourth version); *see also* WAC 173-539A-060 (fourth version) (describing expedited process of trust water rights applications). In other words, the fourth version of the rule contemplates new uses of water, either through a permit or through an exempt well, if that new use is fully mitigated by an applicable trust water right.

Application of the trust water rights program is not inconsistent with Ecology's decision to withdraw the waters from availability for new appropriation under RCW 90.54.050(2). The use of a trust water right to compensate for the effect of a new use of water, either based upon a permit or using an exempt withdrawal, results in no net impact or effect on appropriated water rights. It is therefore consistent with the purpose of the withdrawal authority in RCW 90.54.050(2) to preserve the status quo when insufficient information exists to make sound decisions. We, accordingly, answer this portion of Director Manning's question by concluding that Ecology may authorize new permitted or permit-exempt uses of water that are fully mitigated for consumptive use by trust water rights, even if Ecology has withdrawn the applicable area's waters from new appropriation under RCW 90.54.050(2).

- 4. If the answer to question 3 is "yes," does the Department of Ecology have authority, under RCW 90.54.050(2) and related statutes, to withdraw groundwater from new permit-exempt appropriations under a condition that withdraws water for new exempt uses above a certain quantity from appropriation, unless the amount of use above this quantity is mitigated in equal or greater amount by a trust water right?**

Our response to the fourth question is dictated by our answer to the second question. Director Manning poses the fourth question with reference to the fourth version of the rules, but otherwise focuses upon the same core issue as the second question. As we concluded above, Ecology's authority to withdraw water from new appropriations does not extend to imposing lower or different limits on the uses of water using new exempt withdrawals. This question assumes the authority to establish lower limits by requiring that any amount above such a limit be mitigated.

Director Manning asks not only about authority derived from RCW 90.54.050(2), but directs our attention generally to "related statutes" as well. For example, RCW 90.54.050(1) authorizes Ecology to "[r]eserve and set aside waters for beneficial utilization in the future[.]" RCW 90.54.040(1) authorizes Ecology to implement a comprehensive state water resources program, in order to make decisions on water resource allocation and use. We have identified nothing in these statutes that would alter our analysis and conclusions.

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5. **Does RCW 90.44 preempt the local legislative authority of a county from setting a numeric gallon-per-day limit or group-use limit upon the lawn and noncommercial gardening exemption from permitting?**
6. **Does RCW 90.44.050 preempt a county from using its available authority to limit new residential uses of groundwater (including both permitted and permit-exempt uses) proposed as part of a subdivision or building application to a specified quantity, unless the consumptive amount of use above this quantity is mitigated in an equal or greater amount? For purposes of this question, consumptive use is the amount of water by which the withdrawal would reduce flows or levels of any surface water.**

We must respectfully decline to respond to your fifth and sixth questions, because they raise an issue currently pending in litigation. It is the longstanding policy of this office to decline to provide opinions on matters that are the subject of litigation. *See supra* note 5.

Both questions ask whether counties are preempted from imposing limits on water usage. Prosecutor Zempel poses question 5 narrowly, focusing on whether a county may impose a numeric limit on the number of gallons per day that may be withdrawn for purposes of watering a lawn or noncommercial garden. Director Manning frames question 6 more broadly, asking whether a county may limit new residential uses of groundwater, both permitted and permit-exempt, under its general police powers or under its Growth Management Act or other authorities, such as the authority to act upon subdivision or building applications. The essential issue raised by both questions is whether state law precludes counties from regulating water usage by assigning to Ecology the authority to regulate water rights and by exempting certain withdrawals from the permitting process. In this regard, Director Manning calls our attention to, among other principles, the Growth Management Act, including a provision under which county comprehensive plans are to address the protection of surface water and groundwater resources. RCW 36.70A.070(5)(c)(iv).

This issue is raised in a case currently pending before Division III of the Washington Court of Appeals, in which the county is a party. *Kittitas County v. Kittitas County Conserv.*, No. 271234 (Wash. Ct. App. Div. III May 16, 2008). That case is before the court on review of a decision of the Growth Management Hearings Board for Eastern Washington. *Kittitas County Conservation Ridge v. Kittitas County*, No. 07-1-0015 (Final Decision And Order, Mar. 21, 2008). The board, in that case, found that the Growth Management Act provides counties with, not only the authority, but the responsibility to protect the quality and quantity of water. It concluded that the county's development regulations failed to adequately protect water quality and quantity, regarding the way in which it allowed exempt withdrawals to be used in new development. According to the board, the county did not comply with the Growth Management Act for this reason. *Id.* at 30. The county has appealed from the board's decision, arguing that its authority to regulate the use of water is preempted by state law. Opening Brief Of Kittitas County, at 29-30, *Kittitas County*, No. 271234 (Apr. 3, 2009) (citing RCW 90.44.050); *see also* Kittitas County Farm Bureau's Brief, at 2-3, *Kittitas County*, No. 271234 (June 25, 2009)

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(arguing that Ecology has the exclusive authority to regulate water rights); Opening Brief Of BIAW, at 28–29, *Kittitas County*, No. 271234 (Apr. 23, 2009) (same). In response, the opposing parties contend that statutes governing Ecology’s authority to regulate water rights, including RCW 90.44.050 governing exempt wells, can be harmonized with the Growth Management Act and the authority it grants to counties to protect water resources. Brief Of Respondents Kittitas County Conservation, Ridge, and Futurewise, at 29-33, *Kittitas County*, No. 271234. They argue that the county not only had the authority, but the duty, to preclude excessive withdrawals of groundwater through exempt withdrawals. *Id.* at 32-33.

Questions five and six thus present an issue that is already pending before the Court of Appeals. For this reason, we respectfully decline to address these questions.

7. Could the Department of Ecology and a county impose such a limit by entering into an agreement?

The Interlocal Cooperation Act authorizes state and local agencies to enter into agreements to jointly perform any function that those agencies have the authority to perform. RCW 39.34.030(1), .080. Such agreements, however, are not a new source of authority, but merely provide a method of exercising authority that both contracting parties already have by operation of law. As we have observed: “A crucial prerequisite to an interlocal agreement is that each party must independently have the authority to enter into the services which are the subject of the agreement” AGO 2004 No. 2, at 4 n.9. As our analysis regarding questions 2 and 4 demonstrates, Ecology lacks the authority to establish different limits on exempt withdrawals than those set forth in RCW 90.44.050. Whether the county has the authority to establish such limits independently is a matter presently in litigation. *See* Questions 5, 6 *supra*.

We trust that the foregoing will be useful to you.



ROB MCKENNA
Attorney General

A handwritten signature in cursive script that reads "Jeffrey T. Even".

JEFFREY T. EVEN
Deputy Solicitor General
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wros
enclosure

WSR 09-15-107**EMERGENCY RULES****DEPARTMENT OF ECOLOGY**

[Order 09-07 -- Filed July 16, 2009, 8:31 a.m. , effective July 16, 2009, 8:31 a.m.]

Effective Date of Rule: Immediately.

Purpose: This fourth emergency rule establishes a partial withdrawal of ground water within a portion of WRIA 39 in Kittitas County, Washington. The partial withdrawal and restrictions are designed to prevent new uses of water that negatively affect flows in the Yakima River and its tributaries. The withdrawal allows for continued development using the ground water exemption or new permits when the new consumptive use is mitigated by one or more pre-1905 water rights held by ecology in the trust water right program of equal or greater consumptive quantity.

Statutory Authority for Adoption: RCW 90.54.050.

Other Authority: Chapter 43.27A RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Yakima Basin is one of the state's most water-short areas. Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, and during 2004 when USBR prorated May 10, 1905, water rights. The town of Roslyn's municipal supply and another one hundred thirty-three single domestic, group domestic, and municipal water systems throughout the basin are subject to curtailment when USBR prorates the May 10, 1905, water rights. Water supply in the Yakima Basin is limited and overappropriated. Western portions of Kittitas County are experiencing rapid growth and this growth is being largely served by exempt wells. Exempt wells in this area may negatively affect the flow of the Yakima River or its tributaries.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0;

Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 16, 2009.

Jay J. Manning

Director

OTS-2512.2

Chapter 173-539A WAC

UPPER KITTITAS EMERGENCY GROUND WATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. The purpose of this rule is to withdraw from appropriation all unappropriated ground water within upper Kittitas County during the pendency of a ground water study. New ground water withdrawals will be limited to those that are water budget neutral, as defined in this rule.

□

NEW SECTION

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for exempt wells where needed.

In 1999, ecology imposed an administrative moratorium on issuing any ground water permits for new consumptive uses in the Yakima basin, which includes Kittitas County. That moratorium did not apply to exempt withdrawals. In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County. Ecology later invoked the dispute resolution process under the MOA. The MOA was terminated by ecology on July 1, 2009.

□

NEW SECTION

WAC 173-539A-030 Definitions. The definitions provided below are intended to be used only for this chapter.

"Ecology" means the department of ecology.

"Exemption" or "ground water exemption" means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Water budget neutral project" means an appropriation or project where withdrawals of ground water of the state are proposed in exchange for discharge of at least an equivalent amount of water from other water rights that are placed into the trust water right program.

□

NEW SECTION

WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County. Beginning on the effective date of this rule, all public ground waters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of ground water shall be allowed, including those exempt from permitting, except as provided in the following sections.

□

NEW SECTION

WAC 173-539A-050 Water budget neutral projects. (1) Persons proposing to use ground water shall apply to ecology for a permit to appropriate public ground water or, if seeking to use the ground water exemption, shall submit to ecology a request for determination that the proposed exempt use would be water budget neutral.

(2) As part of a permit application to appropriate public ground water or a request for a determination of water budget neutrality, applicants shall identify one or more water rights that would be placed into the trust water right program to offset the consumptive use associated with the proposed new use of ground water.

(3) Applications for public ground water or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:

(a) A suitable trust water right is already held by the state in the trust water right program; and

(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.

(4) No new exempt withdrawal under RCW 90.44.050 may be commenced unless ecology has approved a request for determination that the proposed exempt use would be water budget neutral. Such a request must comply with subsections (2) and (3) of this section.

□

NEW SECTION

WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights. (1) RCW 90.38.040 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new surface water right, a request for a determination of water budget neutrality, or a ground water right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.

(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:

(a) Review the application or request to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.

(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

□

NEW SECTION

WAC 173-539A-070 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

□

NEW SECTION

WAC 173-539A-080 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

□

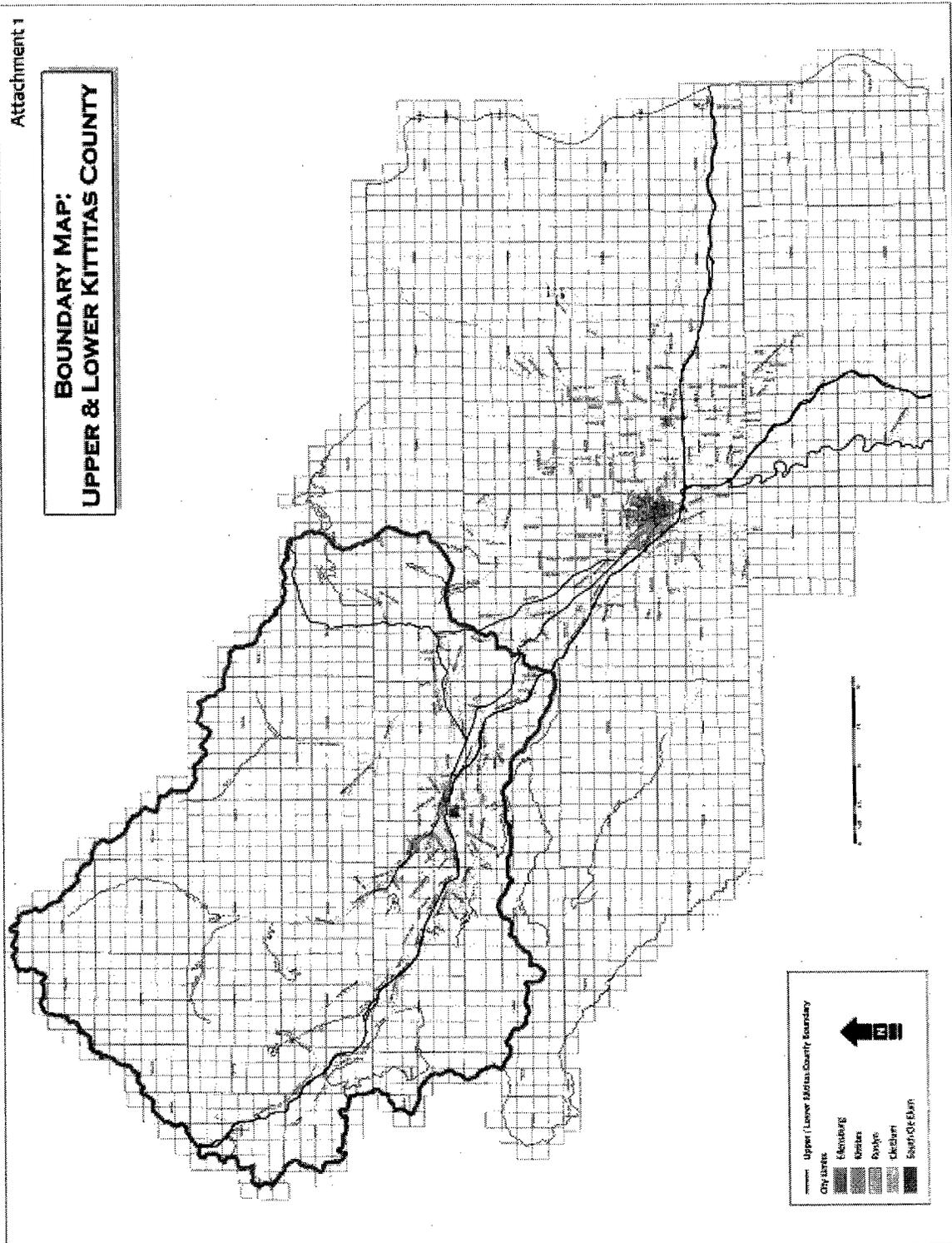
NEW SECTION

WAC 173-539A-090 Repeal. If ecology intends to lift the administrative moratorium on issuing any ground water permits for new consumptive uses in the Yakima basin, it shall prior to doing so issue a notice repealing this chapter.

□

NEW SECTION

WAC 173-539A-990 Appendix 1 -- Map of upper Kittitas County boundaries.



□

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WSR 09-07-068**EMERGENCY RULES****DEPARTMENT OF ECOLOGY**

[Order 08-11 -- Filed March 13, 2009, 8:57 a.m. , effective March 13, 2009, 8:57 a.m.]

Effective Date of Rule: Immediately.

Purpose: This third emergency rule establishes a partial withdrawal of ground water within a portion of WRIA 39 in Kittitas County, Washington for the purpose of implementing a memorandum of agreement (MOA) entered into with Kittitas County on April 7, 2008. The partial withdrawal and restrictions are designed to minimize the potential for a new use of water that negatively affect flows in the Yakima River and its tributaries and does this in a way that minimizes effects on economic development.

Statutory Authority for Adoption: RCW 90.54.050.

Other Authority: Chapter 43.27A RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Yakima Basin is one of the state's most water-short areas. Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, including the town of Roslyn's municipal supply. Water supply in the Yakima Basin is limited and over-appropriated. Western portions of Kittitas County are experiencing rapid growth and this growth is being largely served by exempt wells. Exempt wells in this area may negatively affect the flow of the Yakima River or its tributaries.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 12, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 13, 2009.

Jay J. Manning

Director

OTS-2053.3

Chapter 173-539A WAC

UPPER KITTITAS GROUND WATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. (1) This chapter implements the exempt well management measures identified in the memorandum of agreement between Kittitas County and the department of ecology (ecology) by creating a partial withdrawal of ground water within upper Kittitas County that limits the use of the ground water exemption (RCW 90.44.050) for residential purposes. This chapter also requires measuring of new uses for residential purposes of ground water under the exemption within all of Kittitas County.

(2) Ecology designed the partial withdrawal and related requirements to minimize the adverse effects on flows in the Yakima River and its tributaries, while minimizing adverse effects on the local economy.

(3) Based on technical research, Kittitas County may consider the potential for impairment of existing water rights, along with any other environmental impacts, during review of certain land use applications. The county may require mitigation or other ways to manage risks to reduce or eliminate impacts.

(4) The requirements in this chapter do not apply to areas outside of Kittitas County. Other than the metering requirement of WAC 173-539A-070, the requirements of this chapter apply only in Upper Kittitas County.

□

NEW SECTION

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for exempt wells where needed.

In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology then rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County, which this chapter implements by establishing a partial withdrawal and other requirements.

□

NEW SECTION

WAC 173-539A-030 Definitions. The definitions provided below are intended to be used only for this chapter.

"Applicant" as used herein includes the owner(s) of the parcels that are the subject of the application.

"Application" as used in WAC 173-539A-050 and 173-539A-055 means a land use application to Kittitas County requesting:

- A subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

"Common ownership" means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between the applicant and any owner of a proximate parcel. A joint development arrangement must involve significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of the parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, and construction (include road construction), and agreements for common use of structures, facilities, lands, water, sewer and other infrastructure, covenants, building materials, or equipment.

"Ecology" means the department of ecology.

"Exemption" or **"ground water exemption"** means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"Group use" means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development and all parcels that are proximate and held in common ownership with the proposed new residential development where use of the exemption commenced or will commence within five years of the date the current application was filed.

"Hydrogeologic assessment" means the report prepared by a licensed hydrogeologist and/or others approved by Kittitas County in consultation with ecology addressing the elements identified in WAC 173-539A-060.

"Lands" refers to both singular "land" and plural "lands."

"MOA" or "Memorandum of Agreement" means the "Memorandum of Agreement between Kittitas County and the State of Washington, Department of Ecology Regarding Management of Exempt Ground Water Wells in Kittitas County" of April 7, 2008.

"New residential development" means any division of land involving an application that vested after July 8, 2008.

"New use of the ground water exemption" means a use begun on or after July 8, 2008.

"New use for residential purposes" means any new use of the ground water exemption for a new or additional residential purpose associated with an existing or new structure.

"Parcel" means any parcel, land, tract or other unit of land.

"Proximate" means all parcels that either:

- Have any common boundary;
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet at the nearest point.

"Residential purposes" means all domestic use and/or lawn and noncommercial garden use of water on the parcel(s) in question under the ground water exemption. A dwelling unit is not required for a residential purpose to be present. Domestic use is a separate and distinct purpose of use from lawn and noncommercial garden use. Each use may have a different commencement date under the exemption. For purposes of this chapter all use limits refer to combined domestic and lawn and noncommercial garden use. All use of the lawn and noncommercial garden use may not exceed a one-half acre as required in RCW 90.44.050 whether such use is in connection with a group domestic use or a single domestic use.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Vested" means that under the applicable land use laws an application is considered complete such that the application shall generally be reviewed under laws existing at the time of vesting, unless a special exception may apply. All applications for plat approvals including preliminary plat approvals which were approved by Kittitas County prior to July 8, 2008, are considered to be vested.

□

NEW SECTION

WAC 173-539A-050 New use of the exemption for new residential developments in upper Kittitas County. (1) This section applies only to applications for residential developments that vest or vested on or after July 8, 2008.

(2) Any new residential development within upper Kittitas County must not use more than 5,000 gallons per day (gpd) from the ground water exemption for residential purposes. When filing an application for a new residential development, the applicant must file a sworn statement with ecology and Kittitas County that:

(a) Identifies all parcels that are part of the residential development;

(b) Identifies all joint development arrangements with respect to proximate parcels; and

(c) States that to the best of the applicant's knowledge and belief all such parcels and arrangements have been identified. If the application is approved, such statement shall be recorded against all such parcels in which the applicant holds a legal or equitable property interest. The residential development includes all parcels that are the subject of the application or a larger group use.

(3) For use of the 5,000 gpd exemption limit for a new residential development, ecology and the county will assume each parcel will use 1,250 gpd for residential purposes, unless a condition is recorded as a covenant to use a lesser amount of the group withdrawal. If no exempt lawn or noncommercial garden watering will occur, and a covenant so restricting such use is placed on the parcel, ecology and the county will assume each parcel will use a maximum of 350 gpd unless a condition is recorded as a covenant to use a lesser amount of the group withdrawal.

□

NEW SECTION

WAC 173-539A-055 New uses of the exemption for residential purposes in upper Kittitas County. (1) **New uses for residential purposes on parcels created after March 28, 2002, in upper Kittitas County:**

(a) **Parcels less than ten acres** created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:

(i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;

(ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel; or

(iii) 1,250 gpd.

(b) **Parcels ten acres and greater** created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:

(i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;

(ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel; or

(iii) An average rate of use of 125 gpd per acre up to a maximum of 5,000 gpd.

(c) This section does not restrict an owner from using more water through other legal permitted water rights.

(2) New uses for residential purposes on parcels created on or before March 28, 2002, in upper Kittitas County:

(a) Parcels created on or before March 28, 2002, must use no more than 5,000 gpd for all residential purposes.

(b) Such use may be further restricted by covenants or conditions on water use set forth in the plat, a land use approval, or a public water system approval, or by any other legal restriction that applies to such use.

□

NEW SECTION

WAC 173-539A-060 Hydrogeologic assessment. (1) If Kittitas County requires a hydrogeologic assessment, the hydrogeologic assessment must be:

(a) Submitted to Kittitas County and ecology in the form of a written report, signed by a licensed hydrogeologist and/or others approved by Kittitas County in consultation with ecology; and

(b) Available as part of the project review under the State Environmental Policy Act.

(2) The hydrogeologic assessment may be based on available existing information or other new information as required by Kittitas County.

(3) The required elements of the report are as follows:

(a) Scope of the proposal including all of the following:

- The location;
- Proposed water source(s);
- Water use amounts; and
- The timing of the proposed use.

(b) General description including all of the following:

- The local geologic, hydrogeologic, and hydrologic setting;
- Identification of surface water and ground water features;

- Water sources;
- Recharge/discharge characteristics; and
- Surface water and ground water interactions.

(c) Site-specific description.

(d) Inventory and description of all of the following:

- All state issued surface water and ground water rights;
- All state issued surface water and ground water claims; and
- Wells located within a one-year and five-year area of pumping influence.

(e) Identification and description of existing surface water or ground water withdrawals that may be adversely affected by the proposed use of the ground water exemption.

(f) The preparer's written professional opinion on the potential of the proposal to cause impacts to the natural and built environment including surface water flows.

(g) A statement of the report's limitations regarding its intended use, including scope, extent, and available data.

□

NEW SECTION

WAC 173-539A-070 Measuring and reporting water use. (1) For all uses of the ground water exemption for residential purposes within upper Kittitas County that commence after July 8, 2008, or within the remainder of Kittitas County that commence after the effective date of this rule, a source meter must be installed at the point of withdrawal, in compliance with such requirements as prescribed by Kittitas County and WAC 173-173-100.

(2) Metering data must be collected and reported within thirty days of the end of the recording period to Kittitas County and ecology. The following table shows the recording periods and the due dates for each metering report:

Recording Period	Report Due No Later Than:
October 1 - March 31	April 30
April 1 - June 30	July 30
July 1 - July 31	August 30
August 1 - August 31	September 30
September 1 - September 30	October 30

□

NEW SECTION

WAC 173-539A-080 Expedited processing of trust water applications and new water right applications associated with trust water rights. (1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new surface water right or a ground water right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application must identify an existing trust water right or pending application to place a water right in trust, if that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application must be for domestic, group domestic, lawn or noncommercial garden, and/or municipal water supply purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water rights.

(3) If an application for a new water right is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application is eligible for expedited processing ecology will do the following:

(a) Review the application to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit.

(c) Condition each permit to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

□

NEW SECTION

WAC 173-539A-090 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology and Kittitas County may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve

voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

(3) To mitigate for potential impact of an exempt use to the total water supply available and to avoid potential future regulation in favor of senior water rights, ecology encourages exempt users to participate in a mitigation program through the Yakima Basin Pilot Water Bank or to obtain a senior water right.

(4) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

□

NEW SECTION

WAC 173-539A-100 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

□

NEW SECTION

WAC 173-539A-110 Regulation review. (1) The exempt well management requirements in this chapter will be reviewed after the upper county ground water study is complete or within five years of rule adoption whichever occurs first and may be revised as part of a long-term management program. Ecology and Kittitas County intend to develop the long-term management program after they have completed a ground water study that focuses on portions of Kittitas County not fully addressed by the current USGS ground water study of the Yakima River Basin.

(2) Ecology may review this chapter whenever:

(a) New information is available;

(b) A change of condition occurs;

(c) Statutory changes warrant the review; or

(d) Reviews described in WAC 173-539A-060 show changes are necessary.

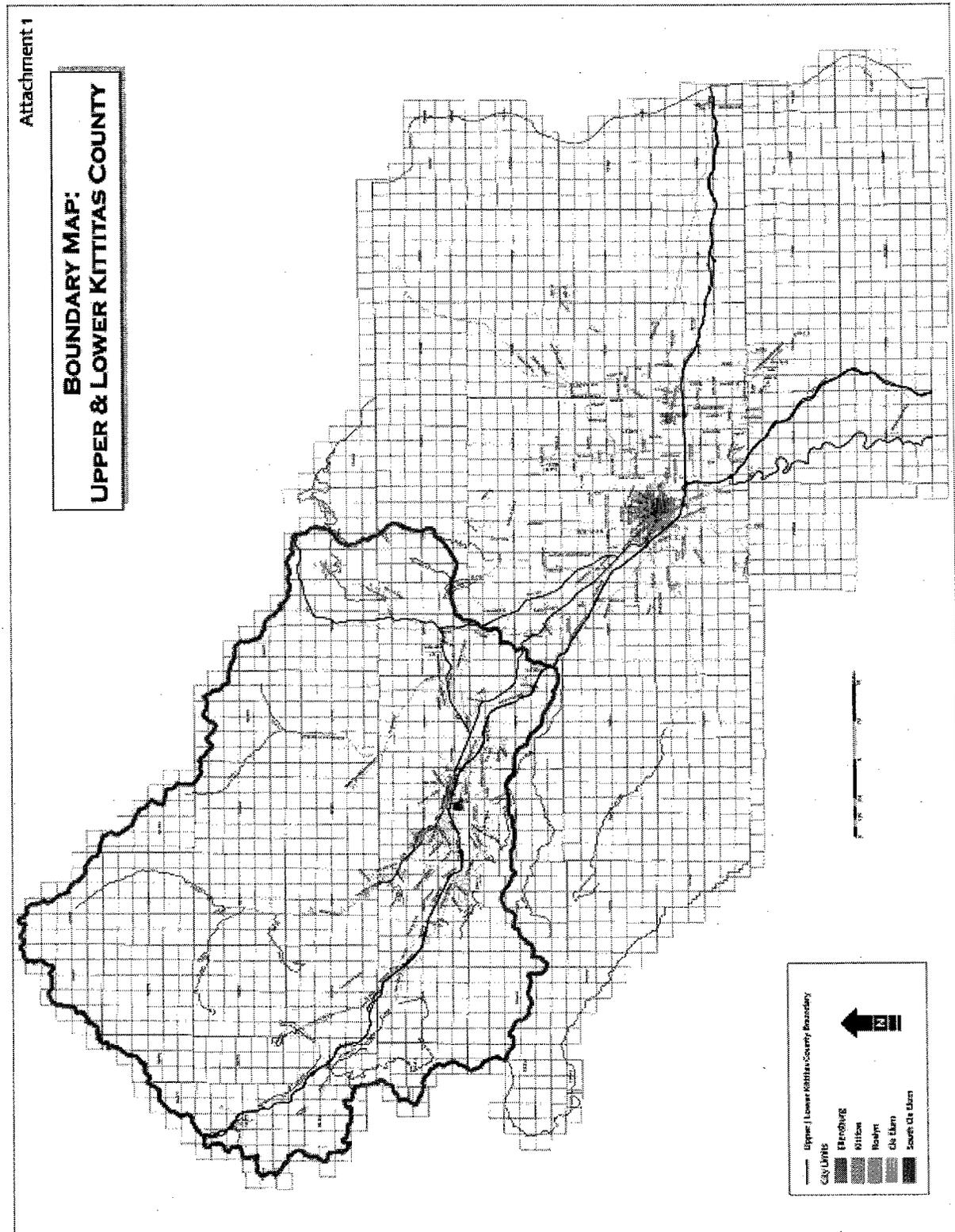
(3) Kittitas County, or interested citizens may request that ecology exercise its discretion to review this chapter at any time.

(4) If ecology begins a review of this chapter, it will consult with Kittitas County.

□

NEW SECTION

WAC 173-539A-990 Appendix 1 -- Map of upper Kittitas County boundaries.



□

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**ISF RULE
PRELIMINARY COST BENEFIT, MAXIMUM NET
BENEFIT, AND LEAST BURDENSOME ANALYSIS**

Dennis Schultz

7/5/09

GENERAL COMMENTS

- **This analysis does not present any other alternatives other than DOE's internally developed plan. This gives our locally elected officials no choice but to accept DOE's plan or face the stoppage of all building permits in the area.**
- **All costs of this rule will fall upon the property owners and the small businesses within the Area.**
- **The Conservation Standard is applied to all the sub-basins in the Area, yet, it is only needed in part of the Area. This puts an unneeded economic burden on most of the Area where it is not needed. What is the cost of this burden?**
- **The whole basis of this rule is based on the theory of 'Instantaneous Conductivity' between ground water and the streams. (If a gallon of water is drawn from a well, it instantaneously lowers the level of the basin stream by a gallon), regardless of the distance from the stream or the properties of the aquifer it is drawing from. It also assumes that wells located at higher elevations will draw water uphill into the wells.**
- **This county is not threatened with runaway development. In the rural areas it is almost impossible to subdivide and develop property.**
- **The growth projections used, are based on a growth boom 2006 and earlier. In the three years since then, growth has slowed to a point that the CETED projections have not been met.**

PROBABLE COSTS

- **Loss of land value**
 1. **It ignores the loss of land value in the Chimacum Basin. There are over 500 un-built residential properties in the basin. At least 400 of these properties will become un-buildable due to lack of water. 400 properties of at least 5 acres (many are 10 and 20 acres) worth \$20,000 per acre at current prices equate to a real estate value of over \$40,000,000. With this rule their value will drop to \$200,000 (current unusable open space value). This is a loss of \$39,800,000 that is missing from the analysis.**
 2. **People have purchased land or plan to purchase land in rural areas to have a ‘rural lifestyle’. This lifestyle usually includes plans to have a garden, or an orchard, or to raise some livestock, or to start a small farm. The proposed 350gpd allowance will not allow them to realize these dreams. This will drive down the value of this land as it is no longer desirable and potential buyers will purchase property elsewhere. And the people who have already purchased land will lose a large part of their equity in their land. Perhaps the Real Estate industry can come up with a rough estimate of the amount of this loss – both in lower property values and lost sales.**
- **COST to Agriculture**
 1. **This rule will have a major impact on Agriculture in the Area. Most of the area will not have any water for Agriculture. The future of Agriculture in Jefferson County is in the small specialty farm business. This type of farm usually can exist using a 5,000gpd Permit Exempt Well. The people starting these farms usually**

- do not have the financial resources to make a large investment and the time to wait for a Water Right.
2. Small farms of this type are usually located away from the rich bottomland along the creek beds because of the unavailability and high cost of these lands.
 3. Allowing only a limited number of Ag wells in only a few areas will deter many of these farms from starting.
 4. The local Farmers Markets are dependent on having a number of new small farmers entering the market every year as older farmers retire or develop a customer base to sell to outside of the farmers markets. This will cause a decline and possibly the end to some Farmers Markets.
- Cost of studies and permits
 1. The cost to have a study showing ground water ‘discontinuity’ or to prepare and implement a mitigation plan is beyond the means of most property owners. Yet these are the alternatives given to get more water.
 2. The cost of additional permits for such things as rainwater catchment and/or other water storage systems is not well defined.

Table 2

The Cost Summary is missing any data for loss of value in real estate as outlined above. Some of this loss can be directly quantified (Chimacum Basin) and some are very apparent, but are hard to quantify. These losses will become important as land values decrease due to this Rule. This Table is incomplete – it needs to be redone.

BENEFIT ANALYSIS

This is based on Permit Exempt wells pumping 5,000gpd and instantaneously reducing stream flows by that amount. It also assumes that wells will be pumped at the 5,000gpd rate continuously. This is a myth and has been disproven by a few studies in the area.

Table 3

The benefits in Table 3 are based on 100% consumptive use by Permit Exempt wells. There is no data available for actual withdrawal rate for the existing Permit Exempt wells. Common sense says that actual use is far less. There is no good data determining just what percentage of withdrawals are consumptive. Appendix 5 is flawed in its assumption that 90% of water withdrawn is consumptive. Most of the irrigation water drawn from Permit Exempt wells is used for drip or spot watering. A significant amount of this water is returned to the ground. There just isn't enough water to run rows of sprinklers or to flood irrigate in this area. Thus Table 3 is flawed in its assessment of water used due to its assumption of Hydraulic Continuity and consumptive use of water.

Availability without the Reserves

- Assumes that all sub-basins would be 'water short' and will require some type of storage. In fact most of the basins have adequate water for future development and will never need a catchment system. And, some of the areas do not have enough annual rainfall to support or fill a catchment system that would hold a 3 months supply.**

- **It assumes that all 690 new homes will have to put in water storage at a cost of at least \$16,250,000.**
- **The claim of this as benefit from the reserves is totally erroneous! Remove it from the table!**

Improved Water Management

This is supposed to be a Water Management Plan. It is in fact a set of water use restrictions. What is really needed is a study to determine where water shortage is a problem and where water is abundant. We need to know how to better use our water. A ‘One Size Fits All’ solution is no solution.

APPENDIX 5

The major error in this analysis is the assumption and use of ‘Instantaneous Hydraulic Continuity’ for the analysis and then putting in a disclaimer that they know this is not true. This makes the whole analysis an academic exercise and worthless in the real world.

The use of the cost of the Marrowstone Island water system for supplying water to the SIPZ areas is probably unrealistic. The Marrow stone system flows from Chimacum, through Indian Island, across the bay, and then on to the users. A local water system should be far less costly.

**Dennis Schultz
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[Sent via e-mail to cyne461@ecy.wa.gov]

January 4, 2010

Cynthia Nelson

Washington Department of Ecology

PO Box 47600

Olympia WA 98504-7700

RE: Initial Comments on Draft Version of WAC Chapter 173-518 Dungeness Instream Flow Rule

Dear Cynthia:

Washington REALTORS® represents the interests of approximately 18,000 members and their clients on matters relating to the development and transfer of residential and commercial real estate.

We appreciate the opportunity to submit initial comments on Ecology draft version of WAC Chapter 173-518, the proposed Dungeness Basin Instream Flow Rule (“ISF Rule”), and request that our comments be included in the agency’s rulemaking record.

As you know, the proposed ISF Rule, and the recently adopted WAC Chapter 173-517 instream flow rule for the Quilcene basin are of great concern to our local members. This letter includes comments on the rule language as well as suggestions on analysis that should be conducted during the formal rulemaking process.

1. Proposed Flow Levels Are Not “Minimum Flows” and Exceed Ecology’s Statutory Authority.

Ecology’s authority to adopt minimum instream flow is provided in Chapter 90.22 and 90.54 RCW, and both provide authority to Ecology adopt only “minimum” or “base” flows. RCW 90.22.010 provides that Ecology “may establish minimum water flows or levels . . .” RCW 90.54.020(3)(a) states that rivers and streams “shall be retained with baseflows . . .” Ecology lacks authority to adopt instream flow levels that are not true “minimum flows” or “baseflows.” Ecology has defined “baseflow”

as “that component of streamflow derived from groundwater inflow or discharge.” Sinclair and Pitts, Estimated Baseflow Characteristics of Selected Rivers and Streams, Ecology Water Supply Bulletin No. 60, Pub. No 99-327 (October 1999).

The flow levels proposed by the ISF Rule are contrary to the statutory authority granted to Ecology to set flows. A 1986 client advice letter from the Office of the Attorney General to Ecology describes the extent of Ecology’s instream flow rulemaking authority. Notably, this letter was written by Senior Assistant Attorney General Charles B. Roe, a preeminent water lawyer and original drafter of the statutes in question. The opinion of the Attorney General’s Office, was as follows:

. . . The intent was, simply stated, that streams with certain values were not to be dried up or reduced to trickles. Rather, flows, usually of an amount extending to a limited portion of a stream’s natural flow were to be retained in order to protect instream values of the stream from total relinquishment. Of import here, the thrust of the 1967 legislation was not designed to maintain a flow in excess of the smallest amount necessary to satisfy the protection and preservation values and objectives just noted . . .

Letter from Office of the Attorney General to Eugene F. Wallace, Program Manager for Water Resources, dated February 20, 1986, at 8.

The Attorney General letter further describes a two-step process under which flows that may be higher than a true minimum flow may be adopted through a “maximum net benefit” legal framework. The two-step maximum net benefit process is described (again, by Mr. Roe) in the Washington State Bar Association’s Real Property Deskbook:

Of import here, the 1967 and 1971 legislation was not designed to maintain a ‘minimum’ flow in excess of the smallest amount reasonably necessary to satisfy the protection and preservation of such values. It was not, however, the legislative intent to preclude [Ecology’s] power, in appropriate factual situations, to establish higher or ‘enhanced’ instream flows than those established under the minimum flows provided by RCW 90.22.010.

WSBA Real Property Desk Book, Water Rights, § 117.9(1)(b), p. 132-133.

The PCHB has also confirmed that instream flows are to be minimum flows, which may be increased only through the two-step maximum net benefits test – i.e., that the initial flow level is a true baseflow, not an optimal fish flow:

“Tacoma first urges that base flows may not be set at levels which provide the optimum flow regime for fish. We agree”

PUD No. 1 of Jefferson County et al. v. Ecology et al., PCHB No. 86-118 (1988).

Perhaps more importantly, the PCHB has also concluded that Ecology’s instream flow authority enables it only to protect existing instream flows, not establish flows beyond actual flows to provide a “restoration” level of instream flow protection:

The optimum fish flows adopted as base flows by Ecology are also inconsistent with the statutory authorization for base flows. Base flows, as authorized at RCW 90.54.020(3)(a), are those ‘necessary to provide for preservation of’ fish and related values. The term ‘preservation’ is not specifically defined, nor ambiguous. . . the term ‘preservation’ means ‘the act of preserving’ . . .

The evidence in this matter is that the optimum fish flows adopted as base flows enhance fish habitat beyond that provided by the river in its natural state. This is inconsistent with the statutory plan that base flows ‘keep safe’ or preserve fish habitat, rather than enhance it.

Id.

The proposed instream flow levels for the Dungeness River far exceed actual flow levels, and are not minimum flows. Specifically, the proposed flows for August, September, and October are 180 cfs.

Using the date of September 1, this flow level has only been reached once since 2000.

Year

USGS Flows for Dungeness River

2009 112 cfs

2008 166 cfs

2007 148 cfs

2006 140 cfs

2005 99 cfs

2004 173 cfs

2003 157 cfs

2002 96 cfs

2001 148 cfs

2000 200 cfs

See <http://waterdata.usgs.gov/nwis/uv?12048000> (USGS flow gauge data for Dungeness River).

2. Exempt Well Withdrawals Are Not Causing Significant Impact on Streamflows.

Like in other instream flow rules recently adopted by Ecology, an underlying assumption is that impacts to streamflows have been directly caused by increased reliance on exempt groundwater wells that capture groundwater that otherwise would provide instream flow. While wells of a certain depth and location will capture groundwater that provide baseflow, the presumption that all wells must be regulated to protect surface water flows is not supported by the specific hydrogeology in WRIA 18. While certain documents relating to the ISF Rule assume that the reliance on exempt wells over the past 30 years has caused instream flow impacts, actual flow data does not support this presumption. Specifically, see flow data again for September 1 for the period of record from 1937 to 1948:

Year

USGS Flows for Dungeness River

1948 162 cfs

1947 146 cfs

1946 237 cfs

1945 143 cfs

1944 97 cfs

1943 174 cfs

1942 140 cfs

1941 212 cfs

1940 162 cfs

1939 156 cfs

1938 160 cfs

1937 174 cfs

The flow levels on September 1 for this historical period of record are similar to actual flows on September 1 from the past decade – in spite of the increasing reliance on exempt groundwater withdrawals that appears to be a cause of Ecology’s concern for streamflows. While a short answer may be that changes in irrigation practices toward more efficient irrigation diversion and delivery methods has resulted in streamflow improvements that more than offset any groundwater withdrawal impacts, the reality is that far more will be done to protect streamflows by focusing efforts on continuing to improve the efficiency of all surface and groundwater diversions.

3. Proposed ISF and Consistency with Local Land Use Plans and Zoning – Further Analysis of Land Use Conflicts is Required.

REALTORS® are greatly concerned that the availability of water in the proposed ISF Rule is inconsistent with land use plans and zoning adopted at the local level. Throughout WRIA 18, our members have assisted clients with transactions in which future development of vacant parcels relies on the use of exempt wells. Hundreds of such parcels of developable land exist within WRIA 18, and are part of Clallam County's land use plan adopted under the Growth Management Act. While the owners of these parcels believe water will be available in the future, the reality is that the groundwater reservations in the proposed ISF Rule will result in unbuildable lots, causing a severe loss of value to ordinary citizens.

One of the ironies of the conflict with land use plans and zoning created by Ecology's proposed ISF Rule is that it is the exact conflict that the Legislature sought to avoid through the watershed planning process – a process implemented in WRIA 18. Under RCW 90.82.070(1)(e), each watershed plan shall include “an estimate of the water needed in the future for use in the management area.”

Because the watershed plan was developed for WRIA 18 and approved by the Clallam County Commissioners, this information should be put to use. Specifically, Ecology should review the amount of water necessary to implement the County's land use plan and ensure that sufficient water is made available to avoid a conflict between its own ISF Rule and the Growth Management Act.

A meaningful analysis of the future conflict between ISF rules and local land use plans has been notably absent from the recent ISF rules adopted by Ecology. This is unfair both to the local governments who have spent significant time and expense to complying with the planning requirements of the GMA, and to local landowners who have purchased vacant land that at the time of purchase was buildable – but in the future may not be because of the limited water reservations in the ISF Rule. REALTORS® request that during the formal rulemaking period, Ecology provide a meaningful analysis of whether the water available for future domestic use in WRIA 18 will allow for implementation of local land use plans based on existing zoning.

We don't believe this is asking much – in fact, the Administrative Procedures Act already requires it. Under the APA, Ecology is required to “coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.” RCW 34.05.328(1)(i). The primary regulatory impact of the proposed ISF Rule will be to limit or condition rural development in certain areas of WRIA 18. Obviously, this is the same “activity or subject matter” regulated by the GMA itself, which requires local governments to adopt a comprehensive land use plan specifically including a “rural element” that allows rural development consistent with rural character.

At this point, we don't see how the proposed ISF Rule is coordinated at all with the county's comprehensive plan or with the specific zoning that has been adopted in many parts of the county. For example, some of the limited groundwater reservations provide enough water only for 2 or 3 additional exempt wells to be drilled – far short of the number of buildable lots in those sub-basins. If Ecology is going to adopt a regulation that renders a significant number of lots unbuildable or imposes mitigation requirements on those lots, Ecology should be straightforward with those landowners about the future impact of its regulation.

Finally, Ecology failure to provide sufficient water supply through the proposed ISF Rule violates RCW 90.54.020(5), one of the fundamental requirements of the state's Water Resources Act. This provisions states that “Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs.” The policy enacted by the Legislature that adequate potable water for human domestic needs “shall be preserved and protected” could not be stated more clearly. An ISF Rule that violates statutory authority by adopting more than minimum flows while failing to provide sufficient water for future domestic uses clearly violates the Water Resources Act.

4. Ecology Must Conduct Accurate Small Business Economic Impact Statement and Cost Benefit Analysis of Proposed ISF Rule.

Under the APA, Ecology is required to conduct both a Small Business Economic Impact Statement (SBEIS) and Cost-Benefit Analysis. REALTORS® ask that unlike the recent SBEIS and cost-benefit analysis conducted in the WRIA 17 rulemaking, that the analysis for the proposed ISF Rule specifically analyze (a) negative economic impacts to construction and real estate caused by limiting the water available for domestic use; (b) increased development costs associated with mitigation plans; (c) reductions in property value to landowners; and (d) lost local and state tax revenues associated with unbuildable property.

We hope that Ecology's economic analysis in WRIA 18 will avoid whatever methodology resulted in the extremely dubious conclusions in WRIA 17. For example, the WRIA 17 analysis concluded that as a consequence of adopting the instream flow rule, 819 new jobs will be created. For example, 384 jobs would be created in the construction sector, and 20 jobs in real estate. It is absurd for Ecology to assert that a rule placing a fixed limit on the supply of water available for future residential growth would result in a net gain of over 800 jobs, and specific gains in residential construction and real estate that would not occur otherwise. While we understand that the role of an agency in rulemaking is to produce analysis that defends the agency decision, the conclusion that instream flow rules actually create jobs in real estate and construction that would not exist absent the rule does not pass the straight face test.

5. Under Washington Water Law, Priority Date for Exempt Wells, Like Other Beneficial Uses, Must Be Based on Relation-Back Doctrine

Ecology's draft ISF Rule states that the priority date for exempt wells will be the date that water is put to beneficial use. Proposed WAC 173-518-070(4) states as follows: "The priority date of a withdrawal under the permit exemption in RCW 90.44.050, is the date upon which water is first put to beneficial use."

Ecology's conclusion that a water users priority and the right to use water is established only upon beneficial use is inconsistent with both the historical common law of water rights, and how the State Legislature codified the relation back doctrine. Ecology's current interpretation creates significant risk for lenders, homebuilders, and homebuyers and should be carefully examined and modified.

"The relation back doctrine was created under the principles of equity to allow an appropriator to receive as a priority date the date the appropriator first initiated the use of water and not later when the appropriation was completed. The ability to receive the early priority date depended on the appropriator's diligence in applying water to use.

An Introduction to Washington Water Law, Office of the Attorney General, January 2000, at III:27, citing RCW 90.03.340 and *Hunter Land Co. v. Laugenour*, 140 Wn. 558, 565 (1926).

The relation back doctrine is relevant to the process used to develop new housing in order to provide certainty to lenders, builders, and homebuyers. If the right to use water for domestic use is not actually obtained until the time of beneficial use, lenders and homebuilders are at significant risk that water may not be available. In the development process, the time from when a construction loan is issued to when the house is completed by a builder and then sold to a homebuyer can often take a number of years. During this period of time, the local government will have to determine whether water is available under RCW 19.27.097 in order for a building permit to be issued. The priority date for this type of project should relate back to when the project was first initiated, to protect the investments of the lender and builders, and so that consumers know that water will be available.

The structure of the mitigation requirements in the proposed ISF Rule further require that the priority date should be based on the relation back doctrine. The proposed ISF Rule would mandate that mitigation plans include financial assurances such as bank letters of credit, a cash deposit, negotiable securities, savings certificates, or surety bonds. See Proposed WAC 173-518-080. Even though such assurance would be provided by water users, Ecology appears to offer to no security in return – the priority date is part of the assurance to lenders and buyers as to the validity of water supply and

viability of the project. Ecology should not impose costly and complicated mitigation requirements and yet be unwilling to provide regulatory assurance in return.

For permitted water rights, the relation back doctrine was codified so that the “date of filing of the original application” becomes the priority date. RCW 90.03.340. Because exempt wells require no application, the analogous point in time would be the notice of intent filed by a well driller. So long as the project is developed and completed with due diligence, the priority date should relate back to the date of the notice.

Further, Ecology’s conclusion in the proposed ISF Rule that the priority date of an exempt withdrawal is the date of beneficial use is inconsistent with how it has dealt with the same legal issue in other instream flow rules. For example, in Chapter 173-503 WAC, the Skagit Basin Instream Flow Rule, the rule provides that exempt withdrawals based on a reservation of water have a priority date of the date of rule adoption when the water reservation was established. For other exempt withdrawals, the Skagit Instream Flow Rule does not provide a date of priority. This is likely correct, since the exact priority date of an exempt withdrawal may be based on fact specific considerations. In any case, Ecology should not be adopting instream flow rules in different parts of the state that are based on different legal standards.

6. Ecology Lacks Authority to Condition Beneficial Use of Water from Exempt Well on Obtaining Permit for Residential Structure.

The error in Ecology’s conclusion that the date of beneficial use of an exempt well determines its priority date is further compounded by its conclusion that “for domestic use, beneficial use shall not be considered to occur until water is used within a permitted residential structure.” Proposed WAC 173-518-070(4). By creating the additional legal requirement that beneficial use of water from an exempt well does not occur until a local government has issued a permit, Ecology is unlawfully conditioning the use of an exempt well on the action of a local government. What constitutes “beneficial use” of water is determined by the state water code (See RCW 90.54.020(1)), not by the

action of local government.

Further, it is common for construction projects to use (if not require) beneficial use of water at the construction site for uses such as dust control, fire suppression, potable consumption, concrete mixing, and other construction-related uses. Owner-builders often live on-site during construction, not in the “permitted residential structure,” but in a temporary structure or recreational vehicle. Such uses of water clearly establish beneficial use.

7. Proposed ISF Rule Must Be Reviewed To Determine Whether It Is Constitutional.

The proposed ISF Rule imposes its regulatory burden solely on water uses that are junior to the priority date of the adoption of the rule. Because all senior uses are not subject to the rule, even though most junior uses will be small withdrawals of water under the exempt well statute, Ecology should review the proposed ISF Rule to determine whether it meets constitutional requirements. In 2008, the Washington State Court of Appeals, Division I, issued a decision invalidating a King County ordinance in part on grounds that King County failed to show that the regulatory restriction on property owners subject to the ordinance was proportional to the impact caused by those property owners. *Citizens’ Alliance for Property Rights v. Sims*, 145 Wn.App 649 (2008).

Small exempt groundwater withdrawals will have little or no impact on surface waters in comparison to large groundwater withdrawals or diversions directly from the surface water source. Thus, there is no “proportionality” in the proposed ISF Rule. As the Court said in the CAPR decision,

These holdings are consistent with the fundamental purpose of the Takings Clause, which is not to bar government from requiring a developer to deal with problems of the developer's own making, but which is “to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Id.* at 669, citing *Burton v. Clark County*, 91 Wn.App. 505, 521-22 (1998) and quoting *Dolan v. Tigard*, 512 U.S. 374 at 384.

Ecology’s proposed ISF Rule clearly lacks the proportionality necessary to pass muster under a constitutional analysis. We believe Ecology should review the proposed ISF Rule under the Attorney

General's Memorandum for Avoiding Unconstitutional Takings of Property established under RCW 36.70A.370 during the formal rulemaking process.

8 Ecology Should Not Proceed With Rule Adoption Until Mitigation Programs Are in Place.

As it has done in other basins, Ecology appears poised to move forward with rule adoption without having mitigation programs in place. As an initial comment on mitigation, many of the areas that would be subject to groundwater closures absent mitigation likely have little impact on surface water flows. Yet, mitigation will be required across the basin regardless of the specific impacts of a proposed withdrawal.

The promise of having a functional, affordable, and rational mitigation program in place at some unknown point in the future after the adoption of an Ecology rule has been problematic in other parts of the state. The strategy of first closing basins through rulemaking and only then developing mitigation strategies is a bad idea that should not be repeated. As evidenced by regulatory closures enacted by Ecology in Skagit or Kittitas Counties, the closure logically results in motivating people seeking to use water before the reservations are depleted (Skagit) or a dramatic increase in the cost of water for transfer that could be part of a mitigation program (Kittitas). By closing a basin first, and then seeking to obtain water rights for mitigation, Ecology creates exclusively a seller's market that drives up costs that will ultimately be paid by homeowners.

During the rulemaking process, it is impossible to analyze the true impacts of the rule because there is no mitigation plan or requirements in place: will mitigation sufficient for an average single-family house cost \$1,000 or \$20,000; will mitigation plan approval take one week or one year? Ecology must seek to develop mitigation requirements as part of the rule itself, so that regulated entities can understand the rule and its impacts. While premise for requiring mitigation in many parts of the basin is dubious, at the least, the mitigation requirements must be integrated into the local land use approval process. Homeowners and small builders should be expected to possess expertise in hydrogeology or provide Ecology or local governments with costly consultant reviews in order to

obtain building permits.

Thank you for the opportunity to provide initial comments on the draft ISF Rule.

Sincerely,

Bill Riley, President

Washington REALTORS®

cc: Clallam County Board of Commissioners

Sen. Jim Hargrove

Rep. Lynn Kessler

Rep. Kevin Van De Wege



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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February 25, 2010

Mr. Dennis A. Schultz, President
Olympic Stewardship Foundation
250 N. Jacob Miller Rd.
Port Townsend, Wa 98368

RE: Petition to Repeal Chapter 173-517 WAC

Dear Mr. Schultz:

The Washington State Department of Ecology (Ecology) received your petition requesting rule removal on December 29, 2009. The petition requests that Ecology remove Chapter 173-517 WAC, "Water Resources Management Program for the Quilcene-Snow Water Resource Inventory Area (WRIA 17)" from the Washington Administrative Code. The petition contends that the rule does not do what it was intended to do; imposes unreasonable costs; and does not meet the criteria of RCW 19.85.040 (Small Business Economic Impact Statement – Purpose – Contents), and the findings in RCW 19.85.020 (Regulatory Fairness Act. Definitions. Findings).

Ecology reviewed and evaluated your comments. We did not find a basis to support your request and are thereby denying the petition to repeal Chapter 173-517 WAC. A detailed response to your specific concerns is attached. If you have questions, please contact Ann Wessel in our Water Resources Program, at ann.wessel@ecy.wa.gov / (360) 470-6785.

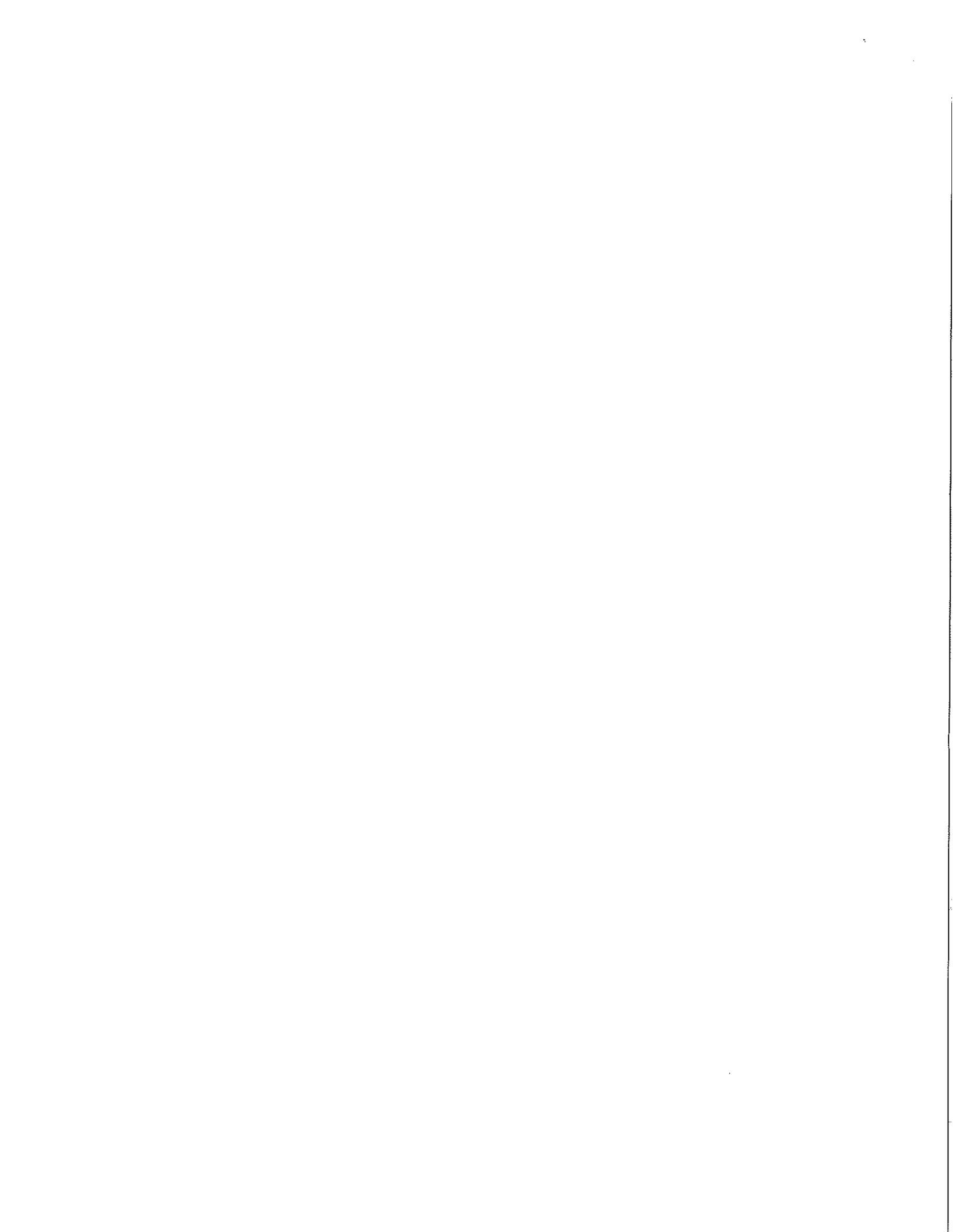
Sincerely,

Ted Sturdevant,
Director

Attachment

cc: Jefferson County Board of Commissioners: John Austin, Phil Johnson, and David Sullivan
Thomas Loranger
Ann Wessel





ATTACHMENT

Page One

WRIA 17 – Chapter 173-517 WAC

List of Petition Issues

1. The rule does not do what it was intended to do.

Response:

Ecology does not agree with the petitioner's claim that the rule does not do what it was intended to do. The petition provides no information to substantiate this claim.

2. The rule imposes unreasonable costs.

Response:

Ecology does not agree with the petitioner's claim that the rule imposes unreasonable costs. The petition provided no information to substantiate this claim.

Ecology calculated the total probable costs of this rule, and published the cost values, assumptions, and methods for our calculations in the Cost Benefit Analysis for this rule. Ecology based the evaluation of the costs and benefits on an analysis and comparison of water right management in WRIA 17 with and without the rule. The analysis of the probable rule costs includes consideration of:

- The cost of restrictions on future water right permitting.
- The cost of restrictions on permit exempt wells, the conservation standards, and outdoor irrigation in Chimacum Subbasin.
- Ecological costs.
- Metering costs.
- Rule implementation costs.
- The cost of an additional public meeting for out-of-subbasin water use.

Ecology found that the probable cost of the rule did not exceed the probable benefits of the rule.

3. The Small Business Economic Impact Analysis does not meet the criteria of RCW 19.85.040 and the Findings in RCW 19.85.020.

The petition argues that the Small Business Economic Impact Statement prepared by Ecology prior to adopting this rule is inadequate for the following reasons:

- It is based on "old data" not current conditions.
- It only compares the effects of the rule vs. a moratorium on all new construction and development for 16 years. No alternative approaches are analyzed.
- It shows a major loss of jobs, not new jobs being created.
- It shows a major loss in construction income.
- It uses an inappropriate model and data to predict growth.
- It does not solve our water management needs here in Jefferson County.
- This rule will discourage the growth of new business - it will place this area in an uncompetitive position, compared to other counties.
- No alternative approaches have been proposed.
- The prime industries in this area, agriculture, aquaculture, forestry, and mining were not involved in drawing up this rule.
- This rule will cause a significant loss in construction sales and in real estate values.

ATTACHMENT

Page Two

- This rule does not reduce any of the costs for small businesses. It will increase the costs for new businesses to locate here.
- It ignores the existence of an existing construction industry workforce, many of whom will not have work under the planned build-out rate of 45 homes a year.
- Other than public meetings and press notices, it appears that no effort was made to contact local businesses or survey their future plans to determine the impact of this rule.

Response:

Ecology does not agree that the Small Business Economic Impact Statement for this rule is inadequate, nor does it fail to meet the criteria of RCW 19.85.

- RCW 19.85.030 requires the preparation of a Small Business Economic Impact Statement to assess disproportionate cost to small businesses resulting from a new rule and, "where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses." The statutes on which this rule is based include 90.03, 90.22 and 90.54 of the Revised Code of Washington. These statutes call for protection of instream values and establishing instream flows. Ecology found that while there are disproportionate costs to small businesses, it is unlikely there will be significant adverse impact on small or large businesses as compared to the baseline.
- The economic analysis does not compare the effect of the rule against a moratorium on all new construction and development for 16 years. It is based on a comparison of water right management in WRIA 17 with and without the rule.
- RCW 90.22.020 states that "flows or levels authorized for establishment under RCW 90.22.020, or subsequent modification thereof by the department shall be provided for through the adoption of rules." In addition, RCW 90.82.130(3) creates an obligation for state agencies to implement Watershed Plan recommendations. These obligations are binding upon adoption of the Watershed Management Plan. The Quilcene-Snow Watershed Management Plan recommended "that Ecology continue to work collaboratively with the Planning Unit, per RCW 90.82.080, in an attempt to achieve consensus and approval of instream flows to be adopted by Ecology." An alternative approach to adopting instream flow levels in a rule was not available to Ecology given these statutory directives. Alternative water management options that Ecology considered during the rule development process are presented in the Least Burdensome Analysis that is incorporated in the Cost Benefit Analysis for the rule. The petition suggested a local "water board" that could manage water allocation decisions as an alternative to this rule. The authority for such a local entity does not exist in the state water code.
- Ecology used Jefferson County building permit data to project demand for new residences outside of water supply areas for each subbasin where we set flows. The high growth rates at Kala Point and Port Ludlow were not included in our baseline. The projected demand for new residences was used to evaluate the sizes of reserves. If actual growth occurs at a slower rate, available water will last longer.

ATTACHMENT

Page Three

- Ecology relied on standard and defensible methods of economic analysis to estimate the economic impacts to small businesses resulting from adoption of this rule. In addition, the economic analysis documents were peer reviewed by an outside economist. The petition provides no information to substantiate the claims that the rule will cause a significant loss in jobs, construction sales, and real estate values, or will increase the costs for new businesses to locate in Jefferson County. The petition seems to indicate that zoning restrictions prevent new businesses from locating in areas under Jefferson County jurisdiction; however, zoning designations are outside the scope of this rule.
- Ecology relies on available data to run the Office of Financial Management's NAICS-based input/output model. This model is recommended by OFM. We do not have access to IRS tax returns, and, therefore, cannot base the analysis on the information described in the petition. We use data from the Washington State Department of Employment Security to make sure we identify active businesses. It is possible to identify sole proprietorship businesses using data from the Washington Department of Revenue.
- This rule establishes instream flow levels, closures, and creates limited reserves of water that together are intended to protect instream values, help protect existing water rights, and serve as a framework for future water management decisions in eastern Jefferson County. Ecology agrees that ongoing effort is needed to solve water management needs in Jefferson County.
- Ecology does not agree that the existing construction workforce will be significantly affected by this rule. The rule does not affect water supply availability for new construction in the city of Port Townsend, or in the service areas of Jefferson County PUD #1 and the Olympic Water and Sewer Company at Port Ludlow, all of whom operate under existing water rights. In addition, the rule does not restrict new permit-exempt well uses in the coastal areas, including the Miller and Quimper Peninsulas. Finally, the rule establishes reserves of water that are projected to meet demand, until 2025, for residential development in the subbasins with newly-established instream flows.
- Ecology extended offers to meet with a wide range of stakeholder interests, including business organizations. Not all organizations chose to meet with us. Those that did included the Brinnon/Quilcene Chamber of Commerce, Jefferson County Association of Realtors, representatives of the agricultural community, Jefferson County Water Utilities Coordinating Council, Jefferson County PUD #1, the city of Port Townsend, Jefferson County, Tribes, Clallam County and the WRIA 17 Watershed Planning Unit.

ATTACHMENT

Page Four

4. It does not meet the criteria of RCW 34.05.325 (6)(a)(iii).

Excerpts from the petition:

RCW 34.05.325 (6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

Many of Ecology's answers to the questions in the comments are of the nature: 'DOE disagrees', and did not respond to the questions asked.

Response:

Ecology agrees that, in some instances, we responded to comments received on the proposed rule with brief statements to the effect that Ecology did not agree with the comment or thanking the person for their comment. In all instances, these were comments expressed as statements about the rule. Where comments were expressed as questions, Ecology made every effort to respond with a complete answer.

5. It does not meet the requirements of the 'Cost/Benefit Analysis' as required in RCW 34.05.328 (1)(d) and (1)(e). Or the findings with respect to The Regulatory Reform Act of 1995.

Excerpts from the petition:

RCW 34.05.328(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

The benefits claimed are over exaggerated and costs minimized or ignored.

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

No alternative solutions have been presented other than a moratorium on all new development.

RCW 34.05.328 Findings -- Short title -- Intent -- 1995 c 403: "(1) The legislature finds that:

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

ATTACHMENT

Page Five

This rule will definitely have a negative impact on the local economy.

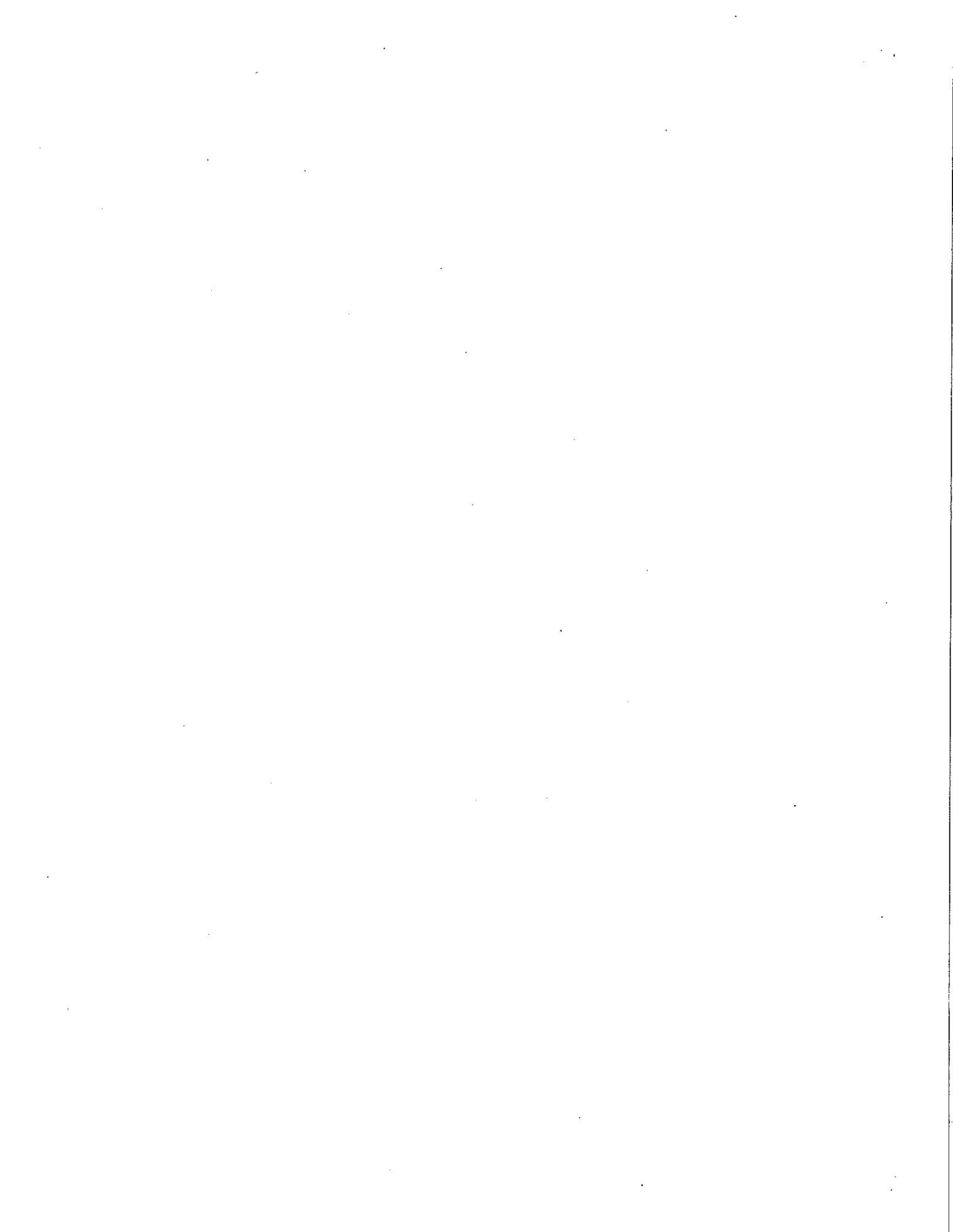
RCW 34.05.328 Findings -- Short title -- Intent -- 1995 c 403:

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth.

This rule does not meet the goal of this law.

Response:

Ecology does not agree with the petition's assertions regarding the Cost Benefit Analysis. Please see the responses to petition issues #2 and #3, above.





1820 Jefferson Street
P.O. Box 1220
Port Townsend, WA 98368

Phil Johnson, District 1 David W. Sullivan, District 2 John Austin, District 3

July 6, 2009

Jay Manning
Director, Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: In-stream Flow Rule for WRIA 17

Dear Director Manning,

Thank you for the chance to comment on WAC 173-517, the proposed in-stream flow rule for Water Resource Inventory Area (WRIA) 17, the Quilcene-Snow watershed. We have appreciated the efforts that the Department of Ecology has made since the fall of 2005 in improving the in-stream flow rule language for WRIA 17. We feel that Ecology has integrated some key requests and language into the rule. In particular, the inclusion of rainwater catchment and the possibility of mitigating for future water withdrawals beyond those allowed for in the reserves. In addition, we appreciate Ecology funding of the development of a ground water and surface water interaction model for the Chimacum watershed by the US Geological Survey (USGS) which is due to be completed in 2010. This model will be an excellent tool in gaining a working knowledge of one of our most resource limited watersheds and the information will be valuable for informing future mitigation and water management actions.

In the spirit of continuing and fruitful interaction with Ecology, the County states, or restates, the following important items of concern:

- The County requests that Ecology continue to support watershed planning efforts and efforts to find and fund mitigation strategies that would allow for the use of new agricultural water and for outdoor irrigation for new homes in the Chimacum sub-basin. We believe that a long term prohibition on new outdoor irrigation in the Chimacum sub-basin, where some of our best soils are located is unacceptable, therefore a mitigation strategy needs to be implemented as soon as possible for this sub-basin.

We believe that several projects and ideas currently proposed or being explored by members of the WRIA 17 Planning Unit may be able to serve as possible mitigation. Included in these are the Aquifer Storage and Recovery study by Jefferson County PUD#1, using existing water rights to augment low flows (“pump and dump”), credit for decommissioning wells in water service areas and reverse osmosis for municipal supplies. The continued exploration of a water bank or exchange also has merit. It is vital that Ecology continue to work with local entities to develop and fund a local watershed planning process after current watershed planning funds run out in 2012.

- Jefferson County has serious concerns that the proposed rule will drastically limit and curtail new agricultural activity in portions of the county. We appreciate that some of the reservations in the Salmon Creek and Snow Creek sub-basins will be available for agriculture. We further appreciate that the rule leaves open the option of additional water rights in the Big Quilcene, Little Quilcene and Thorndyke sub-basins. However, solutions and mitigation will need to be found for those who would otherwise use permit-exempt wells for small scale agriculture but will be unable to under the new conservation standards set for most of WRIA 17 under this rule. We request that Ecology provide technical and financial assistance for mitigation.
- Since habitat, water quality and water quantity are all important aspects of salmonid survival, the County requests that water quality and habitat restoration be credited, where appropriate, toward mitigation strategies for new water withdrawals. In the definition of “mitigation plan” in proposed WAC 173-517-030(12), we request that it reads (changes underlined) “A mitigation plan may address impacts, including those to water quality and habitat, to a stream, basin, reach, or other area, for an individual withdrawal or for multiple withdrawals in a sub-basin.”? Is Ecology aware of any case law that would prohibit the use of habitat or water quality improvements to mitigate and offset water withdrawals, and if so can you please identify it?
- Has Ecology considered a two tiered approach to for the management of water in the Chimacum sub-basin? For example, perhaps groundwater withdrawals further from the creek, near the mouth of the creek, or from a deeper aquifer may be used for outdoor irrigation use. We appreciate the addition of section 173-517-150(8)(b), to allow for data gathered in the groundwater study currently underway by the USGS, to influence areas in Chimacum subject to the no outdoor irrigation provision in the Chimacum Creek sub-basin. However, we request that section read (changes underlined) “If the report for the U.S. Geological Survey ground

water model currently under construction for the Chimacum Creek sub-basin identifies specific areas where new well pumping will not have significant adverse effect on critical stream base flows, withdrawals from these areas” For example, if it were determined that a new groundwater withdrawal, used for summer outdoor irrigation only slightly impacted winter creek flows, since this creek is open to new water withdrawals in the winter anyway, this withdrawal would be allowed if this section were rewritten as above.

- We appreciate the inclusion into the proposed rule of the consideration of metering data when accounting for use under the reserves. It is vital that we adjust the reserves based not just on estimates of new use but actual use of water. This will provide a clear incentive to conserve water for new users.
- There are many wells in Jefferson County that are senior in time to the effective date of the in-stream flow Rule but from which there has been either no water withdrawn or less water withdrawn than the 5,000 gpd a permit exempt well owner could withdraw. Few persons understand that a water right is merely a potential right until it is “perfected” by use of that right and that it is “perfected,” in general, only to the extent of the quantity of water withdrawn. The County foresees instances where this misconception about the rights that arise from a permit exempt well will collide with implementation of the proposed rule. In light of these likely collisions the County asks what resources or efforts for education and explanation will Ecology have in place within and for Jefferson County AFTER the in-stream flow rule becomes effective?
- Just to clarify, if evidence is presented to Ecology that an unperfected water right that predates the in-stream flow rule (such as a previously unused permit exempt well) was being used and therefore perfected after the effective date of the rule, would that water right be debited from the reserve for that particular sub-basin?
- The in-stream flow rule should provide clear incentive to decommission wells by crediting the reserve or, potentially, a mitigation bank of water. If a decommissioned well predates the rule, consideration should be given to crediting the reserve or mitigation bank at a higher rate than the conservation standard set out in the rule.
- The maps provided are insufficient in detail. The County requests that the GIS layers generated by Ecology be made available to the County. If a parcel falls on the boundary between two management areas which rules apply to the water withdrawal?

- In WAC 173-517-030 definitions need to be added for beneficial use, reserve management area, timely and reasonable (as it applies to connection to public water system) and coastal management areas. Some of these may be able to be referenced from other statutes.
- The County requests that Ecology provide rebates or other credits to citizens required to install meters to help ameliorate the cost to impacted citizens.
- Is it necessary to “commit (county compliance) to Ecology in writing” as is stated in proposed WAC 173-517-150 (2) since the county is always obligated to follow state law? We presume that if it still deemed necessary, that a letter from the county to Ecology stating that the county has read and understands the rule will be sufficient. Is that an accurate conclusion?
- What will be the mechanism used by Ecology to inform the citizens that the reserve established under Chapter 173-517 WAC for a particular sub-basin within WRIA 17 has been entirely depleted and thus that sub-basin is closed to new water withdrawals?

We understand that after this rule is signed Ecology and County staff will cooperate in educating stakeholders about the rule and transferring information to Ecology. The county will distribute information about the new requirements, developed by Ecology, to interested parties. The county will provide information about rainwater catchment. Indeed, the county already has a policy on rainwater catchment. Lastly, the county will send Ecology yearly data on building permit activity in each of the sub-basins. The County understands this to be the full extent of its obligations with respect to implementing the in-stream flow rule, WAC 173-517. If Ecology determines otherwise it should inform the County as soon as possible.

We look forward to continuing to work with Ecology to develop mitigation strategies and other solutions to our water supply issues in Jefferson County.

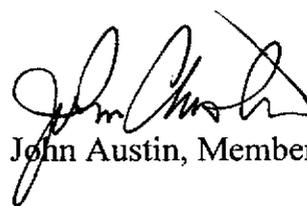
Sincerely,



David Sullivan, Chairman



Phil Johnson, Member



John Austin, Member

cc: Anne Wessel, DOE
Phil Wiatrak, DOE

State of
Washington
House of
Representatives



Joint Administrative Rules Review Committee

2nd Floor, John L. O'Brien Building
Representative Hasegawa, Chair
PO Box 40600
Olympia, WA 98504-0600

June 25, 2010

Mr. Dennis Schultz, President
Olympic Stewardship Foundation
250 North Jacob Miller Road
Port Townsend, Washington 98368

Dear Mr. Schultz,

Your submittal petitioning the Joint Administrative Rules Review Committee (JARRC or Committee) to review rules adopted by the Department of Ecology (Department) regarding the Water Resources Management Program for the Quilcene-Snow Water Resource Inventory Area (WRIA 17), Chapter 173-517 WAC, has been considered. The purpose of this letter is to advise you of the outcome of the review of your petition.

JARRC Background

As you know, the JARRC is a joint legislative committee charged with oversight over executive agency rulemaking. It has the authority to examine three main issues: (a) whether a rule is consistent with the intent of the Legislature as expressed by the statute the rule implements, (b) whether the rule was adopted in accordance with the law (i.e., in accordance with the Administrative Procedures Act and the Regulatory Fairness Act), and (c) whether a policy or interpretive statement is being used in lieu of a rule.

The JARRC has selective jurisdiction, meaning that it is not required by law to conduct hearings on every petition it receives. In addition, while the JARRC may review petitions addressing one or more of the three issues outlined above, the Committee does not review the policy behind the rules. In other words, the JARRC is not authorized to consider whether the substance of a rule is good or bad.

Finally, due to constitutional separation of powers principles the JARRC is not authorized to suspend or repeal a rule or to order an agency to amend or repeal a rule, even if the Committee finds that an agency has exceeded its statutory authority.

Petition Summary

Your petition makes several arguments supporting your position that the Department lacks the authority to adopt some or all of Chapter 173-517 WAC. I understand your primary arguments to include the following, which I have briefly summarized below:

- The Department is not authorized to adopt WAC 173-517-120, the conservation standard for new permit exempt wells, because the rule restricts water usage in an amount inconsistent with the plain language of RCW 90.44.050. In addition, the petition further argues that Attorney General Opinion (AGO) No. 6, dated September 21, 2009, supports this position.
- Although WAC 173-517-030 requires certain users to implement an approved mitigation plan, the Department does not have a mitigation program in place. The lack of a mitigation program has caused problems in other areas of the state; therefore, the Department should be required to have a mitigation program in place prior to rule adoption.
- There are inconsistencies between various rules adopted by the Department under state water rights laws, Title 90 RCW, and local plan and land use zoning requirements of the Growth Management Act (GMA). As a result, the Department is not authorized to adopt rules that are inconsistent with the GMA.
- The Department's rules result in a failure to provide adequate water for future domestic use, which violates the Water Resource Act of 1971, Chapter 90.54 RCW.
- The Department's authority to adopt minimum in-stream flow is limited to "true" minimum flows or base flows and the flow levels set by the Department are not "true" flows. As a result, the flows set by the Department are contrary to legislative intent of RCW 90.54.020(3)(a) and 90.22.010.
- The Department has failed to comply with the requirements the Regulatory Fairness Act, Chapter 19.85 RCW, by failing to consider the impact on three major industries located within rural areas that are subject to these rules. The Small Business Economic Impact Statement (SBEIS) submitted by the Department is not accurate or realistic.

Discussion

First of all, I want to thank you for the thorough and thoughtful petition that you submitted. The subject matter is extremely complex, and I understand that the issues and concerns you raise in your petition have undergone lengthy discussion by many interested parties and stakeholders.

It is my opinion that the issues you raise require the attention of the legislative standing policy committees that have expertise in this extremely complex issue. My reasons for reaching this conclusion are briefly outlined below:

- There is a clear disagreement related to the interpretation of RCW 90.44.050 and whether the Department is authorized to exercise its discretion to restrict water usage, as provided in WAC 173-517-120, in furtherance of its duties to protect the state's waters. The AGO reaches one conclusion, but that Opinion is advisory only and may or may not reflect the intent of the Legislature. Based on the lingering different interpretations of the Department's authority subsequent to the issuance of the AGO, it is highly unlikely that the JARRC could dispense with the differing opinions and come to a clear understanding of legislative intent in this matter.
- Whether the Department should have a mitigation plan or program in place prior to adoption of these rules is a valid issue to raise; however, it is an issue that is outside of the JARRC's jurisdiction.

- The observation that there are possible inconsistencies between some provisions of Title 90 and the Growth Management Act may, in fact, be accurate. However, it appears that the Department has adopted rules consistent with the broad authority established in Title 90, and the issue of inconsistencies between the GMA and Title 90 is outside the scope of the JARRC's jurisdiction. This is, however, an issue that should be considered by the relevant standing policy committees of the Legislature.
- There is no statutory definition of "adequate" water supplies for domestic use, and the Department is not subject to a direct statutory obligation to provide water to all domestic users without regard to other statutory considerations, discretion, and duties. The statute cited, RCW 90.54.020(5), is a "general declaration of fundamentals" that must guide the Department's actions; it does not provide detailed parameters to define such terms as "adequate," and the Department's rulemaking actions are not clearly inconsistent with its authority.
- The Department has extensive authority to protect the waters of this state, including but not limited to the authority provided in RCWs 90.54.030 - 050. State law does not define "minimum flows" or "base flows". The Department is statutorily granted the discretion to establish the appropriate flows by rule for the stated purposes. Nothing in the petition establishes that the rules adopted by the Department are in conflict with their authority.
- Regarding the concerns raised related to the Regulatory Fairness Act and the sufficiency of the SBEIS, these matters are best considered by the standing policy committees of the Legislature in conjunction with the substantive issues raised in your petition.

Conclusion

I sincerely appreciate the time you took to present your arguments to the Committee. For all of the foregoing reasons, it is my opinion that these extremely complex issues are worthy of further consideration by the standing policy committees in the House of Representatives and the Senate, which will be aided by their expertise in the subject matter. As a result, the petition for JARRC review is denied. However, I will forward this petition to the appropriate policy committees and I urge the petitioner to work with the appropriate House and Senate legislators and staff.

Sincerely,



Representative Bob Hasegawa, Chair

cc: Rep. Joel Kretz, Vice Chair
Rep. Brian Blake
Rep. Bruce Chandler
Sen. Jim Honeyford
Rep. Timm Ormsby
Sen. Craig Pridemore
Sen. Phil Rockefeller
Rep. Norma Smith
Ms. Courtney Barnes
Ms. Diane Smith

ISF RULE
SMALL BUSINESS ECONOMIC IMPACT ANALYSIS
7/5/09
Dennis Schultz

GENERAL COMMENTS

- **All costs of this rule will fall upon the property owners and the small businesses within the Area.**
- **This analysis assumes that without the Rule, there will be no change or growth within the Area for the period of the analysis. This is an unreal assumption. This analysis must contain an analysis of what will happen if the Rule is delayed or not imposed. This analysis skews all the possible benefits in favor of the Rule. Where is the comparison: Rule vs no Rule?**
- **The Conservation Standard is applied to all the sub-basins in the Area, yet, it is only needed in part of the Area. Most of the basins in this area do not have a water shortage. This puts an unneeded economic burden on most of the Area where it is not needed. What is the cost of this burden?**
- **It does not take into consideration the current economic state of the County which has changed dramatically since the period used for analysis. This analysis needs to be updated for current economic conditions.**
- **The four major industries in the area covered by WRIA17 are: Agriculture, Mining, Forestry, and Aquaculture. Yet, these are completely ignored in the analysis. Why were they left out?**
- **This analysis does not take into consideration the unusual land use policies and zoning in effect in Jefferson County.**
- **There is almost no land zoned for Retail, Manufacturing, Distribution, or Service Industries in the Area. Most of which are located in the city. What little there is, is**

- located in existing Water Service areas. Given the political climate, this is very unlikely to change.
- **The whole basis of this rule is based on the theory of ‘Instantaneous Conductivity’ between ground water and the streams. (If a gallon of water is drawn from a well, it instantaneously lowers the level of the basin stream by a gallon), regardless of the distance from the stream or the properties of the aquifer it is drawing from. It also assumes that wells located at higher elevations will draw water uphill into the wells. It totally ignores existing studies, the geology of the basins, the probable existence of a lower disconnected aquifer, and the permeability of the aquifer formations.**

IMPACT ON SMALL BUSINESSES

- **Almost all of the businesses located in the Area are either: Home Based Businesses or Cottage Industries. These are all that are allowed under the current Jefferson County Development Code.**
- **Jefferson County does not require business licenses for these businesses. And does not have any data on these businesses.**
- **Most of these business pay taxes as personal income on Form 1040. Therefore very little known about the type and nature of these businesses. They are NOT included in any SIC Code reporting.**
- **The impact of the proposed water rule on future businesses is totally unknown. The major impact will be, that potential businesses will locate somewhere else in a more friendly business environment. How many potential jobs will be lost?**

IMPACT ON AGRICULTURE

- **The future of Agriculture in Jefferson County is in the small specialty farm business. This type of farm usually can exist using a 5,000gpd Permit Exempt Well. The people starting these farms usually do not have the financial resources to make a large investment and the time to wait for a Water Right.**
- **Small farms of this type are usually located away from the rich bottomland along the creek beds because of the unavailability and high cost of these lands.**
- **Allowing only a limited number of Ag wells in only a few areas will deter many of these farms from starting.**
- **The local Farmers Markets are dependent on having a number of new small farmers entering the market every year as older farmers retire or develop a customer base to sell to outside of the farmers markets. This will cause a decline and possibly the end to some Farmers Markets.**

COSTS

- **Rainwater Catchment is touted as the solution to having more water available. Will a 'standard' household rainwater catchment system meet Health Department standards for a business. Will the benefit exceed the cost of designing, installing, and maintaining a catchment system?**
- **Professional Services are very expensive and beyond the means of many business owners. This Rule assumes that future water will users have the resources to pay for groundwater conductivity studies, mitigation planning and installation, and rainwater catchment systems if they want any water in excess of the minimum.**

SIC CODES

- **The use of SIC Code and USDA Agricultural data reports is worthless in this County. Most of the possible data is lost because it is never reported as such to the respective agencies.**

EXPECTED JOBS CREATED OR LOST

- **This section is lacking any analysis about the alternatives if the rule is not implemented.**
- **THIS ANALYSIS (TABLE 2) ASSUMES THAT ALL FUTURE GROWTH AND DEVELOPMENT WILL ONLY COME ABOUT AS A RESULT OF THE PROPOSED RULE.**
- **Without the rule are DOE or Jefferson County going to put a freeze on all new development?**
- **The model used (NAICS) is totally inappropriate for this county. It assumes land use zoning and availability that does not exist.**
- **Most of the jobs predicted in Table 2 will be located outside of Jefferson County where the current businesses (such as retail and manufacturing) are currently located and there is land for future growth.**
- **Most of the people taking these jobs will elect to live close to the jobs as the cost of commuting and high cost of living will make rural Jefferson County unattractive.**

COMMUNITY INVOLVEMENT

- **Apparently Agriculture, Forestry, Mining and Aquaculture are not considered businesses by DOE.**

- **They were not involved by DOE in the development of the proposed Rule even though they are the major businesses in the Area.**
- **IN 2005 DOE MADE A COMMITMENT TO THE COMMUNITY TO WORK JOINTLY WITH STAKEHOLDERS TO DEVELOP THIS RULE. THEY REPEATEDLY REFUSED TO SIT DOWN AND WORK OUT A WORKABLE WATER MANAGEMENT PLAN.**
- **We are still waiting for DOE to keep its promise!**

SUMMARY

- **This is a very biased analysis. It implies big benefits without showing where they will come from. IT NEEDS TO BE REDONE!**
- **It is full of qualifiers such as: ‘might see’, ‘likely lower costs’, ‘could have added costs’, would be a large benefit’, etc. There are almost no statements proving real definite benefits.**
- **The claim of 890 new homes, 819 new jobs, an annual labor income of \$\$25,000,000, and revenues of \$34,500,000 are just wild optimistic guesses.**

Dennis Schultz
250 N Jacob Miller Rd
Port Townsend, WA 98368
360-379-0338
dschultz@waypt.com

**ISF RULE
PROPOSED WAC 173-517-xxx
7/5/9
Dennis Schultz**

RECOMMENDATIONS:

- 1. Hold off on the Rule until the USGS Study of the Chimacum Basin and other on-going studies are complete. There is no real justification for pushing through this rule except that DOE is behind schedule to implement this rule. None of the other stake holders have any pressing need to implement the rule. It will not put any more water in Chimacum Creek and probably will not result in any loss either.**
- 2. Keep the existing Permit Exempt Well rule. Start a program to collect data on actual well use by asking users to voluntarily meter their usage and report the type of usage of the water, so you have real data for your Benefit Analysis instead of guessing the usage.**
- 3. Be realistic in analyzing ground water flow in the Chimacum Basin. Forget your theory that water will flow uphill from streams to wells completed above the stream beds. Admit that we do not have ‘Instantaneous Hydraulic Continuity’ between the wells and the creeks.**
- 4. Work with a stakeholder group to draw up a realistic water use plan that determines where water can be taken without harm to the streams and where water must be rationed. This proposed set of water use restrictions has nothing of a constructive nature in it for users. All it can do is create bad feelings toward DOE.**
- 5. Set the in-stream flow for Chimacum Creek to reflect the actual flow for recent history and forget the flows experienced 50 years ago.**

Section -060

- 1. Needs to specify how often the Rule will be reviewed if a review is not called for earlier.**
- 2. Needs to specify who can call for a review, and what the procedure will be. This Section is too vague.**

Section -120

(2)(a) Sounds like anyone wanting a 5,000gpd use must submit a mitigation plan. Is this a requirement in the other sections that specify 5,000gpd wells can be authorized? If so it will make these wells too expensive for almost all potential users.

CONSERVATION STANDARD

- 1. Forget about setting a Conservation Standard until you have some hard data on which to base it.**
- 2. The current approach to the standard will do nothing but create bad feeling and economic hardship on property owners, particularly where it isn't needed.**
- 3. Realize the economic impact a Conservation Standard will have on property values in areas where it is not needed.**

Section -130

(3)(a) Does this mean that wells will or will not be allowed in the Port Townsend Service area? How about wells for Agriculture?

(3)(d) Just what is procedure to register and who will manage these registrations? Will there be a limit on how many wells?

Why do you insist on including the ‘un-named’ creek on the Quimper Peninsula when it has been shown to not be a Salmonid stream or to flow into salt water?

Section -150

(6) Specifies that no water is available for agriculture unless it is given in a Water Right. What happened to the Permit Exempt 5,000gpd agriculture well?

(8) Again, why not wait for the model before implementing these rules. Why not wait for (8)(a) or (8)(b) ?

Table 8 is inconsistent with Section -150.

Section -160

This section assumes unrealistic use of water, particularly for irrigation. All irrigation water is not 100% consumptive. Furthermore, irrigation does not take place 24 hours a day 30 days a month. A typical irrigation plan is to water for a fixed period of time and then stop until it is needed again. It is definitely stopped during harvest cycles. And pumping is expensive, therefore, most farmers try to limit their pumping costs. Most water rights are set to cover extreme dry spells (insurance against crop loss) not an average annual need. A history of real data (voluntary metering) will give a much better picture of actual usage.

Section -190

(1)(b) Just how do you propose to determine the number of stock that have historically ranged the property? How about property boundary changes or changes in the type of livestock

Such as changes from dairy to feeder calves or from horses to sheep?

SUMMARY

I have lived all my life in water short areas. I believe in planning water use wisely. You use the slogan ‘People, Farms, Fish’ for this rule. Yet it gives all the benefits to the fish and it still won’t put any more water in the streams. It will cause real economic hardships on the undeveloped property owners who typically that have all their personal assets tied up in their land.

**Dennis Schultz
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360-379-0338
dschultz@waypt.com**

PETITION FOR ADOPTION, AMENDMENT, OR REPEAL
OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)

CHAPTER 173-517 WAC

PETITIONER'S NAME **Dennis A Schultz, President, Olympic Stewardship
Foundation**

TELEPHONE NUMBER **360-379-0338** e-mail **dschultz@waypt.com**

STREET ADDRESS **250 N Jacob Miller Rd**

CITY **Port Townsend** STATE **WA** ZIP CODE **98368**

AGENCY RESPONSIBLE FOR ADMINISTERING THE RULE
Department of Ecology

1. NEW: I am requesting that a new WAC be developed.
I believe a new rule should be developed.
The subject of this rule is:
The rule will affect the following people:
The need for the rule is:

2. AMEND: I am requesting a change to existing WAC:

3. REPEAL: I am requesting existing WAC be removed. **YES**

CHAPTER 173-517 WAC

I believe this rule should be changed or repealed because (check one or more):

- It does not do what it was intended to do. **YES**
- It imposes unreasonable costs. **YES**
- It is applied differently to public and private parties.
- It is not clear
- It is no longer needed.
- It is not authorized. The agency has no authority to make this rule.
- It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if known:
- It duplicates another federal, state or local law or rule. Please list number of the duplicate law or rule, if known:
- Other (please explain): **The SMALL BUSINESS ECONOMIC IMPACT ANALYSIS does not meet the criteria of RCW 19.85.040 and the Findings in RCW 19.85.020. SEE ATTACHED SHEETS (7 pages) for a detailed discussion and excerpts from the RCW's .**

PETITIONER'S SIGNATURE

DATE

**Dennis A Schultz
President,
Olympic Stewardship Foundation**

December 29, 2009

Discussion

This analysis uses the period from 1996 to mid 2006 as a base for making projections. In those years, large developments such as Kala Point and the Port Ludlow Master planned Resort were built and largely completed.

- Since that time no such developments have been planned or started.
- Building permits have dropped from over 400 in 2007 to 200 in 2008, to under 70 in 2009.
- Most of the jobs and companies in construction and real estate have disappeared and the workers are unemployed or left the area.
- This rule restricting water, particularly in those rural areas where there is no real water shortage, will depress real estate values as potential buyers realize that they will not be able to live the rural lifestyle they are looking for. The equity loss for those with buildable properties that will not receive water in the Chimacum basin is on the order of at least \$40,000,000.
- The long time impact of this rule on property tax should be discussed in this section.
- The drop to an average of 45 new homes a year from the current 70, will be an even greater loss of jobs and income in the construction industry – not a benefit
- What about the approximately 1,000 current construction workers currently in this county? Will they be put out of work, or expected to go elsewhere?

This analysis assumes that if the Rule is not adopted, DOE will close the watershed to all new water uses. If this happens, it will drive many businesses out of the county or force them to shut down. It does not legitimately compare the benefit or costs of the rule against current conditions, or any other alternatives, but rather against conditions that it knows would be ruinous to the county and its residents, totally impractical and politically impossible if they were attempted. This is using the WAC and DOE's administrative powers as administrative blackmail: 'Do it our way or we will ruin you economically!'

The \$25,000,000 projected labor income (Table 2) calculates out to about a median family income of about \$30,000 for the 819 new jobs that this rule will create. This is defined by the federal government as 'poverty level income' not family supporting jobs! These families can not afford to live in this county. With a current unemployment rate over 10%, this county does not need this kind of help. This is not a benefit!

The \$35,000,000 benefit for new home construction is based on the alternative that absolutely no new homes will be constructed between 2009 and 2025, i.e. DOE will close the watershed to all new water uses and put a freeze on all new construction. Even if this rule is put to use, it will cause a dramatic decrease in the building industry and jobs. This \$35,000,000 represents a major decrease in business income, not a benefit. The current building rate of 70 new homes a year represents \$56,000,000 in income.

Most of the industrial areas in Table 2 do not exist in this county. The NAICS based model used for this projection is not applicable to Jefferson County. 'The OFM 2002 Washington Input-Output Model is used to predict a picture of the state's economic structure including inter-industry linkages and the economy's dependence on U.S. domestic and international markets' (from OFM website). It is not meant to be used to predict the economic structure of a rural county. It does not have an intrastate industrial geographic location element. Many of the potential jobs in table 2 do not exist within a reasonable distance from Jefferson County. If this model is the basis for the benefits analysis, it must be validated by some other justified method. Specifically, it ignored most of the small businesses in WRIA17. Almost all of the small businesses in the area are 'Home Based' or 'Cottage Industries' as defined in the Jefferson County Unified Development Code. Jefferson County has no data about these businesses as it does not require a business license for them. Owners of these businesses report their income on IRS Form 1040. None of this business is found in the IRS SIC Code reporting data. The list of businesses used by Tryg Hoff is a very partial list full of errors. Most, if not all of the businesses were never contacted by Hoff to validate his projections. A number of these businesses no longer exist. Some of them cannot expand because of code limitations and some are retiree businesses with no desire to expand. And yet, he made large projections for their growth (to grow from a part time helper to a range of 4 to 9 new employees). Jefferson County and City of Port Townsend codes restrict the number of employees in these types of businesses. The section 'Expected Jobs Created or Lost' and 'Table 2' are meaningless and are based on erroneous data and analysis. This must be redone!

The problem with this rule is not the incremental cost of doing business. It is that it will keep businesses from locating here. There is almost no land zoned for industrial or commercial use in the county areas. There is about 740 acres in total zoned for these uses and most of that is already in use or under severe development restrictions.

DOE's answer to the water restrictions is: buy property with water rights, or buy water rights to transfer, or pay for mitigation. In reality, agricultural land with water rights rarely comes on the market, transfer of water rights won't allow transferring water from basin to basin, and there are no water mitigation projects that users can buy into.

The impact of this rule has to be reanalyzed. If implemented, it will be a financial disaster for the county in a few years.

What we really need is a better plan to manage the water we have, and to allocate it to the users that need it. Possibly a 'water board', or some such authority, that can determine where and how water is currently being used, who needs water, and, that can act on water allocation in a timely manner is what we need. The proposed 'one size meets all' rule applied to a number of sub-basins with very different characteristics is a very poor way to manage our water resources. This rule is just a rewrite of the rule proposed in 2005. There has to be a better way to manage our water.

In summary:

- It is based on 'old data' not current conditions.
- It only compares the effects of the rule vs a moratorium on all new construction and development for 16 years. No alternative approaches are analyzed.
- It shows a major loss of jobs, not new jobs being created.
- It shows a major loss in construction income.
- It uses an inappropriate model and data to predict growth.

It does not solve our water management needs here in Jefferson County.

Dennis A. Schultz
250 N Jacob Miller Rd
Port Townsend, WaA98368
360-379-0338

RCW's that this rule does not meet the criteria of:

(Pertinent sections are underlined and comments are in red)

This rule does not meet the findings in RCW19.85.020, in particular (1),(7), (9) and (10):

RCW 19.85.020

Definitions.

Findings -- 2007 c 239: "The legislature finds that:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

This rule will discourage the growth of new business - it will place this area in an uncompetitive position, compared to other counties.

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

See (1)

(9) Alternative regulatory approaches which do not conflict with the state objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;

No alternative approaches have been proposed.

(10) The process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules." [2007 c 239 § 1.]

The prime industries in this area, Agriculture, Aquaculture, Forestry, and Mining were not involved in drawing up this rule.

This Small Business Economic Impact Analysis (SBEIS), Chapter 173-517, does not meet the criteria of RCW 19.85.040(1), (2) and (3):

RCW 19.85.040

Small business economic impact statement — Purpose — Contents.

(1) A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW [34.05.320](#), including costs of equipment, supplies, labor, professional services, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

This rule will cause a significant loss in construction sales and in real estate values.

(2) A small business economic impact statement must also include:

(a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW [19.85.030\(2\)](#), or reasonable justification for not doing so, addressing the options listed in RCW [19.85.030\(2\)](#);

This rule does not reduce any of the costs for small businesses. It will increase the costs for new businesses to locate here.

(d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.

It ignores the existence of an existing construction industry workforce, many of whom will not have work under the planned build out rate of 45 homes a year.

(3) To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW [34.05.310\(2\)](#) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business.

Other than public meetings and press notices, it appears that no effort was made to contact local businesses or survey their future plans to determine the impact of this rule.

It does not meet the criteria of RCW 34.05.325 (6)(a)(iii), (responses such as: ‘DOE disagrees, etc.’ are not acceptable).

RCW 34.05.325

Public participation — Concise explanatory statement.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

Many of Ecology’s answers to the questions in the comments are of the nature: ‘DOE disagrees’, and did not respond to the questions asked.

It does not meet the requirements of the 'Cost/Benefit Analysis' as required in RCW 34.05.328 (1)(d) and (1)(e). Or the findings with respect to The Regulatory Reform Act Of 1995:

RCW 34.05.328

Significant legislative rules, other selected rules.

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

The benefits claimed are over exaggerated and costs minimized or ignored.

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

No alternative solutions have been presented other than a moratorium on all new development.

Findings -- Short title -- Intent -- 1995 c 403: "(1) The legislature finds that:

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

This rule will definitely have a negative impact on the local economy.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth.

This rule does not meet the goal of this law

From: Rob Onnen [REDACTED]
Sent: Thursday, July 05, 2012 1:19 PM
To: Wessel, Ann (ECY)
Subject: WIREA 18

I do not believe that your scientific research supports your proposed rule. The benefits clearly do not outweigh the burdens. I would not hesitate to commence or join a class action lawsuit to prevent any further infringement of our property rights.

Robert E. Onnen
Attorney at Law

[REDACTED]

From: One of Us [REDACTED]
Sent: Sunday, July 08, 2012 3:18 PM
To: Wessel, Ann (ECY)
Subject: Water Usage!

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area. It appears as an attempt of a type of "eminent domain" of the worst kind.

I am VERY concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department. Where are we going to get the money to implement this.....more TAXES!!!????

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. I am sure there are many more who would be if they knew this was going on. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Julia Opeka

From: Patricia J Orella [REDACTED]
Sent: Sunday, July 08, 2012 3:00 PM
To: Wessel, Ann (ECY)
Subject: DOE message

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed Patricia J. Orella

From: Bill Paulbitski [REDACTED]
Sent: Tuesday, July 03, 2012 4:12 PM
To: Wessel, Ann (ECY)
Subject: WIRA 18E Rule

Dear Ms. Wessel

We have serious concerns about the validity of the economic data used by your agency to justify this rule. One of your own economists has expressed grave concerns which was the basis for a Sequim Gazette article on the subject within the last few weeks.

Ms. Wessel, we are requesting - no, with respect, we are requiring that an independent (of your agency) economic analysis be completed of all aspects of WIRA 18E and be presented to Clallam County citizens with reasonable time to evaluate and respond before any attempt is made to implement it.

While we want to thank you and your group for taking the time to meet with us and other citizens of Clallam County last week at SCC, it was clear to us and hopefully to you and your group that a majority of those in attendance were not in favor of moving forward with this rule. Frankly, much of the concern and opposition deals with what we see as a lack of transparency with the process. An independent economic audit would go a long way to address those concerns - even if the results would justify moving forward with the rule.

Thank you for taking time to read and consider concerns.

William and Richelle Paulbitski
[REDACTED]

From: Juan [REDACTED]
Sent: Sunday, July 08, 2012 8:33 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Water Management Proposed Rule

Good evening Ms. Wessel,

Thank you for the opportunity to provide comments on the Dungeness Water Management Proposed Rule. By way of background, I own three separate 1-acre lots, already subdivided for their final use, that I purchased about two years ago. I fell in love with the Sequim area and want to have the ability to build a home in the next few years and perhaps homes for my children as well in the future. I am now very concerned about how the proposed rule may affect my ability to do so, and if my purchase was a wise investment for my future or if it will all be for naught.

After reading the proposed rule and associated documents, and related news articles, I offer the following comments:

1. It seems clear that the full economic impacts of the proposed rule have not been taken into account, and that further study of these impacts needs to be done before a legal finding can be made that the adoption of the rule will result in benefits greater than the cost of implementing the rule, and before a finding can be made that adoption of the rule will result in the Least Burdensome Alternative. I am therefore requesting that further economic analysis be conducted which truly captures the potential "costs and benefits" of the rule.

2. The preliminary cost benefit analysis cites "increased certainty in development" as by far the largest "benefit" (accounting for \$62.1 million out of the \$94.1 million to offset the \$23.1 million in "costs"). However, the rule does not seem to clearly identify that development of existing parcels would be allowed for beneficial use, and refers to "future maximum allocations" in various sections, and states that "once fully and permanently appropriated, no more maximum allocated water be appropriated". Could this be interpreted as creating a de-facto building moratorium, where property owners do not have the ability to purchase mitigation and allowed to develop existing lots? How does this provide "increased certainty in development"? If that is not the intent of the rule to potentially prohibit development of an existing, subdivided lot, it needs to be better defined in the document.

3. I am not opposed to the concept of mitigation if the best science truly finds, and can be substantiated by peer review, that there is truly a need to protect the long-term viability of the basin. Mitigation needs to be provided in way, however, that provides "increased certainty in development" and balances that with the need to provide funding to acquire water rights from other users. If there is indeed a need to provide funding for the water exchange to purchase water rights via mitigation credit purchases, I offer the following:

A. Property owners that own existing subdivided lots be allowed to purchase mitigation as soon as practicable immediately after the exchange has been implemented. This will provide those that have purchased lots and made an investment into the community assurance that they will be able to build a home at some future time. It will also provide the exchange with an immediate funding stream from those that choose to buy mitigation and provide certainty to protect their investment, which can be used to purchase water rights in the short term rather than allowing for the funds to build up over time on a per-building permit basis, providing greater purchasing power and economies of scale in the establishment of the exchange.

B. At a minimum, the option to immediately purchase credits should be offered to property owners that have drilled a well and made a further investment in the property, but have not yet obtained beneficial use of the property by building or occupying a home.

C. Allowing for property owners to purchase mitigation immediately, rather than when a building permit is obtained, in exchange for building assurances would clarify the status of buildable lots and lift the cloud that otherwise may exist for property owners looking to build on or sell the property in the future. Otherwise, it creates a potential "taking" of the property without compensation in violation of the "takings clause" of the 5th Amendment of the U.S. Constitution, since a governmental action (i.e. withholding future water rights for a building permit) may preclude the use of the private property, otherwise in conformance with zoning and other reasonable governmental regulations, from its intended and reasonable use.

I urge Ecology to please consider these comments carefully, and please keep in mind the tremendous concerns that you are hearing from property owners whose lifetime investment may appear to be at risk. If indeed a rule is necessary, please do what you can to develop a fair rule that respects individual property rights while providing for the long-term health of the basin, and please keep in mind that you have the moral and legal responsibility to do the former as well as the later.

Thank you for considering my comments, I wish you and your colleagues well in this difficult task ahead.

Regards,

Juan C. Perez



From: Raul Perez [REDACTED]
Sent: Monday, July 02, 2012 7:53 PM
To: Wessel, Ann (ECY)
Subject: Opposition to proposed water rule

I object to the proposed Dungeness valley water rule strongly based on the following:

1. The rule places the interest of fish, salmon, as the best and highest use of the Dungeness basin's water. Even if this were a view held by the preponderance of the residents, salmon numbers are also subject to ocean predation and commercial fishing losses; therefore, restrictions on private well use may in the end accomplish little to increase population. We can all agree that the salmon require some stream flow for reproduction. However, in my reading about the issue, Dungeness flows are currently higher than in the 1950s when agriculture was more widespread in the valley --yet fish numbers are lower now.
2. An unfair situation would arise in the requirement of metering or mitigation costs for new wells versus existing ones. This is a common divide and conquer ploy to weaken opposition. After all, the rule can be amended later if the touted benefits fail to materialize, and expanded to wells now exempt.
3. A good proportion of the new wells affected by this rule would be drilled in properties owned in absentia; therefore, these owners are faced with increased costs and reduction of property values with no representation in the local government by virtue of their lack of resident voter status.
4. The metering of private wells smacks of collectivism. Regardless of the technical rationale, the end result is it gives Ecology the ability to limit usage, or, worse yet, require payments of "mitigation" fees which affect physical water flow not one iota. This is about money and power.
5. The growth in the Sequim area, is a valid topic for public discussion and decision making. The tool to accomplish these are the argument of ideas, discovery and statements of fact, and elections; not rules drafted and implemented by Ecology officials well removed from electoral checks and balances.

Respectfully,

Raul M. Perez

From: Lois Perry [REDACTED]
Sent: Wednesday, July 04, 2012 9:11 AM
To: Wessel, Ann (ECY)
Subject: DOE Rules comments

Attn: Ann Wessel Department of Ecology

July 4, 2012

Happy Independence Day!

To whom it may concern:

We object to the Dungeness Water Management Plan (DOE) , and the "Rules" projected by DOE.

The process for the project is not credible nor based on true science.

It is laced with much pseudo science. The models are not valid. Your determination of hydraulic continuity, is not true.

Your economic analysis is completely corrupted and our tax dollars are being wasted .

The money spent between the Dungeness/Quilcene Project and the Chelan Agreement, (from late 80's) , linking our Peninsula, via the Dungeness River Management Team (DRMT) has been astronomical and we do not need to continue supporting your DOE staff, which has cost us thousands of dollars and millions are still projected.

We do not want and do not need your very expensive, "Rules" experimental project.

We can and always have successfully done our own resource management.

Please consider our comments. We agree with June 28th testimony, in Sequim, with Dick Pilling, Steve Marble, Marguerite Glover, and Kaj Ahlburg and many of those who testified against this process, which was recorded by DOE.

Dan and Lois Perry
[REDACTED]

From: Maureen Pfaff [REDACTED]
Sent: Monday, July 02, 2012 10:32 AM
To: Wessel, Ann (ECY)
Subject: Water Rules

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

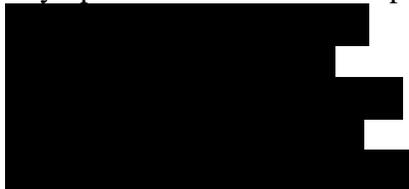
The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial.

Thank you for your attention.

Maureen Pfaff

Maureen Pfaff, General Manager/CFO
Olympic Peninsula Title Company



From: Richard Pinder [REDACTED]
Sent: Friday, July 06, 2012 12:03 PM
To: Wessel, Ann (ECY)
Cc: Wessel, Ann (ECY)
Subject: comment to Dungeness Water Rule for WRIA 18

Dear Ms Wessel,

Attached is our questions and opinion to the WRIA 18 water rule from the public meeting on June 28, 2012 in Sequim.

Thank you ,

Richard and Jill Pinder

[REDACTED]

July 6, 2012

- Richard and Jill Pinder

[REDACTED]
[REDACTED]

Mailing address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- Department of Ecology Comment on the public hearing of June 28, 2012.
- IS THERE a problem in the water shed or is DOE looking for control of the water usage and rights of the Clallam County citizens and businesses?
- What has been the economic impact to the other counties in Washington State where DOE has imposed water rules?
- If there is a water right law in effect for the state of Washington, Why does the DOE feel the need to create a rule for water management in Clallam County Dungeness water shed?
- What are the currant facts and data to back up the WRIA 18 rule proposal?
- Where is the evidence of water usage at various times of the year that would impact ground water, stream and rivers?

- Is average rain fall and snow pack a consideration when analyzing the water usage of a certain area whether it is Clallam, Jefferson or any other county in the state?
- Has the DOE imposed water rules in eastern Washington where the rain fall is lower?
- How recent and accurate are the studies done on the Dungeness Water Shed?
- Has a study been done in the last five years?
- If WRIA 18 water usage is being measured by the Agricultural Water Users Association and the City of Sequim why do we need more regulation by the DOE?
- If it has been five years since a study has been done, why is a current (2012) cost analysis not being done to assess the economic impact to Clallam County?
- Should a current analysis be done by an independent research group?
- Do residential users actually use 5000 gal a day?
- What data supports the daily usages of a residential, commercial and farm irrigation water?
- What does the Attorney General's office have to do with the DOE except issue a formal opinion based on water exemption what data does the Attorney General's office base this formal opinion on?
- Who are the people who create and operate a water exchange?
- How are they regulated and monitored to prevent over pricing and unrealistic restrictions to the public?
- Why is it, that the public can not have a vote on the proposed water rule for the WRIA 18?
- Why is the WRIA 18 Dungeness Watershed Rule even being considered when the State DOE economist agrees there is no economic benefit to the proposed rule?
- What benefit would the DOE have in deceiving the citizen of Clallam County?
- How would this proposed rule affect Snowbird property owners who may only be here in the county for six months?
- If I have property with a well that is in use, yet have not built my home on the property, will I be exempt from the rule or is the building of a home considered a new use, if there is no change in the usage of the well?

In closing my opinion is the proposed WRIA 18 water rule is too incomplete, and should not be adopted until an accurate cost study has been done to better understand: What the egomaniac impact will be on residential, commercial and farms that require irrigation to sustain crops.



POINT NO POINT TREATY COUNCIL

Port Gamble S'Klallam * Jamestown S'Klallam

July 9, 2012

Ann Wessel
Instream Flow Rule Lead
Washington Department of Ecology
1440 10th St., Suite 102
Bellingham, WA 98225

RE: Comments on the water management rule for the Dungeness watershed, east WRIA 18

Ms. Wessel,

The Point No Point Treaty Council (PNPTC) supports the adoption of the proposed water resource management rule for the eastern portion of WRIA 18, the Dungeness watershed. The PNPTC urges the Department of Ecology to adopt, implement and enforce the proposed rule.

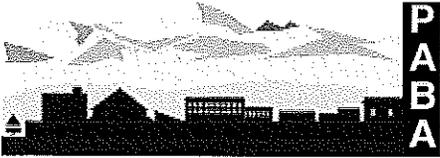
Water is a precious resource. Water is a limited resource. Water is a public resource. Water is critical and essential to the Tribes' right to fish, hunt and gather in the Dungeness watershed as reserved by treaty. We must be wise and we must make choices as we strive to balance the use of available water in the Dungeness watershed. The proposed rule achieves a good balance.

The PNPTC appreciates the comprehensive work done by Department of Ecology staff and the collaborative efforts of policy representatives from all entities involved in the rule development. The proposed rule will begin the process of managing the public's water in the Dungeness watershed for the benefit of people, fish, and wildlife.

Please contact me by phone (360 731-7980) or by email (tjohnson@pnptc.org) if you have any comments, questions, or need more information.

Sincerely,

Thom H. Johnson
PNPTC Environmental Program Manager



PORT ANGELES BUSINESS ASSOCIATION
PO BOX 545
PORT ANGELES, WA. 98362

Ann Wessel
Washington State Department of Ecology
ann.wessel@ecy.wa.gov

June 26, 2012

Dear Ms. Wessel,

Please find following the formal comments of the Port Angeles Business Association on the proposed Water Resources Management Program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18, Chapter 173-518 WAC.

We are a business organization of approximately 80 members with the purpose of promoting business in the Greater Port Angeles Area and increasing business growth and developing jobs. As such, we have examined with particular interest the Preliminary Cost Benefit and Least Burdensome Alternative Analyses and the Small Business Economic Impact Statement. We note that State law requires under RCW 34.05.328 (1)(d) that *"probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs"* and under RCW 34.05.328 (1)(e) that *"the rule being adopted is the least burdensome alternative for those required to comply with it"*.

After thorough analysis of the proposed rule, the Preliminary Cost Benefit and Least Burdensome Alternative Analyses and the Small Business Economic Impact Statement, we have concluded that the rule as currently proposed probably results in costs larger than benefits, and that it is not the least burdensome alternative. As a result, we believe that the rule is in violation of RCW 34.05.328 and, thus, contrary to State law, which always supersedes provisions of the Washington Administrative Code where in conflict. Our reasons are detailed below.

1. The cost benefit analysis suffers from several fatal flaws.
 - A. It does not include among costs the decrease in property value of the properties subject to new restrictions. This decrease is larger than just the amount of estimated mitigation fees, because under the rule as proposed there is no ironclad guarantee that in all affected watersheds at all times there will be available either reserves or mitigation credits at a price known in advance. Uncertainty in the business world has a very real, and often considerable, cost attached to it, ignored by your analysis.
 - B. It does not include among the costs the effect on the local economy of the decrease in building and ancillary (well drilling, landscaping, etc.) activities resulting from the increased cost of a home due to the need to purchase mitigation credits for domestic use and landscape watering. The only time increased cost does not result in decreased demand is when the good in

question has a price elasticity of demand of zero. This clearly is not the case for houses and landscaping. The real estate, building and related industries account for about one quarter of all private employment and economic activity in Clallam County. Your cost benefit analysis and Small Business Economic Impact Statement need to be revised, using the correct price elasticity of demand for these goods, to reflect the impact of the rule on the realty, building, landscaping and related industries, and the impact of the resulting decreased sales tax receipts and increased unemployment.

- C. One of the crucial elements of your cost benefit analysis, without which benefits would not exceed costs, is the assumption of \$22.3 million to \$66.9 million in benefits from avoided litigation. Given that there currently is neither pending nor threatened litigation these numbers are vastly inflated. There is no support whatever for your assumption of a “baseline risk of a lawsuit ... [of] 14.1 – 27.7 percent”. Assuming costs of litigation between 50 and 150 times of the estimated \$400,000 it might cost to purchase the required 0.77 cfs of senior water rights needed to compensate for expected future permit exempt well usage, which would be the subject of this hypothetical litigation, flies in the face of common sense.
- D. Similarly, your assumed benefit of \$20.5 million from protecting existing salmon restoration has no basis in fact. This amount is a sunk cost of an investment in salmon restoration made in the past, on its own merits, without any contemplation of this rule. To the extent adoption of this rule would benefit salmon habitat, those benefits are captured in the assumed \$3.8 million to \$6.8 million from “avoided fish losses”. Adding the \$20.5 million to these amounts constitutes double counting.
- E. It does not include the estimated costs of the litigation that quite likely will ensue if the rule is promulgated without addressing satisfactorily the concerns raised in this comment letter. You need to estimate those costs, for Ecology (and ultimately the taxpayer), the County, and the industry and property owners groups that would be involved in such litigation, as well as the cost of uncertainty and delays in development during the pendency of this litigation.
- F. Ecology’s own economist, Mr. Hoff on March 19, 2012 issued the following finding: *“This is a formal notification to the WRIA 18 rule writers that the evaluated Draft Rule presented on March 15 for the Dungeness watershed does not meet the legal requirements outline in RCW 34.05.328 (1)(d) of the Administrative Procedures Act.”* When Mr. Hoff refused to buckle under to political pressure as to how his economic analysis should be prepared and was removed from the rule making team, the analysis was prepared in just a few weeks by employees lacking any familiarity with the WRIA 18 rulemaking process, resulting in this flawed final result.

We believe that these defects in substance and in process, quite possibly involving serious violations of the Administrative Procedure Act, can only be cured with new Preliminary Cost Benefit and Least Burdensome Alternative Analyses and Small Business Economic Impact Statement, incorporating the above comments.

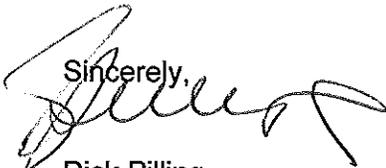
- 2. The proposed rule does not constitute the least burdensome alternative, and thus runs afoul of RCW 34.05.328 (1)(e).
 - A. A much less burdensome alternative would be to have the State of Washington fund through its capital budget and purchase in advance the required mitigation

credits, without charging individual property owners for water use from their permit exempt wells, similarly to the way it is being done in Skagit County. This would, for a relatively minimal expenditure (as little as \$300,000 to \$400,000 for 0.77 cfs) remove the great majority of the costs that currently cause this rule to fail the RCW 34.05.328 (1)(d) test. We consider it essential that the rule be made contingent upon the necessary funding being appropriated and spent to purchase the required mitigation credits, and that the rule be automatically suspended by its terms if this does not occur during the next legislative session. Your own economist Mr. Hoff wrote on March 2, 2012 that *"What usually made the Benefits outweigh the costs in past rules is we gave away water in a reserve for another 20 years with some conditions. In this rule we do not do this so it all falls on the cost side of the balance sheet."*

- B. The metering requirement also runs afoul of the least burdensome alternative rule. There are now sophisticated techniques for estimating well pump usage through residential electric metering, something that would clearly be less burdensome than spending \$1.4 to \$2.1 million on well meters. Your employee Robert Barwin's e-mail dated March 12, 2012, in which he wrote *"Given the relatively low costs of the metering requirement, I didn't even bother with describing a metering v. no metering alternative"*, shows there never was the serious consideration of less burdensome alternatives required by RCW 34.05.328 (1)(e) regarding a requirement expected to cost property owners millions of dollars.

We sincerely hope that you will take the time to address our comments by making the necessary changes to the rule and revising the Preliminary Cost Benefit and Least Burdensome Alternative Analyses and the Small Business Economic Impact Statement. We are concerned that if you were to pass the rule in its current form, against the opposition of local government, local business, and local property owners, it would only result in expensive and unproductive litigation.

Sincerely,



Dick Pilling
President, Port Angeles Business Association

cc: Senator Jim Hargrove, jim.hargrove@leg.wa.gov
Representative Kevin Van de Wege, kevin.vandewege@leg.wa.gov
Representative Steve Tharinger, steve.tharinger@leg.wa.gov
Commissioner Jim McEntire, jmcentire@co.clallam.wa.us
Commissioner Mike Chapman, mchapman@co.clallam.wa.us
Commissioner Mike Doherty, mdoherty@co.clallam.wa.us



PORT GAMBLE S'KLALLAM TRIBE
NATURAL RESOURCES DEPARTMENT
31912 Little Boston Rd. NE – Kingston, WA 98346

July 9, 2012

Ann Wessel
Instream Flow Rule Lead
Department of Ecology
1440 10th St., Suite 102
Bellingham, WA 98225

RE: Comment on the water management rule for the Dungeness watershed, east WRIA 18

Dear Ann,

The Port Gamble S'Klallam Tribe is writing in support of the management rule for instream flows in the Dungeness watershed. We are all aware these flows are necessary for the integrity of the watershed as a whole, to meet the need of all water users including fish and wildlife. As one of the three S'Klallam Tribes with Treaty affirmed Usual and Accustomed hunting, fishing and gathering rights in this area, we have been working collaboratively with our colleagues to protect and recover resources, especially salmon, that we have depended on for millennia. Securing water flows has been and remains a critical need.

The Dungeness watershed has been a key focus for water management for many of us since, in particular, the Chelan pilot project in the 1990's. The Dungeness – Elwah Watershed Plan (WRIA 18) was completed in 2005. It is time for the instream flow rule to be completed. We have worked directly with the Department of Ecology on the WRIA 17 instream flow rule and indirectly through our related Tribes on other rules. None of the rules are perfect or provide what everyone desires in water quantity; however it is incumbent on the Washington State Department of Ecology to set the flows in rule to stop the loss of fish and habitat, and provide benchmarks for constructive restoration and sharing of this vital resource.

We look forward to your adoption of the rule. We further look forward to the many opportunities to implement the rule and restore flows as allowed.

Sincerely,

Paul McCollum
Natural Resources Director

Dave Fuller
Water Resources Manager

From: Karen Pritchard [REDACTED]
Sent: Tuesday, July 03, 2012 5:13 PM
To: Wessel, Ann (ECY)
Subject: STOP THE RULE

Dear Ms. Wessel,

Please do the right thing by Clallam County and stop the rule making process for WRIA 18 until a new economic study can be conducted. We object to the faulty conclusions and feel that justice to everyone cannot conclude without this new study.

*Sincerely,
Karen Pritchard*

[REDACTED]

From: Karen Pritchard [REDACTED]
Sent: Monday, June 11, 2012 8:14 PM
To: Wessel, Ann (ECY)
Subject: a question for the rule

Hi Ann,

You must be getting really weary about now. My question for you and this is a formal question to be entered into the record is this:

What will happen to households where couples decide to add to their families either by adoption, natural birth or taking in foster children? Will they be made to pay mitigation fees for the expansion of the use of water?

Thanks. Karen Pritchard, Sequim

July 6, 2012



Ms. Ann E. Wessel
Department of Ecology
Water Resources Program

Re: Dungeness Water Management Rule

Dear Ms. Wessel:

Public Utility District No. 1 of Clallam County (District) respectfully submits to you our comments on the May 9, 2012 draft rule language for Chapter 173-518 WAC-- Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18. On January 30, 2012, District Staff submitted to you via e-mail a report entitled: "Review of the 1991 Fish Habitat Analysis and Its Application to Setting Instream Flows for the Dungeness River--30Jan2012." Please include this report in your collection of comments on the draft rule.

The District is concerned about the findings discussed in the report. Arithmetic errors were found in Table 5 of the report on the 1991 Fish Habitat Analysis (the 1991 Report). This brings into question the accuracy of the entire report and the thoroughness of any prior peer reviews (Department of Ecology Staff claimed prior peer reviews were conducted, but they did not provide any documentation of any such review).

Contrary to the 1991 Report's description of hydraulic model data collection, not all water surface elevation data were related to a permanent benchmark that was established for the study. Side channel water surface and channel cross-section elevation data were referenced to another benchmark. This presents a problem with the vertical control of the elevation and cross-section survey data. This problem causes uncertainty in the determination of the in the range of mainstem flows below which there is no longer a surface water connection to side channels. The optimum weighted usable area (WUA) for fish in the river is highly sensitive to this range of flows. The optimum WUAs were used to determine the instream flow levels for the Dungeness River in the draft rule language. Consequently, there is uncertainty in these instream flow levels.

Furthermore, with regards to the mainstem connection to side channels, latter reports on the physical habitat of the Dungeness River do not corroborate the 1991 Report. In 2003, the U.S. Bureau of Reclamation (BOR) reported on their instream flow side channel study of the Dungeness River. BOR conducted a survey of side channels in the lower 11 miles of the river. They found 10 side channels with surface water connections. BOR predicted that the range of mainstem flows below which there is no longer a surface water connection ranges from 0 cfs to 156 cfs. The average of this range of flows is 69 cfs. The 1991 Report indicated that this flow was 260 cfs. This report omits a description of how the 260 cfs value was calculated. It appears

Commissioners: Will Purser, District No. 1 • Hugh Haffner, District No. 2 • Ted Simpson, District No. 3 • General Manager: Doug Nass

PUD No. 1 of Clallam County • 2431 East Highway 101 • P.O. Box 1090 • Port Angeles, WA 98362-0207 • www.clallampud.net

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that this value was selected arbitrarily. The side channels investigated in the 1991 Report are not representative of the side channels that the BOR found in their more comprehensive survey.

The January 30, 2012 Report by District Staff raised additional technical concerns regarding the application of the method used to determine instream flow levels in the draft rule language. This report described a review of only a portion of the hydraulic analysis presented in the 1991 Report. The report by District Staff provides evidence of technical errors and omissions and raises a valid question about the existence of such problems in the other portions of the 1991 Report. The District recommends an independent review of the entire 1991 Report. This review should look for any similar errors, omissions and/or arbitrarily selected values that are critical to setting instream flows for Chapter 173-518 WAC.

The District is suggests the following changes to the draft rule language.

WAC 173-518-030 Definitions

Change this section to the following:

"Water budget neutral" means an appropriation for a project where withdrawals of ground water are proposed in exchange for:

- (1) placement of other water rights into the trust water right program or stream flow improvement with appropriate assurances, that are at least equivalent to the amount of consumptive use for the project, or
- (2) return of Class A reclaimed waters to the watershed that are at least equivalent to the corresponding avoided volume of diversion from surface water, or
- (3) return of Class A reclaimed waters to the watershed that are at least equivalent to the corresponding volume of effluent from on-site septic systems that due to the project no longer diminish the quality of the water source, or
- (4) water imported from a source outside of the Dungeness portion of WRIA 18.

This change is intended to allow mitigation credits to be added to the water exchange for reuse of reclaimed water. Reclaimed water that replaces direct diversions of surface water and is reused for the same purpose of use should be credited in the total diversion amount avoided. This full diversion amount is consistent with the amount of water that is widely perceived to be conserved by irrigation ditch piping projects. Sections 173-518-070 and 173-518-075 in the draft language refer to mitigation of proposed consumptive use and stream depletions. According to Section 070 (3) (a) (i), depletion is determined by the groundwater flow model with the input of the proposed consumptive use. However, this is only a flow model, which calculates mitigation credits using the quantity of stream depletion. A method is needed to calculate mitigation credits for the reduction of prior consumptive use due to diminishment of the quality of the water source and of all other water bodies hydraulically connected to the water source.

Also, this change is intended to allow mitigation credits to be added to the water exchange for the water imported from Morse Creek via the District's Fairview Water System. Unconsumed

water from Morse Creek recharges groundwater in the Bagley, Siebert and two coastal sub-watersheds, and enhances streamflow in these creeks and possibly McDonald Creek, as well.

WAC 173-518-070 Future ground water appropriations.

Section (3) (a) (i) refers to the Dungeness water exchange. Water use may be mitigated through the purchase of credits through the exchange. More detail is needed about the mitigation via the exchange. Purchase and transfer of water rights is a common method means of mitigation. The purchase and transfer does not change the period of use of the water right. Apparently the period of use specification is not considered because the exchange determines credits for offsetting consumptive use. Nothing in this language refers to the timing of consumptive use. The language should be clear regarding this period of use issue. There needs to be an assurance that irrigation water rights purchased for mitigation credit through the exchange can be used for mitigating future use outside of the irrigation season specified in the water right.

Furthermore, existing leakage of water through irrigation ditches should be used for mitigation credit in the exchange. This water has not been "wasted." Because of ground-surface water interactions the leakage water recharges the shallow aquifer and enhances streamflow later in the season. These interactions were demonstrated by Pacific Groundwater Group in their March 31, 2009 report entitled: "Aquifer Recharge Feasibility Study for the Dungeness Peninsula."

WAC 173-518-040 Establishment of instream flows.

Because of the questions raised regarding the 1991 Report, the District recommends reconsideration of the instream flows for the Dungeness Mainstem after an independent review of this report is completed.

WAC 173-518-050 Closures.

Because of the questions raised regarding the 1991 Report, the District recommends reconsideration of the closure period of the Dungeness Mainstem after an independent review of the 1991 Report is completed. Mitigation methods relying on withdrawals from the Dungeness Mainstem for aquifer recharge may only be successful if withdrawals are allowed after July 15th. The quality of withdrawals from the Dungeness Mainstem to storage for potable water use will be affected by aging. Water treatment will become more expensive as storage time increases. Allowing withdrawals for potable water purposes after July 15th would reduce treatment costs.

WAC 173-518-070 (3) (a) (i)

Drilling to the middle or deep aquifer, where available, will be encouraged only if adequate measures are taken to prevent cross-contamination from the shallow aquifer. The District's LUD

#10 well in Carlsborg has had steadily increasing nitrate concentrations since March 2009, which is about 1 year after the nearby Carlsborg Mobile Estates replaced their shallow well with a deeper well. The shallow well had nitrate concentrations near the maximum contaminant limit. Encouraging moving withdrawals to the middle or deep aquifers will induce more leakage of water from the shallow aquifer and cause cross-contamination, unless preventative measures are required.

WAC 173-518-090 Future maximum allocation from the Dungeness River mainstem.

There needs to be an exception inserted for withdrawals during non-closure periods to off-channel storage for the purpose of mitigating during closure periods.

WAC 173-518-120 Regulation review.

Explain the rationale for (2).

Comments on Preliminary Cost Benefit and Least Burdensome Alternative Analysis

Page 33 Increased certainty in development

Provide details of Ecology's assessment of risk that a larger (basin-wide) lawsuit would be brought by a tribe or at the federal level (e.g., because of salmon loss and tribal claims to instream flow to support the treaty right to take fish), that would halt future development in the basin. How were the cost and the probability of a successful outcome of the lawsuit determined?

Thank you for considering our comments.

Sincerely,

for
Doug Nass
General Manager

From: Charles Putnam [REDACTED]
Sent: Sunday, July 08, 2012 11:58 AM
To: Wessel, Ann (ECY)
Subject: WRIA18

As a longtime resident of Clallam County, I urge you (the DoE) to reconsider imposition of WRIA18 on the citizens of Clallam County. The science is faulty and the long term costs to the citizens of the county far outweigh the benefits. The agency has heard knowledgeable and caring people speak to this issue, almost all in opposition, with facts and experience.

The DoE should act in the best interests of all users of water in the Dungeness Valley and stop this action.

With respect,

Charles Putnam
[REDACTED]

From: Good Person [REDACTED]
Sent: Sunday, July 08, 2012 12:03 PM
To: Wessel, Ann (ECY)
Subject: limitations on water usage / and the proposed Sewer Treatment Plant in Carlsborg UGA

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Lynda Rathmann

PS. I would also like to ask why the PUD is being allowed to implement plans for a Sewer Treatment Plant in the Carlsborg UGA and submit paperwork to you the DOE that says the property is surrounded by light industrial on all sides when in fact it is residential on three sides.



Jefferson County Association of REALTORS®

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TESTIMONY TO THE AG AND NATURAL RESOURCE COMMITTEE

January 15, 2010

Mr. Chair, Members of the Committee, Ladies and Gentleman. My name is Teren MacLeod. I am chair of the Government Affairs Committee of the Jefferson County Association of Realtors®, and their representative on the WRIA-17 Planning Unit. I am testifying today on behalf of the Washington Realtors®, particularly in regard to rural counties and issues. Thank you for your consideration of this bill.

The enabling legislation in 1945 for 90.44.050 in part was created to allow for small sustainable agriculture on rural lands not served by a public water system. This has allowed for the rural areas to support small niche agriculture on rural residential lands, a growing trend that is now supporting local Farmer's Markets, and helping people to realize their dream of creating a sustainable rural lifestyle. The current instream flow rule adopted in WRIA-17 closes down the opportunity for future agriculture in our "bread basin," the Chimacum sub-basin. We were told by Ecology during the rule-making process, over and over again, that existing wells would not be affected in any way, specifically in regard to metering and investigation of water use. Many said, "we hear you, Ecology, but we don't believe you." That question remains to be answered.

We need this bill to pass to give assurance to existing property owners that their permit-exempt water rights and beneficial uses are intact. It is a fact used by Ecology that up to 87% of the water used from permit-exempt wells can recharge the aquifer. There are no facts to suggest, in our areas, that permit-exempt wells are compromising water availability, to the eco-system, or to senior water right holders. We have been told by hydrologists that use of a deep well in some areas can actually augment stream flows.

Our rural character rests in our capability to produce local food to feed ourselves, especially as we face economic uncertainties. Living on a peninsula, that reality becomes even more concerning. We ask that you secure existing permit-exempt uses with this bill, so that we have some certainty in the future beneficial use of our lands.

Teren MacLeod, Realtor®
360-344-3944



**Preliminary Cost Benefit,
Maximum Net Benefit
and
Least Burdensome Analyses**

**Chapter 173-517 WAC
Water Resources Program for the Quilcene–Snow
Watershed**

Water Resources Inventory Area (WRIA) 17

May, 2009

09-11-014

*Download this report from the Department of Ecology's Web Site at
<http://www.ecy.wa.gov/biblio/0911014.html>*

*If you need this publication in another format, please call the Water Resource Program at
(360) 407-6872. Persons with hearing loss can call 711 for Washington Relay Service.
Persons with a speech disability can call 877-833-6341.*

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1. Conclusions

The Department of Ecology (Ecology) has determined that the probable benefits of the proposed rule greatly exceed the probable costs. Further, Ecology has determined that the proposed rule maximizes the net benefits to the people of Washington State.

Conclusion Summary

- The rule is likely to generate the maximum net benefits available under the law from the reserves that provide a reliable supply of water for population growth through 2025.
- The setting and protection of instream flows and establishing of reserves protects in-stream and out of stream uses in the watershed.
- The benefits associated with establishing the reserves outweigh the costs, including:
 - The probable costs to ecosystems, aesthetics, and cultural ceremonial values.
 - The costs of using and managing the reserves.
- The rule is the least burdensome option for those who must comply.

Quantified Values

- The quantified benefit estimate exceeds \$32 million through 2025.
- The quantified cost of the rule is estimated to be \$3.3 million through 2025.

Unquantified Values

- Impacts of climate change that may affect expected benefits by modifying hydrologic regime and impacting both in-stream and out-of-stream uses.
- Changes to the local economy from the effects of the global economy that may reduce or increase benefits.
- Protected and improved water quality that may occur because of protected flows.
- Improved certainty on how to secure future water rights (new appropriations).

- Allowing rain catchment for onsite use.
- Reduced risks of impairment on existing wells because of conservation standards for exempt wells.

Ecology has determined that the benefits associated with this proposed rule exceed probable costs. Ecology does not believe that the unquantified values will offset the net benefits.

Maximizing the Net Benefits

The proposed rule contains the combination of reserves most likely to maximize net benefits.

Revised Code of Washington (RCW) 90.54.020(3)(a) generally prohibits Ecology from allowing withdrawals of water from surface waters or groundwater that conflict with stream flow needs protected by instream flows. “Instream flows” are stream flow levels set in rule that create a water right to protect in-stream values.

Ecology may authorize water withdrawals in conflict with instream flows when it is clear that it would serve the overriding considerations of the public interest (OCPI). A finding of OCPI allows Ecology to resolve the conflict between the two planning objectives of meeting the needs of people and of the environment. Where public benefits clearly outweigh public losses, OCPI allows Ecology to make some water available for growth when the harm to the instream flow right is minor.

The maximum net benefit analysis (Section 7) considers the public benefits gained by the reserves and any harm to public resources (both discussed in Section 6). In general, the reserves promote growth in economic sectors while protecting the remaining in-stream resources.

The sizes of the reserves are adequate to meet future domestic demands for the following 16 years, while limiting habitat loss. Ecology determined the specific reserve amounts through careful data review and negotiations between technical staff from the state departments of Ecology and Fish and Wildlife (see Appendix 4 for reserve allocations).

Ecology and local counties will track and account for all withdrawals made from the reserves. This includes uses under water right permits and uses that are permit-exempt. This strategy will likely benefit the future in-stream resources in the Quilcene-Snow watershed.

2. Purpose of this Analysis

Ecology is obligated under Chapters 90.82, 90.22, and 90.54 RCW to set and protect instream flows at levels needed to protect fish and other environmental values. Rule setting instream flows may also include strategies or provisions for future out-of-stream water uses. Ecology has proposed this rule, Chapter 173-517 WAC in order to fulfill these obligations. The economic analysis described in this document is part of the rule-making process.

Ecology is issuing this preliminary joint Cost Benefit Analysis (CBA) and Least Burdensome Alternative Analysis, under Chapter 34.05 RCW, and Maximum Net Benefit Analysis (MNB), under RCW 90.54.020 (2). Ecology will use the information from these analyses to ensure that the proposed rule is consistent with legislative policy. Ecology has also developed and issued a Small Business Economic Impact Statement (SBEIS) as part of its rule-making process.

3. Reason for the Proposed Rule

At this time, WRIA 17 does not have a rule in place. To better manage water resources in WRIA 17, Ecology, Department of Fish and Wildlife, and local stakeholders recommended that Ecology adopt, through rule, a new water resource management program that includes:

- Setting instream flow levels in the watershed to protect existing water users and aquatic resources, including habitat for threatened and endangered salmonids.
- Closing most subbasins to new year-round withdrawals.
- Establishing water reserves to provide a reliable water supply through 2025 for population growth in closed areas.
- Specifying conditions for accessing the water reserves to better manage limited supplies.
- Establishing conservation standards for new permit-exempt well withdrawals.
- Allowing rain catchment for onsite water use.

The proposed instream flows are designed to be protective of salmon habitat. This makes less water available for future out-of-stream uses during low-flow portions of the year (typically July 1 through October 31). To provide a reliable, year-round supply of water for future uses, it is necessary to reserve water to be available even when the instream flows are not met. To do this, RCW 90.54.020(3)(a) requires that Ecology determine that the reserve would serve the Overriding Considerations of the Public Interest.

Water uses begun after Ecology adopts the instream flow rule are junior water rights with respect to these flows. Unless mitigated to offset their impact on flows, these junior uses

may be interrupted when instream flows are not met. Water rights established prior to the instream flows are senior uses and are not subject to the flows.

The proposed reserves allow permit-exempt uses, including small group domestic uses. In one subbasin (the Big Quilcene), the reserve gives a municipal system more access to reliable water supplies, consistent with RCW 90.54.020(8). These reserves will enable local governments to make findings of water availability for new construction, as a required under the Growth Management Act (GMA). The proposed reserves are created for each subbasin where instream flows would be set.

The proposed reserves ensure a year-round, reliable water supply for new domestic and some commercial uses to meet expected demands through 2025. They are divided by subbasin and county. Future users from the reserves could obtain their water from either groundwater or surface water sources.

4. Scope of Analysis

This document contains the preliminary Cost Benefit Analysis (CBA), Maximum Net Benefits Analysis (MNBA), and a Least Burdensome Alternative Analysis.

- The CBA measures the probable costs and benefits of the proposed rule against current operating conditions under the existing legal structure.
- The MNBA evaluates whether the proposed rule maximizes the net benefits for the citizens of the state.
- The Least Burdensome Alternative Analysis must show that the proposed rule is the least burdensome option for those required to comply with the rule.

Baseline for Analysis

The baseline is the current legal framework governing the management of water resources within the watershed. Baseline conditions include current water management practices in the basin, and other applicable water resource laws and court cases.

5. Comparison of Current Conditions to the Proposed Rule

This section describes how the proposed rule would affect citizens in the watershed compared to the current conditions of the baseline

The comparison in this section addresses the following major elements of the rule:

- A. Setting instream flows [WAC 173-517-090].

- B. Closing subbasins to future withdrawals [WAC 173-517-100].
- C. Establishing reserves of water for future use, and specifying conditions of use for access to the water reserves [WAC 173-517-150].
- D. Establishing conservation standards for new permit exempt well use [WAC 173-517-120]
- E. Restriction on outdoor irrigation in Chimacum subbasin [WAC 173-517-150(7)].

The following analysis shows that setting instream flows, the formal closures, the reserves, and the conservation standards are the most significant changes from existing conditions. The analysis in this report will focus on the reserves, and quantify the costs and benefits associated with the allocation of the reserved water. Appendix 3 contains a summary of these changes as they apply to specific sections of Chapter 173-517 WAC.

A. Setting Instream Flows (Establishing Instream Flow Rights)

Proposed Rule

The proposed rule sets instream flows for 13 rivers and streams in WRIA 17. Once the rule takes effect, instream flows become water rights. As water rights, Washington water law protects instream flows from impairment by new water right uses (except for uses eligible for the reserves) and future water right changes and transfers.

Baseline

Under the Water Resources Act of 1971, Ecology has a legal obligation to maintain surface water at flows sufficient to protect and, where possible, enhance rivers and streams in the state. Ecology issued 124 permits and certificates for water right applications filed since 1980. Essentially, the issuance of all surface water and groundwater rights ended in the late 1990s throughout all subbasins and the coastal groundwater management area in WRIA 17. Ecology last issued a surface water right in 2000 and a groundwater right in 1998 in the watershed. This is because technical review of applications indicated that further diminishing streamflows would not be protective of fish, and groundwater withdrawals would impact stream flow. One water right application is currently being processed through a cost recovery agreement with the applicant.

Primary Change

The proposed instream flows do not fundamentally change the current situation. Setting instream flows does not affect existing water rights or put water back into the streams. Ecology currently approves water right applications in the watershed only when there is sufficient mitigation or conditions to protect stream flows. Establishing instream flows as water rights does help protect existing flows and any future restored flows by adopting current limits into rule. Once the rule is in place, this same requirement for offsetting impacts to surface waters for new appropriations will still apply.

B. Closing Subbasins to Future Withdrawals

Proposed Rule

The proposed rule closes most surface waters and groundwater to new withdrawals (including permit-exempt groundwater use¹) in some areas (WAC 173-517-100). In closed areas, there are eight exceptions to the closure to allow access to new water rights (WAC 173-517-110):

- (1) The proposed use is non-consumptive.
- (2) The proposed surface water appropriation would not have an adverse effect on any of the surface waters closed in WAC 173-517-100.
- (3) The proposed groundwater withdrawal is located in a coastal management area or where the proponent can show it would not adversely affect any of the surface waters closed in WAC 173-517-100.
- (4) The applicant chooses to submit a mitigation plan as defined in WAC 173-517-030 (8), and such plan is approved by Ecology.
- (5) The proposed water appropriation qualifies as an interruptible use and meets the criteria in WAC 173-517-140.
- (6) The proposed water appropriation qualifies for the reserves established and conditioned in WAC 173-517-150.
- (7) The proposed water appropriation is for an environmental restoration project and meets the criteria in WAC 173-517-200.
- (8) The proposed use relies on rainwater collected from the rooftop of a structure that serves another primary purpose, and all rainwater is used on site.

The rule further limits future water right permits to amounts that protect natural high-flow stream functions. These functions include moving sediment, creating and maintaining aquatic (water) and riparian (near-stream) habitat, and allowing fish migration.

New users in closed areas could also rely on the change or transfer of existing water rights.

Baseline

Under current conditions, new water rights are very difficult to obtain because of administrative closures throughout the basin. In most areas, new appropriations will impact surface waters and consequently new water users must either:

- (1) Provide adequate mitigation,

¹ In the state Ground Water Code, the “ground water permit exemption” allows for certain uses of small quantities of ground water; including domestic, industrial, stockwatering, and non-commercial irrigation of less than one-half acre of land. RCW 90.44.040, *See also* Washington Attorney General Opinion (2005 Op. Atty Gen. Wash. No. 17).

- (2) Show that water comes from a source that does not impact flow-limited bodies of surface water,
- (3) Connect to a public water supplier, or
- (4) Change or transfer an existing water right, which they own, buy, or lease.

If eligible, these water users may secure water under the groundwater permit exemption (RCW 90.44.050). Although exempt from permitting, these uses remain subject to all other state water laws. They are subject to regulation (where use is interrupted) in the future if they impair senior water rights.

Ecology currently issues temporary water rights for small-scale environmental restoration projects and allows emergency water use for fire suppression.

Primary Change

The closures with exceptions provided for environmental and other out-of-stream uses are generally consistent with current regulatory and administrative practice and do not require analysis.

Although the closures would affect permit-exempt uses that are currently under no special use restriction, such change is offset by the reserves that provide an uninterrupted supply for permit-exempt uses (see “Establishing Reserves of Water for Future Use” section below). The combined effect of closing areas to permit-exempt uses while providing water under the reserves creates no net change from current regulatory practice (allowing new permit exempt well use in areas with administrative closures).

C. Establishing Reserves of Water for Future Use

Proposed Rule

The proposed rule would create reserves of water intended to meet the community’s needs for the next 16 years of projected growth. Ecology creates these allocations through a determination that the reserves would serve the Overriding Consideration of the Public Interest (OCPI), as required by RCW 90.54.020(3)(a). The OCPI determination is necessary for new year-round withdrawals to occur in these subbasins, as they would impair flows needed for environmental in-stream values during low flow months.

The reserves were recommended by the Department of Fish and Wildlife and Ecology (See Appendix 4). Water in the reserves would allow a non-interruptible water right for those that qualify. The reserves will be distributed on a subbasin basis. Within each subbasin, a specific amount of water would be available for mostly domestic and other permit-exempt uses.

New permit-exempt well use may not occur where an existing municipal water supplier can provide service. Permit-exempt uses from the reserves must comply with the reserve criteria in WAC 173-517-150.

Baseline:

Prior to the rule, no reserve has been established through an OCPI determination in these subbasins. Permit-exempt users currently withdraw water as authorized by local law and RCW 90.44.050.² Although exempt from permitting, exempt wells remain subject to all other state water laws and could be regulated in the future if they impair senior water rights.

Primary Change:

Residential, small systems, and some commercial users are all gaining a reliable water supply (uninterruptible) through reserves in the proposed rule (See Appendix 4). Reliable water supplies allocated in the reserves would not be available without the provisions in this rule.

As under the current baseline, an applicant could forgo use of the reserves and secure water through other means (such as providing full mitigation, having an interruptible supply, or demonstrating that water comes from a source that does not impact flow-limited bodies of surface water).

The reserves provide water at least over the next 16 years for new wells that meet the conservation standards and other conditions of use for the reserves in WAC 173-517-120 and -150. The rule requires potential well users to hook-up to a public water purveyor when possible.

The reserves provided for exempt wells will result in no net change over the remaining timeframe of this analysis. The primary changes for permit exempt well use are the conservation standards that limit water use for permit exempt wells, and the restriction on outdoor irrigation as a condition of use of the reserve in the Chimacum subbasin.

The reserves established under the proposed rule also make water available for new permitted water rights in the Big Quilcene, Little Quilcene and Thorndyke subbasins. Dependable, uninterrupted water supply for new water rights in these subbasins would not be available without the proposed rule. This available water is a benefit. The cost of this portion of the reserved water is any loss of habitat.

D. Establishing a Conservation Standard

Proposed Rule

The proposed rule establishes a conservation standard for new permit-exempt wells of a maximum withdrawal of 500 gallons per day (gpd) and an average use of no more than 350 gpd. This applies across the entire Quilcene-Snow watershed. For group domestic

² In the state Ground Water Code, the “ground water permit exemption” allows for certain uses of small quantities of ground water; including domestic, industrial, stockwatering, and non-commercial irrigation of less than one-half acre of land. RCW 90.44.040, *See also* Washington Attorney General Opinion (2005 Op. Atty Gen. Wash. No. 17).

use, the conservation standards apply to each residence, up to a maximum of 5,000 gpd for the entire group.

Exceptions to this proposed standard are:

- Up to 5000 gallons per day could be used for commercial agriculture in the Quimper, Miller, Salmon, and Big Quilcene subbasins.
- Up to 3000 gallons per day could be used for commercial agriculture in the Snow Creek subbasin.
- Permit-exempt wells could not be used for irrigation of lawn or gardens without mitigation in the Chimacum subbasin.

Baseline

The current conditions are based on RCW 90.44.050, which allows withdrawals of groundwater without obtaining a water right:

- For stock-watering purposes.
- For the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area.
- For single or group domestic use in an amount not exceeding 5,000 gpd.
- For an industrial purpose in an amount not exceeding 5,000 gpd.

Primary Change

The proposed rule would limit new permit-exempt well use to 500 gallons per day maximum use and 350 gallons per day average use, with some exceptions as noted above. Accurate data on exempt well use in the Quilcene-Snow watershed is not available. However, it is likely that some new permit-exempt well users would withdraw more than 500 gallons per day if not limited by this proposed rule.

E. Restriction on Outdoor Irrigation in Chimacum Subbasin

Proposed Rule

The proposed rule would restrict use of the reserved water in the Chimacum subbasin to domestic permit-exempt well use and would not allow outdoor irrigation. This restriction on outdoor irrigation would no longer apply when an alternative water supply or mitigation strategy for the subbasin is implemented.

Baseline

The current conditions are the same as the baseline for the conservation standards, and are based on RCW 90.44.050.

Primary Change

The proposed rule would generally only allow use of the reserved water in the Chimacum subbasin for indoor domestic use. The proposed rule would not allow use of reserved

water in this subbasin for outdoor irrigation. Funds have been granted to the WRIA 17 Planning Unit to investigate mitigation strategies for the Chimacum subbasin.

6. Analysis of Costs and Benefits

This cost-benefit analysis is provided under RCW 34.05.328(d).

The analysis concludes that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs, and the specific directives of the statutes being implemented.

The cost-benefit analysis includes quantitative information where available, and qualitative information where reliable values for estimating the costs and benefits are not available.

Time Horizon

The costs and benefits associated with the rule depend on the time horizon used in the analysis. For the proposed rule, the cost-benefit analysis uses a 20-year horizon in order to analyze the costs and benefits (2006-2025). Because of this, much of the quantified values start upon rule adoption, which we anticipate by the end of 2009. The reasons are:

- The reliability of the probable benefits and costs estimations are determined by the accuracy of our forecast into the future. Forecasts that use a shorter period are more reliable. Longer periods would significantly increase the uncertainty, and may result in misleading conclusions.
- Ecology considered the water needs of both fish and people when determining reserve quantities for all subbasins in the affected portion of WRIA 17. Specifically, Ecology's goal was to develop reserve amounts that will have little or no impact on the long-term sustainability of fish populations, while at the same time meeting water supply needs of additional households expected through 2025.
- Changes in water management policy are inevitable. Advances in science, population shifts, and changes in technology influence water management policy and create a dynamic process. The need for this rule is a direct result of such changes. Historical evidence shows that changes in how we manage water can be large.

No rule can solve all future problems. Therefore, it is likely that this rule will receive further amendments in the future. The expected lifetime of this rule is 20 years (from 2006), though it may be much shorter or longer.

Discounting Future Values

We must discount the value of benefits and costs accruing in the future. Future costs and benefits are not as valuable as current costs and benefits even when adjusted for inflation.

Ecology uses a real discount rate of three percent for water resource related projects to discount future dollars.³ For the selected 20-year span, this means the remaining 16 annual inflation-adjusted payments of \$1 are currently worth \$12.56. This is equivalent to multiplying the sum of the 16 annual increments by 0.785 (12.56/16).

Probable Costs

Ecology has based the evaluation of the costs and benefits on analysis and comparison of water right management in WRIA 17 without the rule and after the effective date of the rule if the rule is adopted. The proposed rule's probable costs include:

- Restrictions on future permitting.
- Restrictions on permit exempt wells, the conservation standards, and outdoor irrigation in Chimacum subbasin.
- Ecological Costs
- Metering.
- Rule implementation costs.
- Public meeting for out of subbasin water use

Restrictions on Future Permitting

The draft rule language proposes to close most of the rivers and streams in the WRIA from any additional appropriations.

Under state law, flows sufficient to support game fish and food fish populations must be maintained at all times in the streams of this state. The Washington Department of Fish and Wildlife (WDFW) reviews applications to determine if approving the proposed withdrawal would compromise game and food fish populations. If there is a concern that an allocation of water might adversely impact fish, WDFW recommends that Ecology not issue the right or that any allocation granted be conditioned on minimum flows. In most cases, Ecology accepts WDFW's recommendation and conditions the right to protect flows.

Because of the concerns expressed by the Department of Fish and Wildlife and the historic Department of Game, Ecology has issued very few water rights in the watershed

³ For each year 1998 - 2008, we calculated the real rate by subtracting annual inflation from the nominal rate for water. These real rates were then averaged to calculate the 3% real interest rate as an average expectation for the future. Inflation rates as paid out on I bonds came from today's values at http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res_ibonds_iratesandterms.htm. Nominal rates for water projects were obtained today at <http://www.economics.nrcs.usda.gov/cost/discounrates.html>.

in recent years. Many of the streams in WRIA 17 have been “administratively closed” for many years. The last new groundwater right was issued in 1998, and the last new surface water right was issued in 2000.

The proposed rule formalizes administrative closures that have been in place for many years. Without the rule, most new appropriations that do not fall under the permit exemption of RCW 90.44.05 need an approved migration plan to offset impacts to surface waters. After the rule is in place, the same mitigation plans would still be needed for most new appropriations. There is no social cost associated with WRIA 17 being formally “closed” since there is no actual effect on future permitting.

Permit-Exempt Water Restrictions and the Conservation Standards

The water right exemption from a permit requirements in RCW 90.44.050 refers to:

“any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW [90.44.052](#), or for an industrial purpose in an amount not exceeding five thousand gallons a day”

The proposed rule divides the Quilcene-Snow watershed into reserve management areas and coastal ground water management areas. In both areas, Ecology primarily provides groundwater for future domestic uses, although other uses are eligible.

The proposed rule establishes a conservation standard for new permit-exempt well use. The conservation standard is 500 gallons per day maximum use and 350 gallons per day average use across the entire Quilcene-Snow watershed for new permit exempt wells. For group domestic use, the conservation standard applies to each residence, up to a maximum of 5,000 gpd for the entire group. Exceptions include:

- No outdoor irrigation without mitigation in the Chimacum subbasin.
- Water allocated in the reserves of certain subbasins for commercial agriculture relying on a permit exempt well, where use of up to 3,000 or 5,000 gpd is allowed.

To determine the proposed rule’s potential impact on the exempt-well users, the first step is to determine if the water reserved is enough for the projected future domestic uses through 2025.

Details of the methodology Ecology used to determine the reserve sizes is provided in Appendix 4. Ecology calculated the reserved quantities based on stream flow characteristics and the estimated loss of the fish habitat during low flow periods. Ecology used the Instream Flow Incremental Method (IFIM), the 90 percent exceedence flow based on stream gauge records, or actual low stream flow measurement to determine flows and habitat losses. We then adjusted the reserve amounts in three subbasins to ensure enough water to meet the projected 16 remaining years of population growth.

The rule would limit water use in the reserve areas to permit-exempt well use consistent with the conservation standard. However, in some subbasins, portions of the reserved water are allocated for commercial agriculture. In the Big Quilcene, Little Quilcene and Thordyke subbasins which have larger reserves, a portion of the reserve is also available for pending and future water right applications.

Most household water use is typically less than the limits imposed by the proposed conservation standard. However, there is a social cost to those households that would have used more water if not limited by the conservation standard.

For the designated coastal management areas, the conservation standard helps to protect small streams, and total water use is not limited by a reserve quantity. This ensures available water will meet supply needs for the projected remaining 16 years of population growth.

The subbasins designated as coastal management areas include Bolton, Devils Lake, Marple, Toandos, Squamish Harbor, Mats Mats, Oak Bay, Marrowstone, Indian, Quimper, and Miller. Similar to the subbasins with reserves, some future homes in these areas might want to use more water than limited by the conservation standard. These households will also have a social cost of permit-exempt well use restrictions.

The reserved water is enough for the 871 projected households in the Quilcene-Snow watershed. For more details of growth in the watershed and reserves see Appendices 3 and 4.

The Cost of Restricting Outdoor Use

Under the proposed rule, new homes in the Chimaquum subbasin may not use water from a permit-exempt well for outdoor irrigation (watering lawns or gardens). Restricting outdoor irrigation will result in less water use per household. The permit-exempt well user in this subbasin will be entitled to less water which is calculated as a social cost in this analysis. It would reduce the level of people's satisfaction that can be measured by consumer surplus. However, not all future permit-exempt well users would be affected in this subbasin. The proposed rule would have no impacts to those not planning to use water outdoors. Ecology projects 149 households in the Chimaquum subbasin would be restricted from outdoor water use by 2025. Outdoor mitigation costs in other parts of the state for residential use can cost \$2000.⁴ The projected cost of this restriction is \$298,000 or a present value of **\$233,930**.

The Social Cost of Restrictions on Permit-Exempt Well Use

One study examining restriction of permit-exempt well use in Washington State determined an average social cost of approximately \$1,000 during a 20 year period for a similar type of restriction of permit-exempt uses.⁵ In reality only those permit-exempt well users that wanted, or planned, to exceed the restrictions of the proposed rule would

⁴ Walla Walla state assisted mitigation plan. <http://www.ecy.wa.gov/pubs/0711032.pdf>

⁵ A Methodological Case Study of the Cost of Restricting Outdoor Water Use by Exempt Wells, Zhang, Shidong and Reich, Dave. Northwest Journal of Business and Economics 2005

have a social cost. Using the 871 estimated users of permit-exempt wells through 2025 the total social cost of these restrictions would be \$871,000. Although Ecology is unable to determine how many future users would want to use over the conservation standard, this study estimated that about 45 percent of future permit-exempt well users might be affected. Ecology expects the total cost in the period from restricting permit-exempt well use to be **\$871,000** for all users.

Ecological Costs

To measure the ecological costs of the rule, Ecology assessed how the reserves were likely to affect salmon in the Big Quilcene, Little Quilcene and Thorndyke subbasins. These areas differ from the rest of the WRIA in that the rule will allow Ecology to issue new water right permits from the reserves in these three subbasins. This varies from the baseline condition, where to gain a new reliable water right, applicants must either mitigate their proposed use, show evidence that their use will not reduce flows, or prove an overriding consideration of the public interest would be met by the proposed use.

To assess the effects on salmon, Ecology biologists estimated the changes of flow that were likely to occur from new water right permits. They did not consider the entire flow change likely to occur from use of the reserves, as continued development of permit-exempt uses is part of the baseline. The estimated potential stream flow changes are shown in Table 5 in Appendix 5.

Ecology assumed a direct relationship between the changes to the low summer flow and salmon survival. (See How Stream Flow is Related to Fish Survival, in Appendix 5) We therefore multiplied the expected percent change by the estimated number of summer chum, coho, and steelhead for that stream. Total run sizes are made up of both escapement (the number of fish that return to spawn) and harvest (the number of fish that are caught). Since available population estimates only include escapement, Ecology doubled these numbers to account for harvest. Ecology then used that number as the estimate of the total run size that would be affected. The estimates are shown in Table 1, below.

Table 1. Estimates of fish lost

	Flow change (%)	Salmon escapement	Total salmon (includes harvest)	Salmon lost
Big Quilcene	-0.86%	12,953	25,906	-223
Little Quilcene	-0.29%	1,370	2,740	-8
Thorndyke	-0.79%	700	1,400	-11

Based on these assumptions, Ecology estimates that the rule may cause the loss of about 242 salmon from the three streams.

Based on a University of Washington study (Layton, et al 1999), the 20-year average between high and low status quo populations give us \$300 as the annual value for each adult spawner. Columbia River Initiative gave us existence values of \$268 (Huppert 2003). Bonneville Power Administration gave us restoration values of \$400 per adult

fish⁶. From these reports 16 year values for fish would range from \$4,288 to \$6,400. Ecology has chosen to use a 16-year real estimated value of \$5,000 for an adult returning spawner.

Reduction of 242 adult spawning fish to the people of Washington State can be estimated at **\$1,210,000**.

The detailed analysis of impacts to salmonids is in Appendix 5.

Metering

Proposed Chapter 173-517 WAC requires metering for all new uses of water.

The Legislature enacted RCW 90.03.360(2) requiring metering for all water diversions in areas with depressed or critical salmonid stocks. WRIA 17 is one of the 16 basins with depressed or critical salmonid stocks.

Metering will result in costs to individuals and businesses with new uses of groundwater or surface water. Metering imposes costs in the form of buying, installing, maintaining, and reading the meter, and reporting the measured water use to Ecology. The estimated cost below includes all these activities.

Ecology estimates that 871 wells over the remaining 16-year timeline will be drilled in WRIA 17. The estimated cost of metering and reporting for small water systems ranges from \$400 to \$600.⁷ Ecology chose to use \$500 per meter. The total cost for metering these new well uses is 871 x \$500, or \$435,500. This gives a present value of **\$341,868**.

Implementation Costs

There will be costs to implement the rule, including costs:

- To provide technical and educational information for rule compliance.
- To administer the reserves by Ecology and Jefferson County staff.
- To collect metering data and enforce rule requirements.
- To track future commercial agricultural use of permit-exempt wells.
- To track rainwater catchment.

Ecology estimates to employ the equivalent of one full time staff person for the first year and one-half a staff person between Ecology and Jefferson County for the following 15 years. At \$100,000 annual full time equivalent, Ecology estimates the present value at **\$700,000**

Public Meeting for Out of Subbasin Water Use

The proposed rule would require applicants proposing to transfer water from one subbasin for use in a different subbasin to:

⁶ <http://www.perc.org/articles/article232.php>

⁷ Survey of well drillers, pump installers, and Ecology's metering coordinator.

- Conduct a public meeting.
- Submit a report on the meeting to Ecology.

Ecology estimates that the proposed requirement will affect one applicant during the period of this analysis. Ecology estimates the total cost of conducting such a meeting, and preparing and submitting the report to be **\$2,000**.

Cost Summary

We estimate total costs of the proposed rule at \$3.3 million.

Table 2. Cost Summary

Rule Impacts	Costs
Closures/Max Allocation	\$0 (Transfer of Gain)
Exempt well restrictions	\$871,000
Outdoor water restrictions	\$233,930
Ecological costs (reserve allocation)	\$1,210,000
Metering Costs	\$341,868
Implementation Costs	\$700,000
Out of subbasin water use meeting	\$2,000
Total Costs	\$3,358,798

In general, the limits of current science, technology, and economic knowledge prevent us from making a more accurate estimate of the probable costs of the proposed rule.

The Probable Benefits

The proposed rule's primary benefits:

- Protects instream resources and aesthetic values by setting instream flows and managing future water use.
- Benefits to protecting flow restoration investments.
- Additional allocations of water in three reserves.
- Reduces seawater intrusion.
- Improves water management.
- Allows rainwater collection.
- Benefits recreation.
- Non-use benefits.

Protection of Instream Resources

The proposed instream flow rule protects fish in at least three distinct ways including:

- (1) Formally closing most of these streams in the watershed to the creation of large, new water rights under the permit-exempt well statute (currently four streams in the watershed are closed administratively).
- (2) Placing limits on the daily use of a new permit-exempt well in most areas.
- (3) Establishing finite quantities of water (reserves) that can be withdrawn by new wells within the subbasins.

These restrictions will provide significant benefits for the salmon in the future, although many of the benefits will be experienced beyond the 20-year time frame of this analysis.

Benefits to salmon by protecting flows

The benefits of preserving stream flow correspond directly to the percentage of stream flow that remains in the stream. Most of the streams in WRIA 17 are rain-fed. When the rain stops, stream flow starts to drop. During the lowest flow time of year, fish populations will drop as the stream flow drops. Without groundwater providing stream flow during the late summer and fall rain-fed streams would go dry.

The analysis of flow changes resulting from the proposed rule shows that flow benefits will occur in the coastal management areas and in the following subbasins:

- Chimacum
- Donovan
- Ludlow
- Piddling
- Spencer
- Tarboo

There is great uncertainty regarding how many people will move into the basin in the future. Currently any new home built in these subbasins could withdraw up to 5,000 gpd using an exempt well. Because of this potential, we made a relatively conservative assumption during our analysis and evaluated the effect of just one new person moving into the basin and pumping 5,000 gpd, or 4 such exempt withdrawals in the case of Chimacum (see Table 2 in Appendix 5).

Using the percent of stream flow saved as shown in Table 5 in Appendix 5, and multiplying that percentage times the estimated number of summer chum, coho, and steelhead for that stream, Ecology estimated the average number of salmon saved (assuming a direct relationship between the low summer flow and salmon survival (see How Stream Flow is Related to Fish Survival, below). Since available population estimates only include escapement, Ecology doubled this number to account for harvest and estimate the total run size that would be protected. Total run size is made up of both escapement (the number of fish that return to spawn) and harvest (the number of fish that are caught).

Table 3. Estimates of fish saved

	Flow change (%)	Salmon escapement	Total salmon (includes harvest)	Salmon saved
Chimacum	0.99%	2,750	5,500	54
Donovan	2.16%	343	686	15
Ludlow	0.13%	100	200	0
Piddling	2.09%	100	200	4
Spencer	1.25%	2,125	4,250	53
Tarboo	0.22%	685	1,370	3

The calculations for these streams leave out many salmon because certain fish, such as steelhead and cutthroat, have not been counted or estimated. The estimate of total number of salmon saved in the 6 streams is 129 salmon.

During field surveys in 2005 and 2008 Ecology and WDFW biologists found 3 large and 19 small independent coastal streams within the coastal management areas that were flowing during the low flow months at the end of summer. This estimate of 19 smaller streams is likely conservative as the portion of the Toandos Peninsula that was not surveyed likely also has some creeks flowing during the summer.

During the survey two of the large streams, Contractors and Eagle creeks, were flowing about 0.6 and 0.15 cfs, respectively. The remainder of the streams had very low flows of less than 5,000 gpd. Biologists documented either the presence of coho salmon and cutthroat trout or likely habitat for these species in all of these streams.

A total of 542 new households are projected by 2025 in the coastal management areas. If less than 5 percent of new households locate in proximity to these streams and pump approximately 1,000 gpd each, the three large streams could be significantly diminished and the small streams would likely go dry or become too small to support any fish life.

A reasonable estimate of coho and cutthroat production in these small coastal streams is approximately 20 fish in each stream, therefore we estimate that the rule would prevent the cumulative loss of about 440 salmon. In addition, the rule would likely also prevent the loss of chum and steelhead from the small coastal streams, but we cannot estimate these numbers.

Therefore, it is estimated that the rule will prevent the loss of at least 569 salmon (using the assumptions listed above) from the 6 streams listed above and the coastal management areas.

This analysis relies on conservative assumptions that do not reflect the “worst case” scenario of all new users taking full advantage of the ground water exemption in RCW 90.44.050. It is reasonable to assume that more than 14 new wells in the reserve management areas and more than 5% of new users in the coastal management areas would use more than allowed under the 500 gpd maximum and 350 gpd average

conservation standard. In that case the rule would prevent the loss of more than 840 salmon.

Based on the above rationale, Ecology biologists believe that the benefits of establishing the instream flows and preserving these instream values are very large. The salmon run in Quilcene-Snow basin averages around 60,000 adult spawners. This would be the number of salmon and trout that would be lost if the streams of WRIA 17 were allowed to go dry. This number includes the following estimated run sizes of ESA-listed species: summer chum averaging around 12,000, steelhead averaging around 300, Chinook around 20, and bull trout likely less than 20.

Preservation of 569 adult spawning fish to the people of Washington State using the estimated 16-year value of \$5,000 per fish would exceed **\$2,845,000**. This is the minimum value of in-stream resources this rule protects as a benefit. This figure does not take into account the mandatory requirement of preserving the estimated 12,000 listed species that require protection under the Endangered Species Act or the potential impact of eliminating all 60,000 salmonids this basin supports. Eliminating all the salmonids the watershed supports would cost the people of Washington State hundreds of millions of dollars.

The benefits specific to salmonids are discussed in further detail in Appendix 5.

Protecting Flow and Habitat Restoration Investments

The State Salmon Recovery Funding Board has committed significant financial investment to salmon recovery projects in the watershed. These projects are intended to help sustain salmon productivity by providing wild spawner escapement, conserving genetic diversity, and meeting basic needs of salmon for spawning rearing and migration. These efforts have provided a wide range of benefits to salmon including:

- Restoring riparian habitat.
- Reestablishing fish passage.
- Enhancing stream channels.
- Restoring estuaries.
- Acquiring habitat.

The approximate cost of such projects in WRIA 17 is more than **\$12,651,867** (see Appendix 6). Ecology recognizes this value does not account for projects funded through other sources or future restoration projects throughout the basin. Ecology alone has spent over \$265,807 in grants through the watershed planning process.

This proposed rule will ensure protection of the tremendous investments in salmon restoration made by the state, local agencies, tribes, and private entities. This is done by establishing instream flows, closing the subbasins, and limiting the amount of water withdrawn from new permit-exempt wells.

Water availability without the reserves

New water right holders would be required to stop using water when the stream flows dropped below permitted conditions. Under those circumstances, the potential users who needed an uninterrupted supply could choose among the following options:

1. **Water storage:** In some seasons, actual stream flows usually surpass levels currently included as permit conditions. If users can store enough of the excess flow, it would be available throughout the year. However, in order to be assured of sufficient water to sustain their needs, most users would need to store tens of thousands of gallons of water. Storage can be costly.
2. **Abandoning building lots:** In this scenario, the landowners cannot find an economic and technically feasible way to sustain their year-round water use. The potential building lots are unbuildable in the remaining 16-year period because of the lack of water.

To quantify the probable benefits, we assume the benefits are equal to the cost savings of using an uninterrupted water right from the reserves.

3. **Purchasing uninterrupted water rights:** In some areas, persons seeking new water rights can purchase agricultural farmland with uninterrupted water rights and transfer the right for their water supply. Where this is a viable option, the loss was from the degradation of irrigated farmland into non-irrigated farmland. This scenario has not been commonly used in the past.

Additional allocations of water available from three reserves

Under the proposed rule, those that qualify will be able to get additional uninterrupted permitted rights through the reserves in the Big Quilcene, Little Quilcene, and Thorndyke subbasins. Assuming the reserves do not have an impact on existing users, the benefits to surface water and groundwater users should be solely beneficial.

The following uses qualify for new water rights permits under the proposed rule and would not be subject to interruption when stream flows do not meet the instream flow levels:⁸

- Municipal or community domestic water supply consistent with the conservation standard defined in WAC 173-517-120.
- Agricultural irrigation.
- Industrial.

⁸ Fire suppression is not part of the reserves as it is not subject to a water right permit. It is assumed that water for fire suppression is not subject to instream flow and therefore available year-round without interruption.

Ecology recognizes these reserves can support many more uses beyond the projected permit-exempt uses in these subbasins. The users eligible for water right permits from the reserves will benefit primarily from uninterrupted water for domestic and other uses.

This extra water is capable of supporting 690 additional households with an uninterrupted water supply.

Under the rule, water storage would be the most likely means of achieving uninterrupted water if the reserves did not exist. Abandoning a building lot seems unlikely and purchasing uninterrupted water rights may not be possible.

In drought years, interruptible water supply users would likely be asked to shut off from July 1 to October 31. Systems capable of storing 42,000 gallons would be necessary for each household to meet their needs for these 120 days.

Ecology estimates water storage of this nature would average \$.75 per gallon or \$31,500 based on Washington State Department of Health's Small Water System Management Program Guide.⁹ Although we are unable to determine when the storage systems would be constructed, we assume they would all have to be in place to receive the full benefit that would be available from use of the reserves. Multiplying the 690 additional households by \$30,000 storage costs estimates the cost avoided by future users and developers as about \$20,700,000. Under the rule, the reserves eliminate the need for this storage and making water available to these users has a direct benefit. The present value of this benefit is estimated at **\$16,250,000**.¹⁰

Reduced Seawater Intrusion

In addition to the above benefits, adoption of the conservation standards will also reduce the risk of seawater intrusion (see Appendix 5). In vulnerable areas, the risk of seawater intrusion directly relates to the amount of up-gradient (inland) groundwater pumping leading to a reduced head in the aquifer, thus allowing seawater to move inland. Preventing new, large (5,000 gpd) withdrawals throughout the coastal areas reduces loss of head and seawater intrusion risks.

Owning a home without potable water diminishes its value significantly. Options for homes with wells that produce saline water include:

- Treating well water with reverse osmosis system.
- Connecting to a public water system (if available).
- Trucking water in.

One strong indication of the costs associated with seawater intrusion concerns the long-standing problems experienced on Marrowstone Island. Due to these problems, Jefferson

⁹<http://www.doh.wa.gov/ehp/dw/Publications/331-134-4-30-08.pdf>

¹⁰ For the purpose of this analysis, Ecology chose to use the cost of storage as an indication of benefits. The cost of water storage serves as a realistic indication of actual public response to water supply interruptions.

County PUD recently spent \$5.2 million to extend a water system line from the mainland to the island. As a result of this extension, about 625 island property owners were recently assessed a one-time household fee of \$8,100 (includes meter). About 200 people who elected not to connect to the system were charged \$1,500 (a no meter partial assessment).¹¹

There are 68 homes currently designated as “at risk” or “high risk” according to Jefferson County’s SIPZ map. Ecology assumes at least that number of homes will be protected by application of the conservation standard over the next 16 years. Avoiding seawater intrusion is worth at least \$8,100 per home. This suggests that the potential benefit provided by the rule relative to seawater intrusion may be about \$551,000 or present value of **\$432,535**.

Improved Water Management

Increased certainty and clarity in water right processing should reduce the delay and uncertainty in obtaining new water rights. This will allow developers and others to plan ahead in property development and better value investment opportunities. Some permits may be issued that are not subject to instream flows or closure, if the proposed use meets the criteria outlined in proposed WAC 173-517-110.

Proposed WAC 173-517-110 contains eight conditions for future water use, if any one of the conditions is met, then new water use is allowed. Conditions (1),(2), (3)(a) and (4) re-state current policy, cannot be counted as either benefits or costs, and are not considered in this analysis. The new provisions are:

- (3)(b) Proposed ground water appropriation occurs in a coastal management area.
- (5) Proposed water appropriation qualifies as an interruptible use and meets the criteria in WAC 173-517-140.
- (6) Proposed water qualifies for the reserve.
- (7) Proposed water is for an environmental enhancement project.
- (8) Use of rainwater collected from rooftop.

These provisions are new and are considered in this analysis.

Provision (3)(a) applies to permit-exempt water users and the conditions of use are specified in WAC 173-517-130. These future uses would be restricted by the proposed conservation standards for permit-exempt well use that is analyzed below.

Provision (5) limits the availability of interruptible water rights to the Big Quilcene and Chimacum subbasins. It also sets a maximum allocation that limits the total amount of seasonal water available for new water rights.

Provisions (7) and (8) contain no costs and we assume project proponents seeking water through these means believe there to be net benefits. For a group of these applicants,

¹¹ Bill Graham, Jefferson County PUD, pers. com., 4/9/09.

their expectations should be rational and the realized benefit should be larger than the realized cost.

Finally, those that qualify for provision (6) may access water from the reserves established, as conditioned in WAC 173-517-150. These are primarily permit-exempt water right users and would be restricted by the proposed conservation standards for permit-exempt well use that is analyzed below.

This rule also provides more clarity and certainty for existing water rights. To the extent that the rule reduces further big users of permit-exempt withdrawals, the potential curtailment of existing interruptible rights will be decreased. The exact benefit will depend on the location and quantity of actual withdrawals and the number and use of existing interruptible rights.

Rainwater Catchment Benefits

Ecology has evaluated the potential impact of rainwater collection and use on instream flows and determined that the use of rooftop rainwater is compatible with protecting instream flows. The rule enables WRIA 17 residents to reasonably use the rainwater resource. Rooftop collected rainwater can be used on-site to augment an existing supply or can be the sole source of water supply if treated to potable standards.

Recreation Benefits

Avoiding a reduced flow caused by surface water and groundwater uses in the rivers and streams of the Quilcene-Snow watershed could benefit recreation by protecting sport fishing, primarily in the Big Quilcene River. In general, protecting water in streams will favorably impact fishing, swimming, picnicking, camping, and hiking. The exact magnitude is difficult to determine since the quality of the experience and the measure of additional flows are a function of many factors including existing flows, availability of other recreational opportunities.

Non-Use Benefits

Healthy rivers and supporting salmon have been shown to have large and positive non-use value. Salmon are a highly cherished cultural icon and a spiritual source of inspiration. People have shown their willingness to pay for salmon restoration without ever consuming the fish or even visiting a site. These values are very difficult to quantify. However, it is reasonable to conclude that they would depend on the ecosystem impacts. As described previously, the ecosystem impacts may be significant if denying a proposed transfer prevents a significant loss of fish habitat. Several of the papers listed in Appendix B include non-use values.

Table 4. Benefit Summary

Rule Impacts	Benefits
Instream Values (fish)	\$2,845,000
Restoration Protection	\$12,651,867

Future Water Rights	\$16,250,000
Seawater Intrusion	\$432,535
Total Benefits	\$32,179,402

Total Probable Benefits

The estimated benefits of the proposed rule exceed \$32 million over a 20-year period. The estimated value is based on the following assumptions:

- Current fish stocks would be preserved over the life of the rule and beyond.
- Investments in flow restoration projects would be preserved.
- Additional waters would be allocated for highest and best use.
- Seawater intrusion and other benefits would be realized.
- The discount rate is three percent for the remaining 16 years.

D. Summary of the Cost Benefit Analysis

- The quantified benefit estimate is over \$32 million for the 20-year period.
- The quantified costs of the rule is estimated to be \$3.3 million for the 20 years.

Ecology has determined the proposed rule benefits exceed the associated probable costs. Ecology believes the unquantified values will not offset the net benefits of the rule.

7. Maximum Net Benefit Analysis

Reason for a Maximum Net Benefit Analysis

The Water Resources Act of 1971 presents a declaration of “fundamentals for utilization and management of the waters of the state.” One of these “fundamentals” requires Ecology to maximize the net benefits for the citizens of the state when allocating water. To do so generally requires an economic analysis called a “maximum net benefits analysis.”

Ecology will perform a maximum net benefits analysis in the following situations:

“When it is developing a rule to create a “reservation” for a particular use or uses, as allowed by RCW 90.54.050(1), except in cases where the reservation is being established solely to ensure a reliable and safe supply of potable water to satisfy human domestic needs”

Since the proposed rule creates reserves for particular uses, a maximum net benefit analysis (MNBA) is required.

Restrictions on the Analysis

This MNBA is based on the CBA, and is subject to a variety of restrictions.

Ecology has analyzed the rule based on discrete shifts in use. The traditional method of deriving maximum net benefit based on continuous variables is not viable in this case. The proposed rule has several legal constraints. For example, water law doctrine in Washington is prior appropriation, or “first in order, first in right.” This doctrine is incompatible with a general maximum net benefit approach of issuing new water rights according to its marginal value.

The law also constrains the analysis regarding instream flows, permit-exempt groundwater uses, and variables such as stock watering. None of these uses is subject to the maximum net benefit analysis. Therefore, a maximum net benefit analysis in a continuous case is not viable.

Highest Value Analysis

To achieve the maximum net benefit of the rule, we assess the benefits of the reserves for domestic and commercial use. Various researchers have agreed that the average water value for domestic and municipal water is higher than the average value for other uses. Huppert, et al (2004) pointed out that:

“In any given year, the value per AF¹² for M&I¹³ water will be greater than or equal to the value per AF for irrigation water.”

Thus, the average value of domestic, commercial, and industrial use is greater than agricultural uses.

In the 20-year time horizon, as analyzed in the cost-benefit analysis:

- The reserves are enough for qualifying domestic water use.
- The reserves and potential interruptible water rights can provide enough water resources for the continued development relying on permit-exempt well use and small group systems.

Therefore, the reserves satisfy the expected need for various uses that are not subject to the maximum net benefit analysis, while retaining stream flows at sufficient levels. The reserves provide for the highest value water uses, which is consistent with the principle of maximum net benefit.

¹² Acre foot

¹³ Municipal and industrial

Water Management Improvements

The proposed rule also encourages efficient water allocation and use. Conditions to access the reserves support water supply planning and will stretch the use of both in-stream and out-of-stream water supplies. This is consistent with maximizing the net benefits.

This rule indirectly supports economies of scale by utilizing public water supplies where available. Increased hookups to public water supplies reduce the per-unit costs of a distribution system. If most of the homes on a block were to hook up to water systems, the costs to access water would be higher for homes that did not hook up. Further, multiple wells in a given area may require all the wells to be driven deeper—increasing costs.

Overriding Consideration of Public Interest

RCW 90.54.020(3)(a) generally prohibits Ecology from allowing withdrawals from surface water or groundwater that conflict with protecting aquatic resources (in-stream flow needs). Ecology may authorize withdrawals that conflict with protecting aquatic resources only when it is clear that Overriding Considerations of the Public Interest (OCPI) will be served. The director of Ecology may apply a finding of OCPI after carefully weighing the public interest served by a potential out-of-stream use against the public value of leaving the same water in the river. When it is clear that the public interest advanced by a new out-of-stream use exceeds the public values protected by instream flows, Ecology may allow new withdrawals.

Although the reservations in the proposed rule could have a small negative impact on in-stream resources, they are justified through a determination of OCPI. In making a determination of OCPI under RCW 90.54.020(3)(a), Ecology uses a three step analysis:

- 1) Ecology determines whether and to what extent important public interests would be served by the allocation. The public interests served may include benefits to the community at large, such as providing a potable water supply or water for domestic uses, public services or the economy of businesses and farms.
- 2) Ecology assesses whether and to what extent the allocation would harm public values protected by instream flows. Instream flow values include “preservation of wildlife, fish, scenic, aesthetic, and other environmental and navigational values.”¹⁴ In addition to direct environmental benefits provided by instream flows, Ecology may consider other related public values, such as quality of life or resulting economic benefits (such as recreational services).

¹⁴ RCW 90.54.020(3)(a). ‘Other environmental and navigational values’ may include but are not limited to aquatic organisms, recreation, water quality, and channel maintenance.

- 3) Ecology determines whether the public interests served by the allocation (step 1) clearly override any harm to public values protected by instream flows (step 2). Other factors may make a finding of OCPI more likely by minimizing the harm (step 2) or maximizing the value of the out-of-stream use (step 1). Such factors could include limits on use of the reserves or methods to avoid, minimize, or mitigate potential harm.

The reserves in the rule were proposed after a lengthy public process and after evaluating whether establishing the reserves clearly overrides harm to values protected by instream flows. The specific reserve allocations were determined by careful data review and negotiations between Ecology and WDFW representatives. Discussions with local entities and other interested stakeholders during more than five years of rule development resulted in reserves sized to balance the projected needs of people with minimal impacts to stream flows. The reserves were also developed in the context of other rule provisions. For example, instream flows and closure provisions provide safeguards against further degradation of instream values.¹⁵

The reserve quantities are supported by the public interest expressed during the WRIA 17 rule development process, and by satisfying the OCPI requirements under RCW 90.54.020(3)(a). Ecology's OCPI determination further supports a finding that the rule maximizes the net benefits to the people of Washington State.

8. Least Burdensome Analysis

RCW 34.05.328 (1)(e) requires Ecology to perform a Least Burdensome Analysis to:

“Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

The WRIA 17 Watershed Plan created obligations for state and local agencies that took part in the planning process. RCW 90.82.130(3) requires Ecology to adopt water management programs through rule to implement the approved watershed plan. The WRIA 17 Watershed Plan called for water use conservation, better measurement of actual water use, and continuing efforts to adopt instream flows.

During rule development, Ecology considered options for water use conservation. A limit on irrigation to 1/12 acre was considered and found to be more burdensome than a total water use limit of 500 gallons per day. These standards allow property owners that use water-saving irrigation methods to irrigate larger acreage with the same amount of water. Further, the exempt well conservation standards exceed typical residential use in basin, and should not prove burdensome to most new water users.

¹⁵ For instream flow and closure provisions *see* WAC 173-517-090 and WAC 173-517-100.

This rule provides water reserves, and uses a conservation standard and compliance system to promote efficient uses of water that most benefit the public. The alternatives to providing these reserves for future water use would be either complete closure to new uninterrupted water supply or a requirement that all new withdrawals mitigate for future water use. The rule mainly allows new permit-exempt well users to obtain uninterrupted water rights without preparing a proof of Overriding Consideration of Public Interest (OCPI) or providing mitigation.

Use of the reserves of water is limited by the conservation standards. However, in response to public input, Ecology reassessed residential growth projections against the size of the reserves and allowed water for commercial agricultural use in three subbasins with suitable soils for agriculture. Also, in three subbasins, the proposed rule makes water available for water right allocations (up to the reserve amount) that was not available previously. Pending applications, including applications for irrigation, may be processed in these subbasins. The community requested that Ecology make every effort to make water available for new agricultural production, and reserving water and allowing water for new water right allocations will ease the burden for a limited number of new farms.

In response to a request from the WRIA 17 Planning Unit, Ecology reassessed water availability in the Big Quilcene River and expanded the seasonal period when water could be accessed, provided instream flows are met. This change eases the burden on entities pursuing water supply options that rely on storage.

This rule manages future water use in designated coastal areas to protect instream resources and help prevent seawater intrusion. This rule eases the burden on future water users in these areas by allowing expanded water use for commercial agriculture in the Miller and Quimper Peninsula areas.

This rule eases the burden on homeowners strapped by saltwater intrusion, dry wells, or extreme water short areas by allowing rooftop rainwater collection and use without going through the permit process for a water right.

This rule proposes permit-exempt well metering (implementing plan recommendations). Ecology is developing recording or reporting requirements for property owners that we will publish in implementation guidance for the rule. Reporting metering data could be accomplished through requiring property owners to read the meter and send in data. Ecology, however, is intending to implement a less burdensome alternative relying on remote-read meters, with random spot checks of metering data by Ecology staff or a contractor.

Ecology believes the proposed rule is the least burdensome alternative for those required to comply.

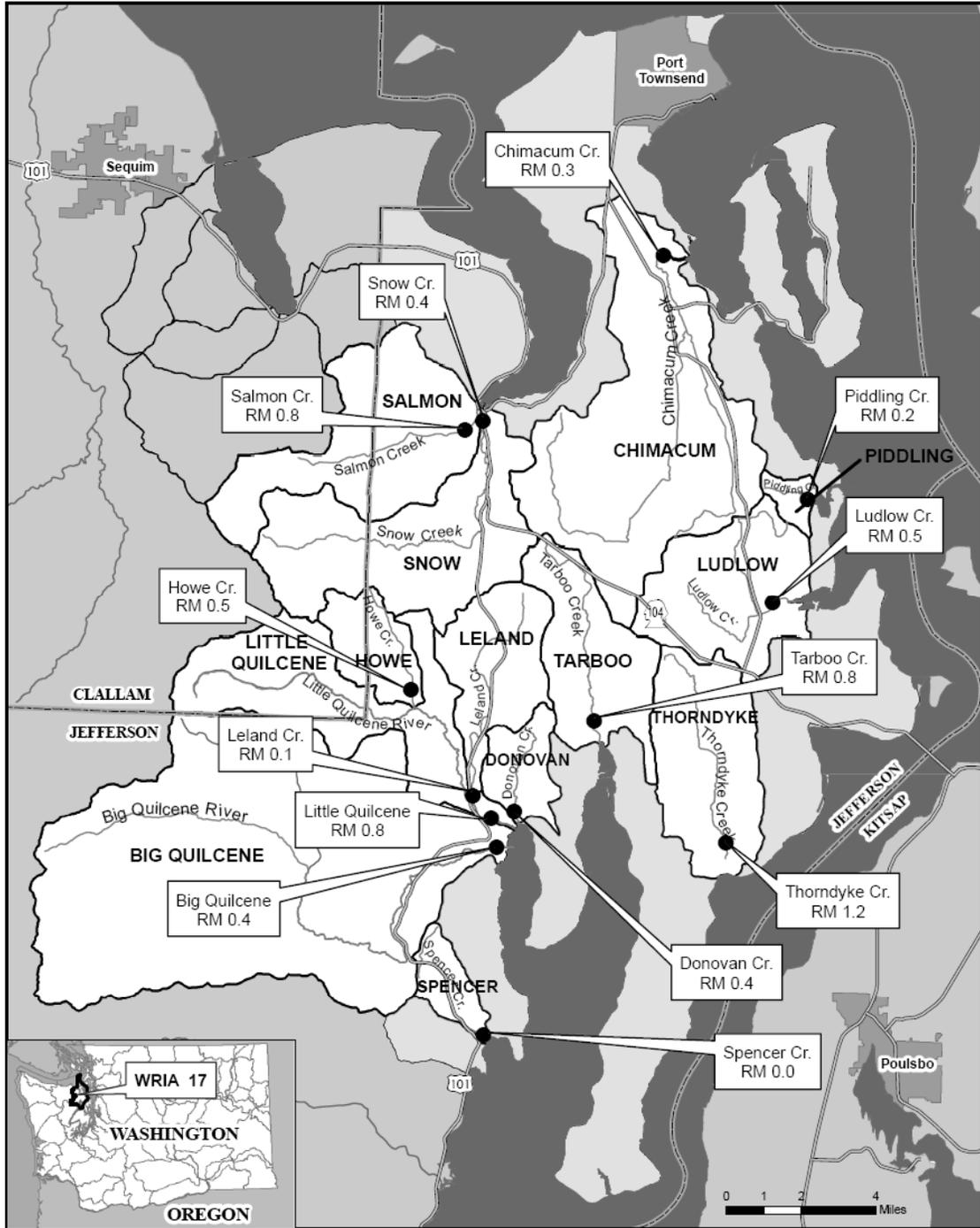
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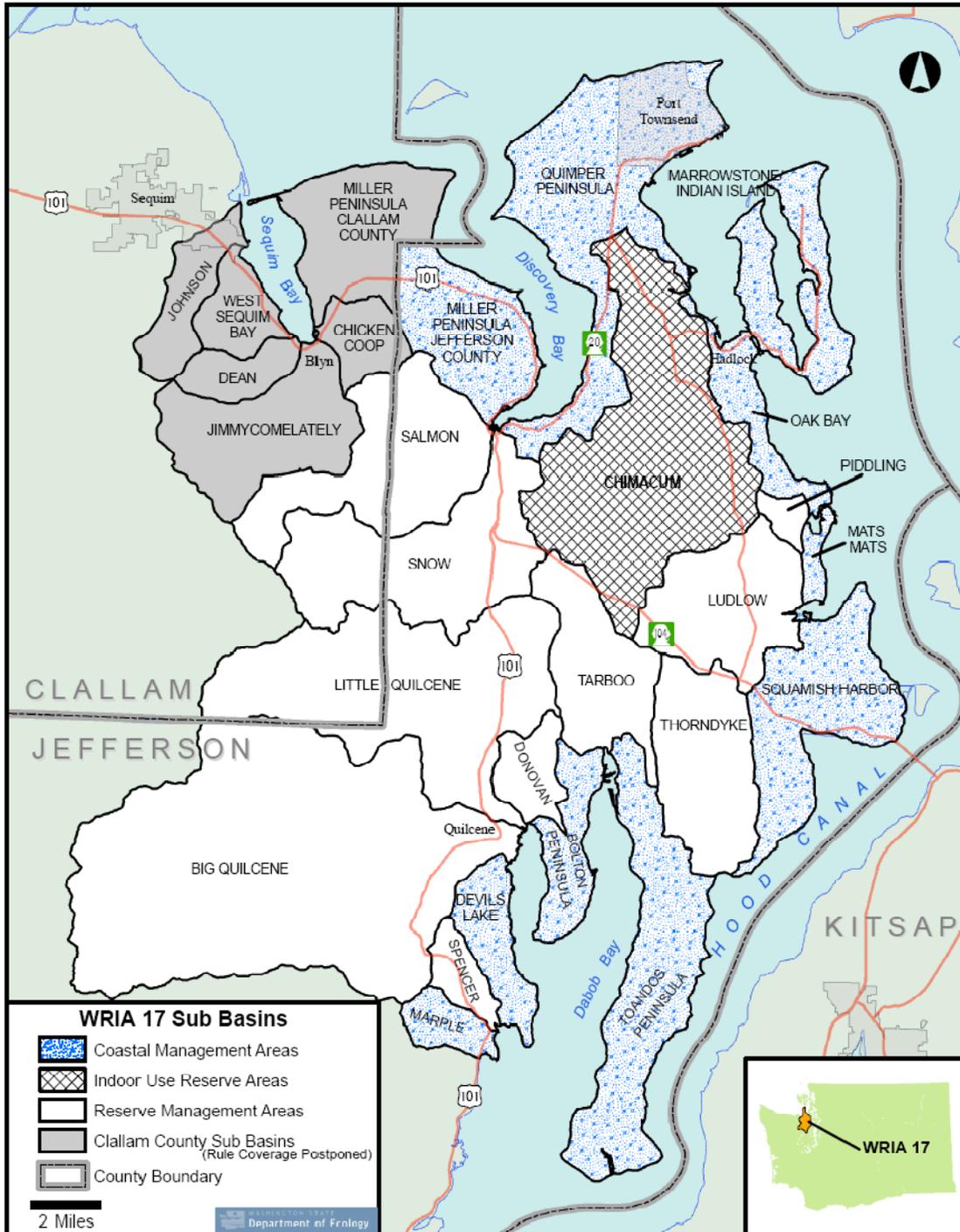
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Appendix 1. Maps

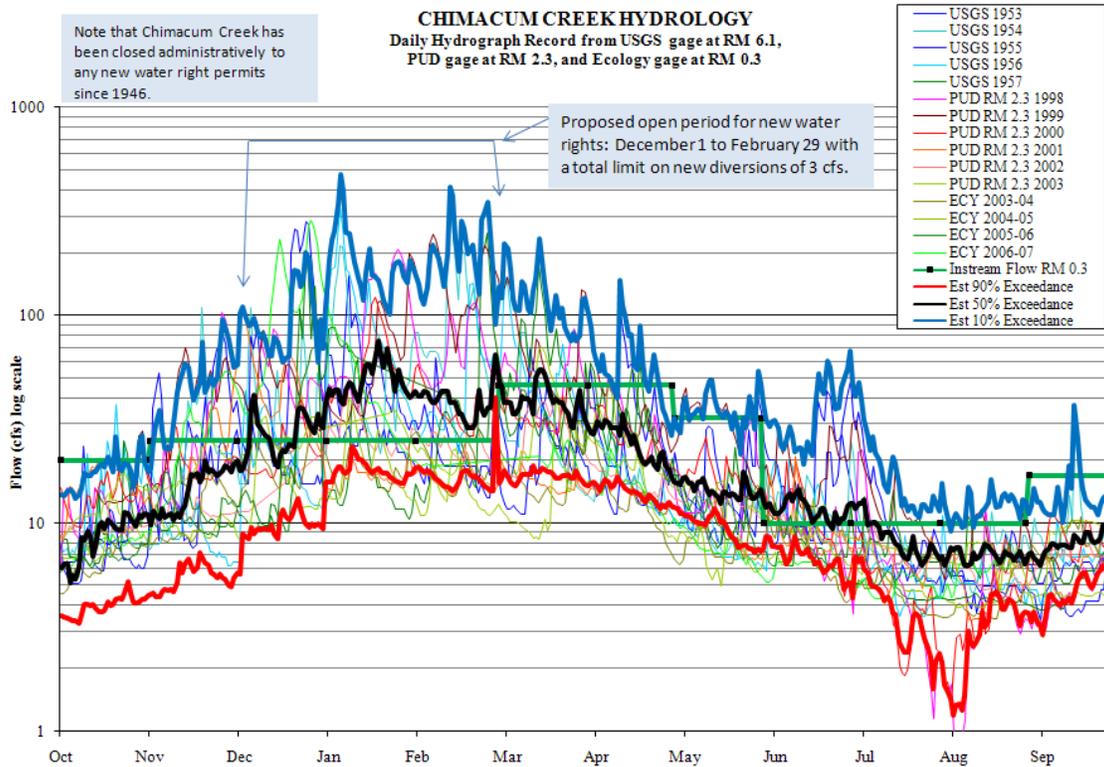
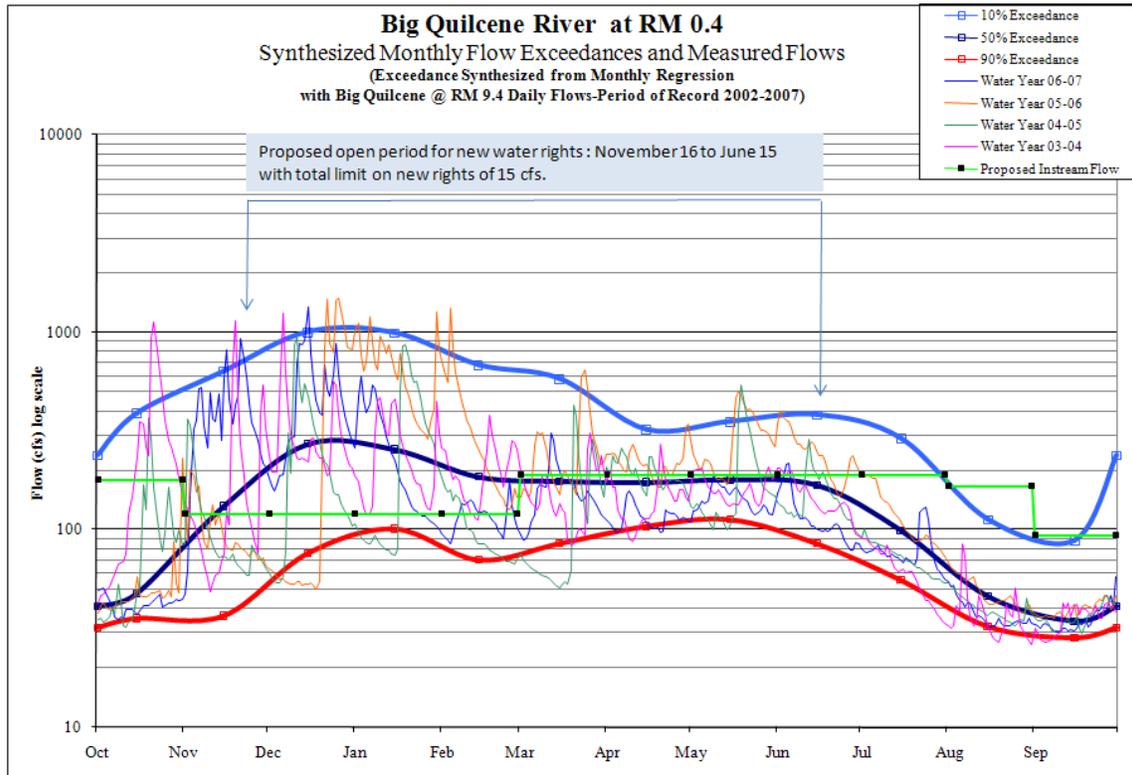
WRIA 17 Stream Management Units and Control Points



WRIA 17 Subbasins and Coastal Management Areas



Appendix 2. Hydrographs



Appendix 3. Rule Summary

WRIA 17 rule matrix – net changes from new rule to Ecology’s existing regulatory practice

Rule Section	Summary of section	Net effect requiring analysis
WAC 173-517-010	Introduction and Purpose	N/A – provisions reflect current laws and background information
WAC 173-517-020	Authority and applicability	N/A – provisions reflect current laws
WAC 173-517-030	Definitions	Most definitions are consistent with agency practice and usage. Unique to this rule are definitions of commercial agriculture and outdoor irrigation See analysis of sections 130 and 150 below.
WAC 173-517-040	Compliance and enforcement	N/A – consistent with statutory requirements for compliance and enforcement
WAC 173-517-050	Appeals	N/A – provisions reflect current laws
WAC 173-517-060	Regulation review	N/A – provisions reflect current agency practice
WAC 173-517-070	Maps	N/A
WAC 173-517-080	Establishment of stream management units	N/A – see analysis for section 090, below.
WAC 173-517-090	Instream flows - establishes monthly instream flow values in 13 streams, for the stream management units and at the control points established in section 050	<p>The rule codifies current permitting practice and statutory obligations for water right permitting.</p> <p>Under the Water Resources Act of 1971, Ecology currently has a legal obligation to maintain water quantities sufficient for the preservation of the natural environment.</p> <p>Current practice for water right permitting includes assessing impacts to flows for all new water rights. Applicants must either demonstrate that flows will not be affected or must mitigate any impacts to flows.</p> <p>-----</p> <p>The rule creates a new conservation standard for permit-exempt well use. See analysis for section 120, below.</p>
WAC 173-517- 100	Closures – closes all streams and connected ground water	Surface Water Source Limitation (SWSL) letters from WDFW administrative close many streams in WRIA 17:

		Chimacum, Little Quilcene, Salmon, Snow, Tarboo, Contractors, Tommy (Donovan), Andrews (Crocker Lake), and 1 unnamed stream flowing into Port Ludlow.
WAC 173-517-110	Future new water use – generally – this section outlines exceptions to closures and how water rights may be approved in the future	See below for analyses of individual exceptions for coastal areas, interruptible water, and reserves Allows use of rooftop rainwater– relies on site-specific analysis of impacts to authorize the use of rooftop rainwater through the rule. The baseline is that de minimus use of rain barrels is allowed without a permit, and whether permit is or is not required for greater use is ambiguous.
WAC 173-517-120	Conservation Standard for permit exempt well use – establishes a 500 gpd maximum limit and 350 gpd average annual for permit exempt well use. Water use up to 5,000 gpd is allowed if a user can mitigate.	Establishes a new limit on permit exempt well use that applies in most areas (see exceptions, below). Also creates new requirement to mitigate for water use between 500 and 5,000 gpd, if more than 500 gpd is desired. Without rule new wells may use up to 5,000 gpd, but actual use typically much less, therefore, most new uses will not be affected. Water use information for residential use in this area is in the range of the conservation standard. There is also fairly strong demand for commercial agricultural use of permit-exempt withdrawals in this area. Without the rule new permit-exempt well withdrawals could use up to 5,000 gpd. See separate analysis for hydrologic benefit to streams and benefits to fish of this use restriction. See also sections 130 and 150, below.
WAC 173-517-130	Designates coastal management areas – and sets management standards for water use in these areas - Requires connection to public water supply, if available, except in the Port Townsend service area - limits permit exempt	N/A – no analysis required, consistent with local codes - without rule new wells may use up to 5,000 gpd, rule restricts new withdrawals to

	<p>wells to the conservation standard</p> <p>- Miller and Quimper peninsulas – agricultural use up to 5,000 gpd allowed outside of designated areas.</p>	<p>the conservation standard except for Miller and Quimper peninsulas.</p> <p>- without rule other types of uses could use up to 5,000 gpd, and agricultural use of exempt wells would not be limited to these 2 areas. Commercial agriculture defined very broadly in the rule.</p>
WAC 173-517-140	<p>Future appropriations for interruptible use - defines when and where future interruptible uses may occur</p>	<p>N/A – closure with the exception for interruptible uses is consistent with existing regulatory practices. The open periods for Big Quilcene and Chimacum match the seasonal high flow when water is available. The limit on the maximum allocation is consistent with the statutory obligation to protect instream resources, in this case channel forming flows. Conversely the seasonal closures on these streams are consistent with low flow periods when mitigation would be required.</p>
WAC 173-517-150	<p>Reserves of water for future use. The rule establishes reserves in 13 subbasins. See table</p>	<p>See Table for reserve sizes, uses of reserves and approximate # of households that could be served with reserves. Rule allows for year-round use for water that ordinarily could only be issued on an interruptible basis. Use of reserves generally restricted to any permit-exempt withdrawal, exceptions include: water available for future water rights in Big Quilcene, Little Quilcene and Thorndyke subbasins; and portions of the reserve allocated for agricultural use of exempt wells. Rule establishes restrictions on permit-exempt withdrawals to protect instream flows.</p> <p>Chimacum subbasin is a special case, because we cannot justify a traditional reserve, an interim 0.1% reserve is established and no outdoor irrigation is allowed – until another source of water is found for mitigation. In addition, if the USGS ground water model identifies places where withdrawals will not affect flows, rule will allow new withdrawals with no restrictions in those places.</p> <p>Analysis needed: Compare value of protection of instream resources to cost of conservation standards.</p>

		Compare out-of stream and instream value of allocated water.
WAC 173-517-160	Accounting for use under the reserves	See section 150
WAC 173-517-170	Lakes and Ponds	N/A – consistent with statutory requirements
WAC 173-517-180	Measuring water use – metering required for all new uses, including permit-exempt withdrawals	Analysis required – cost to install, maintain, and read meters, and report data to Ecology.
WAC 173-517-190	Conveying stockwater away from streams	N/A - provisions reflect current agency practice. Rule codifies existing program policy.
WAC 173-517-200	Future surface water withdrawals for environmental restoration – describes what projects qualify as environmental restoration projects (one of the exceptions to closure)	N/A – exception for environmental restoration projects is consistent with existing agency practice. Criteria used in rule is consistent with agency practice
WAC 173-517-210	Out of subbasin water use. Rule requires additional public meeting and report on possible harm to public interest of applicants that propose using water in a different subbasin.	Analysis required –cost of additional public meeting and report

**Reserves and Coastal Management Areas
WRIA 17 Instream Flow and Water Management Rule**

Subbasin	Projected Growth to 2025: # households outside service areas	Reserve Amount (gpd)	Anticipated Household Consumptive Use through 2025 (gpd)	Conditions of Use Above Conservation Standard*	Maximum Available for Permit Exempt Commercial Agriculture Use (gpd)**	Maximum Available for New Water Right Permits (gpd)**
Big Quilcene River	24.5	200,400	6,118	Permit exempt withdrawals for agriculture Water right permits subject to public interest test for domestic availability	193,670	
Chimacum Creek	148.7	1,940	1,933	No outdoor irrigation*	N/A	N/A

Donovan Creek	8.5	2,326	2,118	N/A	N/A	N/A
Little Quilcene River, Leland and Howe Creeks	56.5	38,800	14,118	Water right permits subject to public interest test for domestic availability	N/A	23,270
Ludlow Creek	28.2	7,830	7,059	N/A	N/A	N/A
Piddling Creek	6.6	1,845	1,647	N/A	N/A	N/A
Salmon Creek	2.8	9,050	706	Permit exempt agricultural use	5,000	N/A
Snow Creek	2.8	4,140	706	Permit exempt agricultural use	3,000	N/A
Spencer Creek	0	2,200	0	N/A	N/A	N/A
Tarboo Creek	24.5	7,110	6,118	N/A	N/A	N/A
Thorndyke Creek	23.5	31,670	5,882	Water right permits subject to public interest test for domestic availability	N/A	25,200
Miller Peninsula (Jefferson County) and Quimper Peninsula	222.1	Not limited by reserve	55,525	Permit exempt agricultural use allowed at certain withdrawal locations	Not limited by reserve	N/A
Oak Bay, Mats Mats Bay, Squamish Harbor, Toandos Peninsula, Bolton Peninsula, Devils Lake, Marple, Marrowstone and other islands	319.8	Not limited by reserve	79,950	N/A	N/A	N/A

* **Conservation Standard** for permit-exempt well use:

- Must use public water supply if available
- Single residence or industrial user: 500 gpd maximum, 350 gpd annual average use

The Conservation standard is required for new permit-exempt well water uses, WRIA-wide, except for agricultural use in Salmon, Snow and Big Quilcene subbasins, and Chimacum subbasin restriction on outdoor irrigation.

** Remainders of the reserves were estimated by subtracting 110% of the anticipated household consumptive use through 2025 from the reserve amounts

gpd = gallons per day

Appendix 4. Determining Sizes of Reserves of Water for WRIA 17 Subbasins

April 29, 2009

This document describes the methods the Department of Ecology (Ecology) used to determine the sizes of the reserves of water proposed in the draft Water Resources Inventory Area 17 (WRIA 17) Water Resources Management rule. Part of this analysis was to evaluate whether adequate reserves were being set aside for each subbasin. In addition, this analysis included developing standard amounts to deduct from reserves for each new permit exempt residential use. A standard deduction amount is needed to begin accounting for use of the reserves in the absence of actual use data. The rule allows Ecology to periodically adjust the standard amount to reflect actual use based on metering data.

Water reserves for indoor and outdoor use are proposed in 10 subbasins: Big Quilcene, Donovan, Little Quilcene, Ludlow, Piddling, Salmon, Snow, Spencer, Tarboo and Thorndyke. A water reserve for indoor use only¹⁶ is proposed for the Chimacum subbasin. This reserve is a special case and is described at the end of this document.

Ecology considered the water needs of both fish and people when determining reserve quantities for all subbasins in the affected portion of WRIA 17. Specifically, Ecology's goal was to develop reserve amounts that will have little or no impact on the long-term sustainability of fish populations, while at the same time meeting water supply needs of additional households expected through 2025. Ecology also evaluated the potential for new exempt well agricultural use of reserved water and was able to accommodate this to some extent in some of the subbasins, in light of the strong local public interest in expanding local agricultural production.

The analysis to determine the reserve sizes included the following steps:

1. Fish habitat analysis was used to determine a 1% base amount of water that could be withdrawn in a subbasin without significant further impacts to fish populations.
2. Estimates of the projected number of new households in each subbasin were calculated to estimate future residential water needs.
3. The amount of water consumptively used by new permit exempt households was estimated.
4. Inchoate water rights were evaluated to determine the impacts on reserves. In two cases reserves were decreased because of anticipated depletion of the reserve from use of yet to be used water.
5. In three subbasins reserve quantities were expanded beyond the 1% base reserve amount to accommodate the projected number of new households outside of water service areas through 2025.

¹⁶ In this paper the phrase "indoor use only" is used for convenience only. The proposed rule restricts outdoor irrigation. Outdoor irrigation is defined as watering greenhouse or outdoor plants, lawns, or gardens.

The goal was to establish reserve quantities adequate to meet anticipated growth through 2025 in all subbasins. In most subbasins the size of the reserve is adequate to meet growth beyond this date. In some basins Ecology decided that the 1% base reserve amount is sufficient to allow additional water use for small farms authorize and/or authorize additional water right withdrawals.

Fish Habitat Analysis

Both fish and people need water most when supplies are lowest—in hot dry years, in late summer and early fall. Reductions in flow lead to negative consequences for fish. However, people need to have reliable sources of drinking water that will not potentially be cut off during low flow years.

Biologists from Ecology, in consultation with biologists from the Department of Fish and Wildlife, determined that withdrawals would have a small impact on fish populations if limited to a one to two percent loss of stream flow or fish habitat during the lowest flow time of year. The intention is to minimize habitat loss during the most stressful flow conditions affecting fish survival. During normal or high flow conditions this level of withdrawal will have much less impact. Specifically, Ecology and WDFW determined stream flow during the low flow month (usually September) of a low flow year. This methodology resulted in a 1% base reserve amount that was increased up to 2% if needed to meet projected human water needs.

Listed below in order of preference, the base reserve amounts for each of the 10 subbasins with water reserves set aside for indoor and outdoor use were based on:

1. Calculated loss of 1% of habitat during low flow month based on the IFIM methodology (Big Quilcene River only), or method below if not available,
2. 1% of 90% exceedence flow during low flow month, or method below if not available,
3. 1% of lowest recorded flow during low flow month.

Relying on this analysis, the Department of Ecology determined the benefits to people outweighed the potential harm to fish in allowing a small portion of this lowest flow to be taken for new out-of-stream uses.

The methods used to derive the 1% base reserve amounts for each of the subbasins are as follows:

Big Quilcene River subbasin

Based on USGS and Ecology gage data, the Big Quilcene River's low flow month is September. The 90% exceedence flow (the flow level exceeded about nine years out of ten) for September is 23 cfs. Ecology and WDFW biologists used weighted useable area data (representing fish habitat) from the PHABSIM model to calculate the one percent loss of habitat for steelhead rearing and chum spawning during these low flow conditions. A one percent loss of habitat from 23 cfs equals a flow of 0.31 cfs which equals a reserve of 200,400 gallons per day (gpd).

Chimacum Creek subbasin (see below)

Donovan Creek subbasin

Ecology measured Donovan Creek's stream flow in September 2008 at 0.11 cfs. This flow was added to a low flow of 0.07 measured in a downstream tributary, Jakeway Creek. For the reserve Ecology calculated that one percent of 0.18 cfs is 0.0018 cfs or 1,163gpd.

Little Quilcene River subbasin

Based on Ecology gage data the Little Quilcene River's low flow month is August. The 90% exceedence flow for August is 6.0 cfs. For the reserve Ecology calculated that one percent of 6.0 cfs is 0.060 cfs or 38,800 gpd.

Ludlow Creek subbasin

Ecology measured Ludlow Creek in September 2008 at 3.0 cfs. For the reserve Ecology calculated that one percent of 3 cfs is 0.03 cfs or 19,400 gpd.

Piddling Creek subbasin

Ecology measured Piddling Creek's stream flow in September 2008 at 0.19 cfs. For the reserve Ecology calculated that one percent of 0.19 cfs is 0.0019 cfs or 1,230 gpd.

Salmon Creek subbasin

Based on Ecology gage data Salmon Creek's low flow month is September. The 90% exceedence flow for September is 1.4 cfs. For the reserve Ecology calculated that one percent of 1.4 cfs is 0.014 cfs or 9,050 gpd.

Snow Creek subbasin

Based on Ecology's gage data Snow Creek's low flow month is September. The 90% exceedence flow for September is 1.4 cfs. For the reserve Ecology calculated that one percent of 1.4 cfs is 0.014 cfs or 9,050 gpd.

Spencer Creek subbasin

Ecology measured Spencer Creek's stream flow in September 2008 at 0.34 cfs. For the reserve Ecology calculated that one percent of 0.34 cfs is 0.0034 cfs or 2,200 gpd.

Tarboo Creek subbasin

Based on Ecology's gage data the low flow month is July. The 90% exceedence flow for July is 1.1 cfs. For the reserve Ecology calculated that one percent of 1.1 cfs is 0.011 cfs or 7,110 gpd.

Thorndyke Creek subbasin

Based on Ecology's gage data the low flow month is July. The 90% exceedence flow for July is 4.9 cfs. For the reserve Ecology calculated that one percent of 4.9 cfs is 0.049 cfs or 31,670 gpd.

Anticipated new households in the WRIA 17 subbasins

To predict future households in the WRIA subbasins, Ecology relied on building permit data supplied by Jefferson County. Ecology displayed those data spatially using ArcGIS, then split the data by subbasin. In some subbasins some future development will be supplied by water systems. Therefore in those subbasins building permits within the water system service areas were removed from the data sets.

Once building permit data for each of the 10 subbasins were developed, the numbers of building permits issued between 1990 and 2006 were tallied. The tally began with 1990, since collectively the data indicate a significant increase in growth starting that year. The average numbers of permits per year were then calculated by dividing the numbers of building permits issued between 1990 and 2006 by 17. These values were then multiplied by 16 in order to estimate the additional households expected by 2025 (with 16 representing the number of years between 2009 and 2025). The results of those analyses are as follows:

	Total building permits outside of water system service areas 1990 through 2006	Average permits per year 1990 through 2006	Anticipated additional households by 2025
Big Quilcene	26	1.5	24.5
Chimacum	158	9.3	148.8
Donovan	9	0.5	8.5
Little Quilcene	60	3.5	56.5
Ludlow	30	1.8	28.2
Piddling	7	0.4	6.6
Salmon	3	0.2	2.8
Snow	3	0.2	2.8
Spencer	0	0	0
Tarboo	26	1.5	24.5
Thorndyke	25	1.5	23.5

Table 1. Building permit analysis

Estimated consumptive use associated with new households

To estimate the number of new households that the subbasin reserves could serve, it was necessary to estimate the amount of water consumptively used by new households. As water use peaks during the irrigation season and that coincides with the period of lowest flows, Ecology's analysis focused on water use during that time of the year. The preferred method for determining irrigation use would have involved assuming an outdoor area to be irrigated and a certain crop type (such as pasture/turf grass), then relying on crop use estimates for Washington such as those available in the 1985 Washington Irrigation Guide (WIG). However, the nearest station evaluated in the WIG is Sequim and those data are not very representative of all of WRIA 17. Therefore, Ecology chose a much simpler method.

A greatest potential use scenario would assume that every new house will maximize its irrigation use. However, it is unlikely that all new homes will use the maximum 500 gpd during the growing season. This, combined with the fact that some wells will have more

of a delayed effect on streams suggests a lesser value is more realistic. Unfortunately, there is little information available upon which to base an average growing season use for all wells within the subbasins. In the absence of any published value, an average irrigation season withdrawal rate of 400 gpd was assumed. In order to estimate the percentage of that 400 gpd that does not return to the groundwater system after domestic use, the following assumptions were made:

- Assuming 60 gpd use per person and 2.21 people per household, there will be about 133 gpd indoor use per household.
- During the growing season, the average use per household breaks out as 133 gpd indoor use and 267 gpd outdoor use.
- Consumptive growing season use associated with indoor use will be 10% of 133 gpd or about 13 gpd.
- Consumptive growing season use associated with outdoor use will be 90% of 267 gpd or about 240 gpd.

The above 2.21 people per household estimate for Jefferson County comes from the 2006 U.S. Census Bureau data (<http://quickfacts.census.gov/qfd/states/53/53009.html>). The 60 gpd per connection estimate comes from an often cited an American Water Works Association Research Foundation (AWWA) study completed in 1999 during which end uses of water were physically measured in 100 single-family homes (selected to be statistically representative of all single family homes) in 12 municipal areas including Seattle. Based on those data, average total indoor per capita water use was estimated to be 72.5 gpd without conservation and 49.6 gpd with conservation. The lowest average indoor per capita water use was 57.1 gpd day for Seattle. Bearing in mind that some conservation is likely to have occurred in Seattle when the study was conducted, the above 57.1 gpd figure was rounded up slightly to 60 gpd.

Numerous sources support the 10% and 90% assumptions made for indoor and outdoor consumptive use, respectively. For example, these figures are consistent with percentages found in U.S. Geological Survey Special Investigative Report 2007-5197, entitled, “Consumptive Water-Use Coefficients for the Great Lakes Basin and Climatically Similar Areas) (Shaffer, et al., 2007, <http://pubs.usgs.gov/sir/2007/5197/>). In that report, the median consumptive-use coefficient for domestic and public supply was 12 percent and the median consumptive-use coefficient for the irrigation category was 90 percent. Use of these percentages for Washington is supported by Figure 3 in the report, which presents percent consumptive loss in the conterminous United States by water-resources region. That map, if anything, suggests Washington might have an even greater percentage of consumptive use.

Based on the assumption outlined in the four bulleted items above , consumptive use under a 400 gpd potential use scenario might be about 13 gpd plus 240 gpd, or about 250 gpd (or about 62% consumptive use). Although this number has uncertainty associated with it, this should not unfairly restrict individuals from tapping into reserves in the future. That is because the draft rule includes explicit language stating Ecology may adjust this amount periodically to reflect actual use based on metering data.

The WRIA 17 Planning Unit Level 1 Technical Assessment from 2000 summarized water use data per connection from 11 water systems in Eastern Jefferson County. Annual average use per connection ranged from 120 to 287 gallons per day, with an overall average of 222 gpd. The assessment noted that average use per connection from water systems in Clallam County was 272 gallons per day. However, these data are of limited use because annual averages don't reflect the higher use of water in the summer and the data is from households that pay a fee for water use are biased due to the built in incentive to conserve water.

Additionally, Jefferson County PUD provided water use per connection data for 8 of its satellite water supply systems. For a 7-year period average per connection water use in the month of July ranged from 23 to 799 gpd. In the Tri-Area, the per connection water use in July ranged from 322 to 535 gpd. However, some of those data included non-residential connections (such as ballpark or school irrigation). In addition, data from some systems appears to be skewed due to water system leaks. As such those data were deemed inappropriate for the purposes of this evaluation.

Estimated new households and Establishment of Reserve Sizes

The base reserve flow amounts described in the Fish Habitat Analysis section above were multiplied by up to 2X factors in three subbasins (indicated below) when the base reserve amounts were not sufficient to meet 16 years of predicted growth. In the case of the Chimacum subbasin this figure was reduced using a 0.1X factor as explained on page 8. In order to estimate the total number of new households potentially accommodated by the reserves, the final reserve amounts were divided by 250 gpd. Based on this method, the reserves for the 10 subbasins were as follows:

	Total New Households by 2025 Anticipated	Consumptive Use By 2025 Anticipated (additional households anticipated times 250 gpd)	1%Base Reserve Amount (gpd)	Multiplication Factor	Final Reserve Amount (gpd)	Total New Households Potentially Accommodated	Maximum New Households Potentially Accommodated (rounded down)
Big Quilcene	24.5	6118	200400	1X	200400	801.6	801
Donovan	8.5	2118	1163	2X	2326	9.3	9
Little Quilcene	56.5	14118	38800	1X	38800	155.2	155
Ludlow	28.2	7059	19400	1.6X	7830*	31	31
Piddling	6.6	1647	1230	1.5X	1845	7.4	7
Salmon	2.8	706	9050	1X	9050	36.2	36
Snow	2.8	706	9050	1X	4140*	16.6	16
Spencer	0	0	2200	1X	2200	8.8	8
Tarboo	24.5	6118	7110	1X	7110	28.4	28
Thorndyke	23.5	5882	31670	1X	31670	126.7	126
		<i>Indoor only consumptive use (13 gpd)</i>					
Chimacum [†]	148.7	1933	19,400	0.1X	1,940	149.2	149

Table 2. Reserve size analysis

* The final reserve amounts in Ludlow and Snow creeks were decreased because of anticipated effect of inchoate water use – see discussion on the effect of inchoate water on reserve sizes, below.

‡ *Chimacum subbasin is a special case and is explained on page 8 of this document.*

In the Salmon, Snow, Little Quilcene, Big Quilcene and Thorndyke subbasins the reserve amounts exceed the amount needed to meet residential growth. There are a number of pending water right applications in WRIA 17, including 10 or 11 applications in these subbasins. In addition, Ecology received requests from Jefferson County community members to allocate a portion of the reserved water for new agricultural use in the Salmon, Snow, Little Quilcene, and Big Quilcene subbasins. Therefore, Ecology is allowing additional uses of water from these larger reserves.

- 1) The proposed instream flow rule allows new agricultural use on permit-exempt wells (limit of 5,000 gpd per individual farm) in the following subbasins:
 - Salmon – up to 5,000 gpd of the reserve
 - Snow – up to 3,000 gpd of the reserve
 - Big Quilcene

- 2) The proposed instream flow rule allows future water right permits, for the uses listed below, subject to a public interest evaluation that takes into account water availability for future domestic use in the subbasin:
 - Municipal or community domestic water supply with domestic hookups consistent with the conservation standard defined in WAC 173-517-120.
 - Agricultural irrigation.
 - Industrial use.

Inchoate water effect on reserve sizes

When developing reserves for the various WRIA 17 subbasins, Ecology took into account the potential future effect of inchoate water use. Inchoate water refers to water that water systems are authorized to develop under existing water rights, but is not yet in use.

The WRIA 17 Planning Unit surveyed public water suppliers and published an analysis of inchoate water in the Detailed Implementation Plan for the Quilcene-Snow Watershed dated October 9, 2007. The report identifies four stream subbasins with inchoate water:

- Ludlow Creek
- Snow Creek
- Thorndyke Creek
- Chimacum Creek

Ecology considered individual water rights associated with potential developable inchoate water in each subbasin to determine how the future use of this water may affect stream flows.

The initial analysis performed by the WRIA 17 Planning Unit reported an annual total of 69 acre feet of inchoate water in the Ludlow subbasin. Further investigation showed that only one water right out of three water rights associated with that quantity is likely to affect stream flow in Ludlow Creek. 2008 water use data suggests that 26 acre feet per year might be produced from that well. When averaged across the entire year this equates to approximately 23,210 gpd. The original 1% base reserve quantity for Ludlow Creek was 19,400 gpd and this amount was expanded to a 1.6% reserve to accommodate projected growth and remaining inchoate water, resulting in 31,040 gpd. The 23,210 gpd unused water amount was subtracted from the 31,040 gpd total reserve, resulting in a final reserve amount of 7,830 gpd.

In the case of the Snow Creek subbasin, the initial analysis performed by the WRIA 17 Planning Unit suggested that two inchoate rights might exist. However, only one of these two may have a water right that has yet to be fully perfected. Therefore, in this subbasin the quantity associated with that one right was subtracted from the reserve. The original 1% base reserve quantity for Snow Creek was 9,050 gpd. An annual total of 5.5 acre feet of inchoate water was reported. When averaged across the entire year, this equates to approximately 4,910 gpd. This amount was subtracted from 9,050 gpd resulting in a final reserve amount of 4,140 gpd.

In the case of both the Ludlow and Snow Creek subbasins it is recognized that basing an analysis on annual quantities averaged over the entire year is not entirely justified given the seasonality of pumping. However, in both cases there is a residual amount of water that might have been reserved before reaching the maximum 2 percent potential reserve cap set for this process. The percentages used, 1.6 percent for Ludlow and 1 percent for Snow Creek, are both less than 2% and as such at least partially account for the seasonality of pumping. In addition, in the case of the Ludlow Creek subbasin efforts are underway to work with the owner to shift increased pumping to alternate sources to minimize impacts to the creek.

In the case of the Thorndyke Creek subbasin, the one well apparently associated with a municipal water system's inchoate water right is located in the Squamish Harbor designated coastal area. Therefore, use of this water will not affect stream flows. As such, this quantity of unused water was not subtracted from the reserve.

Special Case for the Chimacum Creek subbasin:

Ecology found that in the Chimacum subbasin unused inchoate water rights could affect the quantity of stream flow during the low flow time of year. An annual total of 851 acre feet of inchoate water was reported. When averaged across the entire year, this equates to about 1.2 cfs. In addition, increased pumping during the summer is likely to result in a larger amount taken during the low flow period than suggested by the annual average. The potential increased stress on Chimacum Creek of 1.2 cfs, or greater, is substantial when compared to the 3 cfs low flow. Therefore, Ecology could not justify a 1 percent reserve of water for new out-of-stream uses.

However, Ecology determined that it was necessary to allow very limited new water use as a stop-gap measure until alternative water supply is available. Therefore, Ecology decided to

create a reserve of 1,940 gpd for in-door use only. This quantity is equal to 0.1 percent of the current low flow for September or 90 percent exceedance, as measured from the Ecology gage.

Using the same building permit data analysis used in other subbasins, the number of new residences by 2025 Chimacum subbasin, outside the PUD water service area, is 149. Relying on the same estimate of 13 gpd per connection for indoor consumptive use as described above, the Chimacum subbasin 1,940 gpd reserve is projected to meet that demand.

Local efforts to develop an alternative water supply for mitigating new water use in the Chimacum subbasin have already begun, and Ecology is optimistic they will be successful prior to the 15-year horizon for this reserve. When an alternative supply is available for mitigation, the restriction on outdoor irrigation will be lifted.

Analysis of Maximum Water Available for New Water Rights and Permit Exempt Commercial Agriculture Use

In the case of the Big Quilcene, Little Quilcene, and Thorndyke subbasins the proposed rule makes water available for water right allocations (up to the reserve amount) that was not available previously. In addition, in the case of the Big Quilcene, Salmon and Snow subbasins new users will have the ability to access the water for agricultural uses up to 5,000 gpd (3,000 gpd for Snow) under the statewide ground water use exemption. In order to facilitate the economic analysis associated with establishment of the rule, an estimate was made of the maximum amount of water available for these new uses. The conditions of use above conservation standards and the amounts of water available for these additional uses are provided in Table 3 below.

Subbasin	Projected Growth to 2025: # households outside service areas	Reserve Amount (gpd)	Anticipated Household Consumptive Use through 2025	Conditions of Use Above Conservation Standard*	Maximum Available for Permit Exempt Commercial Agriculture Use (gpd)**	Maximum Available for New Water Right Permits (gpd)**
Big Quilcene River	24.5	200,400	6,118	Permit exempt withdrawals for agriculture Water right permits subject to public interest test for domestic availability	193,670	
Chimacum Creek	148.7	1,940	1,933	No outdoor irrigation*	N/A	N/A
Donovan Creek	8.5	2,326	2,118	N/A	N/A	N/A

Little Quilcene River, Leland and Howe Creeks	56.5	38,800	14,118	Water right permits subject to public interest test for domestic availability	N/A	23,270
Ludlow Creek	28.2	7,830	7,059	N/A	N/A	N/A
Piddling Creek	6.6	1,845	1,647	N/A	N/A	N/A
Salmon Creek	2.8	9,050	706	Permit exempt agricultural use	5,000	N/A
Snow Creek	2.8	4,140	706	Permit exempt agricultural use	3,000	N/A
Spencer Creek	0	2,200	0	N/A	N/A	N/A
Tarboo Creek	24.5	7,110	6,118	N/A	N/A	N/A
Thorndyke Creek	23.5	31,670	5,882	Water right permits subject to public interest test for domestic availability	N/A	25,200

Table 3. Reserves and conditions of use for subbasins with reserves

* Conservation standard is required for new permit-exempt well water uses WRIA-wide, except for agricultural use in Salmon, Snow and Big Quilcene subbasins, and Chimacum subbasin additional restriction on outdoor irrigation.

** Remainders of the reserves were estimated by subtracting 110% of the anticipated household consumptive use through 2025 from the reserve amounts

Appendix 5. Potential Environmental Effects Resulting from the WRIA 17 Instream Flow Rule

April 29, 2009

This paper evaluates the environmental effects resulting from the WRIA 17 instream flow rule through 2025.¹⁷ Although a number of benefits are expected to occur beyond 2025, those benefits are not considered here because they are beyond the timeframe of the cost benefit analysis, and because there is too much uncertainty to make assumptions that far into the future.

This paper presents two types of analyses:

- 1) Potential flow changes as a result of the rule. This analysis first estimates the amount of anticipated changes in stream flow, and translates these to effects on fish.
- 2) Reduced risk of seawater intrusion. This analysis estimates the number of homes that might be protected from seawater intrusion by the proposed rule and potential benefits of that protection.

The proposed rule divides the areas affected by the rule into either coastal management or reserve management areas. Flow benefits in both of these types of areas will result from the application of a conservation standard for new exempt use (or an in-house use only restriction in the case of Chimacum). However, in the reserve management subbasins full use of the reserve quantities could also affect flows. In the case of Chimacum, Donavan, Ludlow, Piddling, Spencer, and Tarboo the reserve quantities are only sufficient to cover approximately the anticipated permit exempt well growth through 2025. As such, in those subbasins no water has been designated for other than permit-exempt well use on the conservation standard (or in-house use only in the case of Chimacum). A portion of the flow analysis below focuses on the water savings due to the exempt well restrictions in those subbasins.

In the case of Big Quilcene, Little Quilcene, and Thorndyke the rule makes water available for allocation (up to the reserve amount) that previously was not available. Therefore as part of the analysis below, the additional water available for water right authorization in those subbasins was quantified and the diminished flow consequent to this use was estimated as a means of evaluating ecological costs of these reserves.

In the cases of Salmon and Snow the reserve sizes are small, but are more than adequate to cover anticipated permit exempt well growth through 2025. In addition to providing the water amount needed to meet anticipated growth, 3,000 gpd is set aside in Snow and 5,000 gpd is set aside in Salmon for exempt agricultural use up to 5,000 gpd under the

¹⁷ This paper in part relies on analyses described in a document called, "Determining Sizes of Reserves of Water for WRIA 17 Subbasins". (April 29, 2009). Among other things that document explains how Ecology relied on 1990 through 2006 building permit data in order to predict future growth through 2025 for all of the subbasins.

statewide ground water exemption. Since not much growth is expected in either of these subbasins by 2025 (less than 3 houses in each) and the rule allows for some of that growth to occur in the form of exempt agricultural use, during the analysis below it was assumed that no environmental benefit or detriment in Salmon or Snow would occur as a result of the rule through 2025.

Table 1 indicates reserve quantities and allowed uses in Quilcene-Snow subbasins.

Reserve Management Areas, Reserve Quantities and Allowed Uses

Reserve Management Area Water Source (including tributaries)	Reserve Quantity Maximum Average Daily Use in Gallons (gpd)	Allowed Uses of Reserve*
Big Quilcene	200,400 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120 • Permit exempt withdrawals for agriculture • Water right permits subject to public interest test for domestic availability
Chimacum	1,940 gpd	<ul style="list-style-type: none"> • Permit exempt withdrawals for domestic use, no outdoor irrigation
Donovan	2,326 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120
Little Quilcene (includes Leland and Howe creeks)	38,800 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120 • Water right permits subject to public interest test for domestic availability
Ludlow	7,830 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120
Piddling	1,845 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120
Salmon	9,050 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120 • Permit exempt withdrawals for agriculture
Snow	4,140 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120 • Permit exempt withdrawals for agriculture

Spencer	2,200 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120
Tarboo	7,110 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120
Thorndyke	31,670 gpd	<ul style="list-style-type: none"> • Permit exempt uses under the Conservation standard per WAC 173-517-120 • Water right permits subject to public interest test for domestic availability

*This table lists the types of allowed uses. See the text of the rule for specific requirements for each use.

Table 1.

The analysis in this document relies on an assumption that groundwater produced by wells is directly connected to the creeks that they effect. This obviously is a simplification and in reality pumping of groundwater will have delayed effects on the creeks in many instances. Nonetheless this assumption is reasonable for evaluation purposes, since all subbasins where anticipated well growth is evaluated (i.e. subbasins with reserves) were delineated such that they form the recharge areas for the surface water located within.

Anticipated Effects of the Conservation Standard

As a general rule we do not expect many homes to be prevented from using as much water as they would like due to the conservation standard’s restrictions that require individual users not to exceed a maximum of 500 gpd or an annual average of more than 350 gpd, for all permit-exempt uses authorized under RCW 90.44.050. Regarding the 350 gpd annual average restriction, that rate equates to 127,750 gallons per year. In Ecology’s WRIA 17 reserve methodology document it was assumed that indoor use for homes might be about 133 gpd. If one assumes that during the non-irrigation season homes only use water indoors, and that condition occurs for 9 months of the year, then water use during those 9 months will be 36,442 gallons (133 gpd times 274 days). The balance of water left for the remaining 3 months would be 91,308 (127,750 minus 36,442) gallons per year, or an average of 1,003 gpd (91,308 divided by 91 days). Assuming that individuals during the three peak-use months do not use more than 500 gpd (the other limit set in the conservation standard), this suggests the average annual restriction likely will not stop most people from pumping as much water as they would like.

Although it is unlikely that most homes would be restricted on an average annual basis, during the summer the conservation standard’s 500 gpd daily restriction likely would affect some users. There is little basis upon which to estimate how many homes might want to exceed the conservation standard during the summer. For that reason here it was simply assumed that in each subbasin one new home might have chosen to use the full 5,000 gpd available under the current exemption. This approach assumes that each new

high-use individual per subbasin locates his/her well such that it has a fairly direct effect on the creek. Although this assumption is couched in terms of one new 5,000 gpd home per subbasin, the same effect could result from two 2,500 gpd users, etc.

If one new home per subbasin chose to pump 5,000 gpd, the effect on the stream would essentially result from the portion of that use lost to evapotranspiration. In Ecology’s WRIA 17 reserve methodology document it was assumed that 90% of water used for irrigation is consumptively used. Assuming the additional use of water by the one high-use individual per subbasin is 4,500 gpd (5,000 gpd minus the 500 gpd conservation standard) and that 90% of that water would have been consumptively used, it follows that about 4,050 gpd of additional water potentially may reach the streams in each of the subbasins because the rule is in place.

Decreased use anticipated as a result of the instream flow rule

For the purposes of this analysis it was assumed that the effect of this rule is to prevent a single 5,000 gpd exempt well from going into production in the Donovan, Ludlow, Piddling, Spencer, and Tarboo subbasins. As such and based on the analysis in the preceding section, it is assumed that effect of the rule is to prevent 4,050 gpd of water use per subbasin.

In the case of the Chimacum subbasin a more complex calculation is necessary. Based on analysis provided in Ecology’s WRIA 17 reserve methodology document, an additional 148 homes might go in this subbasin by 2025 (based on 9.29 additional homes per year). As that number is almost as much as all other subbasins with reserves combined (for which 173 homes are predicted), an assumption of just one high-use individual is unrealistic. Therefore for the Chimacum subbasin it was assumed that 4 individuals might use the maximum 5,000 gpd. Thus relying on the 4,050 gpd savings per high-use individual (as described above), a total 16,200 gpd (4 times 4,050) savings might occur. However, additional savings would also occur as a result of the in-house use only restriction. For example, if all new homes in the Chimacum subbasin were allowed to use up to 500 gpd (the conservation standard), then perhaps an additional 240 gpd per home of water might be consumptively used (based on analysis in Ecology’s WRIA 17 reserve methodology document). As the in-house use only restriction does not allow this without mitigation, that provision alone might lead to a savings of 35,520 gpd (148 times 240). Combining this figure with the potential water use savings from preventing high-use individuals, this suggests the total water savings to the Chimacum subbasin of about 51,720 gpd (35,520 plus 16,200).

Based on all the above, the total savings for six of the subbasins with reserves might be as follows.

	New use (gpd) that might have occurred by 2025
Chimacum	51,720
Donovan	4,050
Ludlow	4,050

Piddling	4,050
Spencer	4,050
Tarboo	4,050

Table 2. Potential increased use prevented in WRIA 17 reserve management areas through 2025 as a result of the rule.

Increased use that will not occur by homes in the designated coastal management areas

The subbasins designated as coastal management areas include Bolton, Devils Lake, Marple, Toandos, Squamish Harbor, Mats Mats, Oak Bay, Marrowstone & Indian, Quimper, and Miller. Similar to the subbasins with reserves, in these areas some homes that do get built might choose to use more water if they were not limited by the conservation standard. No low flow analyses similar to those for the reserve areas were completed because the designated coastal management areas have so many small streams it would have been cost prohibitive to undertake the analysis. However, there are many environmental benefits anticipated from the protections of the rule listed in Table 4:

	Benefits to small streams/riparian health	Benefits to salmonids	Reduced risk of seawater intrusion	Reduced risk to existing water right holders
Bolton	X	X	X	X
Devils Lake	X	X	X	X
Marple	X	X		X
Toandos	X	X	X	X
Squamish Harbor	X	X	X	X
Oak Bay	X		X	X
Marrowstone & Indian	X		X	X
Mats Mats	X			X
Quimper	X	X	X	X
Miller	X	X	X	X

Table 3. Environmental benefits anticipated in the designated coastal management areas

In the designated coastal management areas the conservation standard will prevent large (5,000 gpd) single-location exempt uses permissible under the current exemption. The benefits of this are significant, since in some locations, one such withdrawal could diminish flows in small streams and cause existing nearby water levels in wells to drop. Based on the building permit record, projected growth in the coastal areas is 546 new households outside of public water supply service areas. The benefits specific to salmonids are discussed in greater detail later in this paper. The other benefits to small streams and riparian corridors, and the reduced risk to existing wells, while very important are difficult to quantify.

Increased use anticipated as a result of the instream flow rule

In the case of Big Quilcene, Little Quilcene, and Thorndyke subbasins the rule makes water available for water right allocation (up to the reserve amount) that was not

available previously. In these subbasins, water is made available for permit exempt uses under the conservation standard and water right permit allocations. In addition, in the case of Big Quilcene, new users will have the ability to access the water for agricultural use up to 5,000 gpd under the statewide ground water exemption. In order to evaluate the potential effects on flows from this expanded potential use, first an estimate was made of the amount of water use that would have occurred if the rule is not established. This amount was then subtracted from the reserve amount. For that analysis the following assumptions were made:

- One new household through 2025 was assumed to pump at the maximum 5,000 gpd, and to consumptively use 4,050 gpd.
- The remaining households anticipated through 2025 were multiplied times 250 gpd (estimated use under the conservation standard)
- The sum of these two types of use was subtracted from the reserve amounts

The results of that analysis were as follows:

	Reserve amount (gpd)	New households anticipated by 2025	Estimated use ((number of anticipated households - 1) X 250) + 4,050) gpd	Potential flow change (decrease) by 2025 (gpd)***
Big Quilcene	200,400	24.5	9,925	-190,475
Little Quilcene	38,800	56.5	17,925	-20,875
Thorndyke	31,670	23.5	9,675	-21,995

Table 4. Potential decreases in flow as a result of the rule

*** Reserve amount minus estimated use

Flow Analysis

In order to gain perspective on the quantities of water lost or gained as presented in Tables 2 and 3, these flow amounts were compared to the amounts of water in the streams during the times critical to fish. Ecology has flow data available for the Big Quilcene, Chimacum, Little Quilcene, Salmon, Snow, Tarboo and Thorndyke subbasins. For these streams, Ecology used available data to calculate the median flow during September, the low flow month. An analysis of those data also shows that the September median flow is generally 1.6 times the 90 percent exceedance (the “normal” low) flow measurement. Thus, in the case of Donovan where only a single low flow measurement is available, that value was multiplied by 1.6 in order to approximate the median low flow. In the case of Ludlow, Piddling and Spencer multiple individual measurements were taken. In order to approximate a median low flow for these streams the highest of these measurements were selected. In all cases the highest flow measurement was at least as high as the lowest flow times 1.6.

The percent of flow change for each of the subbasins was determined by comparing the quantities of water lost or gained as presented in Tables 2 and 3 with the median low flows estimates (Table 5).

	Median September flow (cfs)	Median September flow (gpd)	Potential flow changes by 2025 (from Tables 2 and 3) (gpd)	Flow change (%)
Big Quilcene	34.3	22,168,668	-190,475	-0.86%
Chimacum	8.1	5,235,166	51,720	0.99%
Donovan	0.29	187,432	4,050	2.16%
Little Quilcene	11	7,109,485	-20,875	-0.29%
Ludlow	5	3,231,584	4,050	0.13%
Piddling	0.3	193,895	4,050	2.09%
Spencer	0.5	323,158	4,050	1.25%
Tarboo	2.9	1,874,319	4,050	0.22%
Thorndyke	4.3	2,779,162	-21,995	-0.79%

Table 5. Estimated median low flows, potential flow changes by 2025, and estimated percent change in low flow

Reduced Risk of Seawater Intrusion

In the Coastal Management Areas adoption of the conservation standard will also reduce the risk of seawater intrusion. In areas where seawater intrusion exists, that risk directly relates to the amount of up-gradient (inland) groundwater pumping that leads to a reduction in the head (groundwater surface elevation) in the aquifer and thus allows seawater to move inland. Preventing new, large (5,000 gpd) withdrawals throughout the coastal areas reduces potential declines in head and the risk of seawater intrusion accordingly.

In order to address the issue of seawater intrusion Jefferson County adopted a seawater intrusion policy in 2002. That policy classifies all lands within ¼ mile of marine shorelines and all islands as Seawater Intrusion Protection Zones (SIPZ). Additionally, the SIPZ include all areas within 1000 feet of a groundwater source with a chloride history above 100 milligrams per liter (mg/L). This includes areas categorized as either “at risk” (between 100 mg/L and 200 mg/L) or “high risk” (over 200 mg/L). The policy designates a number of steps intended to prevent additional seawater intrusion within the SIPZ.

The County’s SIPZ map

(http://www.co.jefferson.wa.us/idms/pdfs/august2002_finalmap_parcel.pdf) indicates that 8 out of 10 of the designated coastal management areas have at least one “high risk” area. All totaled, the map indicates about 8 “at risk” wells and about 23 “high risk” wells on Marrowstone Island. Additionally, about 6 “at risk” wells and about 31 “high risk” wells are indicated throughout the remainder of the County.

Seawater intruded wells produce water with constituents not suitable for drinking water, including sodium and chloride. The EPA set a secondary maximum contaminant limit (MCL) for chloride at 250 mg/l based on a taste threshold. The EPA considers sodium a primary (health risk) contaminant, although it has not set an MCL for this. The EPA has

recommended a level of 20 mg/l for those consumers who may be restricted for daily sodium intake.

A “Seawater Intrusion Topic Paper” produced by the WRIA 6 watershed planning group (3/16/05) provides information on the relationship between chloride and sodium. Using water quality data from sampling marine waters around Island County, the ratio of chloride to sodium was estimated to be about 1.8 mg/l of chloride for every 1 mg/l of sodium. Applying this ratio to the wells indicated as “high risk” on Jefferson County’s SIPZ map suggests that about 54 existing wells might produce water with more than 110 mg/l of sodium. That level is more than 5 times the recommended EPA level for consumers who should restrict daily sodium intake.

Owning a home without potable water diminishes its value significantly. Options for homes with wells that produce saline water include: treating well water with reverse osmosis system, connecting to a public water system (if available), or trucking water in. One strong indication of the costs associated with seawater intrusion concerns the long-standing problems experienced on Marrowstone Island. Due to these problems the Jefferson County PUD recently spent 5.2 million dollars to extend a water system line from the mainland to the island. As a result of this extension about 625 island property owners were recently assessed \$8,100 (includes meter), and about 200 people who elected not to connect to the system were charged \$1,500 (a no meter partial assessment) (Bill Graham, Jefferson County PUD, pers. com., 4/9/09).

The total number of homes currently designated as “at risk” or “high risk” according to Jefferson County’s SIPZ map is about 68. Assuming at least that number of homes will be protected by application of a conservation standard over the next 20 years, and that avoiding seawater intrusion is worth at least \$8,100 per home, this suggests that the potential benefit provided by the rule relative to seawater intrusion may be on the order of about \$551,000.

Fish Use and ESA Listings

Most all of the small streams support coho and chum salmon, and cutthroat trout. Many of the streams support smaller numbers of steelhead and a few streams may have small numbers of Chinook, pink salmon and bull trout.

The fish populations in WRIA 17 streams consist of salmonids whose juveniles rear in streams year round such cutthroat trout, coho salmon, bull trout, and steelhead. In addition, there are other salmon present such as summer and fall chum and fall Chinook whose young rear in streams for short periods of time: a matter of a couple of weeks rather than a year or more.

There are several species of trout and salmon in WRIA 17 subbasins listed as threatened or endangered under the Federal Endangered Species Act. For example, Chimacum Creek specifically has the following fish species federally listed as “threatened:” Puget Sound Chinook salmon, Hood Canal summer-run chum salmon, and Puget Sound

steelhead. Bull trout, another federally listed species, are also listed for this evolutionarily significant unit (ESU) area.

Existing Stream Closures and Instream Flows

Most of these streams have been closed since the 1940's and 50's.

- **Chimacum Creek:** administratively closed to new rights since 1946.
- **Donovan Creek:** administratively closed to new rights since 1975.
- **Little Quilcene River:** administratively closed to new rights since 1952.
- **Ludlow Creek:** administrative minimum instream flow since 1972.
- **Salmon Creek:** administrative minimum instream flow since 1946.
- **Snow Creek:** administratively closed to new rights since 1948.
- **Tarboo Creek:** administrative minimum instream flow since 1972.

Salmon Numbers for the Quilcene-Snow River Basin

Salmon population estimates vary widely. The current total yearly wild and hatchery salmon population for the Quilcene-Snow basin (including harvest and escapement) averages around 60,000 adult fish. The largest numbers of salmon consist of summer chum, fall chum, and coho salmon. The estimated yearly run size of ESA listed species are: summer chum averaging around 12,000, steelhead averaging around 300, Chinook maybe around 20, and bull trout likely less than 20.

Ecology has 4 primary sources of information about salmonid population sizes in WRIA 17:

1. The Washington State Department of Fisheries 1976 "*A Catalog of Washington Streams and Salmon Utilization*".
2. The "*WRIA 17 Stage 1 Technical Assessment*" dated October, 2000, prepared by Parametrix for the WRIA 17 Planning unit.
3. Information provided by Thom Johnson, WDFW biologist
4. Field surveys conducted in 2005 and 2008 by Ecology and WDFW biologists.

According to the Washington State Department of Fisheries 1976 "*A Catalog of Washington Streams and Salmon Utilization*" in WRIA 17 there were 303 streams with 428 miles of streams. The average number of salmon per year that escaped harvest to spawn in the streams from 1966-1971 was as follows: 400 Chinook, 7300 coho, 8900 chum, and 200 pink salmon. The total harvest of all salmon from WRIA 17 varied from 20, 125 to 59,700.

The total number of adult salmon estimated in WRIA 17 for 1966-1971 ranged from 36,925 to 76,500. These numbers did not include the steelhead or cutthroat trout generated from these streams.

The Watershed Planning Unit had Parametrix, Inc. produced the "*WRIA 17 Stage 1 Technical Assessment*" in October, 2000. In that document the graphs of the number of adult salmon that escaped harvest to return to spawn were as follows: summer chum from

1968 to 1998 ranged from 1000 to 40,000, fall chum from 1968 to 1998 ranged from 3000 to 29,000, and coho from 1986 to 1999 ranged from 2500 to 41,000. These numbers are for the eastern Strait of Juan de Fuca and Hood Canal for summer chum, for northern Hood Canal and Quilcene Bay for fall chum, and for northern Hood Canal for coho.

Chinook estimates were 100 to 200 in the 1980s. At that time some Chinook had been sighted in the Big Quilcene River, Snow Creek, Tarboo Creek, and Salmon Creek.

Steelhead and cutthroat trout were known to return to most all streams but escapement was unknown.

Table 7 below is a March, 2009 summary developed by Washington Department of Fish and Wildlife (WDFW) fish biologist, Thom Johnson that provides salmon escapement data for some of the streams in the Quilcene-Snow basin.

Geographic area in WRIA 17	Stream number	Fall chum	Summer chum	Coho	Steelhead
Spencer/Jackson creeks	17.0001-17.0004	1,000 to 4,000	--	50 to 200	--
Dabob/Tarboo Bays (including Big/Little Quilcene rivers)	17.0012-17.0136	1,000 to 10,000	4,000 to 13,000	500 to 2,000	50 to 150
Northern Hood Canal/Ludlow	17.0140-17.0192	--	--	100 to 500	--
Chimacum Creek	17.0203	--	500 to 1,000	1,000 to 3,000	unknown
Snow/Salmon creeks	17.0219-17.0245	--	1,000 to 5,000	1,000 to 2,000	50 to 150
TOTAL		2,000 to 14,000	5,500 to 19,000	2,650 to 7,700	100 to 300

Table 6. Typical range in the number of salmon and steelhead spawners in WRIA 17 streams.

(compiled by Thom H. Johnson, WDFW District Fish Biologist, 3-09)

Ecology and WDFW biologists conducted field surveys on the independent streams in the coastal management areas and verified the existence of many streams and their use by fish even during low flow times. Surveys were conducted in July and October of 2005 and 2008. During those investigations biologists found about 20 of the small streams flowing and some had coho and cutthroat juveniles. The streamflow in these streams was too small to measure with streamflow meters and all were estimated to be less than 5,000 gpd. The overall numbers of fish produced by each streams would be small, but likely would cumulatively be on the order of several hundred coho and cutthroat for all the coastal streams. Possible use by chum and steelhead could result in many more salmon created per stream when fish migrate up during much higher flows in the winter and

spring. The overall salmonid fish production from these independent small streams would likely be on the order of hundreds of adult salmon and trout.

Effect of the Rule on Salmon in the Basin

The proposed instream flow rule affects fish in at least three distinct ways including:

- 1) Formally closing most of these streams in the WRIA to the creation of large, new water rights under the exempt well statute (currently four streams in the basin are closed administratively).
- 2) Placing limits on the daily use of a new permit exempt well in most areas.
- 3) Establishing finite quantities of water (reserves) that can be withdrawn by new uses within some of the subbasins.

These provisions in the proposed rule will affect stream flows and the resulting change in flow will affect fish populations. In six subbasins the effect of the rule is to increase flows and protect salmon over the baseline situation of continued water use without the rule. In three subbasins the effect of the rule is to slightly decrease flows and cause negative impacts to salmon populations. In two subbasins flow will remain essentially unchanged from the baseline through the year 2025, the time frame for this analysis. The provisions in the rule will provide significant benefits for salmon in the future, and many of the benefits will be experienced beyond the time frame of this analysis.

Benefits to salmon by protecting flows

The benefits of preserving stream flow correspond directly to the percentage of stream flow that remains in the stream. Most of the streams in WRIA 17 are rain-fed. When the rain stops, stream flow starts to drop. During the lowest flow time of year, fish populations will drop as the stream flow drops. Without groundwater providing stream flow during the late summer and fall rain-fed streams would go dry.

The above analysis of flow changes resulting from the proposed rule shows that flow benefits will occur in the coastal management areas and in the following subbasins:

- Chimacum
- Donovan
- Ludlow
- Piddling
- Spencer
- Tarboo

There is great uncertainty regarding how many people will move into the basin in the future. Currently any new home built in these subbasins could withdraw up to 5,000 gpd using an exempt well. Because of this potential, we made a relatively conservative assumption during our analysis and evaluated the effect of just one new person moving into the basin and pumping 5,000 gpd, or 4 such exempt withdrawals in the case of Chimacum (see Table 2).

Using the percent of stream flow saved as shown in Table 5, and multiplying that percentage times the estimated number of summer chum, coho, and steelhead for that stream, Ecology estimated the average number of salmon saved (assuming a direct relationship between the low summer flow and salmon survival (see [How Stream Flow is Related to Fish Survival](#), below). Since available population estimates only include escapement, Ecology doubled this number to account for harvest and estimate the total run size that would be protected. Total run size is made up of both escapement (the number of fish that return to spawn) and harvest (the number of fish that are caught).

	Flow change (%)	Salmon escapement	Total salmon (includes harvest)	Salmon saved
Chimacum	0.99%	2,750	5,500	54
Donovan	2.16%	343	686	15
Ludlow	0.13%	100	200	0
Piddling	2.09%	100	200	4
Spencer	1.25%	2,125	4,250	53
Tarboo	0.22%	685	1,370	3

Table 7. Estimates of fish saved

The calculations for these streams leave out many salmon because certain fish, such as steelhead and cutthroat, have not been counted or estimated. The estimate of total number of salmon saved in the 6 streams is 129 salmon.

During field surveys in 2005 and 2008 Ecology and WDFW biologists found 3 large and 19 small independent coastal streams within the coastal management areas that were flowing during the low flow months at the end of summer. This estimate of 19 smaller streams is likely conservative as the portion of the Toandos Peninsula that was not surveyed likely also has some creeks flowing during the summer. During the survey two of the large streams, Contractors and Eagle creeks, were flowing about 0.6 and 0.15 cfs, respectively. The remainder of the streams had very low flows of less than 5,000 gpd. Biologists documented either the presence of coho salmon and cutthroat trout or likely habitat for these species in all of these streams. A total of 542 new households are projected by 2025 in the coastal management areas. If less than 5% of new households locate in proximity to these streams and pump approximately 1,000 gpd each, the three large streams could be significantly diminished and the small streams would likely go dry or become too small to support any fish life. A reasonable estimate of coho and cutthroat production in these small coastal streams is approximately 20 fish in each stream, therefore it is estimated that the rule would prevent the cumulative loss of about 440 salmon. In addition, the rule would likely also prevent the loss of chum and steelhead from the small coastal streams, but we cannot estimate these numbers.

Therefore, it is estimated that the rule will prevent the loss of at least 569 salmon (using the assumptions listed above) from the 6 streams listed above and the coastal management areas.

This analysis relies on conservative assumptions that do not reflect the “worst case” scenario of all new users taking full advantage of the ground water exemption in RCW 90.44.050. It is reasonable to assume that more than 14 new wells in the reserve management areas and more than 5% of new users in the coastal management areas would use more than allowed under the 500 gpd maximum and 350 gpd average conservation standard. In that case the rule would prevent the loss of more than 840 salmon.

Ecological costs: Impacts to salmon by reducing flows

Using the assessment of flow changes shown in Table 5, above, Ecology biologists assessed the likely effect of the reserves on salmon in the Big Quilcene, Little Quilcene and Thorndyke subbasins. These flow changes reflect an assumption that the impact to stream flow over the baseline condition of continued permit-exempt well use is the portion of reserved water that could be allocated for future water right permits, and/or in the Big Quilcene subbasin future agricultural use of up to 5,000 gpd through the ground water exemption.

Using the estimated potential stream flow changes in Table 5, and multiplying those percentages times the estimated number of summer chum, coho, and steelhead for that stream, Ecology estimated the average number of salmon lost by assuming a direct relationship between the low summer flow and salmon survival (see How Stream Flow is Related to Fish Survival, below). Since available population estimates only include escapement, Ecology doubled these numbers to account for harvest and estimate the total run size that would be affected. Total run sizes are made up of both escapement (the number of fish that return to spawn) and harvest (the number of fish that are caught).

	Flow change (%)	Salmon escapement	Total salmon (includes harvest)	Salmon lost
Big Quilcene	-0.86%	12,953	25,906	-223
Little Quilcene	-0.29%	1,370	2,740	-8
Thorndyke	-0.79%	700	1,400	-11

Table 8. Estimates of fish lost

Therefore, it is estimated that the rule may cause the loss of at approximately 242 salmon (using the assumptions listed above) from the 3 streams listed above.

How Streamflow is Related to Fish Survival.

Does a 1% loss of streamflow represent a 1% loss in the fish population?

Numerous studies have found that the higher the 30- or 60-day low summer flow the higher the number of returning adult coho salmon from that year class. Correlations relating low summer streamflow for juvenile coho to the numbers of returning adult coho two years later have been reported in the literature here in Washington since the 1940's. Mathews and Olson (1980) (see graph below) found a strong relationship between increased summer flow for coho juveniles and greater returning adults 2 years later, as did Neave 1949, McKernan et al 1950, Wickett 1951, Smoker 1955, Lister and Walker 1966, Pearson et al 1967. This relationship was reaffirmed in Hartman and Scrivener 1990, and Quinn and Peterson 1996. The summer low flow is still used today by WDFW to predict the number of returning coho adults in Puget Sound 2 years later as described in Zillges 1977 and Seiler 2001 (see graph below).

It is surprising that the correlation between summer flow and returning adult coho salmon 2 years later would be so strong since fish habitat is only one of many factors that kill fish (such as ocean survival, fish harvest, disease, winter floods, etc). However, biologically it makes sense that a 1% loss in streamflow during a low flow month such as September can serve as a reasonable surrogate for estimating a 1% loss in a salmonid fish population whose juveniles rear in streams.

The relationship between low streamflow and salmonid survival has also been shown for steelhead. In the Green River in 1979, Dr. Hal Beecher (WDFW) found the higher the low summer flow the higher the number of returning wild steelhead adults 2.5 years later. The low summer flow measurement he used was the lowest daily flow recorded during the summer.

Ecology has found in other streams and rivers that a 1% loss of streamflow during the low flow month, usually September, corresponds to around a 1% loss of fish habitat. For example:

- Ecology and WDFW biologists used weighted useable area data (representing fish habitat) from the PHABSIM/IFIM fish habitat model to calculate the 1% loss of habitat for steelhead rearing and chum spawning in the Big Quilcene River during the September low flow. Agency biologists found that a 1% loss of habitat corresponds to a 1.1 % loss of flow for the Big Quilcene River
- In the mainstem Stillaguamish River a 1.1% loss of flow from the September 90% exceedance flow (its low flow month) corresponds to a 1% loss of steelhead juvenile habitat using the Instream Flow Incremental Methodology (IFIM) to quantify fish habitat.
- In the South Fork Stillaguamish River a 0.9% loss of flow from the September 90% exceedance flow (low flow month) corresponds to a 0.6 % loss of steelhead juvenile habitat and a 1.3 % loss of chinook spawning habitat. The loss is not exactly 1% because there are multiple fish species and lifestages present in these streams.

- In the North Fork Stillaguamish River a 0.94% loss of flow from the September 90% exceedance flow (low flow month) corresponds to a 0.7 % loss of steelhead juvenile habitat and a 1.0 % loss of Chinook spawning habitat.

F.W. Olson in 1983 summarized the relationship between low summer streamflow and coho run size in a Draft EIS for the South Fork Skokomish River Hydroelectric Project.

the correlation between coho production in Puget Sound and the WDF low-flow index for a composite of streams indicates that a tripling of the stream flow during the critical summer period could be expected to nearly triple the adult coho run (Figure 3-8).

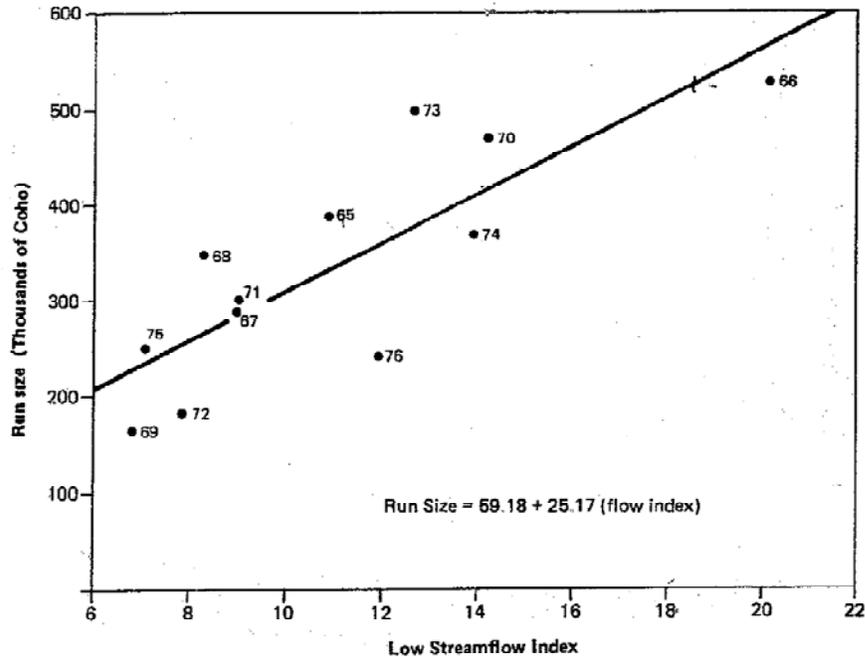
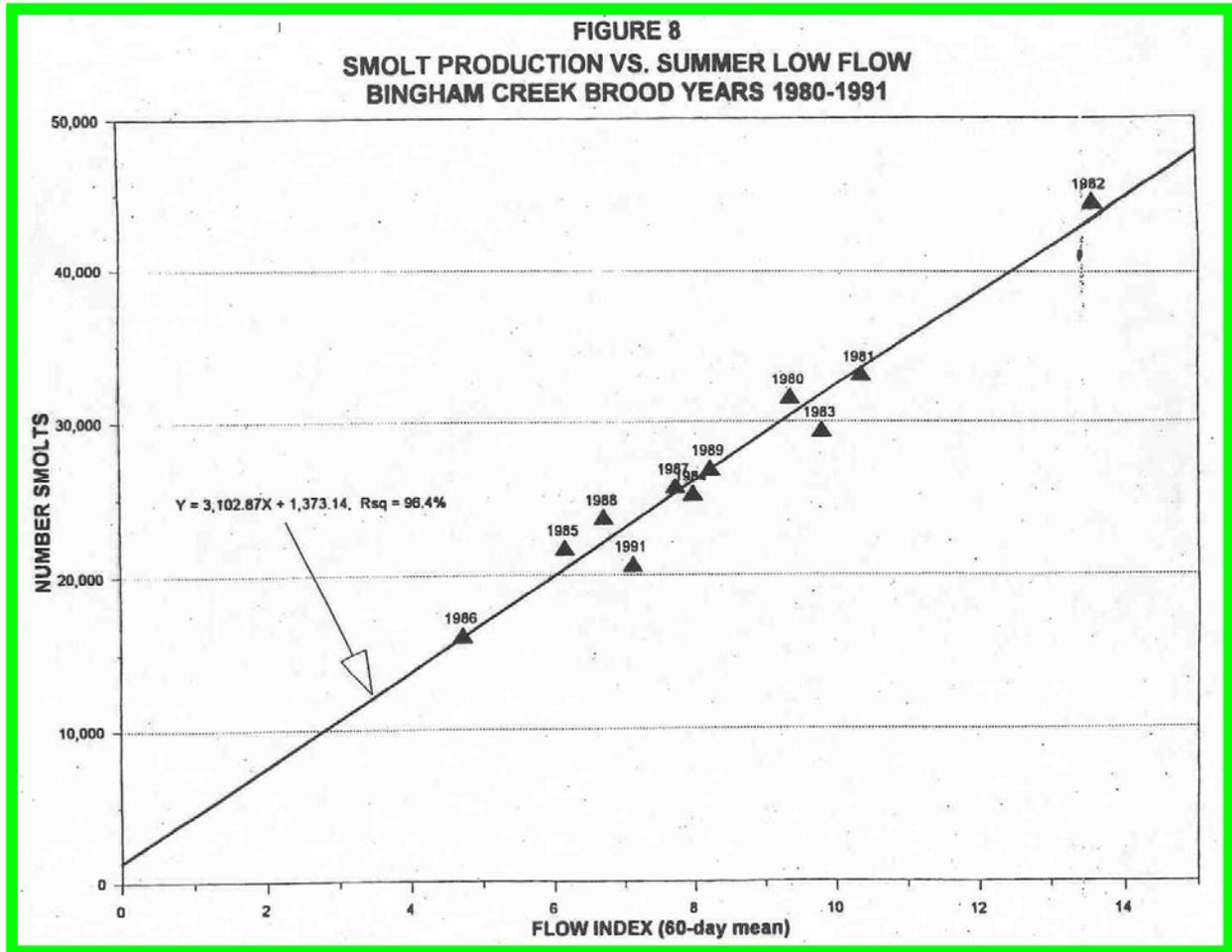


Figure 3-8
Relationship between
Puget Sound Coho Run
Sizes and Summer Low Flow

Summer Flow Enhancement

Numerous studies have shown that coho salmon smolt production and resulting adult returns are positively correlated with minimum summer discharge levels (Neave, 1949; Wickett, 1951; Smoker, 1955). Other studies of stream-carrying capacities for coho have found direct relationships between summer flows and coho production (Lister and Walker, 1966; Pearson et al., 1967). The strength of this relationship for Puget Sound streams is evidenced by its continued high correlation from 1935 (Mathews and Olson, 1980). Currently, the preseason run size prediction of Puget Sound wild coho is based on the relationship between the 60 lowest consecutive days of flow during year i and the return in year $i + 2$ (Zillges, 1974 and 1977).

Dave Seiler's studies on Bingham Creek for 1980-1991 found more summer flow equals more coho smolts migrating out the following spring.



Seiler (2001) used the Zillges 1977 document (Tech. Memo 28, WDFW) to estimate wild coho smolt production. Zillges 1977 contained estimates of the amount of coho juvenile habitat at summer low flow by using the 60 consecutive day low flow. The flow averaged over 12 years was called the Puget Sound Summer Low Flow Index (PSSLFI).

When Seiler mapped coho smolt production versus PSSLFI for Puget Sound streams he found a strong positive correlation between the previous summer's flow and the population of smolts the following spring. On Bingham Creek, Seiler stated: "for this low gradient stream, the relationship between smolt production and flow the previous summer is clear: production is a positive and proportional function of flow – water equals fish" (p 14).

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Appendix 6. Restoration Project Costs WRIA 17

Funded Salmon Recovery Funding Board projects supported by WRIA 17 Rule

Sponsor	Name	Program	TotalAmount
Jefferson Co Cons Dist	Indian George Creek Restoration, Phase 2	Salmon State Projects	\$11,506
Jefferson Co Cons Dist	Big Quilcene River Colyott Project	Salmon State Projects	\$59,836
North Olympic Salmon Coalition	WF Chimacum Creek Restoration Project	Salmon State Projects	\$184,000
Jefferson Co Cons Dist	E. Chimacum Creek RM 1.2 - 2.3	Salmon State Projects	\$78,492
North Olympic Salmon Coalition	Lower East Fork Chimacum Creek	Salmon State Projects	\$57,700
Jefferson Co Cons Dist	Salmon Creek Restoration	Salmon State Projects	\$202,400
Jefferson Land Trust	Chimacum Creek Watershed Acquisitions	Salmon State Projects	\$194,757
Fish & Wildlife Dept of	Chimacum Estuary Habitat Restoration	Salmon Federal Projects	\$559,981
Hood Canal SEG	Indian George Creek Estuary Restoration	Salmon State Projects	\$588,639
Jefferson Co Public Works	Big Quilcene R. Linger Longer Fea. Study	Salmon Federal Projects	\$50,000
Jefferson County of	WRIA 17 Salmonid Refugia Study	Salmon Federal Projects	\$94,624
Hood Canal SEG	Tarboo Creek Habitat Restoration Project	Salmon State Projects	\$483,510
Jefferson Land Trust	Salmon and Snow Creek Estuary 01	Salmon State Projects	\$509,211
Jefferson Co Public Works	Lower Big Quilcene N Bank Acquisition	Salmon Federal Projects	\$152,218
Skokomish Indian Tribe	Mid-Quilcene River LWD Restoration	Salmon Federal Projects	\$209,126
North Olympic Salmon Coalition	East Fork Chimacum Extension	Salmon State Projects	\$63,705
Hood Canal SEG	Shine Estuary Restoration	Salmon State Projects	\$417,453
North Olympic Salmon Coalition	Chimacum Creek Estuary Riparian Acq	Salmon State Projects	\$879,307
Hood Canal SEG	Little Quilcene Estuary Restoration	Salmon State Projects	\$1,492,680
Hood Canal SEG	Big Quilcene Estuary Dike Removal 04	Salmon State Projects	\$170,393
North Olympic Salmon Coalition	Salmon/Snow Lower Watershed Restoration	Salmon State Projects	\$1,022,612
Skokomish Indian Tribe	Big Quilcene ELJ Restoration	Salmon Federal Projects	\$486,882
Jefferson Co Cons Dist	Hannan- Swansonville Creek - R4	FFFPP Grants	\$14,000
Hood Canal SEG	Quilcene Estuarine Wetlands Rest-Schinke	Salmon State Projects	\$643,001
Hood Canal SEG	L Quilcene River Acquisition, McClanahan	Salmon Federal Projects	\$125,000
Skokomish Indian Tribe	Quilcene Floodplain Acquisition	Salmon Federal Projects	\$39,548
North Olympic Salmon Coalition	Salmon Estuary Wood Waste Removal and Restoration	Puget Sound Acq. & Restoration	\$755,580
Hood Canal SEG	WDFW Big Quilcene Estuarine Dike Removal	Salmon Federal Projects	\$225,000
Jefferson Co Cons Dist	Snow/Salmon Cr. 2007 Riparian Project	Puget Sound Acq. & Restoration	\$218,462
Hood Canal SEG	Quilcene Bay Conservation - Ward	Puget Sound Acq. & Restoration	\$305,025
Northwest Watershed Institute	Tarboo-Dabob Bay Acquisition and Restoration	Puget Sound Acq. & Restoration	\$993,186
Jefferson Land Trust	Chimacum Creek S. Curve	Puget Sound Acq. & Restoration	\$113,350
North Olympic Salmon Coalition	Snow/Salmon Railroad Grade Removal Design	Salmon Federal Projects	\$100,000
Hood Canal SEG	Big Quilcene River ELJ Restoration Phase 2	Salmon Federal Projects	\$325,500
Hood Canal SEG	Little Quilcene Delta Cone Removal - Design Only	Salmon Federal Projects	\$100,000
Jefferson Co Cons Dist	Scholz Riparian Restoration	Salmon State Projects	\$10,906
North Olympic Salmon Coalition	Christian Chimacum Creek Habitat Project	Salmon State Projects	\$9,885
Wild Olympic Salmon	Indian George Creek Railroad Bridge	Salmon State Projects	\$28,200
Northwest Watershed Institute	Chimacum Headwaters Restoration Project	Salmon State Projects	\$27,977

Jefferson Co Public Works	North Branch East Fork Tarboo Creek	Salmon State Projects	\$120,222
Fish & Wildlife Dept of	East Fork Tarboo Creek Passage	Salmon State Projects	\$164,841
Jefferson County of	Chimacum and Salmon Creek Chum Salmon	Salmon Federal Projects	\$38,246
Jefferson County of	Chimacum Creek/Summer Chum Spawning	Salmon Federal Projects	\$105,000
Jefferson County of	Big Quilcene River Habitat Aquisition	Salmon Federal Projects	\$179,904
Fish & Wildlife Dept of	Salmon and Snow Creek Estuary 99	Salmon Federal Projects	\$40,000
WRIA 17 RESTORATION INVESTMENT DOLLARS			<hr/> \$12,651,867

Appendix 7. Pending Applications for WRIA 17

Report Date: 2/11/2009

Doc	Priority Dt	Purpose	Qi	UOM	Qa	Ir Acres	WRIA	County	1stSrc
NewApp	2/4/2009	PO	250	CFS			17	JEFFERSON	BIG QUILCENE RIVE
NewApp	9/17/2008	IR	0.03	CFS		0	17	JEFFERSON	HUBBARD CREEK
NewApp	6/25/2008	ST,DS	0.02	CFS			17	JEFFERSON	UNNAMED STREAM
NewApp	2/26/2008	DS	0.07	CFS			17	JEFFERSON	RAINWATER
NewApp	11/19/2007	MU	200	GPM	120		17	JEFFERSON	Well #13
NewApp	9/20/2006	DM	50	GPM	7		17	JEFFERSON	WELL
NewApp	8/25/2006	DM	158	GPM	128		17	JEFFERSON	WELL
NewApp	3/13/2006	MU	50	GPM	30		17	JEFFERSON	well
NewApp	1/17/2006	DS	0.2	CFS	0.32		17	JEFFERSON	UNNAMED SPRING
NewApp	4/20/2004	IR,DM	100	GPM	30	0.5	17	JEFFERSON	well
NewApp	2/19/2004	DS	0.01	CFS			17	JEFFERSON	UNNAMED SOURCE
NewApp	6/5/2003	IR,DS	0.03	CFS		5	17	JEFFERSON	LAKE LELAND
NewApp	10/31/2002	DM	600	GPM			17	JEFFERSON	WELL
NewApp	6/13/2002	IR	150	GPM		35	17	JEFFERSON	WELL
NewApp	8/24/2001	IR,DS	20	GPM		5	17	JEFFERSON	WELL#1
NewApp	7/10/2001	CI	750	GPM			17	JEFFERSON	WELL
NewApp	4/13/2001	ST,IR	0.11	CFS		6.71	17	JEFFERSON	Teal creek
NewApp	1/24/2000	DS	0.02	CFS			17	JEFFERSON	UNNAMED SPRING
NewApp	1/4/1999	DM	45	GPM			17	JEFFERSON	WELL
NewApp	6/19/1998	WL,IR	0.11	CFS		20	17	JEFFERSON	UNNAMED SPRING
NewApp	4/10/1998	DS	0.01	CFS			17	JEFFERSON	LAKE LELAND
NewApp	3/31/1998	FR,DM	20	GPM			17	JEFFERSON	WELL
NewApp	3/6/1998	ST,IR	0.02	CFS		0.5	17	JEFFERSON	TARBOO CREEK
NewApp	12/17/1997	DM	10	GPM			17	JEFFERSON	WELL
NewApp	11/3/1997	IR	25	GPM		5	17	JEFFERSON	WELL
NewApp	12/9/1996	DM	600	GPM			17	JEFFERSON	WELL
NewApp	12/3/1996	ST,IR	0.02	CFS		3	17	JEFFERSON	UNNAMED STREAM
NewApp	9/27/1996	DM	120	GPM			17	JEFFERSON	WELL
NewApp	1/17/1996	IR	294.17	GPM		85	17	JEFFERSON	WELL
NewApp	11/20/1995	DM	38	GPM			17	JEFFERSON	WELL
NewApp	5/10/1995	DM	15	GPM			17	JEFFERSON	WELL
NewApp	12/27/1994	DS	0.067	CFS			17	JEFFERSON	UNNAMED STREAM
NewApp	12/6/1994	IR	1.5	CFS		10	17	JEFFERSON	UNNAMED POND
NewApp	9/29/1994	FR,DM	250	GPM			17	JEFFERSON	WELL
NewApp	9/14/1994	DM	50	GPM			17	JEFFERSON	WELL
NewApp	9/8/1994	DM	100	GPM			17	JEFFERSON	WELL
NewApp	7/20/1994	IR	400	GPM		0	17	JEFFERSON	WELL
NewApp	6/17/1994	CI	20	GPM			17	CLALLAM	WELL
NewApp	9/21/1993	DM	370	GPM	225		17	JEFFERSON	WELL
NewApp	7/14/1993	IR	300	GPM		43	17	JEFFERSON	WELL
NewApp	1/22/1993	MI,DS	60	GPM			17	JEFFERSON	WELL
NewApp	10/5/1992	IR,FS	0.04	CFS		4	17	JEFFERSON	UNNAMED SOURCE
NewApp	10/2/1992	CI	60	GPM			17	JEFFERSON	WELL
NewApp	9/14/1992	IR,FS	40	GPM		4	17	JEFFERSON	WELL
NewApp	2/19/1992	DM	55	GPM			17	JEFFERSON	WELL
NewApp	1/24/1992	IR	0.0001	CFS		12	17	JEFFERSON	UNNAMED POND
NewApp	5/23/1991	IR,DM	1000	GPM		0	17	CLALLAM	WELL

March 9, 2009

MEMORANDUM

TO: Bill Clarke, Attorney and Teren MacLeod, Realtor

FROM: Joanne Greenberg, P.E.

RE: Final DRAFT Buildout Analysis of Chimacum Subbasin

As per your request and in accordance with the contract issued by Bill Clarke on 12/4/2008, we have undertaken a full buildout analysis of the Chimacum Creek Subbasin. This memo serves as a final draft summarizing what was accomplished as part of this analysis.

The goal of this analysis was to determine/estimate the number of new homes that could be built within the Chimacum Basin watershed boundary. This is considered a surrogate for understanding the additional domestic water supply needs of the basin outside of existing water service areas. This means that we assumed that each vacant parcel would require a new exempt well to be drilled or additional water drawn from an existing well. Additional assumptions are as follows:

Assumptions

- Jefferson County PUD #1 Service Area was excluded
- Acreage values were obtained from the Assessor's database. If not available, area presented in j-Map was used (Jefferson County online parcel map).
- If a parcel is vacant and the acreage < zoning acreage, one house could still be built on the parcel.
- Polygons with duplicate parcel numbers were counted as one total area. In other words, one parcel number includes the acreage from all of the polygons associated with that parcel number
- If the polygon appeared to be subdivided into similar sizes but only had one parcel no., the buildable homes are based on the total area and the zoning under that parcel no. For example, even if a parcel seems to have been subdivided into similar size polygons, those lots are not buildable unless each has its own parcel number. If they do not have their own parcel number prior to the rule implementation, it is possible they would not be able to get parcel numbers after the rule is set.
- Four parcels in Vacant Land (9100) with significant building values were moved to the appropriate land use category.

- Building values greater than \$10,000 were assumed to have a livable dwelling unit on it and thereby a water supply sufficient for that structure.
- Parcels with building values less than \$10,000 were assumed buildable unless spot checking proved otherwise.
- Areas in PPR (Parks, Preserves, Recreation) zoning were excluded
- The following land use codes were eliminated from the analysis:
 - ✓ 4800 Utilities
 - ✓ 4810 Public utilities: state assessed land
 - ✓ 5000 Commercial: whl-ret inc inc restaurants
 - ✓ 6000 Commercial banks, offices, services
 - ✓ 6242 Cemeteries
 - ✓ 6911 Churches
 - ✓ 7600 Community Areas: greenbelts, parks
 - ✓ 7670 Regional Park
 - ✓ 9700 Exempt
 - ✓ 9720 State DNR Managed Timberlands
 - ✓ 9725 State Forest Board

Buildout Analysis Results

The Chimaquum Creek Subbasin encompasses about 24,000 acres or 37.5 mi² of which about 3,680 acres are within the PUD#1 service area. Of the remaining 20,325 acres, 71% of the land area contains parcels that remain buildable. An estimated 597 additional homes could be built on 481 parcels based on current zoning regulations (Table 1). This is an estimate because of the assumptions that were used in the analysis and certainty would only come from fully investigating each parcel to determine whether or not a well has been constructed and the water used on that parcel. A random sampling of parcels with building values less than \$10,000 were investigated to determine whether or not a potable water supply determination had been made or whether or not a livable structure was obtaining a water supply through use of an exempt well.

The 481 parcels represent 53% of the 915 parcels that were analyzed in this study. This means that 47% of the parcels are already developed. The distribution of buildable versus developed parcels in each zoning category can be found in Table 2. The zoning designation RR-5 is 75% built out with only 3 parcels able to accommodate more homes. RR-10 is 60% built out with an additional 165 parcels considered buildable and RR-20 has an additional 126 parcels (or 58% of the total) which can accommodate a dwelling. Rural Forestry and Commercial Forestry parcels are over 80% buildable which translated to 81 parcels being buildable. The agricultural lands, AL-20 and AP-20, have capacity for an additional 105 homes.

Table 3 shows a more detailed breakdown of developed and developable parcels by land use code and zoning designation. The 597 additional homes that could be built are displayed as a percentage of the total in a pie chart by zoning designation (Figure 1) and displayed spatially in Figure 2.

By comparing the buildable parcels to the wetlands overlay, about 53 parcels are covered by wetlands to the point that the construction of buildings might be questionable. However, the wetlands layer is not currently mapped to the parcel level and therefore this interpretation is likely to change if the wetlands are mapped more accurately. In addition, Ecology's well log database shows that about 397 wells are located near to buildable parcels. Since the well logs are mapped to the centroid of a quarter-quarter section in which they are located, it is not possible to identify which buildable parcels actually have operational wells on them. Figures 3 and 4 show the wells in the Chimacum Subbasin that are located near to buildable parcels and the wetlands overlay onto buildable parcels, respectively.

Data Sources:

1. Teren MacLeod provided the following data:
 - Jefferson County Assessor's Database dated 5/23/2008
 - Current Zoning Designations
 - Wetlands shapefiles
 - Water Service Areas shapefiles
 - Land Use Codes
2. Well logs obtained from the Department of Ecology's well log database website
3. Hydrology and Chimacum Cr Subbasin boundary from previous work in WRIA 17 obtained from Department of Ecology and Jefferson County

Water Use Analysis

Given that the Department of Ecology assumes 350 gallons per day (gpd) per household, that value has been applied to the 597 additional homes that represent full buildout in the Chimacum Subbasin. The water supply needs for those homes totals 0.32 cfs. From previous work documenting water use for homes and gardens, HSC estimated the return flow of inside and outside water use to be about 65%¹. That means that 65% of the 0.32 cfs returns to the Chimacum system, given the parcel is in hydraulic connection with that system. In other words, 35% of 0.32 cfs or 0.11 cfs is consumptively used and is lost to the local system.

¹ HSC Memo dated September 28, 2005 addressing the draft rule in Skagit County and exempt well return flow.

Table 1: Summary of Full Buildout by Parcels and by Number of Additional Homes

Land Use Code	1100	1101	1900	8000	8100	8120	8300	9100	9800	Total
Built Out Parcels	257	81	24	3	41	4	17	0	7	434
Buildable Parcels	7	12	13	1	89	5	119	223	12	481
Total	264	93	37	4	130	9	136	223	19	915
# additional homes	9	12	13	1	113	5	184	247	13	597
<p>The number of additional homes may exceed the number of parcels due to the ability to subdivide a parcel under its zoning designation</p> <p>Land Use Codes: 1100 RES-SINGLE RESIDENTIAL-SINGLE UNIT 1101 MH-REALW/LND RESIDENTIAL-MH REAL W/LAND 1104 MH SITE RP MH SITE RP ONLY 1900 VAC HM-CABIN VACATION HOMES AND CABINS 8100 OSAG OPEN SPACE AGRICULTURE(A) 8120 OSTBR OPEN SPACE TIMBER(T) 8300 DESIGNATED TIMBERLAND 9100 VACANT LAND VACANT LAND 9800 SITE IMPS SITE IMPS/OTHER IMPS</p>										

Table 2: Summary of Developed and Buildable Parcels

Zoning	Developed Parcels		Buildable Parcels		Total Parcels*	
AL-20	33	52%	31	48%	64	100%
AP-20	34	31%	74	69%	108	100%
CF-80	8	13%	52	87%	60	100%
IF-20	1	50%	1	50%	2	100%
PPR	3	100%	0	0%	3	100%
RF-40	5	15%	29	85%	34	100%
RR-10	250	60%	165	40%	415	100%
RR-20	91	42%	126	58%	217	100%
RR-5	9	75%	3	25%	12	100%
Total	434	47%	481	53%	915	100%
*This does not include parcels with land use codes that were excluded from the analysis.						

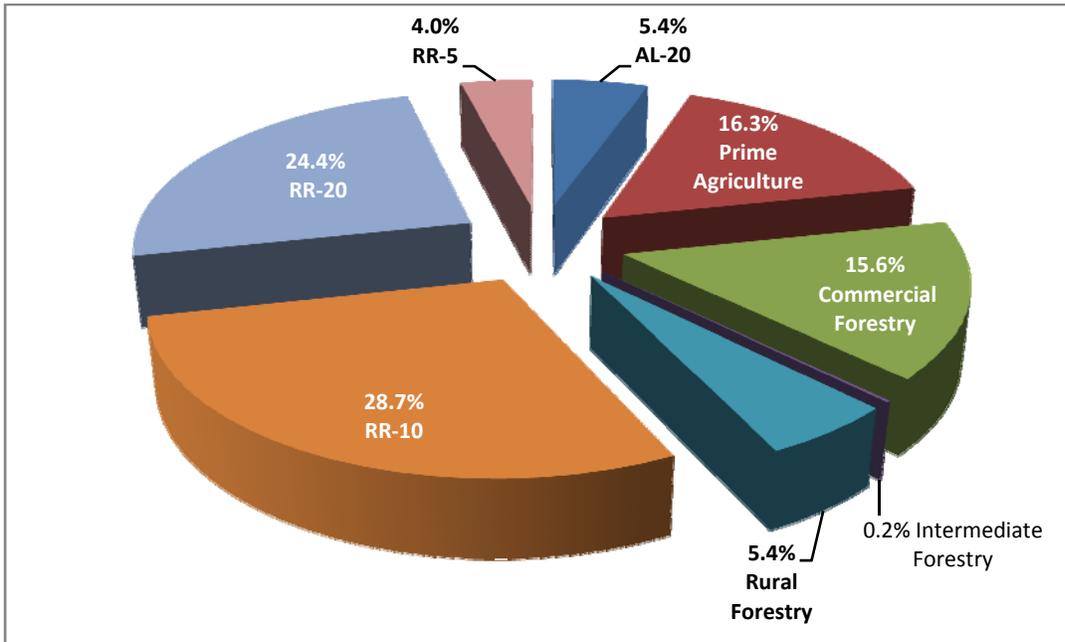


Figure 1: Distribution of Additional Homes Allowed Under Current Zoning to Achieve Full Build Out

Table 3: Parcel Summary for Chimacum Subbasin by Zoning and Land Use

Land Use Code	1100			1101			1900			8000			8100			8120			8300			9100			9800		
	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T
Zoning	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T	D	B	T
AL-20	17		17	3	1	4	1	1	2	3		3	7	7	14	1		1		2	2		20	20	1		1
AP-20	2	1	3	1		1							30	69	99				1	1	2		2	2		1	1
CF-80	2	1	3	1		1							3	2	5				2	47	49		2	2			
IF-20	1		1																							1	1
PPR	2		2				1		1																		
RF-40	2		2										1	1					3	23	26		4	4		1	1
RR-10	172	2	173	52	9	61	16	6	22		1	1				2	5	7	4	17	21		118	118	5	7	12
RR-20	53	3	56	22	2	24	6	6	12				1	10	11	1		1	7	29	36		74	74	1	2	3
RR-5	7		7	2		2																	3	3			
Total	257	7	264	81	12	93	24	13	37	3	1	4	41	89	130	4	5	9	17	119	136		223	223	7	12	19

D= # developed parcels
 B= # buildable parcels
 T = # total parcels

Chimacum Creek Subbasin Full Buildout Analysis Based on Zoning

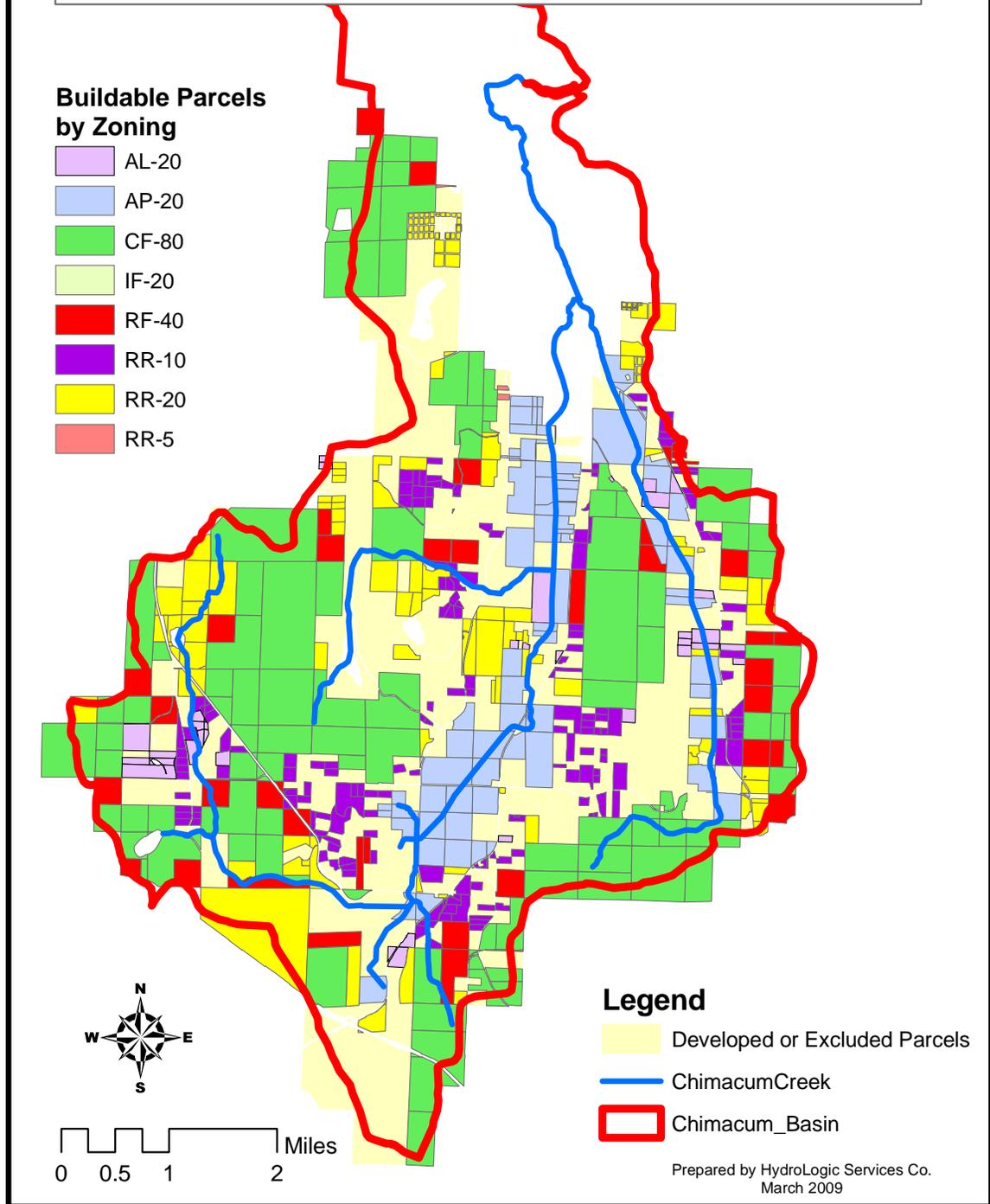


Figure 2: Buildable Parcels identified according to Zoning Designation

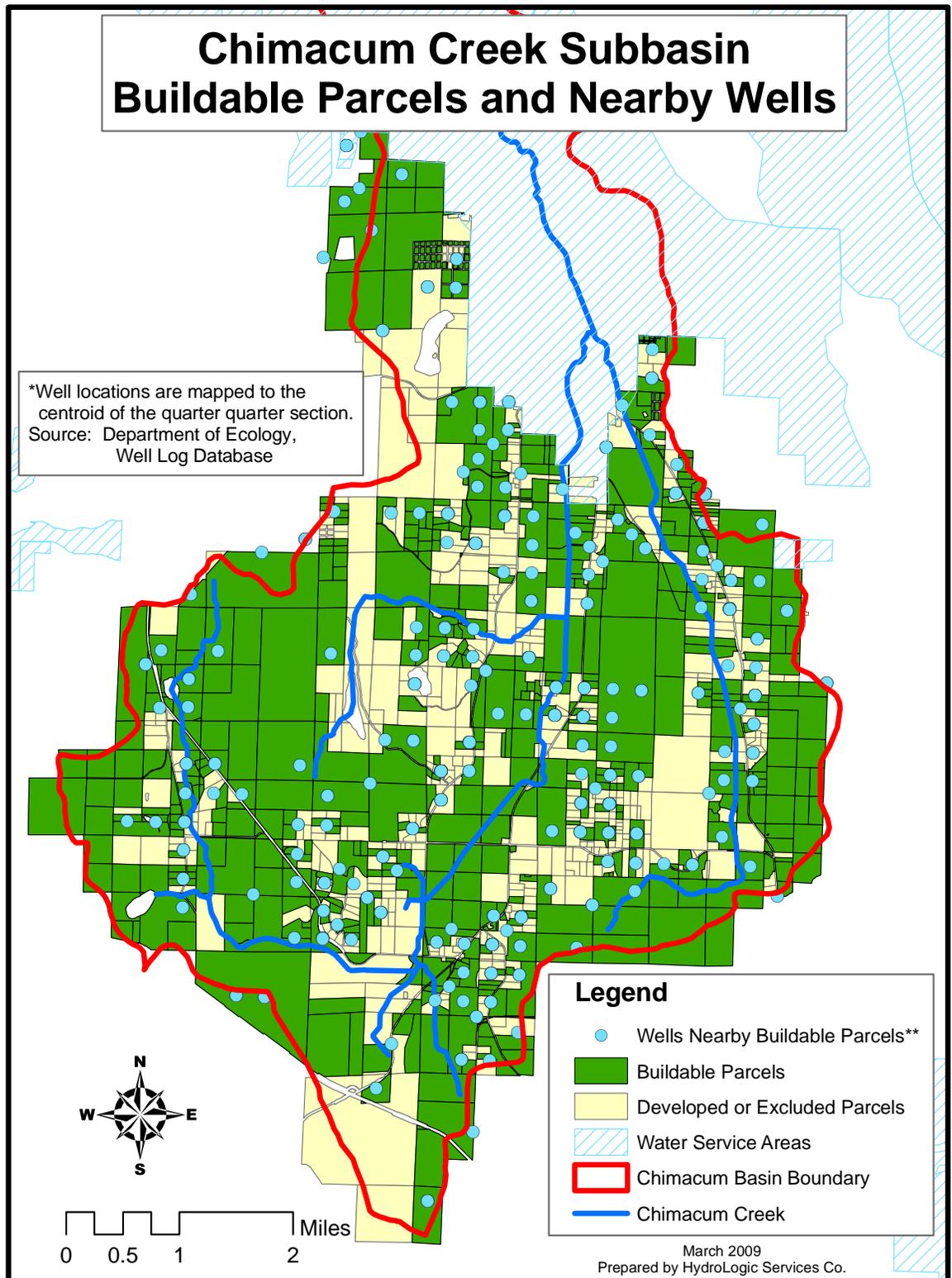


Figure 3: Buildable Parcels with Wells Located Nearby

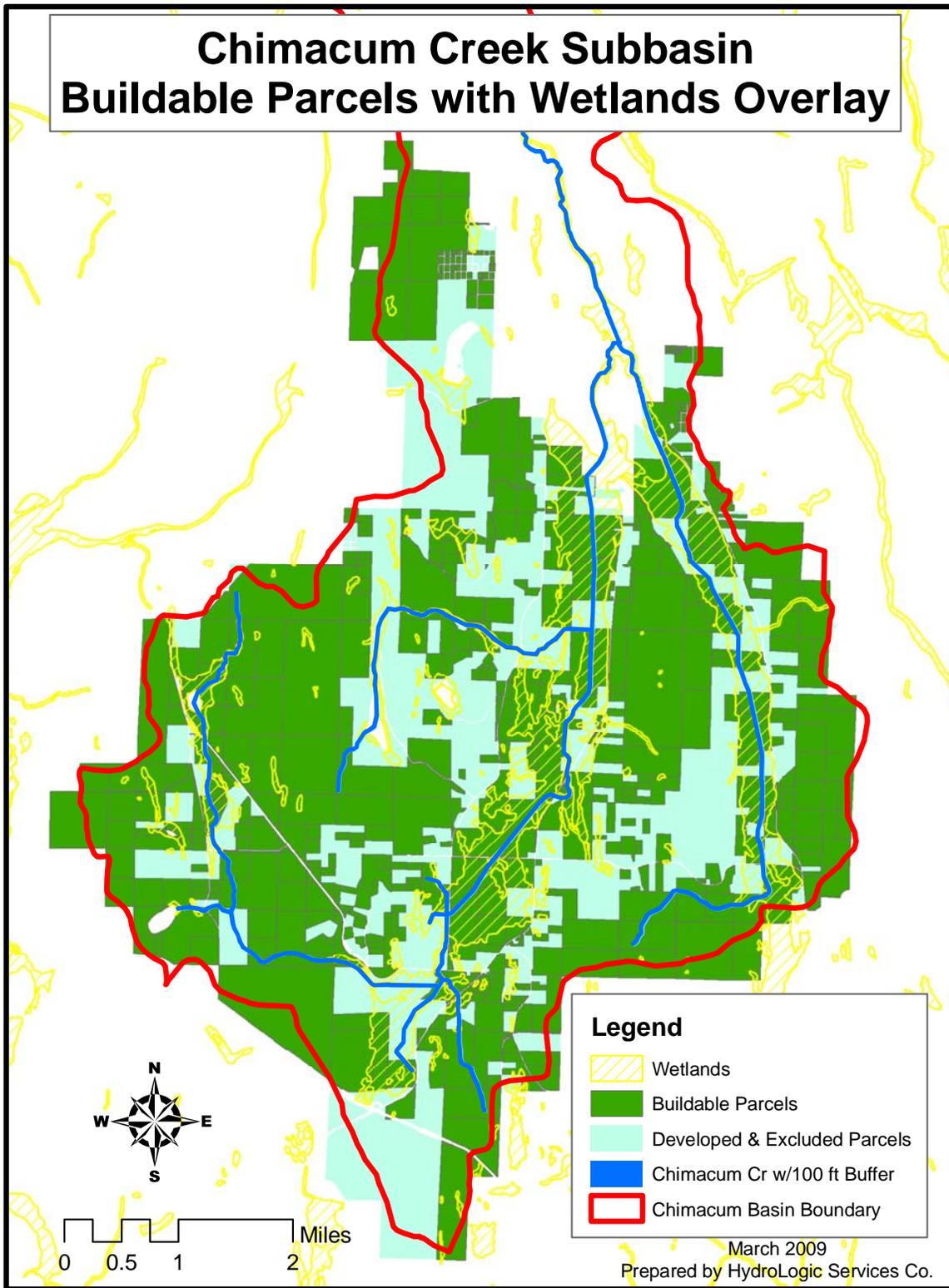


Figure 4: Buildable Parcels and the Potential Effect by Wetlands

From: Marguerite Glover [mailto:marg@sequim.com]
Sent: Monday, June 11, 2012 11:39 AM
To: Teren MacLeod
Subject: Our June 28th Public Hearing, on the Dungeness Water Rule

Teren MacLeod

Dear Teren,

Because you have been very active in rural issues, water issues, and land use issues--and, most especially, since you have followed, and given testimony, on the WRIA 17 Rule, I would like to invite you to come and speak (on the record), at the Public Hearing for our Dungeness Water Management Rule. I know that you are also following our Rule, and are versed in the economic and regulatory aspects of it. The hearing starts at 5 PM, with an open house. It is at the Guy Cole Convention Center, which is in Carrie Blake Park. At 6 PM, there will be a presentation about the proposed Rule, with questions and answers (these may or may not be "live" questions). Following that, will be the hearing. Thursday, June 28th.

All of the comments (including verbal ones) that Ecology receives at the hearing will become part of the official record; and, all of us have until July 9th, to make written comments.

I hope you can make it!

Thank you, Teren!

Sincerely,

Marguerite A Glover, Co-Chair
Sequim Assoc of REALTORS® Govt Affairs Committee



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Government Affairs Committee
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Department of Ecology
Water Resources Program Attn: Ann Wessel
PO Box 47600
Olympia WA 98504-7600

RE: WRIA 17 Proposed Water Management Rule, WAC Chapter 173-517

Dear Ann:

The Jefferson County Association of REALTORS® (“JCAR”) is submitting this letter from its Government Affairs Committee in response to the Department of Ecology’s proposed Water Management (instream flow) Rule for WRIA 17. JCAR members have been involved with the formulation of this rule and related water resource issues for a number of years. We have a member on the planning unit, have planned and hosted a number of meetings to inform both our members and the public, and have taken out ads in the local newspapers to make sure that local residents and landowners are aware of the proposed Rule. As REALTORS® we know the beauty of the land and the value of the natural resources Jefferson County offers us as community members and our clients as land and home owners and buyers.

We agree that instream flow water resource issues should be addressed and believe that actions that actually improve streamflows and groundwater resources are the better approach. Regulations, where necessary, need to be clear and concise. As proposed by Ecology, we believe certain parts of the rule are beyond the agency’s statutory authority, conflict with other legal requirements, and will negatively impact homeowners, homebuyers, and the quality of life in Jefferson County. We also are concerned that some of the data used by Ecology is not accurate and that additional information on water resources and hydrogeology is necessary before adopting a final rule. Below we provide specific comments on a number of provisions in the rule.

1. Coastal Management Areas

Ecology has included a new concept called “Coastal Management Areas” within the proposed rule (WAC-173-517-130(1)), indicating that these are areas where future groundwater withdrawals could negatively impact the instream values of small streams, or contribute to the seawater intrusion. We believe that Ecology should be required to first show that there will be a negative impact from future water withdrawals in order to regulate these areas. Furthermore, we do not believe Ecology has a sufficient statutory mandate to regulate these areas under this section of the law. Regulatory authority over coastal area is found in the Shoreline Management Act, not the water code, and the SMA provides a more balanced approach involving both state and local shoreline regulation, as opposed to state-only regulations.

2. Regulation of the “Unnamed Stream”

The waterway indicated in the rule to be the “Unnamed Stream” is subject to additional restriction on groundwater withdrawals and well construction activities. The “Unnamed Stream,” however, is a series of drainage basins that do not interface with Discovery Bay, and fish passage and existence in the basins are not and have never been seen. We do not believe that Ecology has the statutory authority to regulate such an area.

3. Stream Flow Levels

The instream flow levels that would be set by the proposed rule are levels that have only been achieved by actual flow levels two times in the previous 80 years, in 1952 and 1958. This clearly exceeds Ecology’s statutory authority to adopt minimum instream flows by rule. Ecology’s authority to adopt minimum instream flow is provided in Chapter 90.22 and 90.54 RCW, and both provide authority to Ecology adopt only “minimum” or “base” flows. RCW 90.22.010 provides that Ecology “may establish minimum water flows or levels . . .” RCW 90.54.020(3)(a) states that rivers and streams “shall be retained with baseflows . . .” Ecology lacks authority to adopt instream flow levels that are not true “minimum flows” or “baseflows.” Ecology has defined “baseflow” as “that component of streamflow derived from groundwater inflow or discharge.” *Sinclair and Pitts, Estimated Baseflow Characteristics of Selected Rivers and Streams, Ecology Water Supply Bulletin No. 60, Pub. No 99-327 (October 1999).*

The meaning of “minimum flow” or “baseflow” has not been subject to court decision, however, the Attorney General’s Office has previously provided Ecology with legal interpretation of what these terms mean. In 1986, then Senior Assistant Attorney General Charles B. Roe provided an information opinion as to the extent of Ecology’s instream flow authority, based on both Chapters 90.22 and 90.54 and the legislative history of those acts:

. . . The intent was, simply stated, that streams with certain values were not to be dried up or reduced to trickles. Rather, flows, usually of an amount extending to a limited portion of a stream’s natural flow were to be retained in order to protect instream values of the stream from total relinquishment. Of import here, the thrust of the 1967 legislation was not designed to maintain a flow in excess of the smallest amount necessary to satisfy the protection and preservation values and objectives just noted . . .

Letter from Senior Assistant Attorney General Charles B. Roe to Eugene F. Wallace, Program Manager for Ecology Water Resources, February 20, 1986, at 8. (Attached as Exhibit 1).

Mr. Roe's analysis from 1986 still stands today, and is provided as legal authority on instream flows in the WSBA Real Property Deskbook, which further provides:

“The first determination is to provide for foundational ‘minimum flows’ (or ‘baseflows’) as contemplated by RCW 90.22.010 and RCW 90.54.020(3)(a). The second determination, reaching after conducting a ‘maximum net benefits’ test as described in RCW 90.54.020(2), focuses on whether an additional increment of enhanced flow should be provided above ‘minimum flows.’”

WSBA Real Property Deskbook, Water Rights (C. Roe) § 117.9(1)(b), p. 117-133, also citing Northwest Steelhead and Salmon Council et al. v. Ecology, PCHB No. 81-148.

The flow levels proposed by Ecology far exceed minimum or baseflows, and Ecology has not properly conducted a maximum net benefits test to justify selecting flow levels beyond minimum or baseflows. Due to this fact, Ecology needs to reevaluate this rule and set the levels and the related restrictions to levels that are historically achievable flows that are truly minimum or baseflows.

4. Serving a Water Right

In the cost benefit analysis included within the rule proposal, Ecology currently valued each and every adult spawning salmon at over \$5,000. The instream flow levels being what they are, we believe that the Department of Fish and Wildlife (WDFW) should be establishing opportunities to directly serve the new water right they are creating. Taking this action would be very beneficial for the DOE and DFW and would move the burden off of the rural land owner.

5. Impacts to Local Cottage Industry Agriculture

The Small Business Economic Impact Analysis (SBEIS) concludes that “there are very few businesses in the affected area of this Rule” and discussions with Tryg Hoff from Ecology has clarified that the document parameters consider only businesses that report income to the IRS. That being said, Ecology has shown in its analysis of WRIA-17, and particularly in rural areas, that most businesses are cottage industry and/or small sustainable agriculture on rural residential lands. These “businesses” were not looked at or considered in the SBEIS, a possible tax burden shift was not considered, and the loss of future agriculture was not valued. We feel that Ecology needs to revisit the SBEIS in order to make it more accurately reflect the nature of our local community.

6. Job Creation

Ecology's SBEIS concludes that as a consequence of adopting the instream flow rule, 819 new jobs will be created, including 384 jobs in the construction sector, and 20 jobs in real estate. We disagree with Ecology's assertion that a rule placing a fixed limit on the supply of water available for future growth in Jefferson County could result in a net gain of over 800 jobs. Ecology uses the fact that rule provides limited supplies of water to create a false baseline

against which to measure economic impacts. In the past, Ecology has informed the WRIA-17 planning unit that the rule restrictions are not based on a water shortage or over-allocation of water rights. We believe the number of purported jobs created is inaccurate because water is currently readily available and not water short. We believe the SBEIS needs to be changed to reflect this fact.

7. Previously Drilled Wells, Priority Dates, and Relation-Back Doctrine

The Hydrologic Services Co. (HSC) Build-Out Analysis (Attached as Exhibit 2) and the well data provided to Ecology from the Jefferson County Department of Health (Attached as Exhibit 3) shows there are several hundred wells that have been drilled in Eastern Jefferson County that have not yet been used for a beneficial domestic use. Many of these wells are in the Chimacum sub-basin and will be subject to no outdoor use after the rule is in place. We believe that the citizens who have drilled wells and done soils testing with the understanding that they would be able to develop their properties and have the opportunity for all the beneficial uses that a permit-exempt well provides under 90.44.050. In answering a query from the county as follow-up to a question from a landowner in the Chimacum sub-basin, Ann Wessel attempted to clarify Ecology's position on the impact of the instream flow rule on pre-existing wells, and how Ecology would determine the priority date of exempt wells, in the following:

“Your best assurance of establishing your water right under this exemption is to beneficially use water for the purpose you intend for the future. For domestic use, beneficial use is considered to occur when water is used within a permitted residential structure. Ecology prefers a Certificate of Occupancy for the residence to demonstrate domestic use of water.

The proposed rule establishes reserves of water that will provide water for new and previously unused permit-exempt wells for many years into the future. Based on the building permit record, we project each reserve will provide water through 2025. If alternative sources of water are not developed and available when the reserve is used up, there will likely be further restrictions on those who want to start using water at that time.

After the rule takes effect we will be coordinating with the County, tracking new building permits and applying the requirements of the rule to each new residence. This means we intend to debit the reserves and apply the conservation standard to each new user regardless of their using an individual or shared well.”

E-mail from Ann Wessel (Ecology) to Neil Harrington, Jefferson County DOH) , dated 7/2/09.

Ecology's conclusion that a water users priority and the right to use water is established only upon beneficial use is inconsistent with both the historical common law of water rights, and how the State Legislature codified the relation back doctrine. Ecology's current interpretation creates significant risk for lenders, homebuilders, and homebuyers and should be carefully examined and modified.

“The relation back doctrine was created under the principles of equity to allow an appropriator to receive as a priority date the date the appropriator first initiated the use of water and not later when the appropriation was completed. The ability to receive the early priority date depended on the appropriator's diligence in applying water to use.

An Introduction to Washington Water Law, Office of the Attorney General, January 2000, at III:27, citing RCW 90.03.340 and Hunter Land Co. v. Laugenour, 140 Wn. 558, 565 (1926).

The relation back doctrine is relevant to the process used to develop new housing in order to provide certainty to lenders, builders, and homebuyers. If the right to use water for domestic use is not actually obtained until the time of beneficial use, lenders and homebuilders are at significant risk that water may not be available. In the development process, the time from when a construction loan is issued to when the house is completed by a builder and then sold to a homebuyer can often take a number of years. During this period of time, the local government will have to determine whether water is available under RCW 19.27.097 in order for a building permit to be issued. The priority date for this type of project should relate back to when the project was first initiated, to protect the investments of the lender and builders, and so that consumers know that water will be available.

For permitting water rights, the relation back doctrine was codified so that the “date of filing of the original application” becomes the priority date. RCW 90.03.340. Because exempt wells require no application, the analogous point in time would be the notice of intent filed by a well driller. So long as the project is developed and completed with due diligence, the priority date should relate back to the date of the notice.

8. Shared Well Agreements

Shared well agreements are prevalent in the rural areas of WRIA-17. When one party in a shared well agreement is vested with beneficial domestic use and another is not, Ecology has asserted that the second party will be subject to the rule limitations. We believe that if a well predates the adoption of the instream flow rule, it is senior to the rule and therefore additional users or increases in use are not subject to the rule. Ecology’s position will create a situation where different users on the same well have different priority dates and requirements under the instream flow rule. This results in conflict among water users who have invested jointly in the development of water resources and who have a reasonable expectation of being able to use water.

9. Least Burdensome Option

The Least Burdensome Analysis does not explore all the possible ways in which the proposed rule could be imposed to find a true Least Burdensome option. The HSC study shows that in the Chimacum sub-basin, approximately 60% of undeveloped parcels in the area are zoned rural 1du/10 acres and 1du/20 acres. These are parcels that will be restricted to no outdoor watering, destroying the opportunity for our community’s future small farms and rural way of life. Ecology should look to find a way to truly create a Least Burdensome option that preserves the ability for landowners to engage in agricultural activities.

10. 1/10th of 1% Basis for Reservation in Chimacum Sub-Basin

The water reserve given to people in the Chimacum sub-basin is 1/10th of 1% of the flow level set in rule. In other areas that have been regulated under such rules, the reserve levels for people have not been nearly this minimal. We believe that it is beyond Ecology's authority to limit the amount of water to such an extreme degree and should be changed to allow greater flexibility for water users within the Chimacum sub-basin.

11. Conflict With Local Planning

By adopting this rule and limiting the number of households that can be allowed in certain areas of the County, Ecology is invalidating the growth projections and other aspects of the County's Comprehensive Plan required under Chapter 36.70A RCW, the Growth Management Act ("GMA"). Under the GMA, local governments are required to plan for future growth, including making sufficient land and zoning available to accommodate this growth. It is questionable whether under Ecology's rule that water will be sufficient for 20 years, and without question that at some point, Ecology's rule could prevent local governments from being able to accommodate population growth. Ecology's promise to reexamine water demands in the future provides little comfort.

By creating conflicts with the GMA that have not be reconciled or analyzed, Ecology's rulemaking process also violates the requirements of the Administrative Procedures Act, Chapter 34.05 RCW. Under the APA, Ecology was required to: (h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

- (i) A state statute that explicitly allows the agency to differ from federal standards; or
 - (ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and
 - (i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.
- RCW 34.05.328

The GMA, local comprehensive plans and zoning, and Ecology's instream flow rule all relate to constraints on future population growth and land use. Even though the local comprehensive plan will be undermined by the proposed instream flow rule, Ecology has not analyzed whether this is "justified," or provided "substantial evidence that the difference is necessary." Further, there has been little progress in coordinating the rule with other state and local laws.

12. Livestock Watering

The proposed rule indicates in section WAC-173-517-190(b) that water for livestock is limited to "no greater number of stock that historically range that parcel." Ecology has no statutory authority to use instream flow rules to prevent landowners from increasing the number of stock at a piece of property, or to begin raising stock even though the property was not historically used for this purpose. We interpret this to be affecting water rights that are senior to the water right developed in this rule and clearly outside the statutory mandate of the Ecology.

More fundamentally, we question why Ecology would want to prohibit landowners from raising farm animals, which is an important part of our rural economy and way of life.

13. Impacts to Real Estate Consumers

Ecology's rule is premised on the collection, analysis, and distribution of significant amounts of data relating to water use, building permits, and other information. Neither Ecology nor local governments have the human resources necessary to actually implement all of the various details of the rule. Ultimately, this will create risks to real estate consumers. Under the Seller Disclosure Act, Chapter 64.06 RCW, sellers of residential real estate, both improved and unimproved, must provide buyers with a checklist responding to various questions about the property, including whether the property has water supply. The instream flow rule is so complicated that we do not believe average real estate sellers will have sufficient knowledge to be able to complete the seller disclosure form, which in turn creates significant uncertainty for real estate buyers.

14. Continued Support for Alternative Water Supply Studies and Options

One of our major concerns with the proposed rule is that it limits future water supply without any certainty that alternative water supplies will be made available. We acknowledge and appreciate the support provided by Ecology to the WRIA-17 Planning Unit for the USGS study and the ASR project. We support working towards a better understanding of water movement and alternative water supply options. Ecology's adoption of an instream flow rule will require continued work and funding on the part of the agency to examine future water supply options. Water availability for supply and storage options from the Big Quilcene River and the Chimacum Creek at certain high flow periods is an important beneficial use and tool that Ecology has allowed for in the proposed rule and must continue to pursue.

Thank you for your time and we look forward to your comments on the issues we have just raised.

Sincerely,

Teren MacLeod
Government Affairs Chairperson
Jefferson County Association of REALTORS®

Enclosures:

- 1 – 1986 Memo from Office of the Attorney General
- 2 – HSC Buildout Analysis
- 3 – Jefferson County Well Information



Small Business Economic Impact Analysis

Chapter 173-517 WAC

**Water Resources Program for the
Quilcene–Snow Watershed**

May 2009

09-11-015

This report is available on the Department of Ecology Web site at:

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Introduction

The Washington State Department of Ecology (Ecology) is proposing Chapter 173-517 of the Washington Administrative Code (WAC), Water Resource Program for the Quilcene-Snow Watershed, Water Resources Inventory Area (WRIA) 17.

The purpose of this Small Business Economic Impact Statement (SBEIS) is to identify and evaluate the various requirements and costs that the proposed rule might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rule impose a disproportionate impact on the state's small businesses. The Revised Code of Washington (RCW) 19.85.040 describes the specific purpose and required content of an SBEIS.¹

To meet Chapter 19.85 RCW, Ecology is developing and issuing this Small Business Economic Impact Statement (SBEIS) as part of our rule adoption process. Ecology intends to use the information in the SBEIS to ensure that the proposed rules are consistent with legislative policy.

Rule Proposal

The key elements of the proposed rule include:

- Setting instream flow levels in the watershed to protect aquatic resources, including habitat for threatened and endangered salmonids, and protect existing water users.
- Closing most subbasins to new year-round withdrawals.
- Establishing water reserves to provide a reliable water supply through 2025.
- Specifying conditions for accessing the water reserves to benefit in-stream resources and better manage limited supply.
- Establishing a conservation standard for new permit-exempt well withdrawals.
- Allowing rain catchment for onsite water use.

The proposed instream flows are designed to protect fish habitat. This makes less water available for future uses during low-flow portions of the year (July 1 through October 31). To provide a reliable, year-round supply of water for future uses, it is necessary to reserve water that would be available even when the instream flows are not met. To do this, RCW 90.54.020(3)(a) requires that Ecology determine that there is an Overriding Consideration of the Public Interest (OCPI) to establish reserves for future out-of-stream uses.

The proposed reserves give more access to reliable water supplies for permit-exempt uses in the watershed and permitted uses in three subbasins, consistent with RCW 90.54.020(8) and the Growth Management Act (GMA). The reserves ensure a year-round, reliable water supply to

¹ Due to size limits for filing documents with the Code Reviser, the SBEIS does not contain the appendices that further explain Ecology's analysis. Nor does it contain the raw data used in this analysis, or all of Ecology's analysis of this data. However, the rule-making file contains this information and it is available upon request.

meet demands estimated to occur through 2025. Future users of the reserves can obtain their water primarily from groundwater sources.

Water uses, established after the instream flow rule and that do not use reserves, are junior water rights and may be interrupted when instream flows are not met.

Analysis of Compliance Costs for Washington Businesses

We have assessed the impacts of the proposed rule by comparing water right management under the proposed rule to current practices. The current framework or “baseline” includes the use of water by permit-exempt wells (RCW 90.44.050) and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Baseline administrative procedures include technical and legal review to ensure the proposed use meets flow protection requirements of Chapters 90.22, 90.54, and 90.82 RCW.

We provide a brief description of compliance requirements below. You can find further details of water management under existing practices and the proposed rule in the Cost Benefit Analysis.

Water Right Administration under the Proposed Rule

The proposed Chapter 173-517 WAC will create “instream flows.” Instream flows are water rights for in-stream resources. Once adopted, the instream flows would be protected from impairment by “junior” water rights—those with a later priority date. This means junior water rights must not further deplete surface waters when stream flows do not meet the instream flow levels. The instream flows will not affect senior uses established before the rule. Uses from the reserves will also have uninterruptible water rights.

Ecology and the Department of Fish and Wildlife negotiated the size of the reserves, established to provide water for permit-exempt well use. Water in the reserves would also provide water for new non-interruptible water rights in three sub-basins (Little Quilcene, Big Quilcene, and Thorndyke).

As well as setting the instream flows and creating reserves for new uses, the proposed rule clarifies other requirements that might affect future uses. We describe the expected changes to water management below. For more detail on changes to water right administration, see the Cost Benefit Analysis.

Surface Water

The proposed rule would close the watershed to further surface water diversions during periods of low flow. During such periods, water users wanting a new surface water right would need to either:

- Purchase or lease, and transfer an existing water right.
- Suspend water use during periods of low flows.

- Develop storage mechanisms.
- Develop strategies, acceptable to Ecology, to mitigate their impacts.
- Get a new water right from the reserve.

However, we do not expect the rule to have a large effect on those that cannot directly access the reserves. These users face similar obstacles to gaining new water rights under current practices. Absent rulemaking, all new surface water users would need to either mitigate or use stored water during periods of low flow.

Groundwater Permits

As with surface water, following adoption of the rule, Ecology can also make decisions on groundwater right applications similar to the baseline, except for permitted uses from the proposed reserves in three sub-basins. Applications for groundwater in hydraulic continuity with rivers and streams in WRIA 17 would be subject to flow conditions under the baseline or to the instream flows under the proposed rule.

As with surface water, there may be minimal effects to those water users not qualifying for the reserve, but Ecology does not expect such effects to change business practices. In particular, many small businesses may still be able to meet demands under the groundwater permit exemption and conservation standard². Groundwater users under the proposed rules are also able to avoid interruption by showing that their use is not in hydraulic continuity with closed surface water bodies.

Overall, the change in ground water permitting does not significantly affect businesses, unless they qualify for one of the reserves available water in Big Quilcene, Little Quilcene, or Thorndyke. The proposed rule will reduce the administrative costs of ground water permitting. The rule closes certain most ground water areas, making case-by-case hydraulic connection determinations unnecessary. Applicants can still make these determinations and seek permits via traditional means if they choose.

Permit-Exempt Groundwater Uses

Under the proposed rules, permit-exempt well users would gain an uninterrupted water use through the reserves and in coastal management areas. Although exempt from permitting under RCW 90.44.050, permit-exempt wells remain subject to all other state water laws. Permit-exempt well use can be shut off if it impairs senior water rights, although this has not yet occurred in WRIA 17. Nonetheless, permit-exempt well users remain susceptible to future curtailment if withdrawals result in impairment of a senior water right.

The proposed rule reserves water for future permit-exempt wells subject to a restricted conservation standard of use, but are not subject to interruption to protect the created instream

² In the state Ground Water Code, the “ground water permit exemption” allows for certain uses of small quantities of ground water; including domestic, industrial, stockwatering, and non-commercial irrigation of less than one-half acre of land. RCW 90.44.040, *See also* Washington Attorney General Opinion (2005 Op. Atty Gen. Wash. No. 17).

flows. The rule provides added assurances to small businesses that would rely on year-round water from permit-exempt wells.

Small businesses that locate outside a service area of municipal water suppliers are most likely to use permit-exempt wells.

Changes or Transfers of Water Rights

Ecology will continue to process changes or transfers of existing water rights as permitted by Chapters 90.03 and 90.44 RCW. The process is the same with the proposed rule as with the baseline, although future decisions would also consider the potential of impairing the instream flows.

Reserves of Water

The use of water under the reserves, and the conditions of use, are part of the proposed rule. The reserves will allow eligible water users the benefit of having a continuous, reliable source of water during low flow periods, with a few limits. These limits primarily include the finite quantity of the reserves and the restricted amount of the conservation standard, which is a condition of accessing the reserves. The proposed rule also requires measuring water use from the reserves.

Coastal Management Areas

The proposed rule establishes coastal management areas to protect streams too small for setting instream flows, but that still provide valuable salmonid habitat. Surface water and connected groundwater are closed in these areas, however, permit-exempt well use is allowed subject to the conservation standard. The proposed rule will allow eligible water users in coastal management areas the benefit of having a continuous, reliable source of water during low flow periods. There is no finite limit as in the subbasins with reserves. Measuring water use is also required as in the reserve management areas.

Impacts to Businesses in WRIA 17

The element of the proposed rule that will have the greatest financial impact on businesses is creation of the reserves of water for future uses. The reserves would make water predictably and reliably available for more out-of-stream uses than under the baseline. The proposed reserves can provide water for water systems and permit-exempt uses, even during low flow periods. Businesses located in the Big Quilcene, Little Quilcene, or Thorndyke subbasins, may also be able to secure a reliable water right, which would have been very difficult to do without the rule.

Some businesses may also rely on rainwater collection and use on site, as this use is allowed under the proposed rule.

The proposed rule will not directly affect existing water right holders and is likely to have a positive effect on most of the affected businesses. An exception to this would be businesses that use water in the river—such as canoeing and fishing businesses. There are also potential costs to

businesses from the conservation standard restricting permit-exempt well use and the requirements to measure new water uses. The possible impacts are described below.

Impacts to Businesses Dependent on Stream Flows

As stated above, the proposed rule creates a series of reserves. Accessing the reserves will allow entities to use water for various uses during low flow periods. In three subbasins, this will slightly reduce the amount of water in streams and could impact in-stream benefits such as ecosystem services, recreation, and so on. For farms that rely on stream flow for stockwatering, businesses that provide guide services such as fishing and bird watching, or those dependent on dilution for waste removal, there could be a very minor negative impact. Most impacts to businesses will be from gaining access to the volumes of water needed out-of-stream for the proposed future or expanding business, not from reduced stream flows.

Impacts to Existing Permitted Water Rights

Allowing access to water through the reserve could affect the value of existing permitted water rights held by some businesses. The exact effect will depend on the allowable use, volume, and point of diversion of the existing rights, the existing and desired uses, and the volumes needed. Ecology does not foresee any measureable impacts to existing water rights from this rule.

Costs to Firms and Required Professional Services

Businesses that depend on in-stream activities and potentially those that hold existing permits might incur very small impacts.

- The impacts to in-stream users would be specific to the firm, but is unlikely to be significant since few firms are dependent on instream flows.
- Existing water right holders could be impacted if the proposed rule resulted in changes to the value of their water right. This would ultimately only affect those that want to sell or lease a right, and only for the period until the reserves are fully allocated to new uses. The exact cost is difficult to determine since it depends on many factors and very few if any transfers would happen in this fashion.

Creation of the reserve will be a net benefit for most businesses that need water. Water being unavailable during low flow periods is damaging to any business that needs it for its own use or who are looking to develop residential or commercial properties. Allowing rainwater collection and use on site is also a benefit to some businesses.

For those that do not require water during low flow periods, an interruptible water right is an option under both the current practices and proposed rule in the Chimacum and Big Quilcene sub-basins.

In order to have water available during low flow periods under the baseline, uninterrupted water would have to be obtained through purchase, lease, transfers, or on-site storage. On-site storage for a low flow period can cost approximately \$0.75 per gallon for small water systems.³ This

³ <http://www.doh.wa.gov/ehp/dw/Publications/331-134-4-30-08.pdf>

would be typical for a residence connected to a public water system; the proposed rule avoids this cost for those using the reserves. For other users, the cost of storage would likely preclude it as an option. Businesses who are able to locate outside the water service areas in the watershed are able to get uninterrupted water with some restrictions and costs identified below.

Required Professional Services

Ecology anticipates no added professional services as a result of requirements from this rule. For water users qualifying for the reserves, the proposed rule reduces the need for small businesses to obtain consulting services. The proposed reserves make a reliable water supply available, without the expense and uncertainty of demonstrating water exists on a case-by-case basis. The same is also true for permit-exempt well use in the coastal management areas.

Costs of Equipment, Supplies, Labor, and Increased Administrative Costs

We expect no additional equipment, supplies, labor, or administrative costs from the proposed rule except from required metering. This would include the cost of a meter for their groundwater well and minimal labor for maintaining the meter and reporting measured water use.

Other Compliance Requirements

The proposed rule establishes a 500-gallon per day maximum and 350 gpd annual average conservation standard for the use of permit-exempt wells. Group domestic uses are limited to 5,000 gallons per day and the conservation standard for each residence. This standard applies throughout the watershed—including subbasins with reserves and the coastal management areas.

The proposed rule includes an exception to the conservation standard for new permit-exempt wells to be used for small commercial agriculture. The rule would limit such use to no more than 5,000 gallons per day (3,000 gallons per day in the Snow Creek subbasin). The proposed rule would only allow these new permit-exempt agricultural uses in the Salmon Creek and Snow Creek subbasins and most parts of the Miller and Quimper peninsulas.

Quantification of Costs and Ratios

It is the purpose of this section to evaluate whether:

- Compliance with the proposed rule will cause businesses to lose sales or revenue.
- The proposed rule will have a disproportionate impact on small businesses.

Revenue Impacts

As noted previously, the impacts of the proposed rule would be from the conservation standard on permit-exempt wells, required metering, decreased flows in the river, the creation of reserves, and allowing rainwater collection and use on site. Some potential losses to revenue we felt were could be dropped from consideration:

- The reduction of flows in three subbasins is unlikely to significantly affect any firms within the subbasins.
- Existing water right holders might see some loss in the value of existing water rights and this could lower revenues. However, this effect is likely to be relatively small.

Those firms that will be able to access water from the reserves will benefit from easier access to reliable water supplies. We estimate that summer flows will not meet the proposed minimum instream flows most years. New permits issued with stream flow conditions would be interruptible under the baseline, as under the proposed rules. Storage or mitigation would likely be required for all uses absent the reserves. In that sense, the rule will represent a negative cost (net benefit) to firms.

The net benefit to firms is the value of avoiding expensive storage, or purchasing or leasing water rights, or other mitigation options to access water during periods of low flow. This will likely lower costs to some potential water users and to that extent, may increase revenues.

Distribution of Compliance Costs

The distribution of compliance costs can be analyzed by evaluating those who would seek water under the permit-exempt well exceptions. To qualify for the reserve, those businesses would need to measure their water use and adhere to the conservation standard for permit-exempt wells. Local ordinances already require those businesses in municipal water services areas to hook up to a municipal supplier.

Small businesses could have added costs under the proposed rule if they pursue interruptible water rights in the Chimacum or Big Quilcene subbasins. However, gaining new allocations of water, that were not readily available before, would be a large net benefit.

Known Costs and Benefits

The rule would allow water rights to be issued from the reserves in the Big Quilcene, Little Quilcene, and Thorndyke subbasins. Businesses located in these subbasins may benefit from being able to obtain a permitted water right more easily. Under baseline conditions, few businesses were receiving additional permitted water rights in the watershed.

The rainwater catchment provisions may provide a benefit to small business. It provides an alternate source of water, of greatest benefit to those with a dry or contaminated well. Catchments can also provide additional water for landscaping.

Businesses wanting to use a new permit-exempt well are required to comply with the rule. These businesses must comply with the conservation standard and would have a total social cost of about \$1000 on average.⁴

⁴ Cost Benefit Analysis and “A Methodological Case Study of the Cost of Restricting Outdoor Water Use by Exempt Wells, Zhang, Shidong and Reich, Dave. Northwest Journal of Business and Economics 2005”

Businesses beginning new permit-exempt well uses and requesting water right permits from the reserves must measure their water use. Additional costs for buying and installing a meter for small water systems is estimated to range from \$400 to \$600.⁵ Ecology chooses to use \$500 per meter, including any reporting costs.

Costs Per Employee for Large and Small Businesses

There are very few businesses in the affected area of this rule. Ecology found 53 small businesses in the potentially affected industries in the watershed. For small businesses in these industries, the average number of employees is 2.5. For the top ten percent of potentially affected businesses, the average number of employees is 7.

Table 1. Proportional Costs to Businesses

	Estimated Costs	Average # of Employees		Cost Per Employee	
		Small Business	10% Largest	Small Business	10% Largest
Cost of the conservation standard, meters and reporting	\$1500	2.5	7	\$600	\$214

The highest cost per employee for small business is \$600, and for the top ten percent of large businesses is \$214.

Overall, the data suggests that the impacts of the proposed rule will impose disproportionate costs to the smaller businesses. However, there is clearly a very large net benefit to those who seek water and qualify for the reserve.

Conclusions

Only businesses needing new water supplies outside a public water service area or applying for a water right are required to comply with the rule. Businesses that choose to qualify for the benefits of the reserve or use a permit-exempt well in a coastal management area must measure their water use and may suffer a welfare loss adhering to the conservation standard. Those businesses that choose to seek water through this option would receive a net benefit of uninterrupted water. All businesses of all sizes that qualify to use the reserves will experience net benefits from the rule. When examining only the costs, the rule will have disproportional costs to small businesses.

Actions Taken to Reduce the Impact on Small Business

As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rulemaking compared to the baseline. Therefore, the proposed rule takes no specific measures to reduce or mitigate these rule impacts. In general, small businesses seeking reserved water through a permit-exempt well may have advantages over larger businesses with needs too large to be satisfied through a permit-exempt well.

Involvement of Small Businesses in the Development of the Proposed Rules

The proposed rules have been developed as an outcome of regular communication with a variety of stakeholders including:

- WRIA 17 watershed planning unit
- City of Port Townsend
- Jefferson County
- Jefferson County PUD #1
- Three Klallam Tribes
- Skokomish Tribe
- Clallam County
- Quilcene Chamber of Commerce
- Jefferson County Association of Realtors
- Jefferson County Water Utilities Coordinating Council
- WSU Extension Office.

This rulemaking was an open process allowing all entities to comment and take part in developing the rule. Those taking part included small businesses and organizations representing small businesses. Ecology will also hold public hearings after filing the CR-102 to allow small businesses to provide further input.

SIC Codes of Impacted Industries

No industries are required to comply with the proposed rules unless they seek to obtain new water right permits or permit-exempt water rights in the covered area. The following list shows Standard Industrial Codes (SIC) codes for existing developable properties in the Quilcene-Snow watershed.⁶ This serves as a representative sample of potential future businesses that may be affected.

**Table 1. Industries potentially affected by proposed rules
(North American Industry Classification System⁷)**

Agriculture, forestry, fishing and hunting	Code 11
Mining, Mineral extraction	Code 2123
Residential building construction	Code 2361
Nonresidential building construction	Code 2362
Manufacturing	Code 33
Health Care and Social Assistance	Code 62
Accommodation & Food Services	Code 72

⁶ Washington State Employment Security Department was the basis for this table.

⁷ Ecology has used NAICS codes rather than Standard Industrial Codes (SIC). It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

Expected Jobs Created or Lost

Ecology recognizes three of the reserves can support substantially more households beyond the exempt uses in these reserves. These users will benefit primarily from uninterrupted water for domestic and other uses.

This extra water is capable of supporting 690 additional households with an uninterrupted water supply. Assuming \$50,000 revenue from construction of each household, this could generate revenues of \$34,500,000.

If further residential build out uses all of the water from the reserves, it could result in annual labor income of about \$25 million to the area. This could create 819 new family-supporting jobs in the Quilcene-Snow watershed. (See Table 2.)

Office of Financial Management's NAICS based input/output model⁸ provides estimates of interdependence among industrial sectors in the state. Each sector not only produces and sells goods or services, but also purchases goods or services for use within its production process. Ecology expects jobs created through the proposed rule in these areas:

Table 2.	
	Employment
Crop production	6
Animal production	2
Forestry and fishing	2
Logging	2
Mining	3
Electric utilities	2
Gas utilities	0
Other utilities	1
Construction	384
Food manufacturing	4
Textiles and apparel	1
Wood product manufacturing	5
Paper manufacturing	1
Printing	2
Petroleum and products	0
Chemical manufacturing	0
Nonmetallic mineral products manufacturing	11
Primary metals	1
Fabricated metals	4
Machinery manufacturing	1
Computer and electronic product	1
Electrical equipment	0
Aircraft and parts	0
Ship and boat building	0
Other transportation equipment	0
Furniture	2
Other manufacturing	3
Wholesale trade	14
Retail trade	85
Transportation and warehousing	11
Information	8
Finance and insurance	17
Real estate	20
Professional services and management	57
Educational services	10
Health services	67
Arts, recreation, and accommodation	16
Food services and drinking places	36
Other services	42
Total Employment	819

⁸ <http://www.ofm.wa.gov/economy/io/default.asp>

Appendix A. References

1. Department of Ecology Quilcene-Snow Watershed Planning website, <http://www.ecy.wa.gov/apps/watersheds/planning/17.html>
2. Huppert, Daniel, Gareth Green, William Beyers, Andrew Subkoviak and Andrew Wenzl, Economics of Columbia River Initiative, 2004
3. RS Means, Building Construction Cost Data, 55th Annual Edition, 1997

Appendix B. Net effects analysis

WRIA 17 rule matrix – net changes from new rule to Ecology’s existing regulatory practice

Rule Section	Summary of section	Net effect requiring analysis
WAC 173-517-010	Introduction and Purpose	N/A – provisions reflect current laws and background information
WAC 173-517-020	Authority and applicability	N/A – provisions reflect current laws
WAC 173-517-030	Definitions	Most definitions are consistent with agency practice and usage. Unique to this rule are definitions of commercial agriculture and outdoor irrigation See analysis of sections 130 and 150 below.
WAC 173-517-040	Compliance and enforcement	N/A – consistent with statutory requirements for compliance and enforcement
WAC 173-517-050	Appeals	N/A – provisions reflect current laws
WAC 173-517-060	Regulation review	N/A – provisions reflect current agency practice
WAC 173-517-070	Maps	N/A
WAC 173-517-080	Establishment of stream management units	N/A – see analysis for section 090, below.
WAC 173-517-090	Instream flows - establishes monthly instream flow values in 13 streams, for the stream management units and at the control points established in section 050	<p>The rule codifies current permitting practice and statutory obligations for water right permitting.</p> <p>Under the Water Resources Act of 1971, Ecology currently has a legal obligation to maintain water quantities sufficient for the preservation of the natural environment.</p> <p>Current practice for water right permitting includes assessing impacts to flows for all new water rights. Applicants must either demonstrate that flows will not be affected or must mitigate any impacts to flows.</p> <p>-----</p> <p>The rule creates a new conservation standard for permit-exempt well use. See analysis for section 120, below.</p>
WAC 173-517- 100	Closures – closes all streams	Surface Water Source Limitation (SWSL) letters

	and connected ground water	from WDFW administrative close many streams in WRIA 17: Chimacum, Little Quilcene, Salmon, Snow, Tarboo, Contractors, Tommy (Donovan), Andrews (Crocker Lake), and 1 unnamed stream flowing into Port Ludlow.
WAC 173-517-110	Future new water use – generally – this section outlines exceptions to closures and how water rights may be approved in the future	See below for analyses of individual exceptions for coastal areas, interruptible water, and reserves Allows use of rooftop rainwater– relies on site-specific analysis of impacts to authorize the use of rooftop rainwater through the rule. The baseline is that de minimus use of rain barrels is allowed without a permit, and whether permit is or is not required for greater use is ambiguous.
WAC 173-517-120	Conservation Standard for permit exempt well use – establishes a 500 gpd maximum limit and 350 gpd average annual for permit exempt well use. Water use up to 5,000 gpd is allowed if a user can mitigate.	Establishes a new limit on permit exempt well use that applies in most areas (see exceptions, below). Also creates new requirement to mitigate for water use between 500 and 5,000 gpd, if more than 500 gpd is desired. Without rule new wells may use up to 5,000 gpd, but actual use typically much less, therefore, most new uses will not be affected. Water use information for residential use in this area is in the range of the conservation standard. There is also fairly strong demand for commercial agricultural use of permit-exempt withdrawals in this area. Without the rule new permit-exempt well withdrawals could use up to 5,000 gpd. See separate analysis for hydrologic benefit to streams and benefits to fish of this use restriction. See also sections 130 and 150, below.
WAC 173-517-130	Designates coastal management areas – and sets management standards for water use in these areas - Requires connection to public water supply, if available, except in the Port Townsend service area - limits permit exempt wells to the conservation standard	N/A – no analysis required, consistent with local codes - without rule new wells may use up to 5,000 gpd, rule restricts new withdrawals to the conservation standard except for Miller and

	- Miller and Quimper peninsulas – agricultural use up to 5,000 gpd allowed outside of designated areas.	Quimper peninsulas. - without rule other types of uses could use up to 5,000 gpd, and agricultural use of exempt wells would not be limited to these 2 areas. Commercial agriculture defined very broadly in the rule.
WAC 173-517-140	Future appropriations for interruptible use - defines when and where future interruptible uses may occur	N/A – closure with the exception for interruptible uses is consistent with existing regulatory practices. The open periods for Big Quilcene and Chimacum match the seasonal high flow when water is available. The limit on the maximum allocation is consistent with the statutory obligation to protect instream resources, in this case channel forming flows. Conversely the seasonal closures on these streams are consistent with low flow periods when mitigation would be required.
WAC 173-517-150	Reserves of water for future use. The rule establishes reserves in 13 sub-basins. See table	See Table for reserve sizes, uses of reserves and approximate # of households that could be served with reserves. Rule allows for year-round use for water that ordinarily could only be issued on an interruptible basis. Use of reserves generally restricted to any permit-exempt withdrawal, exceptions include: water available for future water rights in Big Quilcene, Little Quilcene and Thorndyke subbasins; and portions of the reserve in Salmon, Snow and Big Quilcene are allocated for agricultural use of exempt wells. Rule establishes restrictions on permit-exempt withdrawals to protect instream flows. Chimacum sub-basin is a special case, because we cannot justify a traditional reserve, an interim 0.1% reserve is established and no outdoor irrigation is allowed – until another source of water is found for mitigation. In addition, if the USGS ground water model identifies places where withdrawals will not affect flows, rule will allow new withdrawals with no restrictions in those places. Analysis needed: Compare value of protection of instream resources to cost of conservation standards. Compare out-of stream and instream value of allocated water.
WAC 173-517-160	Accounting for use under the	See section 150

	reserves	
WAC 173-517-170	Lakes and Ponds	N/A – consistent with statutory requirements
WAC 173-517-180	Measuring water use – metering required for all new uses, including permit-exempt withdrawals	Analysis required – cost to install, maintain, and read meters, and report data to Ecology.
WAC 173-517-190	Conveying stockwater away from streams	N/A - provisions reflect current agency practice. Rule codifies existing program policy.
WAC 173-517-200	Future surface water withdrawals for environmental restoration – describes what projects qualify as environmental restoration projects (one of the exceptions to closure)	N/A – exception for environmental restoration projects is consistent with existing agency practice. Criteria used in rule is consistent with agency practice
WAC 173-517-210	Out of sub-basin water use. Rule requires additional public meeting and report on possible harm to public interest of applicants that propose using water in a different sub-basin.	Analysis required –cost of additional public meeting and report to greater protection of public interest.

From: Teren MacLeod [<mailto:teren@ptproperty.com>]
Sent: Monday, July 09, 2012 8:04 AM
To: awes461@ecy.wa.gov
Subject: Written testimony - WRIA-18, JCAR

Jefferson County Association of REALTORS®
Community & Government Affairs Committee
219 W. Patison Street
Port Hadlock, WA 98339
jcarwa@gmail.com
360-385-6041

July 9, 2012

Ms. Ann Wessel
Washington Department of Ecology
Bellingham Field Office
1440 – 10th Street Suite 102
Bellingham, WA 98225-7028
RE: Dungeness River Water Management Rule Proposed WAC 173 – 518

Dear Ms. Wessel:

This written testimony amplifies the verbal testimony provided from the Jefferson County Association of Realtors® (JCAR) at the June 28th Public Hearing on the proposed Water Management Rule in WRIA-18. This testimony is made by invitation and cooperation with the Sequim Association of Realtors (SAR) and the Washington Realtors (WR). As co-Chair of the Community and Government Affairs Committee for JCAR, we find that many issues and concerns that are being faced here in the proposed Rule for WRIA-18 are remarkably similar to what was and is being experienced in WRIA-17 – in fact, the comments provided to Ecology during the Public Hearing process for the Rule in WRIA-17 have many salient points that can and could and should be applied here, in particular, numbers 3-7, 9, 11 and 12.

While not speaking for the East Jefferson Watershed Council (EJWC), I have also served for 7 years as the Realtor member for EJWC, previously known as the WRIA-17 Planning Unit. In a similar capacity, Marguerite Glover has been a long-time participant (to the extent allowed by the Ecology process in 18) in water and community issues in the Dungeness.

I ask that this testimony also include all formal testimony made by JCAR for WRIA-17 (attached), as well as be received in support of testimony made by SAR and WR to Ecology for the proposed Water Management Rule adopted in WRIA-18 (attached).

The Rule in WRIA-17 created reserves for future water use in many sub-basins. The Chimacum sub-basin saw severe restrictions to water and land use for homes and future agricultural.

Now, no new water is allowed for outdoor gardens and growing food in this, our primary farming area. A study conducted by Hydrologic Services (attached) showed that full build-out of the basin would have a consumptive use of only .3 cfs from permit exempt wells – very similar to water demand projections for the Dungeness - and only a small fraction of the water “right” provided to the streams for instream flow.

While both WRIs are administratively deemed “water-short” and considered critical for fish habitat in terms of water availability, there is much to indicate that actual wet water is available and even plentiful at times. In Chimacum, and in the Dungeness, there is much good news that is not being considered.

A book from the Instream Flow Council (Integrated Approaches to Riverine Resource Stewardship) uses the Dungeness as one of its case studies. It shows 150 cfs used for irrigation in 1979, down to 56 in 2001. With less and less water being used, .3 cfs should be available to the community for future reasonable development without concern.

Rules are not supposed to cost more than the benefit they provide. Ecology has opted to conduct a cost-benefit analysis and small business economic impact study here and in 17. These economic analyses are required to meet a certain standard and meet the maximum net benefits test. They are required to show real costs and benefits, and we, the public, are meant to see and be able to understand those real costs and benefits.

An internal Ecology e-mail suggests the draft Rule for 18 is “upside down by a massively negative cost benefit ratio.” This does not seem to be an isolated case. In WRIA-17, each returning salmon was valued at \$5,000 over a 16 year life span. That same study, the SBEIS for 17, showed, as a benefit, 819 jobs created from the Rule, with 384 in construction! We have instead experienced a steady decrease.

Questions regarding this and other outlandish presumptions were raised by many voices in the proposed Rule process in WRIA-17, by JCAR as well as other organizations and individuals. Information to qualify or quantify the reasoning behind these presumptions was never made available. Clear questions were asked, stemming from the need to provide information back to our members on matters that were, and continue to be, very difficult to understand and explain.

The Concise Explanatory Statement that is required from questions raised in the hearing process is not provided until Rule adoption, with the CR-103. We believe this practice needs to be changed in statute so that formal answers are provided during the hearing process and the CR-102, to allow time for *responsiveness modification* for the proposed Rule prior to the end of the formal comment period.

We ask that you withdraw the proposed Rule and go back to the drawing board for WRIA-18 to develop more information that is understood and available. We ask

that you re-consider the Rule in WRIA-17, particularly as it relates to the draconian restrictions now in place in the Chimacum sub-basin.

We ask that the science used in the stream assessments and water demand studies be peer-reviewed independently to ensure that real and replicable numbers are being used and provided as a basis for the reasoning behind the Water Management Rules and related impacts to communities.

We also ask that the economic impact analyses be independently reviewed and acknowledged, and be reflective of the unique nature of the communities they engage. A full SEPA review should be required.

Sincerely,

Teren MacLeod
Co-Chair, JCAR CGAC

**Attachments to e-mail to Support Testimony in
WRIA-18 Proposed Water Management Rule**

Hydrologic Services Co. – Build-Out Analysis (WRIA-17) (3/9/2009)

Preliminary Cost Benefit, Maximum Net Benefit and Least Burdensome Analyses

Chapter 173-517 WAC

Water Resources Program for the Quilcene-Snow Watershed

Water Resources Inventory Area (WRIA) 17

May, 2009

09-11-014

Small Business Economic Impact Analysis

Chapter 173-517 WAC

Water Resources Program for the Quilcene-Snow Watershed

May 2009

09-11-015

Jefferson County Association of Realtors – WRIA-17 Testimony (7/10/2009)

Testimony – Ag and Natural Resources Committee (1/15/2010)

E-Mail invitation from SAR (6/11/2012)

Washington Realtors/Sequim Association of Realtors Comments (from initial draft and for proposed Rule)



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Realtor Funded Study of the Chimacum Sub-basin Provides Full Build-out Analysis for Review

A draft report presented to the WRIA-17 Planning Unit shows how and where full build-out of the Chimacum sub-basin could occur, given current land use and zoning, and estimates the corresponding water usage. The Washington Realtors® (WR) funded study is helping to identify the actual potential for development in the sub-basin, as a critical piece in understanding how the proposed Water Management Rule (previously referred to as the Instream Flow Rule) would alter development patterns currently allowed in the county's comprehensive plan. The study was conducted by Joanne Greenberg, hydrologist and principal of HydroLogic Services Company (HSC) based in Bellingham, Washington.

Ms. Greenberg had previously conducted a permit-based analysis for the Department of Ecology (DOE) based on building permits issued from 1990 to 2006. The study assumed similar activity in building permits from now to 2024, and indicated over 1300 new homes could be built in the Chimacum sub-basin. Questions regarding those assumptions and subsequent numbers prompted this analysis, based on the actual zoning and land use in the sub-basin.

HSC's analysis showed 481 parcels with the potential for 597 new homes, encompassing 71% of the land mass and 20,325 acres, not including the PUD service area. Much of the undeveloped land in Chimacum is in Rural Residential 1:10 and 1:20, with Prime Agriculture and Commercial Forestry also showing a significant percentage. Residential 1:5 zoning accounts for only 4% of the yet undeveloped homes on buildable parcels at this time.

Ms. Greenberg, putting that in water terms, remarked, "The full build-out of the sub-basin would require 0.32 cfs (cubic feet per second) additional water supply with a net loss or consumptive use of 0.11 cfs to the Chimacum sub-basin hydrologic system, which translates to 71,128 gpd (gallons per day). This allows for 350 gpd for each household and assumes 65% return from in-house use via septic systems and outside water use for lawns and gardens." This compares to the 10 cfs being allotted to the stream in low flow months in the draft flow rule for the Chimacum Creek, which translates to 6.5 million gpd.

The study was initiated by local Realtor, Teren MacLeod, who, as a member of the WRIA-17 Planning Unit and Government Affairs chair for the Jefferson County Association of Realtors (JCAR) recognized the need for a more thorough analysis of future growth trends as it relates to water use and the proposed rule limitations. Teren commented, "We are aware of the trend locally for small sustainable agriculture on rural residential lands. We also understand the importance of local food production and security. I believe we all need to understand the impacts of the rule as it relates to our future needs as a community, and to become more sustainable here on the peninsula."

Washington Realtors funding of this local government affairs program was an essential element in getting the work done, and continues to assist in education and awareness for issues of local import. Bill Clarke, WR Public Policy Director, said, "We see information as key, and encourage, wherever possible, policy decisions based on facts rather than suppositions. We were pleased to support the study for the WRIA-17 Planning Unit."

A Realtors' Friday Forum on April 3rd will offer an opportunity for presentation of the study to the public, JCAR members and affiliates; as well as hear from Jack Westerman and other pertinent guests on the affects the proposed rule might have in east Jefferson County. These Forums, held the first Friday of each month at 9 am at WSU offer ample time for questions on issues of importance to our community.

#

Attached file – Final Draft Build-Out Analysis from HydroLogic Services Company

Note: 597 homes X 350 gpd = 208,950 gpd; w/65% return flow, the 35% consumptive use is 73,132 gpd. A slightly different number than above due to conversions and rounding.

Press contact for more information: Teren Macleod (344-3944)



Promoting expertise in real estate

[Sent via e-mail to cyne461@ecy.wa.gov]

January 4, 2010

Cynthia Nelson
Washington Department of Ecology
PO Box 47600
Olympia WA 98504-7700

**RE: Initial Comments on Draft Version of WAC Chapter 173-518
Dungeness Instream Flow Rule**

Dear Cynthia:

Washington REALTORS® represents the interests of approximately 18,000 members and their clients on matters relating to the development and transfer of residential and commercial real estate. We appreciate the opportunity to submit initial comments on Ecology draft version of WAC Chapter 173-518, the proposed Dungeness Basin Instream Flow Rule ("ISF Rule"), and request that our comments be included in the agency's rulemaking record.

As you know, the proposed ISF Rule, and the recently adopted WAC Chapter 173-517 instream flow rule for the Quilcene basin are of great concern to our local members. This letter includes comments on the rule language as well as suggestions on analysis that should be conducted during the formal rulemaking process.

1. Proposed Flow Levels Are Not "Minimum Flows" and Exceed Ecology's Statutory Authority.

Ecology's authority to adopt minimum instream flow is provided in Chapter 90.22 and 90.54 RCW, and both provide authority to Ecology adopt only "minimum" or "base" flows. RCW 90.22.010 provides that Ecology "may establish minimum water flows or levels . . ." RCW 90.54.020(3)(a) states that rivers and streams "shall be retained with baseflows . . ." Ecology lacks authority to adopt instream flow levels that are not true "minimum flows" or "baseflows." Ecology has defined "baseflow" as "that component of streamflow derived from groundwater inflow or discharge." *Sinclair and Pitts, Estimated Baseflow Characteristics of Selected Rivers and Streams, Ecology Water Supply Bulletin No. 60, Pub. No 99-327 (October 1999).*

The flow levels proposed by the ISF Rule are contrary to the statutory authority granted to Ecology to set flows. A 1986 client advice letter from the Office of the Attorney General to Ecology describes the extent of Ecology's instream flow rulemaking authority. Notably, this letter was written by Senior Assistant Attorney General Charles B. Roe, a preeminent water lawyer and original drafter of the statutes in question. The opinion of the Attorney General's Office, was as follows:

. . . The intent was, simply stated, that streams with certain values were not to be dried up or reduced to trickles. Rather, flows, usually of an amount extending to a limited portion of a

stream's natural flow were to be retained in order to protect instream values of the stream from total relinquishment. Of import here, the thrust of the 1967 legislation was not designed to maintain a flow in excess of the smallest amount necessary to satisfy the protection and preservation values and objectives just noted . . .

Letter from Office of the Attorney General to Eugene F. Wallace, Program Manager for Water Resources, dated February 20, 1986, at 8.

The Attorney General letter further describes a two-step process under which flows that may be higher than a true minimum flow may be adopted through a "maximum net benefit" legal framework. The two-step maximum net benefit process is described (again, by Mr. Roe) in the Washington State Bar Association's Real Property Deskbook:

Of import here, the 1967 and 1971 legislation was not designed to maintain a 'minimum' flow in excess of the smallest amount reasonably necessary to satisfy the protection and preservation of such values. It was not, however, the legislative intent to preclude [Ecology's] power, in appropriate factual situations, to establish higher or 'enhanced' instream flows than those established under the minimum flows provided by RCW 90.22.010.

WSBA Real Property Desk Book, Water Rights, § 117.9(1)(b), p. 132-133.

The PCHB has also confirmed that instream flows are to be minimum flows, which may be increased only through the two-step maximum net benefits test – i.e., that the initial flow level is a true baseflow, not an optimal fish flow:

"Tacoma first urges that base flows may not be set at levels which provide the optimum flow regime for fish. We agree . . . "

PUD No. 1 of Jefferson County et al. v. Ecology et al., PCHB No. 86-118 (1988).

Perhaps more importantly, the PCHB has also concluded that Ecology's instream flow authority enables it only to protect existing instream flows, not establish flows beyond actual flows to provide a "restoration" level of instream flow protection:

The optimum fish flows adopted as base flows by Ecology are also inconsistent with the statutory authorization for base flows. Base flows, as authorized at RCW 90.54.020(3)(a), are those 'necessary to provide for preservation of' fish and related values. The term 'preservation' is not specifically defined, nor ambiguous. . . the term 'preservation' means 'the act of preserving' . . .

The evidence in this matter is that the optimum fish flows adopted as base flows enhance fish habitat beyond that provided by the river in its natural state. This is inconsistent with the statutory plan that base flows 'keep safe' or preserve fish habitat, rather than enhance it.

Id.

The proposed instream flow levels for the Dungeness River far exceed actual flow levels, and are not minimum flows. Specifically, the proposed flows for August, September, and October are 180 cfs. Using the date of September 1, this flow level has only been reached once since 2000.

Year	USGS Flows for Dungeness River
2009	112 cfs
2008	166 cfs
2007	148 cfs
2006	140 cfs
2005	99 cfs
2004	173 cfs
2003	157 cfs
2002	96 cfs
2001	148 cfs
2000	200 cfs

See <http://waterdata.usgs.gov/nwis/uv?12048000> (USGS flow gauge data for Dungeness River).

2. Exempt Well Withdrawals Are Not Causing Significant Impact on Streamflows.

Like in other instream flow rules recently adopted by Ecology, an underlying assumption is that impacts to streamflows have been directly caused by increased reliance on exempt groundwater wells that capture groundwater that otherwise would provide instream flow. While wells of a certain depth and location will capture groundwater that provide baseflow, the presumption that all wells must be regulated to protect surface water flows is not supported by the specific hydrogeology in WRIA 18.

While certain documents relating to the ISF Rule assume that the reliance on exempt wells over the past 30 years has caused instream flow impacts, actual flow data does not support this presumption. Specifically, see flow data again for September 1 for the period of record from 1937 to 1948:

Year	USGS Flows for Dungeness River
1948	162 cfs
1947	146 cfs
1946	237 cfs
1945	143 cfs
1944	97 cfs

1943	174 cfs
1942	140 cfs
1941	212 cfs
1940	162 cfs
1939	156 cfs
1938	160 cfs
1937	174 cfs

The flow levels on September 1 for this historical period of record are similar to actual flows on September 1 from the past decade – in spite of the increasing reliance on exempt groundwater withdrawals that appears to be a cause of Ecology’s concern for streamflows. While a short answer may be that changes in irrigation practices toward more efficient irrigation diversion and delivery methods has resulted in streamflow improvements that more than offset any groundwater withdrawal impacts, the reality is that far more will be done to protect streamflows by focusing efforts on continuing to improve the efficiency of all surface and groundwater diversions.

3. Proposed ISF and Consistency with Local Land Use Plans and Zoning – Further Analysis of Land Use Conflicts is Required.

REALTORS® are greatly concerned that the availability of water in the proposed ISF Rule is inconsistent with land use plans and zoning adopted at the local level. Throughout WRIA 18, our members have assisted clients with transactions in which future development of vacant parcels relies on the use of exempt wells. Hundreds of such parcels of developable land exist within WRIA 18, and are part of Clallam County’s land use plan adopted under the Growth Management Act. While the owners of these parcels believe water will be available in the future, the reality is that the groundwater reservations in the proposed ISF Rule will result in unbuildable lots, causing a severe loss of value to ordinary citizens.

One of the ironies of the conflict with land use plans and zoning created by Ecology’s proposed ISF Rule is that it is the exact conflict that the Legislature sought to avoid through the watershed planning process – a process implemented in WRIA 18. Under RCW 90.82.070(1)(e), each watershed plan shall include “an estimate of the water needed in the future for use in the management area.” Because the watershed plan was developed for WRIA 18 and approved by the Clallam County Commissioners, this information should be put to use. Specifically, Ecology should review the amount of water necessary to implement the County’s land use plan and ensure that sufficient water is made available to avoid a conflict between its own ISF Rule and the Growth Management Act.

A meaningful analysis of the future conflict between ISF rules and local land use plans has been notably absent from the recent ISF rules adopted by Ecology. This is unfair both to the local governments who have spent significant time and expense to complying with the planning requirements of the GMA, and to local landowners who have purchased vacant land that at the time of purchase was buildable – but in the future may not be because of the limited water reservations in the ISF Rule. REALTORS® request that during the formal rulemaking period, Ecology provide a meaningful analysis of whether the water available for future domestic use in WRIA 18 will allow for implementation of local land use plans based on existing zoning.

We don't believe this is asking much – in fact, the Administrative Procedures Act already requires it. Under the APA, Ecology is required to “coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.” RCW 34.05.328(1)(i). The primary regulatory impact of the proposed ISF Rule will be to limit or condition rural development in certain areas of WRIA 18. Obviously, this is the same “activity or subject matter” regulated by the GMA itself, which requires local governments to adopt a comprehensive land use plan specifically including a “rural element” that allows rural development consistent with rural character.

At this point, we don't see how the proposed ISF Rule is coordinated at all with the county's comprehensive plan or with the specific zoning that has been adopted in many parts of the county. For example, some of the limited groundwater reservations provide enough water only for 2 or 3 additional exempt wells to be drilled – far short of the number of buildable lots in those sub-basins. If Ecology is going to adopt a regulation that renders a significant number of lots unbuildable or imposes mitigation requirements on those lots, Ecology should be straightforward with those landowners about the future impact of its regulation.

Finally, Ecology failure to provide sufficient water supply through the proposed ISF Rule violates RCW 90.54.020(5), one of the fundamental requirements of the state's Water Resources Act. This provisions states that “Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs.” The policy enacted by the Legislature that adequate potable water for human domestic needs “shall be preserved and protected” could not be stated more clearly. An ISF Rule that violates statutory authority by adopting more than minimum flows while failing to provide sufficient water for future domestic uses clearly violates the Water Resources Act.

4. Ecology Must Conduct Accurate Small Business Economic Impact Statement and Cost Benefit Analysis of Proposed ISF Rule.

Under the APA, Ecology is required to conduct both a Small Business Economic Impact Statement (SBEIS) and Cost-Benefit Analysis. REALTORS® ask that unlike the recent SBEIS and cost-benefit analysis conducted in the WRIA 17 rulemaking, that the analysis for the proposed ISF Rule specifically analyze (a) negative economic impacts to construction and real estate caused by limiting the water available for domestic use; (b) increased development costs associated with mitigation plans; (c) reductions in property value to landowners; and (d) lost local and state tax revenues associated with unbuildable property.

We hope that Ecology's economic analysis in WRIA 18 will avoid whatever methodology resulted in the extremely dubious conclusions in WRIA 17. For example, the WRIA 17 analysis concluded that as a consequence of adopting the instream flow rule, 819 new jobs will be created. For example, 384 jobs would be created in the construction sector, and 20 jobs in real estate. It is absurd for Ecology to assert that a rule placing a fixed limit on the supply of water available for future residential growth would result in a net gain of over 800 jobs, and specific gains in residential construction and real estate that would not occur otherwise. While we understand that the role of an agency in rulemaking is to produce analysis that defends the agency decision, the conclusion that instream flow rules actually create jobs in real estate and construction that would not exist absent the rule does not pass the straight face test.

5. Under Washington Water Law, Priority Date for Exempt Wells, Like Other Beneficial Uses, Must Be Based on Relation-Back Doctrine

Ecology's draft ISF Rule states that the priority date for exempt wells will be the date that water is put to beneficial use. Proposed WAC 173-518-070(4) states as follows: "The priority date of a withdrawal under the permit exemption in RCW 90.44.050, is the date upon which water is first put to beneficial use."

Ecology's conclusion that a water users priority and the right to use water is established only upon beneficial use is inconsistent with both the historical common law of water rights, and how the State Legislature codified the relation back doctrine. Ecology's current interpretation creates significant risk for lenders, homebuilders, and homebuyers and should be carefully examined and modified.

"The relation back doctrine was created under the principles of equity to allow an appropriator to receive as a priority date the date the appropriator first initiated the use of water and not later when the appropriation was completed. The ability to receive the early priority date depended on the appropriator's diligence in applying water to use.

An Introduction to Washington Water Law, Office of the Attorney General, January 2000, at III:27, citing RCW 90.03.340 and Hunter Land Co. v. Laugenour, 140 Wn. 558, 565 (1926).

The relation back doctrine is relevant to the process used to develop new housing in order to provide certainty to lenders, builders, and homebuyers. If the right to use water for domestic use is not actually obtained until the time of beneficial use, lenders and homebuilders are at significant risk that water may not be available. In the development process, the time from when a construction loan is issued to when the house is completed by a builder and then sold to a homebuyer can often take a number of years. During this period of time, the local government will have to determine whether water is available under RCW 19.27.097 in order for a building permit to be issued. The priority date for this type of project should relate back to when the project was first initiated, to protect the investments of the lender and builders, and so that consumers know that water will be available.

The structure of the mitigation requirements in the proposed ISF Rule further require that the priority date should be based on the relation back doctrine. The proposed ISF Rule would mandate that mitigation plans include financial assurances such as bank letters of credit, a cash deposit, negotiable securities, savings certificates, or surety bonds. *See Proposed WAC 173-518-080.* Even though such assurance would be provided by water users, Ecology appears to offer to no security in return – the priority date is part of the assurance to lenders and buyers as to the validity of water supply and viability of the project. Ecology should not impose costly and complicated mitigation requirements and yet be unwilling to provide regulatory assurance in return.

For permitted water rights, the relation back doctrine was codified so that the "date of filing of the original application" becomes the priority date. RCW 90.03.340. Because exempt wells require no application, the analogous point in time would be the notice of intent filed by a well driller. So long as the project is developed and completed with due diligence, the priority date should relate back to the date of the notice.

Further, Ecology's conclusion in the proposed ISF Rule that the priority date of an exempt withdrawal is the date of beneficial use is inconsistent with how it has dealt with the same legal issue in other instream flow rules. For example, in Chapter 173-503 WAC, the Skagit Basin Instream Flow Rule, the rule provides that exempt withdrawals based on a reservation of water have a priority date of the date of rule adoption when the water reservation was established. For other exempt withdrawals, the

Skagit Instream Flow Rule does not provide a date of priority. This is likely correct, since the exact priority date of an exempt withdrawal may be based on fact specific considerations. In any case, Ecology should not be adopting instream flow rules in different parts of the state that are based on different legal standards.

6. Ecology Lacks Authority to Condition Beneficial Use of Water from Exempt Well on Obtaining Permit for Residential Structure.

The error in Ecology's conclusion that the date of beneficial use of an exempt well determines its priority date is further compounded by its conclusion that "for domestic use, beneficial use shall not be considered to occur until water is used within a permitted residential structure." *Proposed WAC 173-518-070(4)*. By creating the additional legal requirement that beneficial use of water from an exempt well does not occur until a local government has issued a permit, Ecology is unlawfully conditioning the use of an exempt well on the action of a local government. What constitutes "beneficial use" of water is determined by the state water code (See RCW 90.54.020(1)), not by the action of local government.

Further, it is common for construction projects to use (if not require) beneficial use of water at the construction site for uses such as dust control, fire suppression, potable consumption, concrete mixing, and other construction-related uses. Owner-builders often live on-site during construction, not in the "permitted residential structure," but in a temporary structure or recreational vehicle. Such uses of water clearly establish beneficial use.

7. Proposed ISF Rule Must Be Reviewed To Determine Whether It Is Constitutional.

The proposed ISF Rule imposes its regulatory burden solely on water uses that are junior to the priority date of the adoption of the rule. Because all senior uses are not subject to the rule, even though most junior uses will be small withdrawals of water under the exempt well statute, Ecology should review the proposed ISF Rule to determine whether it meets constitutional requirements. In 2008, the Washington State Court of Appeals, Division I, issued a decision invalidating a King County ordinance in part on grounds that King County failed to show that the regulatory restriction on property owners subject to the ordinance was proportional to the impact caused by those property owners. *Citizens' Alliance for Property Rights v. Sims*, 145 Wn.App 649 (2008).

Small exempt groundwater withdrawals will have little or no impact on surface waters in comparison to large groundwater withdrawals or diversions directly from the surface water source. Thus, there is no "proportionality" in the proposed ISF Rule. As the Court said in the CAPR decision,

These holdings are consistent with the fundamental purpose of the Takings Clause, which is *not* to bar government from requiring a developer to deal with problems of the developer's own making, but which *is* "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Id.* at 669, citing *Burton v. Clark County*, 91 Wn.App. 505, 521-22 (1998) and quoting *Dolan v. Tigard*, 512 U.S. 374 at 384.

Ecology's proposed ISF Rule clearly lacks the proportionality necessary to pass muster under a constitutional analysis. We believe Ecology should review the proposed ISF Rule under the Attorney General's Memorandum for Avoiding Unconstitutional Takings of Property established under RCW 36.70A.370 during the formal rulemaking process.

8. Ecology Should Not Proceed With Rule Adoption Until Mitigation Programs Are in Place.

As it has done in other basins, Ecology appears poised to move forward with rule adoption without having mitigation programs in place. As an initial comment on mitigation, many of the areas that would be subject to groundwater closures absent mitigation likely have little impact on surface water flows. Yet, mitigation will be required across the basin regardless of the specific impacts of a proposed withdrawal.

The promise of having a functional, affordable, and rational mitigation program in place at some unknown point in the future after the adoption of an Ecology rule has been problematic in other parts of the state. The strategy of first closing basins through rulemaking and only then developing mitigation strategies is a bad idea that should not be repeated. As evidenced by regulatory closures enacted by Ecology in Skagit or Kittitas Counties, the closure logically results in motivating people seeking to use water before the reservations are depleted (Skagit) or a dramatic increase in the cost of water for transfer that could be part of a mitigation program (Kittitas). By closing a basin first, and then seeking to obtain water rights for mitigation, Ecology creates exclusively a seller's market that drives up costs that will ultimately be paid by homeowners.

During the rulemaking process, it is impossible to analyze the true impacts of the rule because there is no mitigation plan or requirements in place: will mitigation sufficient for an average single-family house cost \$1,000 or \$20,000; will mitigation plan approval take one week or one year? Ecology must seek to develop mitigation requirements as part of the rule itself, so that regulated entities can understand the rule and its impacts. While premise for requiring mitigation in many parts of the basin is dubious, at the least, the mitigation requirements must be integrated into the local land use approval process. Homeowners and small builders should be expected to possess expertise in hydrogeology or provide Ecology or local governments with costly consultant reviews in order to obtain building permits.

Thank you for the opportunity to provide initial comments on the draft ISF Rule.

Sincerely,



Bill Riley, President
Washington REALTORS®

cc: Clallam County Board of Commissioners
Sen. Jim Hargrove
Rep. Lynn Kessler
Rep. Kevin Van De Wege



July 7, 2012

Ann Wessel
Washington Department of Ecology
Bellingham Field Office
1440 – 10th Street Suite 102
Bellingham, WA 98225-7028

**RE: Dungeness River Water Management Rule
Proposed WAC 173 – 518**

Dear Ms. Wessel:

These comments on the proposed Dungeness River Water Management Rule (“Proposed Rule”) are submitted on behalf of Washington REALTORS® and the Sequim Association of REALTORS® (“REALTORS®”). REALTORS® work on behalf of 13,000 members in Washington State, on issues relating to residential and commercial real estate transactions, property development, and homeownership.

Ecology’s proposed Rule represents the culmination of instream flow protection efforts for the Dungeness Basin that date back nearly 20 years. Our local members have actively participated in many of these efforts, including local watershed planning. Throughout this period, REALTORS® appreciate the time taken by Ecology staff to provide information and answer questions from our members, and to meet with stakeholders in the local area to understand the Proposed Rule and how it will impact landowners and the real estate industry.

However, while our members support protecting instream flows and fish species in the Dungeness Basin, we do not support Ecology’s proposed rule. Like other water resource rules adopted by Ecology in recent years, the proposed rule creates a regulatory scheme that is overly complicated and costly relative to the actual impact of future exempt well withdrawals in the Dungeness Basin. While the proposed rule would utilize a mitigation bank to provide water supply, the details of this mitigation have yet to be determined as part of the proposal. Further, we do not believe that much of the legal or economic analysis underlying the rule is factually or legally correct.

For these reasons, REALTORS® join the Clallam County Department of Planning and other concerned citizens in requesting that Ecology delay adopting this or any water

resource rule in the Dungeness Basin. As an alternative to the proposed rule, Ecology should (1) Analyze future buildout and associated consumptive water use from new exempt wells in sub-basins of concern; (2) Determine whether that level of consumptive water use has any measurable effect on streamflows; and (3) If an impact can be shown, utilize its authority under the Trust Water Program and water code to acquire water rights and implement other mitigation strategies.

Over the past few decades, Ecology has invested millions of dollars in streamflow protections in the Dungeness Basin directed at senior surface water rights that have significant direct effects on streamflows. Because of this, irrigation withdrawals have less of an impact on streamflows than occurred decades ago. There is no reason the agency cannot spend a fraction of that amount of money to address any cumulative streamflow impact that may be caused by junior exempt wells in the future.

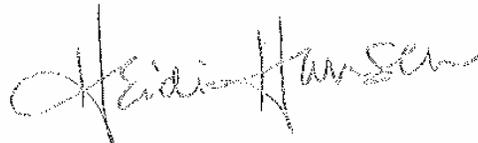
This type of approach would result in protections to instream flows without conflicting with the county's land use plan and zoning, the reasonable expectations of rural landowners, or burdening the county's land use permitting process and average citizens with water restrictions and mitigation requirements that have failed in other parts of the state. In addition, this non-regulatory approach would spare Ecology the time and expense of making itself part of the local subdivision and building permit process, functions that Ecology is neither authorized, funded, or structured to adequately perform.

Our specific concerns with the proposed rule are provided in the attached memo. If you have further questions, please contact Bill Clarke at (360) 943-3301.

Sincerely,

A handwritten signature in black ink that reads "Faye Nelson". The signature is written in a cursive, flowing style.

Faye Nelson, 2012 President
Washington REALTORS®

A handwritten signature in black ink that reads "Heidi Hansen". The signature is written in a cursive, flowing style.

Heidi Hansen, 2012 President
Sequim Association of REALTORS®

Enc.

MEMORANDUM

July 7, 2012

TO: Washington Department of Ecology

FROM: Bill Clarke, for Washington REALTORS/Sequim REALTORS®

RE: Comments on Proposed WAC Chapter 173-518
Dungeness Basin Water Management Rule

1. Proposed Rule Violates State Water Code Requirement That Adequate Potable Water Supply for Human Domestic Needs Be Provided.

The Proposed Rule's failure to provide sufficient water supply through the proposed violates RCW 90.54.020(5), one of the fundamental requirements of the state's Water Resources Act. This provisions states that "Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs." The policy enacted by the Legislature that adequate potable water for human domestic needs "shall be preserved and protected" could not be stated more clearly. An instream flow rule that violates statutory authority by adopting more than minimum flows while failing to provide sufficient water for future domestic uses clearly violates the Water Resources Act. The Proposed Rule fails to include any "adequate potable water supply for human domestic needs." This legal flaw in the rule was noted by Ecology staff:

. . . We intend to appropriate a new water right under 90.54.020(3) to fish and habitat which is 73% of the river. We appropriate 0% to domestic use under 90.54.020(5) . . .

February 28, 2012 email from Tryg Hoff, Exhibit A.

REALTORS® are greatly concerned that the availability of water in the Proposed Rule is inconsistent with land use plans and zoning adopted at the local level. Throughout WRIA 18, our members have assisted clients with transactions in which future development of vacant parcels relies on the use of exempt wells. Hundreds of such parcels of developable land exist within WRIA 18, and are part of Clallam County's land use plan adopted under the Growth Management Act. While the owners of these parcels believe water will be available in the future, the reality is that the Proposed Rule does not provide the water supply necessary to meet "human domestic needs."

One of the ironies of the conflict with land use plans and zoning created by Ecology's Proposed Rule is that it is the exact conflict that the Legislature sought to avoid through the watershed planning process – a process implemented in WRIA 18. Under RCW 90.82.070(1)(e), each watershed plan shall include “an estimate of the water needed in the future for use in the management area.” Because of watershed plan was developed for WRIA 18 and approved by the Clallam County Commissioners, this information should be put to use. Specifically, Ecology should review the amount of water necessary to implement the County's land use plan and ensure that sufficient water is made available to avoid a conflict between its own Proposed Rule and the Growth Management Act.

Further, under the APA, Ecology is required to “coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.” RCW 34.05.328(1)(i). The primary regulatory impact of the Proposed Rule will be to limit or condition rural development in certain areas of WRIA 18, and to make Clallam County water availability decisions for land subdivisions under RCW 58.17.110 and building permits under RCW 19.29.097 subject to the requirements of the rule. Obviously, this is the same “activity or subject matter” regulated by the GMA itself, which requires local governments to adopt a comprehensive land use plan and zoning specifically including a “rural element” that allows rural development consistent with rural character.

At this point, we don't see how the Proposed Rule is coordinated at all with the county's comprehensive plan or with the specific zoning adopted in those parts of Clallam County where water supply from purveyors is not available. After spending millions of dollars and over two decades on GMA and watershed planning efforts, Ecology is now poised to adopt a rule that is inconsistent with the local land use plan by failing to provide adequate water supply – the exact opposite result intended by the GMA and Watershed Planning Act.

2. In the Dungeness Basin, Past Public Investments in Streamflow Restoration Make the Proposed Rule Unnecessary – And Show Why a Capital Approach, Not a Regulatory Approach, Is Best Suited for Instream Flow Protections.

Ecology's recent success in using public funds to restore streamflows in the Dungeness Basin is well-documented. Washington State University and the University of Washington completed a study in 2004 on Ecology's water acquisition program that detailed the extent of efforts in the Dungeness Basin. The report states as follows:

In the Dungeness Area, agricultural water users have been relatively receptive to the Water Acquisition Program. In 2001, thirteen one-year split-season leases (August 1 to September 15) totaling 417 acre-feet per year were completed. The combination of water right leases and irrigation system improvements in 2001

resulted in an estimated 8.5 cfs of additional water in the Dungeness River. In 2003, twenty-five similar split season leases were concluded, each for a three-year period, totaling 10.17 cfs.

Of Water and Trust: A Review of the Washington Water Acquisition Program; Prepared By Nicholas P. Lovrich (Principal Investigator), Washington State University and Dan Siemann, University of Washington (secondary authors omitted), March 2004, page 9, Exhibit B.

These instream flow improvements were the result of significant state and federal funding. As described by Ecology:

State, federal, and local partners have invested 26 million dollars in salmon habitat recovery projects in the last approximately 15 years in the Dungeness of which 10.5 million was for water conservation, irrigation efficiency, and acquisition projects to improve flow in the Dungeness. Diversions were reduced by about 10 cfs during that period. That's about \$1 million per cfs of flow improvement.

January 23, 2012 email from Tom Loranger [Exhibit C]

Finally, these recent improvements in Dungeness Basin streamflows should be viewed in the context of streamflow improvements achieved over the past few decades. A review of Dungeness River water use efficiency programs concluded that diversions from Dungeness River have been reduced from the pre-1979 average of 150 cfs, to 109 cfs before 1990, and down to 56 cfs in 2001.

In recent years, increasing efficiency has created a significant reduction in agricultural diversions. Diversions have dropped from a seasonal average of 150 cfs (4.3 cms) during flood irrigation (before 1979) to 109 cfs (3.1 cms) (before 1990) to 56 cfs (1.6 cms) in 2001.

Integrated Approaches to Riverine Resource Stewardship: Case Studies, Science, Law, People, and Policy, Allan Locke, Hal Beecher (and other co-authors), Instream Flow Council.

The substantive improvements in streamflows must be compared to the relative impact of future exempt withdrawals as calculated by Ecology. Ecology has calculated the likely consumptive impact of exempt wells in the Dungeness Basin, including all regulated tributary sub-basins, as part of the Proposed Rule. In this analysis, Ecology projects for the next 20 years the same rural development growth rate as occurred in the watershed from 1990 – 2010, which Ecology acknowledged was “a flawed assumption as the current well construction [sic] is about half of the rate observed between 1990 and 2010.” *February 2, 2012 email from Dave Nazy [Exhibit D]. Ecology*

then calculated average annual consumption of 100 gallons per day, and maximum daily consumptive use in July of 320 gallons per day, accounting for higher indoor and outdoor water use during the peak water use months of summer. Based on this, Ecology calculated the impacts from new exempt wells as follows:

Average Instantaneous Consumptive Use in WRIA 18 Over 20 years	.5487 cfs
Maximum Instantaneous Consumptive Use in WRIA 18 Over 20 years	1.75 cfs

February 2, 2012 email from Dave Nazy (Exhibit D)

Thus, assuming a rural development growth rate equal to the housing boom period that Ecology acknowledges as “a flawed assumption,” the consumptive impact of all new exempt wells of 1.75 cfs is only 17.5% of the streamflow diversion reductions already achieved by Ecology. Further, while the streamflow improvements occurred with surface water rights having direct and immediate impacts on the Dungeness River and tributaries, these exempt well “impacts” are occurring through wells that will varying distances from surface waters, thus having indirect and often immeasurable impacts.

A different Ecology analysis concluded that the Proposed Rule would prevent impacts of about .77 cfs across the entire basin over the next 20 years. *March 7, 2012 email from Tryg Hoff, Exhibit E.* A third Ecology analysis, based on Office of Financial Management information was summarized as follows: “OFM estimates of new residences in the unincorporated areas of the Dungeness in the next 20 years: 2000 to 3500, @ 350 gallons per day consumptive use per exempt well, this would be 1.1 to 1.9 cfs of consumptive use. *January 23, 2012 email from Tom Loranger, Exhibit C.*

Altogether, these impact estimates compared to past Ecology investments in Dungeness Basin streamflow restoration show why the Proposed Rule should not be adopted. After investing \$10 million in public funds to obtain a 10 cfs improvement, plus an additional \$16 million in related habitat restoration work, Ecology is now poised to adopt a rule for which the agency’s own numbers show a cost impact of between \$7.7 million and \$23 million – all to prevent somewhere between .77 cfs and 1.9 cfs of impact on streamflows. And this level of impact is based on assumed growth rates equal to the housing boom of 1990 – 2010, assuming that groundwater withdrawals have identical impacts on streamflows as surface water diversions, and assuming 350 gallons per day of consumptive use for each new exempt well, none of which are logical assumptions.

3. Exempt Well Withdrawals Are Not Causing Significant Impact on Streamflows

Like in other instream flow rules recently adopted by Ecology, an underlying assumption is that impacts to streamflows have been directly caused by increased reliance on exempt groundwater wells that capture groundwater that otherwise would

provide instream flow. While wells of a certain depth and location will capture groundwater that provide baseflow, the presumption that all wells must be regulated to protect surface water flows is not supported by the specific hydrogeology in WRIA 18.

While certain documents relating to the Proposed Rule assume that the reliance on exempt wells over the past 30 years has caused instream flow impacts, actual flow data does not support this presumption. Specifically, see flow data again for September 1 for the period of record from 1937 to 1948:

Year	USGS Flows for Dungeness River
1948	162 cfs
1947	146 cfs
1946	237 cfs
1945	143 cfs
1944	97 cfs
1943	174 cfs
1942	140 cfs
1941	212 cfs
1940	162 cfs
1939	156 cfs
1938	160 cfs
1937	174 cfs

The flow levels on September 1 for this historical period of record are similar to actual flows on September 1 from the past decade – in spite of the increasing reliance on exempt groundwater withdrawals that appears to be a cause of Ecology’s concern for streamflows. While a short answer may be that changes in irrigation practices toward more efficient irrigation diversion and delivery methods has resulted in streamflow improvements that more than offset any groundwater withdrawal impacts, the reality is that far more will be done to protect streamflows by focusing efforts on continuing to improve the efficiency of all surface and groundwater diversions, and by a capital approach of acquiring mitigation water rights if needed.

4. New Ecology Policy of Closing Basins to Exempt Wells and Requiring Mitigation On A Project-By-Project Basis is Costly and Complex for All Involved.

The Proposed Rule is the latest iteration of Ecology’s new model of instream flow rules – a model that should be abandoned and replaced with something that is simpler and less costly to both regulated entities (homeowners and local governments) as well as to Ecology. Under the rules adopted by Ecology in the 1970’s and 1980’s, instream

flow rules generally included an exemption for domestic use, and sometimes a domestic exemption coupled with a potential in-home domestic exemption. (see, e.g., WAC 173-511-070, Nisqually Basin Instream Flow Rule)

This exemption meant that while Ecology would use the rule to reach its desired outcome of closing basins to new surface and groundwater withdrawals, that at least the in-home domestic portion of exempt uses would remain lawful. This ensures that homeowners have a valid legal water supply, and can meet the requirement in RCW 19.27.097 and RCW 58.17.110 to show proof of water supply, but would still allow Ecology to adopt and regulate against an instream flow level.

Further, the provisions of RCW 90.44.050 provides that certain withdrawals are exempt from the general permit requirements of the water code. Under Ecology's Proposed Rule, all new water uses, including exempt uses must obtain mitigation. This mitigation consists of a portion of an existing water right through the Dungeness Water Exchange. Thus, the ability to use an "exempt" well is now conditioned on the requirement to purchase a portion of a permitted water right – the exempt well is no longer exempt from the permit process.

Ecology's new generation of instream flow rules creates new costs and complexities for all parties involved by inserting the agency and its various untested applications of water law to small exempt uses. As seen in Upper Kittitas County, Skagit County, and Jefferson County, the structure of new Ecology rules makes it extremely costly for homeowners to know whether water is legally available or obtain legal water supply. At their worst, Ecology's new rules close vast areas of land to even in-home domestic water use as no legal water supply is available: there are no water rights to transfer directly or indirectly through a water bank or water exchange and no reasonable way for homeowners to mitigate. Local government land use decisions are greatly complicated, as Ecology is stuck with unmanageable rules of its own making. As an example, Ecology's Skagit Basin instream flow rule resulted in a moratorium on all new exempt wells in a certain part of the basin, which affected whether Skagit County could find that water supply was available for purposes of issuing a building permit. Skagit County inquired of Ecology as to whether water supply was legally available under Ecology's own rule, and was informed as follows:

On behalf of the Department of Ecology (Ecology), I am responding to your email of June 13, 2012 concerning the water right issue related to Thomas Crane's application to Skagit County for a building permit.

On May 30, 2012, Jacque Klug of Ecology sent a letter to Mr. Crane which explained that there is "legal uncertainty associated with your water withdrawal that results from your failure to have a proper building permit," because while it appears that Mr. Crane's water use commenced prior to Ecology's June 27, 2011 issuance of the notice that the Carpenter-Fisher is closed to new water

appropriations, his property was not included in Ecology's accounting of water uses under the reservation, which is currently over-allocated by approximately 3,000 gallons per day. Consequently, Ms. Klug informed Mr. Crane that:

Because we understand that your well is the only source of water supply for your home, and you may have a water right that vested prior to the closure, we will not enforce the closure against you at this time so that you may obtain a building permit and come into compliance with a Skagit County building permit. Please be aware that your water right could be subject to regulation in the future. This could mean being directed to cease using water.

Subsequent to this letter, Skagit County staff requested Ms. Klug to provide a "yes or no" answer as to whether Mr. Crane has a lawful right to water that can support the County's issuance of a building permit. I am writing you now to provide the County with clarification on Ms. Klug's letter to Mr. Crane.

As you are aware, the Washington Supreme Court recently held in *Kittitas County v. Eastern Washington Growth Management Hearings Board* that it is the counties' (and not Ecology's) responsibility to determine whether applicants for subdivisions under RCW 58.17.110 and applicants for building permits under RCW 90.27.097 demonstrate evidence of an adequate legal water supply to enable the counties' issuance of subdivision approvals and building permits. *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144, 178-180, 256 P.3d 1193 (2011). The Supreme Court further pronounced in that decision that Ecology has a role to assist the counties in making determinations of whether adequate water supply is available in making land use decisions. *Kittitas County*, 172 Wn.2d at 180. In that vein, as the administrator of the Skagit River Basin Instream Flow Rule, WAC 173-503, Ecology offers the following recommendation to the County.

For the reasons explained in Ms. Klug's letter, it is not possible to provide a "yes or no" answer as to whether Mr. Crane has a lawful non-interruptible right to water from the Carpenter-Fisher reservation. However, because it presently is not certain that Mr. Crane has a lawful water right, Ecology recommends, at this time, that the County determine that Mr. Crane has not demonstrated evidence of an adequate water supply to support issuance of a building permit under RCW 19.27.097. Ecology is working to develop a broader subbasin-wide mitigation effort for property owners in the Carpenter-Fisher basin which may provide mitigation for Mr. Crane's groundwater withdrawal. Ecology will provide a different recommendation in the future if mitigation for Mr. Crane's water use can be secured, either through his own effort, or through Ecology's current program to develop mitigation to allow for new uses of water in the Carpenter-Fisher Subbasin notwithstanding the closure.

Ecology recognizes that having an unpermitted, inhabited residence is at odds with your public health and safety responsibilities under the County's Building Code and is willing to work with Skagit County to resolve the situation. Yet, given the legal uncertainty associated with Mr. Crane's water use, Ecology believes it would be a disservice to affirm such an uncertain water right through a building permit approval at this time, especially since Ecology is actively working on mitigation projects that may provide legal coverage for Mr. Crane's withdrawal.

. . .

June 25, 2012 email from Alan Reichman, Assistant Attorney General – Ecology Division, to Will Honea, Chief Civil Deputy Prosecutor, Skagit County.

The length and complexities of Ecology's response to Skagit County's basic question, and the ultimate conclusion "that it is not possible to give a yes or no answer" demonstrate the unnecessary complexities that Ecology's new rules introduce to local water availability decisions. Average citizens will be seeking to buy vacant lots and will need to understand "is water supply available" – a yes or no answer is needed in a timely manner for the real estate transaction to function properly and to protect consumers.

REALTORS® believe that if Ecology seeks to address impacts from exempt withdrawals on instream flows, it should do so in a way that does not impose complex and costly regulatory impacts on landowners and local governments. This can be done through Ecology's existing authority in the water acquisition program and trust water statutes. Regulation of small water uses that have little or no measurable impact on streamflows imposes significant costs with little environmental gain.

5. Ecology Lacks Authority to Delegate Functions Necessary to Administer A State Regulation to a Private Entity, and Such Delegation Violates Trust Water Statute

Under the Proposed Rule, Ecology continues its recent practice of closing a basin to all new water rights and exempt uses, and then allowing new water uses to occur if mitigated. The Proposed Rule is unique, however, in that it includes reliance on a private entity, the Dungeness Water Exchange, to provide the mitigation necessary to relieve landowners from the impacts of the rule. For both legal and policy reasons, this rule structure is unlawful and ill-advised.

Ecology's Proposed Rule provides that "water use may be mitigated through the purchase of credits available through the Dungeness Water Exchange." WAC 173-518-070(3)(a)(i). The Dungeness Water Exchange is not part of Ecology or under Ecology's

control, rather, it will be created by Washington Water Trust, a Washington non-profit corporation. As described by Ecology,

The statement ‘Washington Water Trust (WWT) will control water rights’ is inaccurate. What’s true is that WWT will be the administrator of the Dungeness Water Exchange. This organization will act as an exchange to bring voluntary buyers and sellers of water rights together.’”

April 10, 2012 email from Sally Toteff to Pete Church-Smith [Exhibit F].

The Proposed Rule cites Ecology’s legal authority for this type of “water exchange” process as Chapter 90.42 RCW, the state’s trust water statute, and "Dungeness water exchange" is defined as “a water bank pursuant to the Water Resources Management Act, chapter 90.42 RCW. Within RCW Chapter 90.42 are the water banking provisions that relate to the envisioned water exchange process. However, this statute makes clear that water banking authority rests with Ecology – there is no statutory to delegate this function to a private entity. RCW 90.42.100(1) states that “**The department** is hereby authorized to use the trust water rights program for water banking purposes statewide.” (emphasis added) Further, the water banking statute provides that water banking may be used “to provide a source of water rights **the department** can make available to third parties on a temporary or permanent basis for any beneficial use under chapter 90.03, 90.44, or 90.54 RCW. RCW 90.42.100(2)(c). (emphasis added).

Ecology’s intended delegation of the proposed rule’s mitigation functions to the Washington Water Exchange also violates other provisions of the trust water statute. For example, the statute makes clear that trust water rights are to be managed by Ecology, not other parties: “A trust water right acquired by the state shall be placed in the state trust water program and managed by the department. . . .” RCW 90.42.040(1)

REALTORS® note the irony that the real estate industry would take issue with the structure and purpose of the Dungeness Water Exchange, as it likely could provide the only relief from the impacts of the rule on landowners. The point is not that mitigation should not be discussed or that water exchanges are without merit. Our point is that this type of mitigation (or what is known about it at this point) is far more costly and complicated than what is necessary to address future consumptive impacts from exempt wells and other water uses.

Moreover, Ecology’s new policy of closing basins to exempt withdrawals with hopes that water supply or mitigation is brought forward by 3rd parties feels like a series of evolving water policy experiments. Ecology’s regulatory methods and rulemaking analysis are changing from basin to basin and imposing huge costs on landowners, local governments, and the agency. In some areas (Skagit), homeowners have no viable mitigation. In other areas (Kittitas), some select areas were spared the economic

consequences of moratorium only because of the unique existence of the Suncadia water bank and the profit motives of other water rights holders.

6. Proposed Rule Has Numerous Major Parts to Be Determined in the Future Either by Ecology Or By 3rd Parties, and So Cannot Be Adopted.

Ecology's Proposed Rule has a number of major provisions that have yet to be determined or specified in any rulemaking document, and thus the Proposed Rule cannot be adopted. For example, the cost of purchasing mitigation has yet to be determined (and in any event, it appears that Ecology will have no control over the cost). Ecology's document *Frequently Asked Questions – Changes to Water User in the Dungeness Watershed, Exhibit G* ("FAQ") document states "Preliminary estimates for the cost of water mitigation as part of a building permit are \$500 to \$3,500." This cost range includes a seven-fold difference from bottom to top, and it is not known whether this cost range is accurate, or could double or triple. The FAQ document states that the fees for mitigation "go to the Exchange and would be used to purchase additional water rights ("mitigation credits") and also to fund flow restoration projects. From this, it is unclear whether the purchase of mitigation involves purchasing a quantity of water equal to consumptive use or whether it involves both mitigation plus additional "flow restoration."

Further, Ecology's mitigation flowchart in the FAQ document concludes that if water from a public water system is not available, then "Mitigation is required," with a note following stating "Note: As we go to press, a third option is being considered by Clallam County.) However, there are no provisions in the Proposed Rule that describe the regulatory requirements for this county-based mitigation process.

Altogether, the Proposed Rule includes no definite regulatory provisions regarding exactly where mitigation will be available, when, or how much it will cost. Ecology should not adopt this rule until the complete mitigation program can be developed and understood by landowners and other interests.

The promise of having a functional, affordable, and rational mitigation program in place at some unknown point in future after the adoption of an Ecology rule has problematic in other parts of the state. The strategy of first closing basins through rulemaking and only then developing mitigation strategies is a bad idea that should not be repeated. As evidenced by regulatory closures enacted by Ecology in Skagit or Kittitas Counties, the closure logically results in people seeking to use water before the reservations are depleted (Skagit) or a dramatic increase in the cost of water for transfer that could be part of a mitigation program (Kittitas). During the rulemaking process, it is impossible to analyze the true impacts of the rule: will mitigation sufficient for an average single-family house cost \$1,000 or \$20,000; will mitigation plan approval take one week or one year? Ecology must seek to develop mitigation requirements as part of the rule itself, so that regulated entities can understand the rule and its impacts.

7. Ecology Must Clarify Language In Proposed Rule So It Is Clear That Mitigation Is Required For All New Uses

Ecology must clarify the rule language relating to when mitigation is required under the rule. Proposed WAC 173-518-080 paragraph 2 states that “based on this finding, ecology hereby reserves specific quantities of groundwater for future domestic supply only. These reserves are not subject to the instream flows established in WAC 173-518-040 or closures established in WAC 173-518-050.” Proposed WAC 173-518-080(2) then provides for three conditions for the use of groundwater from the reserves, which are (a) the water must be for domestic use; (b) water use shall meet conservation standards; and (c) such water use shall be measured and reported.

If new exempt well water use from the reserves is “not subject to the instream flows [or] closures,” how is there any authority to require mitigation for that water use? Or put another way, what is the purpose of establishing the reserves and declaring that the reserves are not subject to the instream flows and closure, if mitigation is still required? This is yet another example of how the proposed rule in the Dungeness Basin varies from other recent Ecology rules, including those in the Quilcene, Skagit, and Upper Yakima Basins. While it is appropriate for rules to address local considerations, Ecology is using a different legal standard that will be hard for landowners, local governments, and the real estate industry to understand.

8. Proposed Flow Levels Are Not “Minimum Flows” and Exceed Ecology’s Statutory Authority.

Ecology’s authority to adopt minimum instream flow is provided in Chapter 90.22 and 90.54 RCW, and both provide authority to Ecology adopt only “minimum” or “base” flows. RCW 90.22.010 provides that Ecology “may establish minimum water flows or levels . . .” RCW 90.54.020(3)(a) states that rivers and streams “shall be retained with baseflows . . .” Ecology lacks authority to adopt instream flow levels that are not true “minimum flows” or “baseflows.” Ecology has defined “baseflow” as “that component of streamflow derived from groundwater inflow or discharge.” *Sinclair and Pitts, Estimated Baseflow Characteristics of Selected Rivers and Streams, Ecology Water Supply Bulletin No. 60, Pub. No 99-327 (October 1999).*

The flow levels proposed by the Proposed Rule are contrary to the statutory authority granted to Ecology to set flows. A 1986 client advice letter from the Office of the Attorney General to Ecology describes the extent of Ecology’s instream flow rulemaking authority. Notably, this letter was written by Senior Assistant Attorney General Charles B. Roe, a preeminent water lawyer and original drafter of the statutes in question. The opinion of the Attorney General’s Office, was as follows:

. . . The intent was, simply stated, that streams with certain values were not to be dried up or reduced to trickles. Rather, flows, usually of an amount extending to a limited portion of a stream's natural flow were to be retained in order to protect instream values of the stream from total relinquishment. Of import here, the thrust of the 1967 legislation was not designed to maintain a flow in excess of the smallest amount necessary to satisfy the protection and preservation values and objectives just noted . . .

Letter from Office of the Attorney General to Eugene F. Wallace, Program Manager for Water Resources, dated February 20, 1986, at , Exhibit H.

The Attorney General letter further describes a two-step process under which flows that may be higher than a true minimum flow may be adopted through a "maximum net benefit" legal framework. The two-step maximum net benefit process is described (again, by Mr. Roe) in the Washington State Bar Association's Real Property Deskbook:

Of import here, the 1967 and 1971 legislation was not designed to maintain a 'minimum' flow in excess of the smallest amount reasonably necessary to satisfy the protection and preservation of such values. It was not, however, the legislative intent to preclude [Ecology's] power, in appropriate factual situations, to establish higher or 'enhanced' instream flows than those established under the minimum flows provided by RCW 90.22.010.

WSBA Real Property Desk Book, Water Rights, § 117.9(1)(b), p. 132-133.

The PCHB has also confirmed that instream flows are to be minimum flows, which may be increased only through the two-step maximum net benefits test – i.e., that the initial flow level is a true baseflow, not an optimal fish flow:

"Tacoma first urges that base flows may not be set at levels which provide the optimum flow regime for fish. We agree . . . "

PUD No. 1 of Jefferson County et al. v. Ecology et al., PCHB No. 86-118 (1988).

Perhaps more importantly, the PCHB has also concluded that Ecology's instream flow authority enables it only to protect existing instream flows, not establish flows beyond actual flows to provide a "restoration" level of instream flow protection:

The optimum fish flows adopted as base flows by Ecology are also inconsistent with the statutory authorization for base flows. Base flows, as authorized at RCW 90.54.020(3)(a), are those 'necessary to provide for preservation of' fish and related values. The term 'preservation' is not specifically defined, nor ambiguous. . . the term 'preservation' means 'the act of preserving' . . .

The evidence in this matter is that the optimum fish flows adopted as base flows enhance fish habitat beyond that provided by the river in its natural state. This is inconsistent with the statutory plan that base flows ‘keep safe’ or preserve fish habitat, rather than enhance it.

Id.

The proposed instream flow levels for the Dungeness River far exceed actual flow levels, and are not minimum flows. Specifically, the proposed flows for August, September, and October are 180 cfs. Using the date of September 1, this flow level has only been reached once since 2000.

Year	USGS Flows for Dungeness River
2009	112 cfs
2008	166 cfs
2007	148 cfs
2006	140 cfs
2005	99 cfs
2004	173 cfs
2003	157 cfs
2002	96 cfs
2001	148 cfs
2000	200 cfs

See <http://waterdata.usgs.gov/nwis/uv?12048000> (USGS flow gauge data for Dungeness River).

Ecology’s analysis demonstrates that it is minimum instream flows that are typically in excess of the flow of water actually in the river. Based on historical flow gauge data, the actual flows are less than the flows 78% of the time in July, 89% of the time in August, 93% of the time in September, and 82% of the time in October. *February 8, 2012 Memo from Ecology Environmental Assessment Program, Exhibit I.* The Proposed Rule asserts that the “instream flows established in this rule are water rights . . . “ – but how can they be water rights if the water is not there?

9. Under Washington Water Law, Priority Date for Exempt Wells, Like Other Beneficial Uses, Must Be Based on Relation-Back Doctrine

Ecology's draft ISF Rule states that the priority date for exempt wells will be the date that water is put to beneficial use. Proposed WAC 173-518-010(3) states that the rule will apply

“to the use and appropriation of surface and groundwater in the Dungeness River watershed begun after the effective date of this chapter. Unless otherwise provided for in the conditions of the water right in question, this chapter shall not affect:

...

Existing groundwater rights established under the groundwater permit-exemption where regular beneficial use began before the effective date of this chapter.

This provision violates relation-back doctrine that is part of Washington's water code. This flaw has been in prior versions of the draft rule, including prior Proposed WAC 173-518-070(4) that stated as follows: “The priority date of a withdrawal under the permit exemption in RCW 90.44.050, is the date upon which water is first put to beneficial use.”

REALTORS® previously commented on this legal flaw, and it appears that Ecology's response was not to correct the flaw, but to make its erroneous legal conclusion even more obscure. That is, rather than defining the priority date for exempt uses as done in prior rule drafts, the Proposed Rule removes this definition. Ecology's conclusion is further explained in an email from Ann Wessel dated April 9, 2012: “If you wait until the rule is in place to start using a permit exempt well for your intended purposes, your water use will be subject to the rule. You only establish a water right through regular beneficial use of water from your well.” *[Exhibit J]* Or, as explained by Ecology in its Questions and Answer document:

Q: I have already drilled a well but not started using it. Would my water use be subject to the rule?

A: Yes. If you have not started using the well for your intended purpose before the rule takes effect, your water use would be subject to the rule. You do not have an existing right unless you used water from the well for “regular beneficial use” prior to that date.

Ecology's conclusion that a water users priority and the right to use water is established only upon beneficial use is inconsistent with both the historical common law of water rights, and how the State Legislature codified the relation back doctrine.

Ecology's current interpretation creates significant risk for lenders, homebuilders, and homebuyers and should be re-examined by Ecology and modified.

"The relation back doctrine was created under the principles of equity to allow an appropriator to receive as a priority date the date the appropriator first initiated the use of water and not later when the appropriation was completed. The ability to receive the early priority date depended on the appropriator's diligence in applying water to use.

An Introduction to Washington Water Law, Office of the Attorney General, January 2000, at III:27, citing RCW 90.03.340 and Hunter Land Co. v. Laugenour, 140 Wn. 558, 565 (1926).

The relation back doctrine is relevant to the process used to develop new housing in order to provide certainty to lenders, builders, and homebuyers. If the right to use water for domestic use is not actually obtained until the time of beneficial use, lenders and homebuilders are at significant risk that water may not be available. In the development process, the time from when a construction loan is issued to when the house is completed by a builder and then sold to a homebuyer can often take a number of years. During this period of time, the local government will have to determine whether water is available under RCW 19.27.097 in order for a building permit to be issued. The priority date for this type of project should relate back to when the project was first initiated, to protect the investments of the lender and builders, and so that consumers know that water will be available.

The structure of the mitigation requirements in the Proposed Rule further require that the priority date should be based on the relation back doctrine. The Proposed Rule would mandate that mitigation plans include financial assurances such as bank letters of credit, a cash deposit, negotiable securities, savings certificates, or surety bonds. Even though such assurance would be provided by water users, Ecology appears to offer to no security in return – the priority date is part of the assurance to lenders and buyers as to the validity of water supply and viability of the project. Ecology should not impose mitigation requirements and yet be unwilling to provide regulatory assurance in return.

For permitted water rights, the relation back doctrine was codified so that the "date of filing of the original application" becomes the priority date. RCW 90.03.340. Because exempt wells require no application, the analogous point in time would be the notice of intent filed by a well driller. So long as the project is developed and completed with due diligence, the priority date should relate back to the date of the notice.

Further, Ecology's conclusion in the Proposed Rule that the priority date of an exempt withdrawal is the date of beneficial use is inconsistent with how it has dealt with the same legal issue in other instream flow rules. For example, in Chapter 173-503 WAC, the Skagit Basin Instream Flow Rule, the rule provides that exempt withdrawals based on a reservation of water have a priority date of the date of rule adoption when the water reservation was established. For other exempt withdrawals, the Skagit

Instream Flow Rule does not provide a date of priority. This is likely correct, since the exact priority date of an exempt withdrawal may be based on fact specific considerations. In any case, Ecology should not be adopting instream flow rules in different parts of the state that are based on different legal standards.

REALTORS® request a provision be added to the Proposed Rule, if adopted, that provides if an development project was initiated prior to the effective date of the rule through issuance of a land subdivision approval, building permit, or well start card, that the project not be subject to the rule if completed with due diligence. The due diligence standard should be based on the terms of the local government land use approval and existing Ecology policies relating to the demonstration of due diligence for water right permit development schedules.

10. Proposed Rule Must Be Reviewed To Determine Whether It Is Constitutional

The Proposed Rule imposes its regulatory burden solely on water uses that are junior to the priority date of the adoption of the rule. Because all senior uses are not subject to the rule, even though most junior uses will be small withdrawals of water under the exempt well statute, Ecology should review the proposed ISF Rule to determine whether it meets constitutional requirements. In 2008, the Washington State Court of Appeals, Division I, issued a decision invalidating a King County ordinance in part on grounds that King County failed to show that the regulatory restriction on property owners subject to the ordinance was proportional to the impact caused by those property owners. *Citizens' Alliance for Property Rights v. Sims*, 145 Wn.App 649 (2008).

Small exempt groundwater withdrawals will have little or no impact on surface waters in comparison to large groundwater withdrawals or diversions directly from the surface water source. Thus, there is no "proportionality" in the proposed ISF Rule. As the Court said in the CAPR decision,

These holdings are consistent with the fundamental purpose of the Takings Clause, which is *not* to bar government from requiring a developer to deal with problems of the developer's own making, but which *is* "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Id.* at 669, citing *Burton v. Clark County*, 91 Wn.App. 505, 521-22 (1998) and quoting *Dolan v. Tigard*, 512 U.S. 374 at 384.

Ecology's Proposed Rule clearly lacks the proportionality necessary to pass muster under a constitutional analysis. We believe Ecology should review the Proposed Rule under the Attorney General's Memorandum for Avoiding Unconstitutional Takings of Property established under RCW 36.70A.370 during the formal rulemaking process.

The prior appropriation doctrine, the basis for Washington's water rights system, is the same "first in time, first in right" system adopted in most Western states. The

purpose of this legal system was to provide an economic incentive for settlement of Western lands, not ensure proportionate allocation of responsibility for environmental impacts. Ecology's Proposed Rule uses the prior appropriation doctrine in a blunt fashion – exempting all water uses senior the Proposed Rule while subjecting all junior water uses – regardless of the impact caused by any specific junior or senior water right. For this reason, the Proposed Rule is constitutionally suspect.

Guidance required by the Washington State Attorney General's Office on avoiding unconstitutional takings of private property reaches the same conclusion:

Because government actions are characterized in terms of overall fairness, a taking or violation of substantive due process is more likely to be found when it appears that a single property owner is being forced to bear the burden of addressing some societal concern, when in all fairness the cost ought to be shared across society.

Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property, Washington State Attorney General's Office, p. 15 (December 2006).

In addition to the regulatory takings analysis, regulations are also subject to substantive due process requirements. The 14th Amendment of the U.S. Constitution prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law . . ." U.S. Const. Amend. 14 § 1. The test for whether a regulation violates a property owner's substantive due process rights has three parts:

- (1) Whether the regulation is aimed at achieving a legitimate public purpose;
- (2) Whether the regulation uses means that are reasonably necessary to achieve the stated purpose; and
- (3) Whether the ordinance unduly oppresses the property owner.

Guimont, 121 Wn.2d 586, 609 (1993), *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330, cert. denied, 498 U.S. 911 (1990).

For example, in a State Supreme Court case concerning a statute requiring the owner of a closing Manufactured Housing Community (MHC) to pay relocation assistance, the Supreme Court found a violation of substantive due process in that the statute imposed all of the burdens of funding low income housing impacts on a single class of property owners, regardless of their level of impact:

"Likewise, in this case, the costs of relocating mobile home owners, like the related and more general problems of maintaining an adequate supply of low income housing, are more properly the burden of society as a whole than of individual park owners.

. . .

An individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest

of the population. Requiring society as a whole to shoulder the costs of relocation assistance represents a far less oppressive solution to the problem.

Guimont v. Clarke, 121 Wn.2d 586, 609 (1993),

Similarly, Ecology's Proposed Rule imposes all of the regulatory and financial burdens of the rule on junior exempt well users, regardless of the actual level of impact caused by an individual exempt well. While the prior appropriation establishes a legal framework for water rights based on priority date, that priority date system is not intended to supersede fundamental constitutional limitations.

Ecology's past public investments in Dungeness Basin streamflow protections provide an example of streamflow protection methods that as the Guimont Court stated, "require[s] society as a whole to shoulder the costs" of a "general society wide problem." Conversely, imposing the regulatory burden of streamflow protection solely on future exempt well users, who have the smallest level of impact and whose water uses are furthest removed from streamflows, raises similar constitutional issues as those in *Guimont*.

11. Cost Benefit Analysis Is Based on Legally Flawed Baseline And Must Be Redone

Ecology's Cost/Benefit Analysis ("CBA") relies heavily on two legal theories in order to produce cost/benefit numbers that enable adoption of the rule. The first is a new legal theory unveiled by Ecology that contradicts the agency's position in similar rulemakings in other basins. Ecology's initial CBA was based on the premise that until Ecology closed the basin, the owner of vacant land could in the future obtain a residential building permit relying on the exemption in RCW 90.44.050, and that this provided economic value to the landowner. Following this analysis, the draft CBA resulted in numbers in which the costs outweighed the benefits, in violation of the Administrative Procedures Act. Consequently, Ecology received advice from the Attorney General's Office, which advised as follows:

One issue I see that is contrary to the baseline we discussed last week when we were all on the phone is that you are assuming that people who have yet to establish an exempt use in the basin (prospective users) have a current legal right to the exemption and in turn you attach a value to that right (a million bucks for all exempt uses). This is simply not true. A prospective user has no legal right to the use of the exemption until the exemption is established. If a basin is closed and they have yet to establish a beneficial use of water, they have lost nothing other than an expectation . . .

March 19, 2012 email from Steve North, and other Cost/Benefit emails [Exhibit K]

This conclusion and direction from the AG's Office is contrary to the agency's conclusion in 2009, in the exempt well rule adopted in Upper Kittitas County. In that

rule, the agency concluded that “Without the rule, landowners could be expected to continue to develop groundwater supplies under the legal authority of the exemption from permitting found in RCW 90.44.050 and without any mitigation.” *WAC Chapter 173-539A, Upper Kittitas Groundwater Rule Concise Explanatory Statement, page 5.*

While it is true that a water right matures into a vested property rights only after it is applied to a beneficial use, this is a different question than whether an exempt well is legally available to a landowner, and what the priority date is for that withdrawal. The more straightforward analysis is that at all times before the Proposed Rule is adopted, an exempt well would allow the landowner to obtain a residential building permit from Clallam County; after the rule is effective, it would not. RCW 19.27.097 requires the local government to determine whether adequate potable water supply is available for a building needing potable water supply. The Washington Supreme Court recently confirmed this requirement that “. . . GMA provisions, codified at RCW 19.27.097 and 58.17.110, require counties to assure adequate potable water is available when issuing building permits and approving subdivision applications.” *Kittitas County v. Eastern Washington Growth Management Hearings Bd.* 172 Wn.2d 144 (2011)

Under existing law and county ordinance, Clallam County’s application form for this portion of residential building permit review references both RCW 19.27.097 and a Joint 1993 Department of Ecology and Health document titled Guidelines for Determining Water Availability for New Buildings. (*Exhibit L*). An exempt well that met the various water quality related provisions would be considered adequate to obtain a residential building permit. That is current legal baseline in Clallam County.

Further, Ecology’s baseline conclusion that the loss of the ability to use an exempt well caused by an Ecology regulation has no cognizable economic impact on the landowner is demonstrably false. In some Snohomish County areas of the Skagit River Basin, Ecology’s rule created a moratorium on new exempt wells, and thus residential lots were deemed not buildable by Snohomish County. In one example, this reduced the property tax valuation of a 1.03 acre lot from \$122,000 in 2011 to \$40,800 in 2012; a second example shows a reduced value of a 20 acre parcel from \$236,000 in 2011 to \$39,300 in 2012. (*Exhibit M*)

The second theory underlying Ecology’s CBA is that the rule provides significant landowner benefits in terms of preventing or reducing litigation. This “litigation avoidance” is assigned a value of between \$2.4 million and \$4.7 million, with associated “increased certainty in development” being valued at \$19.8 million to \$62 million. For example, Ecology staff researched the Dungeness rulemaking process history in order to find examples of litigation threats to provide to Ecology’s economist.

Quotes from Shirley Nixon at February 7, 2012 Clallam County Board of Commissioners public hearing to gather public input on the draft rule:

‘Litigation between neighbors is the only result if we don’t adopt a rule.’

‘Litigation will occur if a rule doesn’t get adopted to protect flows.’

There should be a transcript of this hearing available from the County.

Is this what Tryg needs?

March 12, 2012 email from Ann Wessel [Exhibit N]

Ms. Nixon’s statement of “neighbors” litigating certainly cannot be in reference to the hundreds of Clallam County citizens who have appeared in large numbers at public hearings and workshops over the past few years in opposition to the rule. Further, it is difficult to understand the “litigation prevention” values assigned to the Proposed Rule, especially when recent Ecology instream flow rules have created more litigation than they have prevented. For example, since the adoption of the 2001 Skagit Basin Instream Flow Rule, there have been two Superior Court appeals to the that rule (one to the original 2001 rule, a second to the 2006 amendment to the 2001 rule); a Snohomish County Superior Court case later appealed to the Court of Appeals on a related local water resource agreement, and numerous Pollution Control Hearings Board appeals. So, while an economist may be able to create a “litigation prevention” value for analytical purposes, the court filings would conclude otherwise.

In the end, the analytical contortions underlying the Proposed Rule are simply too much for the reasonable person to bear. REALTORS® point is not that Ecology should not respond to threats of litigation from environmental attorneys or other interest groups. Rather, our point is that if certain stakeholders insist that exempt well and other consumptive water use impacts be addressed to prevent actual impairment of existing water rights, then Ecology should find a way to calculate and offset those impacts in the least burdensome and most cost effective way possible, and in a way that treats future water users fairly.

12. Ecology Is Required To Complete Maximum Net Benefits Analysis

RCW 90.54.020(2) states that “allocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less costs including opportunities lost.” This means that as part of the rulemaking process, Ecology must perform a maximum net benefits analysis. At least one Ecology staff member raised this point during the rulemaking process:

RCW 90.54.020 lays out how water is supposed to be appropriated. In 2012 we intend to appropriate a new water right under 90.54.020(3) to fish and habitat which is 73% of the river. We appropriate 0% to domestic use under 90.54.020(5). How does this pass the Maximum Net Benefit test?

February 28, 2012 email from Tryg Hoff, Exhibit A.

It is yet unknown whether the rule would pass the Maximum Net Benefit test because Ecology has not done one. Ecology's Policy Statement on Maximum Net Benefits, Policy 2025, concludes that while Ecology will perform a maximum net benefits analysis for some types of instream flow rule making, it will not complete a maximum net benefits analysis when adopting instream flow rules such as the Proposed Rule, but will complete this analysis when adopting a rule creating a reservation of water for uses other than domestic use under RCW 90.54.050. That is, simply because the rule includes an extremely limited reservation of water for indoor domestic use (that exists only if mitigation does not materialize), Ecology avoids the Maximum Net Benefit test requirement by relying on an agency policy that violates the statutory requirement. The decision to not perform a maximum net benefits analysis is also discussed in an Ecology document prepared as part of the rulemaking process.

In this document, Ecology comments acknowledge that if a maximum net benefit test was performed, it could prevent adoption of the proposed rule:

Yikes this section is a problem – see my comment.

We are not doing a maximum net benefits analysis for the WRIA 18 rule – this is consistent with WR program policy: POL-2025. That policy says we don't do it to set flows or for domestic only reservations. For us to use this in the Dungeness we need to either explain why it isn't required or delete this whole section of the focus sheet.

Ann Wessel comments to 3/5/12 Economic Analyses Required for Proposed Water Resource Management Rules, Exhibit O.

However, under the terms of Ecology's own rule, it is clear this test is required. The Proposed Rule defines "allocation" as "the designation of specific amounts of water for beneficial uses." Proposed WAC 173-518-030. The Proposed Rule sets instream flow levels as water rights or "allocations" of water for instream purposes: "Instream flows established in this rule are water rights and will be protected from impairment . . ." Proposed WAC 173-518-040(3). In addition to the allocation of water for instream flows, the rule also establishes reservation of water for indoor domestic use under RCW 90.54.050(1). The rule is clearly an allocation that requires a maximum net benefits analysis, and Ecology's policy concluding that such analysis is not necessary is unlawful.

13. Incorporation of Ecology Rulemaking Documents By Reference

While Washington's water code is statewide, variances are developing at the watershed level through rules adopted by Ecology. While some variation is desirable to reflect local conditions, Ecology's analysis and regulatory positions have varied

throughout the state. This is of concern to REALTORS® who seek to maintain statewide consistency in areas such as real estate seller disclosure, real estate agency law duties, and buyer feasibility inquiries. A comprehensive review of recent and earlier Ecology instream flow rules is beyond the scope of this comment letter, but for purposes of including these other related documents in the administrative record for this rulemaking, REALTORS® incorporate by reference the following documents:

Ecology Rulemaking Documents for:

- WAC 173-503 – Skagit Basin Instream Flow Rule
- WAC 173-517 – Quilcene/Snow Instream Flow Rule
- WAC 173-539A – Upper Kittitas County Ground Water Rule
- WAC 173-532 – Walla Walla Basin Instream Flow Rule
- WAC 173-505 – Stillaguamish Basin Instream Flow Rule
- WAC 173-545 – Wenatchee Basin Instream Flow Rule

June 13 email from Ann Wessel, Exhibit P.

From: Cathy Reed [REDACTED]
Sent: Tuesday, July 03, 2012 7:23 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18E Rule

Time to get back to government by the people for the people - WRIA 18 is a flawed rule ... makes no logical sense and is not wanted by the majority of the people. In listening to the "experts" on your team I found them unable to answer way too many important concerns of the people who actually live here.

Stop the rulemaking timeline until an independent economic study is done .

My question to you and your team is this : If you were being totally HONEST about your opinion on what is in the best interest of our valley you would not be in favor of this rule. AND, if you were living here I bet you would be more than a little outraged at how the tax money has been spent for the past 10 years.

STOP the timeline and let's do an independent study – no bias.

Thank You
Cathy Reed

[REDACTED]

From: Cathy Reed [REDACTED]
Sent: Tuesday, June 26, 2012 9:16 PM
To: Wessel, Ann (ECY)
Subject: Formal comment on water issues

From all the information I am reading it seems pretty obvious that this law is not ready to go into effect. Too many questions by too many people have been left unanswered.

From what I am understanding you are proposing to take away the right of property owners to be in a position to obtain water. I do understand that measures need to be taken to protect our water –How is it that you preserve the right of a landowner to not be burdened with a property that is land locked but can even suggest that an issue like water that is just as important if not more is being denied on some properties - doesn't make any sense.

Please extend the time frame on this issue and allow time for all major questions and concerns to be answered. I believe most have been addressed but unless I missed something many have not been answered. I don't believe it is in anyone's best interest to take away probably the most basic ingredient for survival : water.

Thank you for your time,
Cathy Reed
Clallam County Resident

From: Austin [REDACTED]
Sent: Friday, July 06, 2012 9:54 AM
To: Wessel, Ann (ECY)
Subject: RE: RCW 90.82.130(4)

You say I cannot water my garden? But I use my garden to sustain life, limit my expenses in a financially difficult time, eat healthy food and share with my neighbors. This proposal will curb my ability to sustain our food production?

Also, if I want to sell my home with existing water statutes; do the existing water rights for the property go away? And does the new owner have to mitigate new water rights? Will the new owner have to dig deeper wells and incur hefty drilling fees in doing such?

This will make my existing property much less valuable if this should happen and after I have worked so hard to improve my property all these years and to end up with no benefits to buying my property?

And, if I start failing and need to do water therapy and existing pools are too cold around the county, can I purchase a hot tub/swim spa and be able to fill it for my medical use/physical therapy?

We are pretty much at the end of the water chain in our location. So, how does my location affect water usage as much; it goes right back into the ground and right out to the straights eventually.....?

This proposition is too vague, too clouded, to ambiguous. There are not specific items to grab on to here so that I will know what I will or will not be able to do.

Is like the "Health Care Bill"; it has to be passed before we know what's in it and how it really affects us?

We already do as much as we can to save water usage. I grew up on a ranch in Arizona. I know how to do that, especially when the well dries up for a week or so or the pump motor fails.

Even city and county governments make us get permits for rain barrel collection and even then we have to use a certain kind that the government specs for us to use rather than doing it the old fashioned way of just collecting the water, then distributing the water to our gardens or livestock. They have made it prohibitive. What is wrong with this practice, discouraging us from alternative way to water and not using ground water? This is not logical.

With all this said, *I definitely have BIG problems with the proposal and definitely am against this proposal.*

Respectfully,
Alaine Reeves,
Sequim, WA

[REDACTED]

"If God Brings you to it, He will bring you through it!"

From: Doc Reiss [REDACTED]
Sent: Monday, July 02, 2012 1:07 PM
To: Wessel, Ann (ECY)
Subject: Dept. of Ecology's proposed water regulations

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial.

Thank you for your attention.

Yours Sincerely:

Doc Reiss, Chairman City of Port Angeles Planning Commission

Managing Broker Windermere Real Estate [REDACTED]
[REDACTED]

From: Carol [REDACTED]
Sent: Sunday, July 08, 2012 10:34 AM
To: Wessel, Ann (ECY)
Subject: DOE

Dear Ms. Wessel,

As a voting citizen and a concerned citizen of Clallam County, I write the following edited letter of which I am in agreement.

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by the proposed number of DOE significant limitations on the water usage in our area are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

I am concerned that these limitations will ultimately decrease land values, adversely impact business and real estate-related tax bases, and result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Carol Rutledge
[REDACTED]

From: Andy Sallee [REDACTED]
Sent: Friday, June 29, 2012 4:13 PM
To: Wessel, Ann (ECY)
Subject: Proposed Dungeness Water Rule Comments

6-29-12

RE: Proposed Department of Ecology Dungeness Water Rule

The Department of Ecology's new proposed Dungeness Water Rule goes way too far. It lacks common sense and proper accountability. These new rules raise more questions than answers about our future water rights and uses.

DECREASED PROPERTY VALUES

This new rule will have a detrimental effect on property values and future development. I understand the need for and believe in sensible water management. The current system is working well and does not need change.

SALMON

A few people are saying these new regulations are going to help salmon by keeping the river from drying up. Some of the river flow has likely increased due to the closure of numerous irrigation ditches over the last 30 years. The river is not going to dry up. This is simply ridiculous!

The salmon issue is complex and not going to be solved by pushing more water down the river. The Salmon problem is a result of poor decisions by various state and federal agencies over many years. Getting the Sport Fisherman, Commercial Fisherman, Tribes, Canadians, State Fisheries and other government agencies on the same page is the only real solution that is going to truly help save the salmon.

OVER REGULATION

We are constantly seeing more and more new government regulations, many of which make it harder for people to make ends meet and stifle business. If government agencies continue to burden taxpayers with more and more senseless rules such as the proposed Dungeness Water Rule, we will soon see a "forever stagnant" economy, no jobs, no businesses and no source of funding for government agencies and programs. We all lose. This regulation will adversely affect a lot of people.

THIS LACKS PUBLIC SUPPORT

An estimated 300 people attended the public hearing in Sequim on June 28th. There were over 35 speakers voicing opposition. The only person at the hearing who spoke in favor of the new proposed rule was another state employee. The City of Sequim, Sequim Association of Realtors and Port Angeles Business Association are all opposed to the proposed rule. The overwhelming majority of both people in attendance at the meeting and general population are clearly against the proposed rule.

I believe that the Department of Ecology needs to responsibly listen to and represent the wishes of the People. I urge the Department of Ecology to do the right thing and dismiss the proposed rule.

Thank you for your consideration!

Andy Sallee

[REDACTED]
Sequim, WA 98382
[REDACTED]

6-29-12

RE: Proposed Department of Ecology Dungeness Water Rule

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Thank you for your consideration!

Andy Sallee



From: Don [<mailto:sscs@naturalsettings.org>]
Sent: Wednesday, July 04, 2012 3:06 PM
To: Wessel, Ann (ECY)
Subject: Instream flow rule for the Dungeness River

We strongly support adoption of an instream flow rule for the Dungeness River (and all rivers and streams minimum flows) in WA. State. This river has for many years needed these protections to keep water in the Dungeness sustainable for both people and for fish and wildlife. However, we are concerned that the proposed rule fails to adequately protect the Dungeness River by creating "reservations" for future new uses that will keep the water levels below the minimum flows set in the rule to sustain fish and the river itself. We strongly urge Ecology to adopt the rule but not the proposed reservations for future use until we know the minimum flow amounts will be met. I must also mention that I am sure you are aware of that many species of which are on the endangered species list reside within the waters of the Dungeness River. The state must under "The Endanger Species Act" maintain these minimum flows to meet the acts minimum standards under Federal law.

We look forward to seeing Dept. of Ecology meeting your public trust obligations in adopting this rule into law.

Sincerely,
Don Schluter
President and CEO
Salmon and Steelhead Conservation Society

From: Ardyth Schaumburg [REDACTED]
Sent: Wednesday, July 04, 2012 2:36 PM
To: Wessel, Ann (ECY)
Subject: CALL TO ACTION

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

Ardyth Schaumburg

A large black rectangular redaction box covering the signature of Ardyth Schaumburg.

When injustice becomes law, Rebellion becomes duty
Thomas Jefferson

A large black rectangular redaction box covering the footer area of the email.

From: Don [REDACTED]
Sent: Wednesday, July 04, 2012 3:06 PM
To: Wessel, Ann (ECY)
Subject: Instream flow rule for the Dungeness River

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We look forward to seeing Dept. of Ecology meeting your public trust obligations in adopting this rule into law.

Sincerely,
Don Schluter
President and CEO
Salmon and Steelhead Conservation Society

From: [REDACTED]
Sent: Monday, July 09, 2012 4:59 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18 Question and Concern

Mrs Wessel,

I have been a resident of Sequim my entire life. That would be almost 40 years. In my time here, I have not noticed any difference in the water flows of the Dungeness River. No I have not actually recorded the flows, it is just my observation that they have not changed. This would include a lot of changes in the amount of homes in the area as you can imagine since 1972 when I was born. I will admit that the fish population has declined drastically. That would be due to over fishing by everyone (commercial fisheries, the tribes and yes the sportsman as well). So I am wondering why we need to regulate the wells in the area except for an excuse to trample on the rights of land owners.

I also would like to know why the Instream Flow that is set for the rule is 116% of what the average flow has been in the Dungeness River for the past 69 years? This seems like an impossible flow to achieve.

Please explain.

Thanks,

Bill Schroepfer

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: Monday, July 09, 2012 11:28 AM

To: Wessel, Ann (ECY); [REDACTED]

Subject: Formal remarks WIRA 18

To the Department of Ecology and interested parties, these are my **Formal Remarks** on WIRA 18. Please include them into the record.

These are my formal remarks regarding the proposed WIRA 18 rule.

1: The objective of the entire project is to reduce water use and protect resources while allowing continued use and development. The easiest way to accomplish this is to have the state purchase the mitigation water, have some entity, ie water bank or PUD to metering and monitoring of use and accept payments from the public for the mitigated water, and lastly do not worry about how the public uses their water. I understand how and why ecology controls water use for irrigation, but once it is set aside for a household to use, that should be the end of control.

2: Define "Change of Use" I cannot believe you would enact a rule without having so important a term defined. Any Scientist knows that adjectives are open to subjective interpretation, that is poor rule making at it's best.

3: Remove Ecology's power to enter private property, leaving this in place opens the State up to Federal law suit. The State legislators should be protecting our property rights, where are you? This provision amounts to a public taking of private property rights, property ownership guarantees quite title rights. It is unimaginable that ecology should be allowed to over ride these rights.

4: Fines end venue - Ecology has a long and positive history of working with people to help them get into compliance before fining them. Please codify fines, # of contacts needed before fining, and make sure that the venue for paying fines, hearings & appeals should be in the County in which the violation occurred.

5: Include Gardens, lawns and some qualified outdoor watering within the definition of Domestic use.

6: It is impossible for someone to prove that an existing water connection does not exist - remove this provision.

7: The public should only have to create a mitigation plan if they are obtaining water without the assistance of the water bank. I thought this was the reason for the creation of the bank. Why have impossible to achieve requirements?

8: Lastly I find the wording, not the intent, of the law to be burdensome, and intrusive on the public. The cost of WIRA 18 and Ecology's intended management scheme are not cost effective, nor do they represent best management practices.

We have all seen what happens with over regulation - many people on water front do not get permits for dock repair or for new Buoy's due to the prohibitive cost and long delays, and relatively low probability of being caught or fined.

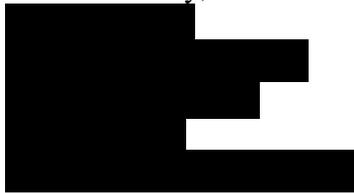
This community was founded on independence and self reliance. The irrigation companies have made extensive voluntary reductions by piping the lines. This intrusive rule/law is not in the public's best interest and the cost for the 3.5 CFS to accommodate a total build out and its administrative costs far exceed the benefits. As proposed the rule will increase the likelihood of law suits against the Department of Ecology by this community. The State has already spent MILLIONS on Salmon restoration, reducing irrigation utilization, improving the efficiency of irrigation and on research to substantiate the rule.

It seems to me that if the State could secure 3.5 CFS of water from all of the irrigators in concert then none of the rule, possible suits for takings, etc. would happen along with the burdensome tax payer expense.

Sincerely,

Leland Schwab

Schwab Realty, Inc.



From: Scott Chitwood [<mailto:schitwood@jamestowntribe.org>]
Sent: Thursday, July 05, 2012 2:31 PM
To: Wessel, Ann (ECY)
Cc: Nelson, Cynthia (ECY); Loranger, Thomas (ECY); Toteff, Sally (ECY)
Subject: comment letter wria 18 rule

Ann – Please see the attached comment letter RE: the east WRIA 18 water resource management rule.

Scott Chitwood
Natural Resources Director
Jamestown S'Klallam Tribe
1033 Old Blyn Highway
Sequim, WA 98382
360-681-4616

"I love any discourse of rivers, and fish and fishing." Izaak Walton



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

July 5, 2012

Ann Wessel
Instream Flow Rule Lead
Department of Ecology
1440 10th St., Suite 102
Bellingham, WA 98225

RE: Comments on the water management rule for the Dungeness watershed, east WRIA 18

Dear Ann: Since the Dungeness – Elwha Watershed (WRIA 18) Plan was adopted in 2005 we have been working on rules to manage water in the eastern portion of WRIA 18. The Plan calls for instream flows to be established and this is what the proposed rule does. In the 7 years it has taken to get to this point all of us that have been involved have learned quite a bit about the laws that govern water in our state and about the hydrology of the Dungeness watershed.

U.S. Census data shows that the population of Clallam County in 1970 was less than 35,000. Sequim and the surrounding area was predominantly an agricultural community populated by about 2,000 people. Forty years later the 2010 U.S. Census data shows the County has a population of 71,404, over twice the population in 1970, with most of the increase occurring in the eastern portion of the County. This rate of growth is higher than what occurred in the state over the same time frame and much higher than what occurred nationwide. The quantity of water needed for this growth was large.

During this 40 year span the eastern portion of Clallam County has experienced considerable growth and development. And during those same 40 years fish populations in the area have experienced a dramatic downturn. Water quality has degraded, water quantity has decreased, habitat has been significantly altered and numerous species have been listed for protection

under the Endangered Species Act. Water management has become a major need.

Precipitation within the Dungeness watershed is considerably less than average for a western Washington watershed. In many respects the Dungeness has a hydrologic cycle that matches watersheds on the eastern side of our state. That is, water flow patterns are driven by runoff in the fall/winter and snow melt in the spring/summer. Loss of our glaciers and permanent snow fields is a well know factor affecting our hydrologic cycle. With the well-advertised climate changes coming the streams and rivers draining the Olympic Mountains are projected to have less water flowing in them during the spring and summer. This will, in turn, have a bearing on future groundwater supplies. The time to set up our water management structure is now.

One critical factor learned while developing the rule was the connectivity that exists between our surface water and groundwater in east WRIA 18. Many thousands of years of erosion and alluvial deposits linked to the last retreat of the Cordilleran Ice Sheet, glacial outwash since that time with rivers and streams draining the runoff and melting snow from the Olympic Mountains have shaped our watersheds and created the layered aquifers. It was enlightening to learn of the connectivity between groundwater and surface water supplies in east WRIA 18.

Irrigation uses have existed for over 100 years in the Dungeness watershed. In the 1920's state courts adjudicated the water rights of the various irrigators and issued certificates for specific volumes of water that when summed exceeded 500 cubic feet per second; far more than what the Dungeness River actually held for much of the annual cycle. We didn't manage water very well in the 1920's.

In the 1940's the state legislature passed a law that allows property owners to drill a well and use groundwater without acquiring a water right certificate. This law was created as a means of encouraging development in rural areas of the state. Much attention was given to how water could be used (up to 5,000 gallons a day or no limit if watering stock) but little attention was given to what would happen if too much water was used. We didn't manage water very well in the 1940's either. It really wasn't until watershed planning was developed, in the 1980's that we began to consider proper management of the public's water resources in the Dungeness.

Because we believe active management of water resources in WRIA 18 is necessary, we are particularly interested in seeing that new water uses be measured. The irrigation companies and districts must measure the amount of water withdrawn from the Dungeness River. It makes sense that new uses of water pumped from the aquifers would also be measured. The proposed rule relies heavily on reserves to allow continued new uses of groundwater. In order to properly manage the reserves we need to know how much new water is being used. Requiring meters on new wells is the only way to accurately collect this information.

Water in this state is owned by the public. Recent policies allow harvesting of rainwater but water that flows in our rivers and streams as well as water that is contained in the aquifers underground, is a public resource. Individuals do not own the water they use. Federal, state and local governments are charged with regulating access and use of the public's water. Because water is a public resource its use must be balanced among all aspects of the public's interest. Water is not only needed by people but by the other resources that these same federal, state and local governments are responsible for. Balance is the key.

While the proposed instream flows are not what all parties would like to see, it is interesting to note that many voices argue for instream flows that are less than that proposed by the rule. We actually believe that there are reaches of the Dungeness that would benefit from higher instream flows and create more diverse habitats beneficial to Dungeness salmon populations. In the interest of seeing a rule adopted we are, for now, willing to see the proposed flows adopted so the work of restoring flows can begin.

During the past year the Treaty Tribes of western Washington have been trying to capture the attention of the federal government with regard to salmon recovery. In the 1850's the Tribes signed treaties that gave the United States title to millions of acres of land in exchange for continued and protected rights, forever reserved, to fishing, hunting and gathering opportunities, among others. These rights have become severely constrained and they are at risk of disappearing. Harvest opportunity has been reduced in many cases and eliminated in others. Hatchery operations, often the only type of production that offers Tribes harvestable salmon, have been reduced. All in the name of salmon populations and their recovery plans. Yet the rate of habitat decline marches on. There is no change in

how we treat our habitat as we continue to alter our shorelines, uplands, riparian zones, floodplains, and channel migration zones. These habitats continue to degrade. Docks continue to be built, rip-rap is as popular as ever, stream bank armoring projects big and small are permitted, and encroachment on valuable fish and wildlife habitat remains common.

Habitat management measures are not keeping pace with harvest and hatchery management measures. We are losing our habitat faster than we can restore it. Salmon are not recovering. Treaty Rights are not protected. Water resource management is needed in WRIA 18.

In the Dungeness watershed, water = habitat = fish. This is a linear relationship, a well proven one. The proposed rule seeks to establish instream flows for fish. People have rights to the water. These rights are in place and have been in place for almost 100 years. People cannot live without water and the rule insures that people will always have rights to water. It is now time for the state to assign rights to water for other resources that cannot live without it, our fish and wildlife.

If we do not manage our water we take away from our habitat which results in loss of fish. The proposed rule will only begin the process of managing the public's water. We need to first stop treating our water resource as if there is no limit to the supply. Then we then need to begin the long and costly job of restoring instream flows which the Dungeness Water Exchange has the potential to facilitate. Restoration of flows is a critical aspect of the rule as we must provide for the needs of fish and wildlife species listed for protection under the Endangered Species Act. Once recovered, local fish populations need to become more productive in order to provide increased harvest opportunity, including that reserved by the Tribes by treaty.

The water resource management rules proposed by the Department of Ecology do not affect water rights reserved by the Jamestown S'Klallam Tribe. We have participated in the east WRIA 18 Executive Committee process and the Local Leaders Work Group process by invitation of the governments involved. We have offered our thoughts and ideas as we have considered the same from others. We appreciate the effort that the Department of Ecology has made to develop the proposed rule and the hard work accomplished by the staff and policy representatives from all entities involved in the rule development. Everyone involved did a good job and should be proud of their contributions.

Letter Ann Wessel
July 5, 2012

page 5

Please do what is necessary to adopt the water resource management rule for the eastern portion of WRIA 18, the Dungeness watershed. We look forward to helping implement the rule. We look forward to the many opportunities to restore flows as allowed by the rule.

Sincerely,



Scott Chitwood

Natural Resources Director

From: Sextro, Bob [REDACTED]
Sent: Friday, June 29, 2012 12:36 PM
To: Nelson, Cynthia (ECY); Walsh, Brian (ECY)
Cc: Wessel, Ann (ECY)
Subject: Dungeness water rule

first, thanks for holding another meeting in Sequim last night and I guess you took public comment so I hope that was productive.

second I have a couple of questions that I thought of last night after I got home and was talking to my wife about the rule, etc

At the open house we were talking to a couple of Clallam county reps and one said that to date none of the large water right holders (I assume irrigation districts) have sign on a contract/deal to give up/sell a portion of there unused rights. if this is the case and signups are not pending and essentially mostly complete, how can the rule proceed or would the rule be delayed until the trust/bank has some significant water reserve to meet mitigation demands?

a follow on to this, I believe Brian/DOE said last night that that between 100 and 200 residential use mitigation requests per year for new water rights were expected, but what about after rule initiation, would you not expect a "run" on the water bank of all the legal parcel owners (like us as we own two platted parcels near Sequim) say upwards of 500 or more to request an individual water right for each one of these legal parcels?

on this later, I would assume that Clallam Cty can tell you/us how many undeveloped, but legal parcels are in WRIA 18, and if it is 500 or more how could the bank meet all these requests if the answer to my first question (water rights yet relinquishing) is NO?

thanks for your work on this rule as I believe it is our responsibility to conserve and protect the Dungeness stream flows from now into the future, but also not put local citizens in a position where their legal land could be come worthless as they have no right to the water below it.

if I need to transition these questions to comments let me know and I can do so, regards, Bob

Bob Sextro

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: anne shaffer [REDACTED]
Sent: Tuesday, July 10, 2012 10:32 AM
To: Wessel, Ann (ECY)

Subject: wria 18 plan

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

As the director of the Coastal Watershed Institute, I am not concerned that these limitations will ultimately stifle development, decrease land values, and adversely impact the business-generated and real estate-related tax bases. They should not be construed as a government "taking" of land. Citizens and landowners have a responsibility to stewardship. These rules begin to address this stewardship. Lastly, and perhaps more important, they do NOT deprive citizens of the right to use their land in keeping with traditions established over many years.

DOE's scientists assertion that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers is sound, and basic logic. DOE is right in it's position that, if development is to continue, there must be in place a water banking and mitigation plan. Minimizing impact and withdrawal should be the first step of this planning.

From my observation the majority of the citizens that affected by these rules support them.

Accordingly, I request that you implement these rules as soon as possible. In CWI's opinion these rules are logical, lawful, and beneficial both ecologically and environmentally.

Thank you for your attention.

Signed

Anne Shaffer
Coastal Watershed Institute

[REDACTED]

From: Kurt Shara [REDACTED]
Sent: Friday, June 29, 2012 9:18 AM
To: Wessel, Ann (ECY)
Subject: Dungeness instream flow.

To whom it may concern,

I support adoption of the proposed instream flow rule for the Dungeness River. However, I am concerned that the rule fails to adequately protect the Dungeness basin from the further over-appropriation of its water resources. The proposed rule allows for withdrawals of water, in the form of reservations for future use. Allowing those future uses, even if partially mitigated, will keep the river from achieving the 180 cfs minimum flow in late summer the rule sets to sustain fish and the river itself. I urge Ecology to adopt the rule but not the proposed reservations for future use until we know the minimum flow amounts will be met.

Sincerely,
Jan Sharar - Aqua Permanente'

From: [REDACTED]
Sent: Tuesday, July 03, 2012 6:06 PM
To: Wessel, Ann (ECY)
Cc: [REDACTED]
Subject: WRIA 18 rule protest

Dear Ms. Wessel,

I would like to protest both the form & function of DOE's proposed WRIA 18 E rule. Upon review of the pending realities associated with this proposed rule, an analysis of objections & overwhelming public sentiment, it is clear that DOE has little substantive science to support this rule. I further call the legality of the action into question as well as the economic value to our community. Additionally, it is not apparent that DOE has the administrative mechanism to "hit the ground running" in the event of it's implementation. This action has all the earmarks of bureaucracy run amuck. Please step back, regroup and re-evaluate not only your plans for implementation, but your science as well. I dare say the harm you will visit on the residents of our area will be far reaching and economically disasterous to literally thousands of tax paying property owners. Challenges in the law are inevitable. At some point, environmental concerns must mesh compatibly with humanity and our quality of life - not crush it.

Respectfully,
W. David Sharman

[REDACTED]

From: [REDACTED]
Sent: Monday, July 09, 2012 4:40 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

Comments for the record on the Dungeness Water Rule:

From [Tom Shindler](#)

[REDACTED]

To: Department of Ecology
Bellingham Field Office
Attn: Ann Wessel
1440 10th Street, Suite 102
Bellingham, WA 98225-7028:

I agree that regulation, technology and development must be fostered to preserve, and in some cases enhance, stream flows in the Dungeness basin, and to guarantee recharge of the aquifer over the long term. Those who say we can continue withdrawing groundwater without limits are dangerously in denial, as nature's limits will be imposed in a very negative way if humans don't impose proactive limits.

However, I strongly disagree with the use of the exchange, and the trading of water rights, money and mitigation as the method to reach the important goals.

As the lead GIS staff person with Clallam County at the time of the formation of this process, I have seen how the basic assumptions and baseline data were generated. This comment is my own personal opinion, but has been informed by my county work.

As I see the issue, both qualitatively and quantitatively, I believe that the water rule and the exchange process being proposed are NOT the most effective way to reach the stated objective. Though I am a fan of using market mechanisms (as the exchange would do) for allocation of communal resources, such mechanisms are only appropriate if the transaction costs are minimal compared to the values being traded. Also, to be fair and effective, a market must also be inclusive of all those who receive benefits, or incur costs from the transactions in the market.

The proposed water rule fails both tests. It will have a large overhead cost compared to the value of the water rights being transacted. It also excludes many beneficiaries from the market, imposing those costs disproportionately on others.

I believe the same objectives can be met more simply and equitably with the following proposal. I urge you to consider offering the citizens of Clallam County the OPTION to accept an alternative like this instead:

1. Secure agreement from Clallam County to limit future development in this basin to that which is presently allowed. This will limit the additional water needed to supply this future development to about 2 CFS, which is an amount of water use that can practically be mitigated.
2. Establish an Aquifer Protection District within the boundaries of the proposed water rule area. Enable this district to assess a small charge to each property to fund a basin-wide mitigation fund. Match that money with State funds, since significant benefits will return to all the citizens of the state.
3. Use this fund to create the projects envisioned for funding by the mitigation process within the current water rule proposal.
4. Lobby the legislature to scale back the amount of water use allowed by an exempt well. 200-500 gallons/day would be more than enough. Anything more should require water rights. 5,000 is absolutely unnecessary, especially in light of the draconian measures envisioned in the water rule.

The above measures form my POLITICAL alternative to the currently proposed Water Rule. I believe it would accomplish at least as much as the proposed rule, with less public and private cost, and a fraction of the political strife. The following are ideas for the physical solutions:

Foremost among mitigation projects should be a network of diversions, pipelines, and infiltration structures designed to withdraw water from surface streams ONLY when the levels are significantly higher than those needed for maintaining healthy stream flows, and infiltrate that water into the aquifer. This would provide aquifer recharge comparable to that which was formerly provided by the un-lined irrigation ditch network, without threatening the low flows of the streams in the basin.

This alternative would have a fraction of the overhead that the exchange would require, and by spreading a small assessment across the water users in the entire basin, would be more equitable at generating the same level of funding. I believe that if this alternative were offered to the voters of the Dungeness Basin, they would vote to impose this fee upon themselves. The same benefits would be achieved, fairly, and with a smaller cost.

Finally, as I listened to the testimony in Sequim last week, I felt that government credibility is on the line here in a very consequential way. As a government employee trying to fairly and helpfully administer development regulations, I know the damage that is done by governmental over-reaching, even if the reasons are well-meaning. The backlash to this proposal as written could be worse than the no-action alternative. We need the citizens of Clallam County to continue to trust government action, and this proposal, when other alternatives are available, will seriously damage that trust, making all future efforts to protect our environment more difficult.

Thank you for considering my views,

Tom Shindler



From: [REDACTED]
Sent: Monday, July 09, 2012 8:30 AM
To: Wessel, Ann (ECY)
Subject: WRIA 18

Dear Ms. Wessel:

I am against the proposed rule for WRIA 18 for the following reasons:

The internal emails in the DOE show a clear disrespect for sound science. The Clallam County Commissioners are not in favor of this rule as presently written. In stream flow rules are set higher than the Dungeness River levels have ever been during the dry season. No peer review of your flawed data by outside hydrologists and geologists has ever occurred. No connection between someone flushing their toilet and the river level has been scientifically proven. All the information in the DOE's internal emails, failed science, and outright fabrications will serve as a corner stone for litigation. I guarantee the the sun will shine on the truth in a court of law. You just can't make it up as you go along. You heard the folks at the Sequim Community Church, 300 to 1 against this rule making. Science, common sense, and reason will triumph for the people. Legal action will follow as this jambdown will not be allowed to stand.

Yours truly,
Dan Shottthafer, Port Angeles, WA

From: RANDY CINDY SIMMONS [REDACTED]
Sent: Saturday, July 07, 2012 11:05 AM
To: Wessel, Ann (ECY)
Subject: FW: Dungeness Water Rule

July 7, 2012

Dear Ann Wessel,

I have been very concerned for some time as I have watched the DOE trying to subtly erode the private property and constitutional rights of U.S. citizens. I have also experienced first hand intimidation tactics and illegal trespass by DOE employees while conducting business as a General Contractor. Thankfully I had done everything according to the BMPs for the projects and was willing to stand up for my rights and assured the DOE agents that I was willing to take legal action against them and the DOE if the harassment, threats and inaccurate accusations did not stop immediately. Fortunately, the DOE acknowledged their wrongful actions and lack of accurate record keeping, after 2 years everything was resolved.

All of this to say that the Dungeness Water Rule is another example of the same tactics only on a larger scale. It looks like it's time to take a stand again, this time along with many other outraged land owners. We see this as another taking of personal property rights and putting an amazing hardship on the community and future generations who would desire to own property and a home. This not only effects home owners, but anyone who desires to live in a rural area in the future. This has been a fundamental right since the founding of this country. This is what our forefathers fought for since 1776 on our soil then, but mostly overseas. The battle has come full circle back to fighting for our own soil, on our own soil.

I hope you understand this letter as a passionate call to you and your Department to reconsider what you are proposing and the true effect economically, environmentally and on the rights of American citizens. I would also strongly recommend you look to outside sources who would give accurate scientific, and economic analyzes instead of suspicious in house data that even some of your own do not agree with.

I am also attaching Kaj Ahlburgs comments and questions because I would also like to know your responses to the same questions he asked.

Sincerely, Randy Simmons

Dear Ms. Wessel,

Please find following my formal comments on the proposed Water Resources Management Program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18, Chapter 173-518 WAC. I will first offer some fairly broad comments, followed by more specific comments on the language of the rule and a list of questions. The questions submitted are part of my formal comments and I request they be answered in your Concise Explanatory Statement. The questions also serve as comments to make the appropriate changes to the extent the questions can not be satisfactorily answered.

General Comments

1. The cost benefit analysis (CBA) is flawed and needs to be redone. It does not include, or even consider, decreases in property values that would result from the proposed rule. It does not include, nor even consider, the diminution in economic activity as fewer people choose to engage in the now more expensive pursuit of building a house and landscaping a garden in the covered area. It also does not include or analyze the resulting loss of sales and property taxes and decrease in employment. It double counts the benefits from “avoided fish losses” and protecting salmon restoration: the only benefit of salmon restoration is avoiding fish losses. It uses an arbitrary and outlandishly high amount of over \$20 million for benefits from avoiding litigation and increased certainty of development if the rule is passed, even though no litigation is pending or even threatened and the only uncertainty of development currently is the one caused by the threat of this rule. On the other hand it ignores the very real cost of the likely litigation if the rule is implemented as now written.

Ecology’s own economist, Mr. Tryg Hoff, is on the record with a formal notice that the costs of the rule exceed its benefits and that it fails under RCW 34.05.328 (1)(d). The economic analysis now served up by Mr. Hoff’s successor is indeed a *“cooked analysis”* that is *“ignoring the economic evidence”*, as Mr. Hoff was pressured, but refused, to prepare. The approach suggested in comment 2. below would go far to bring benefits and costs more into balance.

The rule making process needs to be put on hold while an independent economic cost benefit analysis is done. Only if such analysis results in benefits exceeding costs should the rule making process continue. Any other result would almost certainly result in lengthy and expensive litigation in which Ecology’s position would be very shaky.

2. Instead of requiring “mitigation” payments, Ecology should follow the Skagit County approach of having the State purchase the required water rights through an appropriation in its capital budget. This would also constitute a less burdensome alternative, as required by RCW 34.05.328 (1)(e), and cure the most serious problems with the cost/benefit analysis for the proposed rule currently being upside down, as described in comment 1. above.

3. RCW 19.85.040(1) requires the Small Business Economic Impact Statement (SBEIS) to *“consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue”*. The proposed rule will have material adverse effects on the revenues and profits of realty, building, landscaping and well drilling small businesses. To comply with RCW 19.85.040(1), the SBEIS needs to be revised to reflect that.

4. The metering requirement runs afoul of the RCW 34.05.328 (1)(e) least burdensome alternative rule. There are now sophisticated techniques for estimating well pump usage through residential electric metering, something that would clearly be less burdensome than spending \$1.4 to \$2.1 million on well meters and millions more on monitoring and administration. Your employee Robert Barwin’s e-mail dated March 12, 2012, in which he wrote *“Given the relatively low costs of the metering requirement, I didn’t even bother with describing a metering v. no metering alternative”*, shows there never was the serious consideration of less burdensome alternatives required by RCW 34.05.328 (1)(e) with respect to a requirement expected to cost property owners millions of dollars.

5. There is insufficient peer reviewed scientific data on the hydrologic continuity between all private exempt wells and the streams in the Dungeness basin, particularly wells that draw water from the second or third aquifer down. Ecology claims that the confining beds

separating these lower confined aquifers from the uppermost aquifer and the river beds are, in fact, permeable, but there is no peer reviewed scientific study supporting that assertion.

Section 90.54.030 (3) requires Ecology to “*Develop such additional data and studies pertaining to water and related resources as are necessary to accomplish the objectives of this chapter*”. Ecology should commission such a study, and incorporate its results into the rules before proposing any final version of the rules.

Furthermore, in WRIA 17 a study performed, I believe, by the USGS showed that a very significant amount of water travels directly from the mountains underground through deep confined aquifers to the sea. If this were the case in the Dungeness basin, the focus should shift to attempting to bring some of this water up to the surface to allow it to replenish stream flows when they are low. A similar study should be performed for WRIA 18 East before implementing any rules.

Ecology should produce peer reviewed scientific studies that show which wells in which specific areas, and drilled at what depths into which aquifers, have hydrologic continuity with streams in the Dungeness basin. Only those wells for which hydrologic continuity with rivers in the Dungeness Basin has been proven to have a material and adverse effect on stream flows, reducing them below required minimum instream flows, should the proposed rules subject to the restrictions you want to impose on all wells (metering, reduction in allowed daily withdrawals below 5,000 gpd, restrictions on outdoor watering, mitigation payments, etc.). Ecology has no statutory authority to regulate wells that can not be proven to be hydraulically connected and such an approach would violate the least burdensome alternative requirement.

6. RCW 90.54.020 (1) states that “*Uses of water for domestic, stock watering, ... irrigation, ... are declared to be beneficial.*” Ecology’s attempt to discriminate against outdoor water uses in the future is directly inconsistent with this statement. Such outdoor uses, which are an essential component of the rural life style of Clallam County, under the statute need to be given equal priority to “domestic use”.

7. Ecology’s internal e-mail correspondence (Tryg Hoff, Dave Nazy) on the rule making process shows that the estimated impact of permit-exempt well water withdrawals on the Dungeness is relatively de minimis – as little as 0.77cfs, an amount so small that is inside the error of measurement of the stream flow gauges used. This needs to be kept in mind when balancing the advisability of imposing severe restrictions on land use, development, and availability of affordable housing (restricting supply drives up price) against the benefits for fish habitat that might be achieved.

In “Findings – Purpose 1997 c 360 § 1” in connection with RCW 90.03.255 the legislature found that “*It is the goal of this act to strengthen the state's economy while maintaining and improving the overall quality of the state's environment.*” The draconian restrictions on water use your draft rule would impose in the Dungeness Valley are directly contrary to the legislature’s mandate in the Water Code to balance environmental protection against strengthening the state’s economy. These restrictions also violate the maximum net benefits rule in RCW 90.54.020(2), which mandates that allocation of water resulting in maximum “*total benefits less costs including opportunities lost ... for the people of the state*” (and not the fish of the state, whose interests have to be balanced with, and can not override, the interests of the people).

8. The draft rule exceeds Ecology's statutory authority and contradicts common sense. This authority only extends to requiring instream flows equal to the stream flow derived from groundwater inflow or discharge, protecting currently existing instream flows, but not to requiring flow levels, as this draft rule does, that may be desirable from a fish habitat perspective but that in actuality have rarely been achieved. In some instances the minimum instream flows you propose to set have been achieved historically less than 10% of the time, and in others never. Required minimum instream flows for each stream and each month should be set at levels that for the last 10 years have actually been achieved a high percentage of the time (I suggest 80% or 90%).

WAC 173-518-020 states that the purpose of the rule is *"retain natural surface water bodies ... with stream flows at levels necessary to protect instream values and resources"*. Please explain from where Ecology derives the statutory authority for such a purpose.

9. You propose that the priority date for an exempt well will be the date that water is put to beneficial use, and distinguish between the different subcategories of beneficial uses (e.g., prior domestic use does not give the right to water a garden in the future). Such a rule would be bad public policy.

It would tell a landowner who has a permitted well for future use that he must place it in use now, even if not needed, to avoid losing its use in the future when it will be needed. It would tell a landowner who owns land without a well on it that he perhaps plans to build on later, that he must immediately drill a well and begin using it. This would result, in addition to unnecessary consumption of electricity from running a well pump 24/7 (and think how hard our utilities are working to get everyone to save electricity) in over 1.8 million additional gallons of water (at 5,000 gpd) being extracted from the aquifer every year for each well. Surely this would be a result directly opposed to the goals of the proposed rule. A common sense adjustment is needed.

10. In WAC 173-518-085 (4) (c) you propose that 90% of outdoor water use should be assumed to be consumptive, compared to 10% for indoor use in a house served by a septic system. Instead of penalizing those who use their irrigation water efficiently, you should make allowances for the fact that much more water that flows through a drip system used at night returns to the aquifer, than, for example, would be the case for a sprinkler system used during the day. In fact, the recharge rate for an underground drip system should be no different than that for a septic tank drain field. Your own internal correspondence refers to a recharge rate of about 75% for water in irrigation ditches. The rate should be even higher for water discharged underground by a buried drip system. Any average percentage must be based on scientific evidence and take into account different means of irrigating and different recharge rates.

11. Pursuant to the Watershed Planning Act, Ecology must show deference to the will of the people of Clallam County, as expressed in their comments to you, and through their elected Board of Commissioners and Director of Community Development.

Section 90.82.005 states that *"The purpose of this chapter is to ... provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development."*

Section 90.82.010 states that *"The local development of these plans serves vital local interests by placing it in the hands of people who have the greatest knowledge of both the*

resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources.”

Finally, in “Findings -- 2003 1st sp.s. c 4 § 1” in connection with this RCW 90.82.040 the legislature stated that *“The legislature declares and reaffirms that a core principle embodied in chapter 90.82 RCW is that state agencies must work cooperatively with local citizens in a process of planning for future uses of water by giving local citizens and the governments closest to them the ability to determine the management of water in the WRIA or WRIs being planned.”*

During the June 28 public hearing you heard universal public opposition from almost 300 citizens, the only person in favor of the rule being an employee of a state environmental agency. The Board of County Commissioners is on record as unanimously being opposed to the rule as drafted, as is the City of Sequim, the major town in the area covered by the rule, and the Director of Community Development. A multitude of business and industry organizations from the affected area also are on record opposing the rule as now proposed. Ignoring this opposition and these statutory requirements and legislative intent can only lead to unnecessary litigation and lengthy delays in the implementation of any rule.

Specific drafting comments

1. WAC 173-518-070(2) - Specify under what statutory authority the RCW 90.44.050 right for permit-exempt well water withdrawals can not be exercised if connection to a public water supply is available, even if only at exorbitant cost. In the absence of such authority, remove this provision. Specify precisely what written evidence that connection is not available will be acceptable under the rule.

2. WAC 173-518-070(3)(a)(i) – Specify exactly how drilling to the middle or deep aquifer is encouraged. Given per foot drilling costs, doing so may well cost the homeowner thousands or tens of thousands of dollars extra. How will he be compensated for, or incentivized to incur, such an expenditure?

3. WAC 173-518-075, line 5: add after “ecology approval”, “which shall not be unreasonably withheld”.

4. WAC 173-518-075(3): delete in line 2 “, for any reason,” and add after “adequate” in line 3 “in its reasonable judgment”.

5. WAC 173-518-075(3)(g): add after “ecology”, “in its reasonable judgment”.

6. WAC 173-518-080, 2. paragraph, line 2: add after “supply”, “and outdoor irrigation of an area not exceeding ½ acre per residence” (see general Comment #6 above).

7. WAC 173-518-110(3), line 3: add after “causing”, “material”.

8. WAC 173-518-120: add a subsection (3) reading “Ecology shall initiate a review, and if necessary amend, this rule if requested by the Clallam County government at any time more than five years after its implementation.”

Questions

1. What section in the state statutes provides Ecology with the authority to override RCW 90.44.050 with an agency rule? Since in the proposed rule it seems the availability of

reserves or mitigation can not be assured in all cases, the rule if adopted would override RCW 90.44.050 in those cases.

2. Why didn't Ecology examine depreciated land value as a result of the rule? Land with use of the exemption outlined in RCW 90.44.050 is clearly worth more than when you have to pay for water, or in some cases have the uncertainty as to whether water from reserves or mitigation will be available at all. Why did your economists fail to describe and analyze this?

3. P. 20 of the CBA states that existing state law requires metering of all new withdrawals, including permit exempt ones, in the Dungeness watershed (WRIA 18). Are you referring to all of WRIA 18 or just the area affected by this rule? What section in the RCWs contains that requirement? Where in state law is the area affected by this rule, constituting only a portion of WRIA 18, defined?

4. Pp. 20 – 21 of the CBA introduces the concept of "maximum depletion amounts", which you admit "is new to instream flow rules". On what section of the RCWs does Ecology base its statutory authority to create this new concept now and use it in a rule?

5. P.21 of the CBA states that "new permit-exempt well use may not occur where an existing municipal water supplier can provide service". What constitutes the statutory authority that overrides permission to withdraw public groundwaters under RCW 90.44.050, which contains no such qualification?

6. P.27 of the CBA states that the cost of foregoing outdoor water use, where neither reserves nor mitigation credits are available, is \$1,000 per household. Given the common rule of thumb of spending about 10% of the value of the house on landscaping, and given that the mean price for a detached home in the Sequim area is over \$250,000, how did you arrive at a "cost" of a mere \$1,000 for not being able to have outdoor landscaping for which the homeowner on average would have been willing to pay over \$25,000?

7. Why is litigation part of the "baseline"? What evidence supports this assumption?

8. Do you have hard factual proof for the assertion that "permit-exempt uses are at an elevated risk of being litigated"?

9. Why does the assumption of litigation also include an assumption that development throughout the entire basin would be brought to a halt?

10. How exactly was the \$19.9 to \$62.1 million cost of avoided litigation arrived at?

11. Who exactly would have borne the assumed cost of litigation?

12. How is the assumed cost of litigation divided between attorneys' fees, judgments for damages and reduced property values of the parties assumed to be losing?

13. On what are the assumptions regarding who would win or lose the lawsuits, and the likelihood they would be settled rather than litigated to conclusion, based?

14. Please set forth in detail: (a) the amounts of irrigator water rights (p. 10 of the preliminary CBA mentions 518 cfs in 1924), (b) when they were established, (c) where applicable, the dates on which failure to beneficially use each of those rights led to their automatic extinction, and (d) quantify in cfs rights for how much irrigation water were extinguished on what dates due to lack of beneficial use, and what rights are still in existence (with last known date of beneficial use). It is important to understand that water rights purchased by a water bank from irrigators actually are water rights that have been in recent enough beneficial use to still be valid. It also is important to understand by how much senior withdrawal rights have diminished since 1924 simply through non-use and relinquishment.

15. What is the expected cost in terms of agricultural production and jobs of agricultural land taken out of production as a result of no longer being able to be irrigated because the irrigation water rights were sold to the water bank to be used for mitigation? Why is this cost not included in the cost/benefit analysis?

16. Why does the proposed rule and analysis involve your agreement with the Jamestown S'Klallam Tribe and the proposal to restore stream flows? What legal authority does

Ecology have to *restore* stream flow, rather than just requiring instream flows equal to the stream flow derived from groundwater inflow or discharge?

17. Why does Ecology utilize hypothetical impairment claims? Where is the statutory authority to do so?

18. If all the rivers are hydraulically connected, how can you close some year round and not others?

19. What is “administratively closed”, what was the authority and basis for such an action and when was it taken, and why does Ecology believe this has legal significance as part of the baseline if there currently are no restrictions on permit-exempt wells in the affected area?

20. What statute authorizes the definition of “closure”?

21. What statute authorizes “mitigation” as utilized as part of the definition of “closure”?

22. What statute or legal precedent authorizes the definition of “hydraulically connected”?

23. Why does your least burdensome alternative analysis ignore many less burdensome alternatives, such as the wholesale purchase of water rights by the state or another entity, or impounding excess spring run off water and releasing it back into the rivers in late summer, when stream flows are lowest?

24. How does Ecology decide to close a basin that historically shows less water use every year? Why wasn't historic water use presented in the analysis? Why are water available and water used not described?

25. Who formulated the Overriding Considerations of the Public Interest determinations?

26. Who do you expect will sue claiming that the benefits of this rule don't exceed the costs? What do you expect the plaintiffs' causes of action to be?

27. Table 3 in the CBA projects 162 to 403 new domestic uses per year. How can this be accurate when Clallam County estimates an average of 65 new building permits per year outside a service area? Please explain the calculations.

28. RCW 19.85.040(2)(d) requires that the Small Business Economic Impact Statement include an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule. Why was this not done?

29. RCW 19.85.040 requires the agency to describe in the Small Business Economic Impact Statement the additional costs to businesses, how the agency reduced regulatory requirements, how small businesses were involved in the development of the rule, a description of the steps to reduce the costs on small businesses, and a variety of other items that must be analyzed. Why was this not done?

I look forward to your responses. I strongly urge you to place the rule making process on hold while an independent economic cost benefit analysis is prepared. Thank you for your consideration.

Sincerely,

Kaj Ahlburg

From: Jerry Sinn [REDACTED]
Sent: Tuesday, July 03, 2012 5:54 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18 proposal

Anne Wessel

I am a concerned citizen, a voter, a taxpayer, and a resident in WRIA 18. I have been reading the various articles, letters, statements, etc. relative to the pending ruling. I have also read the ruling (to the extent my technical capability would allow me). Based on my accumulated knowledge, I would offer the following observations and recommendation:

Issues relative to the proposed Water Resources Management Program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18, Chapter 173-518 WAC.

The economic assumptions are questionable. Property values will be negatively impacted, there will be small business impacts in construction and real estate industries, and internal analysis by DOE questions the economic assumptions and process. It appears that least burdensome alternative really was not considered.

At least two local government entities and many individuals have raised serious questions relative to conflicts with existing RCWs. They recommend that the law needs to be change before any decision is made to implement the proposed rule.

The standards to be applied to determine volumes, pricing, wildlife mitigation, etc. rely on data that is not available or at best incomplete. Therefore, it appears that the proposal is a set of assumptions developed to support a predetermined conclusion.

On a more general note, the majority of the local citizens do not support this proposal. It appears that those who stand to profit are driving and supporting the current proposal. A believable case has not been made to support a need for this proposal's conclusions. There is no factual evidence that we are going to have a serious shortage of water. Many of the local citizens do not believe any real assessment of other alternatives, e.g. water from other areas, were considered.

Until these issues are resolved and a third party economic analysis is completed, all efforts to pass this ruling need to stop. It is beyond the authority of DOE to override current law or not meet legal tests of the economics.

Respectfully submitted by,

Jerald R. Sinn
[REDACTED]



From: Steve Smith [REDACTED]
Sent: Thursday, June 07, 2012 3:36 PM
To: Wessel, Ann (ECY)
Subject: water rule

Ann,

I am heavily invested in the Sequim/Dungeness area real estate for my retirement security, and I will lose tens of thousands of dollars in lost property value if this Rule is adopted. The proposed rule is so full of verifiable errors and misconceptions that it is beyond belief that you are proceeding to shove this legislation down the throats of the taxpayer land owners. Your statements about the minimum impact this will have on property values is laughable, almost as laughable as your statements on the impact on the river waters that wells have now and in the future. You and your agency are obviously under the impression that the "Tribe" has some special rights to control the rest of us, they do not. This rule will be a very costly legal battle if you proceed, but we will have no choice. Please take a step back and consider that the taxpayers, not the "Tribe", pay you to do your job. I know at this point you would have to do lots of back-tracking on your positions, but it is the right thing to do and might keep you from defending yourself personally in court. If you think your agency will be your shield from personal liability, check State law.

Steve W. Smith

From: Susan Smith [REDACTED]
Sent: Wednesday, July 04, 2012 6:48 PM
To: Wessel, Ann (ECY)
Subject:

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention. Susan Smith

Susan Sparks Smith Silpada Independent Consultant

[REDACTED]

From: Melissa Soares [REDACTED]
Sent: Friday, July 06, 2012 10:59 AM
To: Wessel, Ann (ECY)
Subject: Dungeness water rule

STOP this rule until an independent study has been completed to support DOE theory.

Melissa Soares
[REDACTED]

From: [REDACTED]
Sent: Monday, July 02, 2012 9:23 AM
To: Wessel, Ann (ECY)
Subject: Instream flow rule for the Dungeness River

Department of Ecology
Dear Ms. Wessel,

I support the adoption of the proposed instream flow rule for the Dungeness River

HOWEVER, I am concerned that the rule fails to adequately protect the Dungeness basin from the further over-appropriation of its water resources.

As currently formulated, the rule allows for withdrawals of water, in the form of reservations for future use. Allowing such future uses, even if partially mitigated, will keep the river from achieving the 180 cfs minimum flow in late summer the rule sets to sustain fish and the river itself

I URGE ECOLOGY **to adopt the rule *but not the proposed reservations for future use*** until we know the minimum flow amounts will be met.

Sincerely,
W. Thomas Soeldner

From: Chuck Sparks [REDACTED]
Sent: Monday, June 25, 2012 4:53 PM
To: Wessel, Ann (ECY)
Subject: Dungeness River Basin Issue

I support adoption of the proposed instream flow rule for the Dungeness River. However, I am concerned that the rule fails to adequately protect the Dungeness basin from the further over-appropriation of its water resources. This rule needs to be strengthened to avoid the loophole that allows for withdrawals of water, in the form of reservations for future use. Allowing "future uses" will, in all likelihood, prevent the river from achieving the 180 cfs minimum flow in late summer the rule sets to sustain fish and the river itself. I urge Ecology to adopt the rule but not the proposed reservations for future use **until we know the minimum flow amounts will be met.**

Thank you for your consideration,

Chuck Sparks

From: Karl Spees [REDACTED]
Sent: Sunday, July 08, 2012 10:34 AM
To: Karl Spees; Wessel, Ann (ECY)
Subject: Dungeness Water Rule - Public Comment by Karl Spees of Clallam County

Ann Wessel

Please submit this comment from a citizen of Clallam County affected secondarily to the Dungeness Water Rule.

The Dungeness Water Rule is part of the giant overreach by the current regime to monopolize a public resource. This is being done using a scheme of creating an artificial crisis with a predetermined solution whose objective is to transfer more power and control from the rightful holders, the citizens, to a malignant overgrown central government. They are using the pretext of protecting the environment while using pseudo-science which does real damage to the environment and the citizens of the County, State, and Country.

We are in an economic crisis. The contrived regulatory controls of the Dungeness Water Rule will make this problem much worse. At the same time the much less urgent ever-present real environmental problems are being neglected. The public treasure is being squandered by these surrogates of the ruling party and regime. Citizens lives and discretionary time are being wasted protecting their property and rights from this out-of-control incompetent corrupt over-paid agency the DoE. These are resources that will never be recovered.

As a true environmentalist, I see that we need to recycle the current group of bureaucrats and their agents and agencies. The Dungeness Water Rule needs to be set aside until we have sane adults in the roles of public service who are acting along Constitutional lines in the best interest of 'we the people'.

Karl Spees
[REDACTED]

From: Janet Stevenson [REDACTED]
Sent: Monday, July 02, 2012 8:53 AM
To: Wessel, Ann (ECY)
Subject: water rights in Clallam County

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government “taking” of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE’s scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE’s own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far outweighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial.

Thank you for your attention.

Signed
Janet M. Stevenson

rk, Inc.

[REDACTED]

[REDACTED]

Subject: Comments on Dept of Ecology's May 2012 Publication no. 12-11-020 entitled:

Preliminary Cost Benefit and Least Burdensome Alternative Analysis

regarding the Dungeness portion of the Elway-Dungeness Water Resources Inventory Area (WRIA) 18.

By

Gerald J. Stiles,
PhD, Public Policy Analysis
Sequim, WA resident

1. Core to and apparently missing from this analysis is an explicit equation linking Dungeness CFS flow and salmon population.

P. 13 of the Analysis states that there was a low of 43 returning fish in 1993. It subsequently notes that "Water conservation . . . and an experimental hatchery program. . . **may have helped** bring the Dungeness Salmon back . . .(emphasis added)" but fails to provide a conclusive linkage.

This conclusive linkage should be established and provided in any subsequent analysis because it is core to this issue in that it establishes a Dungeness flow cause and effect. This analysis appears specious absent this linkage.

2. The section titled "Increased Certainty of Development" starting on p. 33 fails to accommodate the likelihood that water-constrained property values will decrease because WRIA 18 portends a finite, and thus negative, limit on water access. This likelihood should be part of any cost-benefit analysis.

3. The paragraph titles "Protecting Existing Restoration" on p. 35 seems to be based on the specious argument that existing restorations would devalue or decay absent WRIA 18 and cannot stand alone. If this were the case, why were these restorations enacted in the first instance?

Also, and if I recall my doctoral cost-benefit analyses correctly, this analysis violates basic cost-benefit analysis premises in that it accounts for already-expended (i.e., 'sunk') costs. All of the cost-benefit analyses with which I have been associated were exclusively forward-leaning, and never backward-leaning.

And, this section violates RCW 34.05.328 guidance in that it fails to count "probable costs" and, instead, counts 100% of previous restoration costs. Were there even a 10% likelihood of protecting existing restorations, this expected value would reflect \$2.05M rather than the \$20.5M.

4. Finally I comment that this analysis fails to account for the increased toxicity costs attendant with more salmon spawning, dying, rotting, and subsequently contaminating waterways. Informal estimates suggest that wild salmon could be the Peninsula's greatest waterway polluter.

From: [REDACTED]
Sent: Wednesday, June 27, 2012 11:54 AM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

To Department of Ecology:

In wading through in your Dungeness rule documents I've found no mention of the negative effects salmon, per se, have relative to pollution. Nor any analysis as to how this could alter your cost-benefit outcome.

Specifically, salmon spawn, die, decay, and thereby contaminate our streams and waterways. I'm far from being an expert, but I've read that salmon pollution, in itself, can be one of the most toxic contaminants of our waters, to include streams, rivers, and the Strait.

Have you made any cost-benefit analyses relative to this source of pollution? Aside from the economic benefit accrued from salmon production in itself, I doubt very seriously if there's any significant benefit to having this source of pollution present in our waterways and, in terms of ensuring public health safety, I'd guess that the cost side of the equation could be huge.

I'd suggest this could significantly alter the conclusion reached in your cost-benefit analysis. You should consider it, and amend your conclusions commensurately.

Cordially,

Gerald J. Stiles, PhD

[REDACTED]

From: Tony and Mary Jo Storm [REDACTED]
Sent: Thursday, May 10, 2012 4:02 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

Ecology and Health ought to try to fix things that are not broken. To me it seems like a Socialist way to collect MY money and start out by calling it Mitigation.. What a way to ruin a nice place to live!!!!!!!

From: [REDACTED]
Sent: Tuesday, June 26, 2012 10:04 AM
To: Wessel, Ann (ECY)
Subject: Dungeness River comment

Please adopt the proposed in-stream flow rule for the Dungeness River but **without reservations clauses**. Scientists have established 180 cfs minimum flow in late summer and reservations should be avoided until that flow is established and confirmed for a period of time.

I would attend the meeting planned at Sequim but will be out of the country at that time.

Sincerely,

Fred Struck
[REDACTED]

From: Ed Sumpter [REDACTED]
Sent: Tuesday, July 03, 2012 3:28 PM
To: Wessel, Ann (ECY)
Subject: New well regulations

I am strongly opposed to the upcoming unnecessary well restriction. I will personally be financially devastated by the impact these rules will have. I own several parcels that have not been built on. I intend to give them to my children someday for their future use. If this is such an important issue to all of us why are a small minority of landowners being impacted the most? How about spreading the pain? How will this hurt you?? Besides being unnecessary it is unfair. Please reconsider, there is no real reason for this extreme measure. What is the real agenda?

Ed Sumpter Sequim/Washington

From: [REDACTED]
Sent: Thursday, June 28, 2012 1:13 PM
To: Wessel, Ann (ECY)
Subject: [FWD: [SAR] My two cents Costs of the Water Rule to the Community]

I would like to go on the record as agreeing with Mr. Gordon and Ms. Glover.

Gail Sumpter, SFR
[Blue Sky Real Estate Sequim](#)

[REDACTED]

----- Original Message -----

Subject: [SAR] My two cents Costs of the Water Rule to the Community
From: [REDACTED]
Date: Thu, June 28, 2012 12:12 pm
To: [REDACTED]

----- Original Message -----

Subject: Costs of the Water Rule to the Community
Date: 06/28/2012 11:59
From: [REDACTED]
To: <awes461@ecy.wa.gov>, [REDACTED]

Dear Ann, Margarite etc.

I wanted to reiterate Margarite's comments and in addition add a few of my own.

I was Fisheries director for the Summit Lake Paiute tribe in NV, and was responsible for Lahonton Cutthroat trout management. I also assisted in the planning development of housing in ecologically sensitive environment.

I am surprised by the high and unattainable level of river flow being used as the standard. The whole idea is to protect fish populations and retain the ability to provide water for multiple other uses. Most of the decline in fish populations seems directly attributable to ocean catch and influences other than freshwater habitat. Given the history of the fish population in the river at historic flows, and even greater historic irrigation use, it seems illogical to assume that greater water flow will do anything to increase or sustain the fisheries. Lastly given the amount of irrigation water reductions that you and the irrigators have been able to effect, (thank you), it seems that the mitigation of buildout is inconsequential, and the costs are not justifiable.

In the light of when you intend to apply the rule without first having an mitigation process currently available, it you are showing no regard for the existing community, including those who intend to build in the future.

PLEASE do not make the rule law until AFTER the water bank or some other entity is available to make getting a building permit possible. If not all future development is halted and dependant on the whim of the people who have water to sell.

Also, please allow individuals to purchase mitigation water for existing parcels, in the absence of building permit, you could tie the water mitigation to a specific parcel of land. That way people who own land can reasonably expect to be able to use it, and people who want to subdivide and could purchase mitigation water and protect the properties ability to be developed in the future.

By tying the ability to purchase mitigation to a building permit you are discouraging retention of undeveloped land, reducing values, increasing the urgency to develop by creating a fear that water will not be available later. While the lack of water may be an inevitable future, why cause so much stress, and loss of property values when it is easily avoided.

The least expensive and best management practice, would be to include in the rule a mechanism for the state to fund the purchase of mitigation water and a pass through fee for the end users of the water. It is the department of ecologies responsibility to monitor the river, and transfer water rights, giving that power over to the water bank or making them the only facilitator makes them a private utility. The Public Utility district #1 of Clallam county, (PUD) is a public utility with transparent and public records. They have a long history of protecting the environment and the community, and are part of our community. You could easily enter into an agreement with PUD, train their employees on how to effect the transfer of water and they already do water metering. Again, why recreate what we already have in a utility company?

Lastly while ecology has stated that it is not their intention to have all wells metered and pay for mitigation, your rule obviously states otherwise.

Thank you for protecting the environment on our behalf and working with us in this endeavor

Sincerely
Scott Gordon [REDACTED]

-----Original Message-----

From: [REDACTED]
Date: 6/27/2012 3:54:54 PM
To: awes461@ecy.wa.gov
Subject: Formal Comment for the Dungeness Water Management Rule

The Cost-Benefit Analysis for WRIA 18 East was done very quickly, by two new economists. The Benefits of this proposed Rule most certainly do not outweigh the Costs. We do not know if there would have been a lawsuit from the Tribe or anyone else, without the Rule. The percentage given for the "possibility of a lawsuit" was 14.1 to 27.7--less than a one-third chance.

The Cost of this Rule is estimated at \$7.7 million to \$23.1 million, over 20 years. Not taken into

consideration was the devaluing of property. All real estate agents know that water is incredibly important in marketing a piece of property. Currently, anyone with an exempt well has the ability to

** Use up to 5,000 gallons per day for their own domestic use, and

** Water up to 1/2 acre of lawn or garden, and

** Provide stock water in unlimited quantities, and

** Use up to 5,000 gallons per day for commercial or industrial uses.

While all of these uses are very valuable, I don't really think the last one was given much thought, in the CBA. We are a rural area. Most of us have a garden, or tomatoes, or berries, or flowers. Many of us buy fruits or vegetables or flowers from farm stands, and farmers' markets. The ability to have greenhouses on your property, to provide produce for Sunny Farms, or restaurants, farm stands, street fairs, etc., is huge. The ability to water orchards, to sell fruit, from your own farm stand, or otherwise, is huge. The ability to water beautiful plants and flowers, and sell them, is huge. You can water a small nursery, with water from your exempt well. Without the Rule, this can be done. And, without the Rule, someone with a well, who wanted to expand to that use, could do also do it.

Also very valuable is garden/home orchard/berry watering part of the exemption. People enjoy their own produce, without pesticides. A garden is part of our rural lifestyle. And, the stockwatering portion of the exemption is also very valuable. Many of us buy local, organic beef, from farmers, or from Sunny Farms. We eat it, at local restaurants. We eat our own eggs from chickens, or buy eggs from farm stands. Some people raise rabbits or chickens or sheep or cows, for their own food. Without the ability to stock water, that choice is gone.

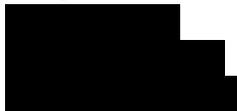
In the future, if this Rule passes, as proposed, real estate agents will be asked which properties have the ability to water outside. Which properties have the ability to have greenhouses. Which ones will be able to have, and water, an orchard. Those properties that do not have these grandfathered features, will most definitely go down in value. They will have to ask far less, for their property, than what they could today. Most certainly, they will ask the County Assessor for relief from their taxes. And, as their taxes are reduced, other taxes must go up. Grandfathered water properties will increase in value.

How much water could we buy, with the Cost of this Rule? A LOT. How many restoration or storage projects could we undertake? Quite a few.

The Benefits absolutely do not outweigh the Costs.

Sincerely,

Marguerite A Glover



From: Dick Sutterlin [REDACTED]
Sent: Wednesday, July 04, 2012 9:11 AM
To: Wessel, Ann (ECY)
Cc: Marguerite Glover
Subject: Water Rule

Ann,

D.O.E. KEEPS TELLING US THAT WELL WATER IS TAKING FROM THE RIVER. I HAVE LIVED HERE FOR FORTY YEARS AND THE RIVER LOOKS NOW AT ALL TIMES OF THE YEAR JUST LIKE IT DID WHEN I CAME HERE AND AS YOU VERY WELL KNOW MANY WELLS HAVE BEEN DRILLED IN THOSE FORTY YEARS. Please explain how you can justify D.O.E.s position. It seems to me that all this is headed towards is a money grab by some one. Please don't try to tell me that meters are going to be installed for monitoring purposes only.

Thank You,

Dick Sutterlin.

From: Dick Sutterlin [REDACTED]
Sent: Monday, June 11, 2012 2:55 PM
To: Wessel, Ann (ECY)
Subject: Water Fiasco Letter

Dear Ms. Wessel,

I and my family have lived in the Sequim area since the 70's. We have seen a lot of changes. But, we haven't noticed much change in the amount of water in the Dungeness River. It looks the same, each year, as it always has!

I question the need for a water management rule, in the first place. The majority of the water being used, that impacts the river, is from irrigation. We need our farms to be healthy, and continue. But, with the loss of so many large farms, over decades, the irrigators now take far less water from the river.

Secondly, how can you put a rule in place, without us knowing what the regulations and actions that will affect us all, actually are? How much will the mitigation fee be? How much will it cost to buy additional outside water? Will we all be able to buy additional irrigation water? Where will the Water Exchange be located? How will they be run? Who will oversee them? There are many questions--too many!

I would like to make this my formal statement, to be added to the record for the Dungeness Water Management Rule.

Thank you.

Dick Sutterlin
[REDACTED]

From: [REDACTED]
Sent: Tuesday, July 03, 2012 3:33 PM
To: Wessel, Ann (ECY)
Subject: Dungeness/Sequim Pending Water Rule

It is indeed a sad statement regarding the lack of integrity displayed by Dept. of Ecology. The decision to disregard the internal data of your own employee smacks of the "fix is in." You owe a fiduciary responsibility to the citizens that your pending rule will impact. As a taxpayer I am truly dismayed by the process to date. I urge a neutral third party be retained to re-examine findings to date. It is only the right thing to do.

Daniel W. Tash

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Tuesday, July 03, 2012 3:33 PM
To: Wessel, Ann (ECY)
Subject: Dungeness/Sequim Pending Water Rule

It is indeed a sad statement regarding the lack of integrity displayed by Dept. of Ecology. The decision to disregard the internal data of your own employee smacks of the "fix is in." You owe a fiduciary responsibility to the citizens that your pending rule will impact. As a taxpayer I am truly dismayed by the process to date. I urge a neutral third party be retained to re-examine findings to date. It is only the right thing to do.

Daniel W. Tash

[REDACTED]

[REDACTED]

[REDACTED]

From: Jack Tatom [REDACTED]
Sent: Wednesday, July 04, 2012 10:07 AM
To: Wessel, Ann (ECY)
Subject: Dungeness Water Plan

DOE,

I am adamantly opposed to the implementation of the proposed Dungeness water plan. I think it is unnecessary, ill-conceived and will have a severe long lasting impact on the economy of the area.

Jack Tatom

Department of Ecology
Dungeness Open House / Public Hearing
PUBLIC COMMENTS

Name:	GARY TERRELL
Company/Organization:	
Mailing Address:	
City, State, Zip:	
Email Address:	

Please print your comment(s) below:

Ecology's economic assumptions are not valid
as are the stream flow estimates for the
last 25 yrs.

THE DAMAGE THAT WILL BE DONE TO THE COUNTY'S
ECONOMY IN THE CATEGORY OF DIMISHED PROPERTY
VALUES AND SLOWER GROWTH HAVE NOT BEEN
CONSIDERED.

Ecology's science is flawed - ASSUMPTIONS
THAT HAVE BEEN REACHED ARE NOTHING
BUT THEORY AND OPINION.

Date Received:	_____
Facilitator:	_____
Page ____ of ____	

From: JG Thomas [REDACTED]
Sent: Monday, July 09, 2012 6:26 AM
To: Wessel, Ann (ECY)
Subject: Water Resources Mgmt. Program - Dungeness (WRIA 18)

Dear Ms. Wessel -

We attended the open house and public hearing on June 28, 2012. Please accept this email as our objection to the proposed "rule" for the following reasons. In 2004 we purchased 8.12 acres off of Happy Valley Road in Sequim (County) with the intention of one day building our retirement home. Each successive year, we improved this acreage and completed a short plat. As part of the requirements of the County, we had to prove that there was water available. Each year after the purchase we made improvements, installed two wells, two pumps, provided road access improvements, underground electrical, telephone and lines for Highland Irrigation water and finally the septic system. You can appreciate that none of this is an inexpensive venture. Now, when we are at the threshold of finally building our home, we are facing an unknown financial impact that very possibly will prohibit the use of our property unless we pay a ransom in the form of mitigation (fees), face a loss not only of improvement costs but serious devaluation of our property.

Included in our Policy of Title Insurance are rights to water that have passed from one heir to the next and to ALL assigns thereafter. Having had no formal notification ever over the years, we continued with the development of the short plat, following all the rules - obtaining required permits, etc. With no inkling or fear concerning water, we proceeded.

After the open house and public hearing, we came away with certainty that this plan has not been realistically proven to be necessary. It has been proven that there is ample water in this area and that private water well usage has diminished consistently. In these economic times, it is virtually unbelievable that the Washington DOE will precipitate the loss of income to Clallam County (due to devaluation of property), to the individual property owners for the loss of use of their property and inhibit economic growth to peripheral businesses involved with property development.

Frankly, we don't understand why the DOE would further the downfall of the economy by imposing this unproven rule (theory).

Submitted by,

Jim & Geri Thomas
[REDACTED]

To Ann Wessel

Dept of Ecology A formal Comment

My Husband and I attended the WRIA 18 open house last night and I want to state in simple terms that all the intellectual data, charts etc. did not impress us. We can see that this whole ploy about the fish is a cover up for the control of the water and to be able to meter wells in the future. The state as we all know is in dire need of revenue and they are looking for all ways to derive income from the tax payers. It is the spending of money in our state that has caused this dilemma and has giving the Dept of Ecology the task to create a reason for well metering so as to extort more needed income. The state has calculated the lost revenue earned from private wells in the state of Wa.

What is not mentioned is the need for jobs in this state and that is what should be addressed rather than all this money being spent by the Dept of Ecology. This is all smoke and mirrors to detract from the real issues. And last night was just a dog and pony show because in the scheme of things to come the Dept of Ecology has been given rights to do what ever it wants to do no matter how many of us object with great facts.

Nelson and Carol Topper as citizens of the State of Wa., are totally against the control approach to the water that WRIA 18 will be mandating in the Dungeness Valley..

Nelson and Carol Topper

Toppers Real Estate

██████████

██████████████████

Dear Ms. Ann Wessel,

Last month, Ecology published a proposed instream flow rule for the Dungeness River. Instream flows are the minimum amount of water that people need to leave in the river to sustain fish.

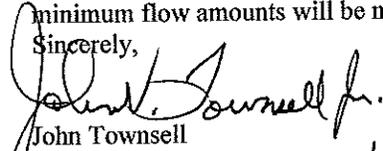
I support adoption of the proposed instream flow rule for the Dungeness River.

However, I am concerned that the rule fails to adequately protect the Dungeness basin from the further over-appropriation of its water resources.

The proposed rule allows for withdrawals of water, in the form of reservations for future use. Allowing those future uses, even if partially mitigated, will keep the river from achieving the 180 cfs minimum flow in late summer the rule sets to sustain fish and the river itself.

I urge Ecology to adopt the rule but not the proposed reservations for future use until we know the minimum flow amounts will be met.

Sincerely,


John Townsell


THANK YOU!

RECEIVED
JUN 27 2012
DEPT OF ECOLOGY
BELLINGHAM FIELD OFFICE

From: Bookmaster [REDACTED]
Sent: Monday, June 25, 2012 4:30 PM
To: Wessel, Ann (ECY)
Subject: Proposed instream flow rule for the Dungeness River

Dear Ms. Ann Wessel,

Last month, Ecology published a proposed instream flow rule for the Dungeness River. Instream flows are the minimum amount of water that people need to leave in the river to sustain fish.

I support adoption of the proposed instream flow rule for the Dungeness River.

However, I am concerned that the rule fails to adequately protect the Dungeness basin from the further over-appropriation of its water resources.

The proposed rule allows for withdrawals of water, in the form of reservations for future use. Allowing those future uses, even if partially mitigated, will keep the river from achieving the 180 cfs minimum flow in late summer the rule sets to sustain fish and the river itself.

I urge Ecology to adopt the rule but not the proposed reservations for future use until we know the minimum flow amounts will be met.

Sincerely,

John Townsell

[REDACTED]

[REDACTED]

From: Carol Treat [REDACTED]
Sent: Wednesday, July 04, 2012 9:45 AM
To: Wessel, Ann (ECY)
Subject: Water

We are very opposed to this new water plan you are proposing. In our neighborhood, there are 5 properties that have not been developed, and now, thanks to this new water plan may never been due to the expense involved. Our property values have already decreased due to the economy and will further decrease if this plan is implemented.

This area is already a depressed area and will continue to get worse as no one will be able to afford to build here. There seems to be no logical reason for this plan, so please listen to the people that live, and work, here.

Sydney & Carol Treat

From: Richard Trudeau [REDACTED]
Sent: Tuesday, May 15, 2012 6:32 AM
To: Wessel, Ann (ECY)
Cc: Doug; Karl Spees; Keith Olson; muddyshoes; Tracy Horn
Subject: Dungeness Watershed

Dear Ecology;

If half of what I read about what you are trying to do up in the Dungeness country is true, you are way out of line. Chapter 173-518 WAC Water Resources Mgmt. program for the Dungeness portion of the Elwha-Dungeness – Water Resources Inventory Area (WRIA 18) – New Rule, is extremely disappointing. You people are way out of line. I, as well as the DOE, served on a committee to write the Smoke Mgmt rules for Silvicultural Burning 25 years ago. The DOE was out of control, trying to control, then, as it is with this new rule.

Maybe you should contribute to Planned Parenthood and try to improve on the real cause of most of these “problems”. OR. Go to the greatest ecologically impacted areas of the state and start cleaning up those disasters and getting rid of all the people. Here’s a few examples; Bellingham, Seattle, Tacoma, Olympia.

No questions, just a nay vote for the “New Rule” for WRIA 18.

Rick Trudeau
Quinault

From: Lin Ulin [REDACTED]
Sent: Friday, July 06, 2012 9:24 AM
To: Wessel, Ann (ECY)
Subject: formal complaint

I would like to register my formal complaint against the wira 18 rule as it stands today. I do not believe the studies used are accurate and the whole rule should be reviewed in its entirety or revoked.

--

Linda J. Ulin (Lin)
Windermere Real Estate Sequim East



From: David Unruh [REDACTED]
Sent: Monday, July 09, 2012 5:00 PM
To: Wessel, Ann (ECY)
Subject: Dungeness Instream Flow and Water Management Rule

My name is David Unruh and I live at [REDACTED] WA and I am against the new water management plan being developed and discussed for it does not treat the water problem head by requiring all who are in the Dungeness water shed to have meters. I would encourage you to put dollars into education for water conservation to achieve your goals of inflow rather than mandated solution for buy in my all will be more effective in solving the water problem as you have defined it. Not sure of that either but I an no expert on this except I look in the river every time I cross the Dungeness and I have never seen fish not being able to go up stream.

From: Allan van der Waal and Joanne Beck [REDACTED]

Sent: Tuesday, June 12, 2012 1:37 PM

To: Wessel, Ann (ECY)

Subject: Dungeness Water Rule

Ann I was given your name and address as the person to voice my concerns over the new dungeness water rules to be placed into effect. I have some property I have owned for about thirty five years. It is the site of my future retirement. I have installed a 4 bedroom septic system and well on the site. I understand that because of it's location (above the irrigation) That I may not even be able to purchase water in the future. If this is true and I can not buy water or use my existing well the money I spent to develop the land and the land itself is useless. Will there be any compensation for the land becoming useless due to new rules?? [REDACTED]

From: Magan Waldron [REDACTED]
Sent: Thursday, June 07, 2012 9:41 AM
To: Wessel, Ann (ECY)
Cc: 'Marguerite Glover'
Subject: Water

In the 1940's, there were 949 farms with milk cows, in the Sequim-Dungeness Valley. The irrigation was flood irrigation, with high withdrawals off the Dungeness River. Yet, there were plenty of fish. Even with the increase in population, the amount of water pulled from the Dungeness River now is FAR less than what was used in previous times.

Ya'll are CRAZY for try'n to do this, and I find what ya'll are doing is grossly offensive and you should be ashamed of yourselves. Also how can you sleep at night with this you have NO idea what you are doing to our community and should in NO way be able to make this into law!!!!

Further more I would like you to explain to me what you would do if a family expands do you plan to wait outside the maternity room door to get extra money from them to compensate for the extra water usage it takes as your family expands.....Your criminals as far as I am concerned, and that is a fact!

Concerned Citizen!
Magan Waldron



Magan Waldron
Customer Service
Olympic Peninsula Title Company

[REDACTED]

[REDACTED]

From: Milo & Terri [REDACTED]
Sent: Wednesday, July 04, 2012 8:32 PM
To: Wessel, Ann (ECY)
Subject: First, Do No Harm.....

Ms. Wessel,

Please know that my husband and I *strongly disagree* with what DOE is proposing on limitations of water usage. We *strongly* propose they stop the rule-making until the independent economic study is completed. We don't feel the rules/constraints are warranted, and DOE's own former economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. By the way, why was he transferred to another area after voicing his concerns? Very interesting, or telling, don't you think?

The citizens that will be impacted by these limitations are emphatically against them so why shove them through before an honest evaluation of the entire situation is complete? Or maybe seek a more rational approach to the perceived problem? Or maybe there isn't even a problem? Or maybe there's a power grab? Hummm?

Please reconsider and delay the implementation of these rules until such time as you can convince the affected population, logically, that there is a valid reason for implementing them!

Respectfully,
Terri and Milo Walker

From: Andrew Watkins [REDACTED]
Sent: Friday, July 06, 2012 12:18 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18

I attended the Public Hearing on 6/28/12 in Sequim. The proposed rule, along with the economic and financial data, is to say the least, thin. There seems to be an agenda driven by an ideology that is very narrow in focus. In addition to a series of questionable events concerning the DOE actions, we now have knowledge of a trove of emails that are at least suspect, and need to be fully investigated. before any rule is proposed.

A thorough unbiased investigation as to the scientific merit of your arguments should be initiated, undertaken, and published. Commensurate with an equally unbiased investigation of the economic ramifications of the proposed legislation.

Without the aforementioned studies I believe any proposed legislation will only result in litigation. I would recommend a postponement of your proposed legislation until the scientific and economic merits sustain your views.

Sincerely,

Andrew Watkins, CFP

Helen L. Watkins

Ann Wessel
Washington State Department of Ecology
Ann.wessel@ecy.wa.gov

Dear Ms Wessel,

I am writing this letter in order to submit formal comments/questions with regard to the Sequim/Dungeness WRIA 18. Please consider all questions asked as part of my formal comments and please answer them in detail as part of the Concise Explanatory Statement.

My comments/concerns are as follows;

1. Has not Ecology admitted to an Abuse of Discretion with regard to the internal controversy over the cost benefit analysis (CBA) originally performed by Mr. Tryg Hoff, one of Ecology's own economists? According to e-mails obtained by the Sequim Gazette, Mr. Hoff stated that the costs would be far greater than the benefits under this rule due to the loss in property values. In his original analysis Mr. Hoff stated that the costs could be as much as \$500 million and far outweighs the benefits.

It was suggested by Mr. Hoff's superior that he amend his analysis which he refused to do. He is on the record with a formal notice that the costs of this rule exceed the benefits and that it fails under RCW 34.05.328. Mr. Hoff asked to be removed as the economist charged with performing the CBA if his superior was going to insist that he do a biased CBA. Ecology removed him from the study. The subsequent analysis was performed in the manner suggested by Mr. Hoff's superior at Ecology.

The manner in which the CBA was done and the controversy it raises puts the validity of the final CBA into question. Due to this the rule making process must be put on hold until and "arms-length" and fully independent economic study can be performed. Not having a study done by a fully independent firm with no connection to Ecology would result in expensive litigation in which Ecology has put themselves in a very weak position.
2. There is a lack of reviewed scientific data to support the assertion that there is hydrologic continuity between all private exempt wells and the streams in the areas designated under WRIA 18. Ecology's contention that all of the 3 aquifers and the rivers/streams within WRIA 18 are connected has not had a peer reviewed scientific study. Such a study needs to be done prior to the implementation of this rule as Ecology has no statutory authority to regulate any wells that cannot be proven to be hydraulically connected.
3. By statute Ecology only has the right to establish "minimum baseflows" and not "maximum flows" with regard to rivers and streams in this state. (RCW 90.22 and 90.54) Why then is Ecology ignoring the precedents already set by these and other statutes/cases and insisting on setting the CFS that must be reached in the Dungeness River and streams within WRIA 18 at a "maximum" flow. This has been reached one time since the year 2000.

4. The Small Business Impact Statement (SBIS) needs to be revised to reflect the loss of revenue to businesses such as Real Estate, Building, landscaping, mortgage, small farms, and, well-drilling. (This is not an exhaustive list). RCW 19.85.040 requires that the SBIS reflect any loss of revenue to small businesses. For this reason, the SBIS needs to be revised to reflect the loss of revenue to small businesses affected by WRIA 18.
5. Per Executive order 12898, the Environmental Justice section of NEPA, Agencies are required to study the effects of actions on minority and low income populations that would be impacted by an action. The Sequim/Dungeness area has long been known as a retirement area with a large population of retirees who are on a fixed income and/or Medicaid. Under what is commonly called "Obamacare" the portion of the population on Medicaid will grow. (Not just retirees but all low-income people in the population). Why were the impacts on the retirement (and therefore the fixed income) and low income population encompassed by WRIA 18 not a part of the studies done by Ecology? The economic impacts to these parts of our population will be significant and should be included in any economic study performed.
6. The Dungeness Basin has been using less and less water and has invested a great deal of money to restore habitat and water to the Dungeness River. Why would Ecology implement such draconian measures in an area that is using less and less water? Per your own department studies, we would use a very small amount of water if the area covered by WRIA 18 was developed under current zoning and if it was all developed using exempt wells. The USGS flow chart for the Dungeness River shows that there has not been a significant change in the flows to this river. The flows from the years 1937 to 1948 are not significantly different than what they have been for the last 10 years. The exempt wells are not, have not, and will not have a significant impact on Streamflows. There is no need for this rule.
7. Ecology should follow the Skagit County approach and have the State buy the required water (enough to protect our exempt well status) through an appropriation in its capital budget. This would negate the need for Mitigation (as a side-note Mitigation is NOT required under NEPA) and would also be a less burdensome alternative as required under RCW 34.05328.
8. In the CBA, Ecology refers to a significant increase in water-use if "mobile homes" are removed from a property and a permanent home is then built on that site. Are you talking about RV's and trailers on properties or on Mobile/Manufactured homes? Please make a revision that makes this language very specific.
9. In the CBA you refer to a study that shows the cost of not being able to use outdoor water as \$1,000 per household. This is a very low number as the common rule is that people allocate 10% of their homes value to landscaping. The average value of detached home in the WRIA 18 area is much higher than \$100,000 even in this economy. This also does not take into account the drop in home values for homes that cannot use their wells for outdoor use. Homes that can use their wells for outdoor use will be more valuable than homes that cannot. Many of these homes will be in the same neighborhoods. Many people will simply choose not to move to or build in an area with such a restrictive rule. As seen in WRIA 17 there will be a significant economic impact. Why was the economic impact due to decreased property value not studied?

There are many more legal questions that need to be answered regarding this rule. These have been submitted to you by the City of Sequim, Washington Association of Realtors, the Commissioners of Clallam County, the Department of Community Development of Clallam County, Clallam County PUD and many private citizens who will be affected by this rule.

I and many others request that this rule not be implemented until you have proven that you have the Statutory and Constitutional authority to do so. Further, please do not implement this rule until you have proven that you have fulfilled all of the requirements with regard to this rule such as the CBA, SBEIS, Environmental Justice, and impartial reviews of all studies (list not exhaustive).

Respectfully,

A handwritten signature in black ink, appearing to read 'Helen L. Watkins', with a large, sweeping flourish at the end.

Helen L. Watkins

From: FaLeana Wech [REDACTED]
Sent: Monday, July 09, 2012 4:38 PM
To: Wessel, Ann (ECY)
Subject: Comment on Dungeness Water Rule

Dear Ms. Wessel,

I am writing as a concerned citizen of Clallam County regarding the proposed Dungeness Water Management Rule.

I support protecting instream flows and fish in the Dungeness and appreciate the hours of time and effort spent working on the draft but do not agree with Ecology's proposed rule.

Throughout the process, citizens of Clallam County have been told by Ecology Staff that the rule balances the needs of people, farms and fish.

In fact, this statement appears in some form or another in many of Ecology's publications regarding the Dungeness Water Management Rule.

The quote below comes from Ecology Publication #10-11-018-A Guide to Water and How We Use It in the Dungeness Watershed, page 1:

"The water management rule is one of many efforts in the watershed to protect the long-term economic health and vitality of your community by ensuring water supplies now and into the future for people, farms and fish."

This proposed rule does not provide balance but is a complex regulatory scheme that will be enormously costly and for what benefit? The public, as evidenced by numerous letters and emails submitted as well as verbal and written comments provided during the public hearing, does not support it.

There are far too many questions that need to be answered and for Ecology to adopt this rule without addressing the concerns raised by the Clallam County Commissioners, City of Sequim, WA Realtors, Port Angeles Business Association and many others would not serve the public well.

Please take the time to get answers to questions before the rule is in place.

Thank you,

FaLeana Wech
[REDACTED]

The rule as proposed does not provide balance at all. In fact, it penalizes

From: Rick Weiss [REDACTED]
Sent: Monday, May 14, 2012 11:40 AM
To: Wessel, Ann (ECY)
Subject: Dungeness Proposed Rule Comments

I hope you remember your college days, remember hating THE MAN? Well now you are THE MAN, imposing your will on the locals, and you aren't even local, you probably have migrated here from California.

You already got the Dam torn out! What will make you happy? Your type is always wanting more, and what you really want is POWER & Influence. Power over the locals, and influence with your cohorts in Government that are working your pitiful plan all over America, so they can make more rules and regulations that the Locals are getting really sick of.

You ought to read "1984". You are part of the problem, now.

From: Shawn West [REDACTED]
Sent: Thursday, July 05, 2012 10:57 AM
To: Wessel, Ann (ECY)
Subject: WRIA 18E Rule

Ann Wessel,

I request that you delay the implementation of the WRIA 18E Rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you

Shawn West
Lab Manager
NTI Engineering & Land Surveying
[REDACTED]

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Department of Ecology
Dungeness Open House / Public Hearing
PUBLIC COMMENTS

Name:	William Cutting
Company/Organization:	
Mailing Address:	
City, State, Zip:	
Email Address:	

Please print your comment(s) below:

I concur with the op-ed piece in the Sequim Gazette dated 6/27, written by the editorial staff at the Gazette.

Date Received:	_____
Facilitator:	_____
Page ____ of ____	

From: Tom Williamson [REDACTED]
Sent: Monday, July 09, 2012 11:23 AM
To: Wessel, Ann (ECY)
Subject: Questions for the record re Wria 18

What will the dollar amount of mitigation expected to be collected over the next 5 years under the proposed rule as now drafted?

Who, specifically, will be the recipients of that mitigation money?

According to spokesperson for DOE "the tribes have some undefined claims" of water rights. How can you determine if the watershed is over allocated if ALL claims are not clearly and specifically defined?

By what authority does the DOE take on the role of proactively protecting the rights of senior water rights holders?

If there is no current or foreseeable shortage of water in our aquifers, as stated by DOE spokesperson, how can any senior water right be impinged?

If the reduction of salmon returns in the Dungeness River is the result of new wells in the valley, how do you explain the similar reduction in salmon returns in the Hoh River?

Sincerely

Tom Williamson
[REDACTED]

From: Linda Wishart [REDACTED]
Sent: Sunday, July 08, 2012 11:36 AM
To: Wessel, Ann (ECY)
Subject: WRIA18
Importance: High

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

It would appear that, in essence, DOE's scientists assert that there is a hydrological connectivity between aquifers and the waters flowing in streams and rivers and, furthermore, that an increase in the number of wells drawing from these aquifers will cause a corresponding decrease in the flow levels in the rivers. To remedy this perceived problem, DOE contends that it must implement and enforce a complex and expensive system of water banking and mitigation.

However, many other equally knowledgeable scientists contend that this supposed hydrological connectivity has not been proven and is merely a hypothesis. Moreover, if such a connectivity does exist, the effects of the wells on the flow levels is minimal and, therefore, the hardships inflicted on the general populace will far outweigh any potential benefits.

In fact, DOE's own economist, Mr. Hoff, indicated that the probable costs of implementing the rule far out-weighed the potential benefits that would be achieved upon implementation. It should be noted that shortly after Mr. Hoff voiced his concerns, he was relieved of his duties and transferred elsewhere in the department.

The town meeting held on 6/28/12 reflected that the majority of the citizens that will be impacted by these limitations are emphatically against them. Many speakers at this meeting pointed out the legal flaws as well as the lack of logic and the punitive nature of the proposed rules. Similar commentary was presented at the Board of Commissioners meeting on 7/3/12.

Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed
Linda L Wishart

[REDACTED]

From: RICHARD WOLF [REDACTED]
Sent: Wednesday, July 04, 2012 8:49 PM
To: Wessel, Ann (ECY)
Subject: RE: Automatic reply: WATER LIMITATIONS

PLEASE DON'T DRINK THE WATER.

"LIFE IS GOOD"

From: RICHARD WOLF [REDACTED]
Sent: Wednesday, July 04, 2012 8:24 PM
To: Wessel, Ann (ECY)
Subject: WATER LIMITATIONS

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed
RICHARD WOLF

"LIFE IS GOOD"

From: Melvina [REDACTED]
Sent: Monday, July 09, 2012 4:39 PM
To: Wessel, Ann (ECY)
Subject: Stop the water invasion!

We are in a very wet climate. We do not need or want this "rule" in our area!

Joshua Worman

[REDACTED]

RECEIVED

JUL 09 2012

DEPT OF ECOLOGY
BELLINGHAM FIELD OFFICE

Dear Ms. Wessel,

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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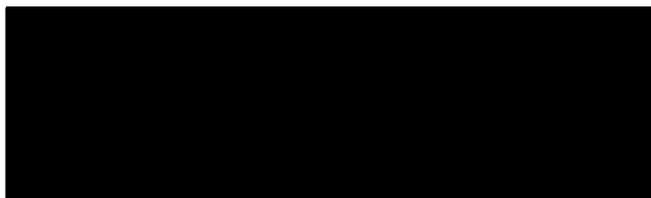
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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population – as well as our elected representatives – that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed



Department of Ecology
Dungeness Open House / Public Hearing

PUBLIC COMMENTS

RECEIVED

Name:	M. Worman	JUL 09 2012
Company/Organization:		
Mailing Address:		DEPT OF ECOLOGY BELLINGHAM FIELD OFFICE
City, State, Zip:		
Email Address:		

Please print your comment(s) below:

We don't want it! IT is not needed!

God has provided so far, ~~for~~ ^{for} our area.

Just more control = more cost!

"Rate"

slowed economy, Less need.

We should vote on it!

- NO PROBLEM!

we are not in a Desert!

Never seen any Dead crops!

How many against?

Date Received:	_____
Facilitator:	_____
Page	___ of ___

From: Carol Yearout [REDACTED]
Sent: Sunday, July 08, 2012 7:02 PM
To: Wessel, Ann (ECY)
Subject: Water Rights

Dear Ms. Wessel, 7-8-2012

The Department of Ecology (DOE) is proposing a number of significant limitations on water usage in our area.

I am concerned that these limitations will ultimately stifle development, decrease land values, adversely impact the business-generated and real estate-related tax bases, and, likely, result in lawsuits over what could be construed as a government "taking" of land. Lastly, and perhaps more important, they will deprive citizens of the right to use their land in keeping with traditions established over many years.

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Accordingly, I request that you delay the implementation of these rules until such time as you can convince the affected population - as well as our elected representatives - that these rules are logical, lawful, and beneficial by means of a thorough, independently performed economic study.

Thank you for your attention.

Signed

Carol Yearout

From: [REDACTED]
Sent: Monday, July 09, 2012 10:15 PM
To: Wessel, Ann (ECY)
Subject: WRIA 18

All streams flow into the sea, yet the sea is never full. To the place the streams come from, there they return again.

As the water cycles, I buy property and use the water that cycles through my property. Use your water on your property and keep the thieves away from my water!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

Daniel

Appendix B

PUBLIC HEARING PROCEEDINGS

RE: PROPOSED WAC 173-518

DUNGENESS BASIN WATER MANAGEMENT RULE

PUBLIC COMMENTARY

JUNE 28, 2012

6:00 P.M. GUY COLE CENTER

8:00 P.M. SEQUIM COMMUNITY CHURCH

REPORTED BY: Valerie Allard (CCR No. 3040)

1 SEQUIM, WASHINGTON; THURSDAY, JUNE 28, 2012

2 6:01 P.M.

3 --ooOoo--

4
5 RE: PROPOSED WAC 173-518

6 DUNGENESS BASIN WATER MANAGEMENT RULE

7
8 MS. BEITEL: Let the record show that it is now
9 6:01 p.m.

10 Good evening. I'm Judy Beitel, hearing's officer
11 for tonight's hearing. On behalf of the Department of
12 Ecology, welcome, and I thank you for coming.

13 Tonight, Ecology is holding a hearing on the rule
14 proposal for Chapter 173-518, Washington Administrative
15 Code, Water Resources Management Program for the Dungeness
16 Portion of the Elwha-Dungeness Water Resources Inventory
17 Area 18.

18 Originally, Ecology scheduled this hearing at this
19 location, the Guy Cole Center. The hearing on proposed
20 Chapter 173-518 WAS is now officially commenced. We now
21 know that a larger number of attendees are anticipated than
22 originally expected, therefore, Ecology has moved the
23 hearing location. We are noW going to be holding the
24 hearing at the Sequim community Church, 950 North 5th
25 Avenue.

1 As hearing officer, I am heading over to that
2 location now and will recommence this formal hearing once
3 the staff presentation and question and answer session has
4 concluded. In accordance with WAS 1-21-050(1), Ecology is
5 continuing this proceeding so that the number of attendees
6 we are now expecting can be accommodated. Pursuant to WAC
7 1-21-050(1), Ecology will file a continuance notice with the
8 Office of the Code Reviser in the next week. We are leaving
9 one staff person at this location who will direct attendees
10 to the new location and will provide a map if needed.

11 Let the record show that this hearing is being
12 temporarily closed at 6:05 p.m.

13 (Whereupon, the proceeding at this location closed
14 at 6:05 p.m. and was continued at the Sequim Community
15 Church.)

16
17
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25

1 SEQUIM, WASHINGTON; THURSDAY, JUNE 28, 2012

2 8:01 P.M.

3 --ooOoo--

4
5 RE: PROPOSED WAC 173-518

6 DUNGENESS BASIN WATER MANAGEMENT RULE

7
8 MS. BEITEL: Thank you and welcome. There were a
9 lot of good questions tonight. I also would encourage your
10 comments. This is why we're here tonight. This is a real
11 important part of the evening so that we can record your
12 comments. We have a reporter here tonight, and she is here
13 solely to get your testimony clear and accurately. I would
14 ask you if you could come down and sit in this chair, then
15 you will be close enough to her so she can get a clear and
16 accurate account of your testimony.

17 Let the record show that it is now 8:01 p.m. I'm
18 Judy Beitel, your hearing's officer for this hearing. This
19 evening we are to conduct a hearing on the rule proposal for
20 Chapter 173-518 WAC, Washington Administrative Code, Water
21 Resources Management Program for the Dungeness Portion of
22 the Elwha-Dungeness Water Resources Inventory Area 18.

23 Let the record show that it is Thursday, June 28,
24 2012. This hearing is being held at the Sequim Community
25 Church, 950 North Fifth Avenue, Sequim, Washington 98382.

1 Originally, Ecology scheduled this hearing at a different
2 location, the Guy Cole Center, at 202 North Blake Avenue.
3 We know now that we have a larger number of attendees than
4 we originally anticipated, so Ecology moved the hearing to
5 this location.

6 The hearing officially commenced earlier this
7 evening at the Guy Cole Center in accordance with the
8 Washington Administrative Code 1-21-050(1). The hearing was
9 continued in order to move to this location in order to
10 accommodate the number of attendees that we were expecting.

11 Pursuant to WAC, the Washington Administrative
12 Code, 1-21-050(1), Ecology will file a continuance notice
13 with the Office of the Code Reviser in the next week. We
14 are leaving one staff member at the Guy Cole Center who will
15 direct attendees to this new location and will provide a
16 map, if needed. Notices were sent out about this new
17 location using all the same interested party listings as the
18 original notice included and the local newspapers.

19 Legal notice of this hearing was published in the
20 Washington State Register on June 6, 2012, the Washington
21 State Register number was 07-22-116. In addition, notices
22 of this hearing were postal mailed to over 30 interested
23 parties, email notices were sent out to over 2500 interested
24 parties, a news release was issued on May 9 and May 21,
25 2012, a notice was also published in the Peninsula Daily

1 News and in the Sequim Gazette newspapers on June 20 and
2 June 27, 2012.

3 I will be calling people up to provide testimony
4 based on the order that the name appears on the sign-in
5 sheet. Once everyone has indicated that they would like to
6 testify and has had the opportunity, I will open it up for
7 others. As we discussed prior to the opening of this formal
8 hearing, we are going to have comments for four minutes.
9 When you reach that limit, you will be asked to summarize
10 your comments so the next person can come up here and
11 testify. When I call your name please state, up in the
12 front here, your name and address for the record and speak
13 clearly.

14 I would ask you to please hold your applause and
15 keep the noise to a minimum, so we can get a good, clear
16 record of the people giving testimony. I'm going to begin
17 with Richard Hale, and then I'll move on to Hal Beecher. If
18 there is anyone who wishes to provide testimony, please
19 remember to tell us your name and the address. If you would
20 like to send Ecology written comments, please remember that
21 they are due by 5:00 p.m., July 9, 2012. Please send them
22 to Ann Wessel at Ecology's Bellingham Field Office, 1440
23 10th Street, Suite 102. You can fax your comments to
24 Ann Wessel at 360-715-5225.

25 MR. THIELEN: Judy, as a point of clarification,

1 you can ask a question, if that's part of your testimony;
2 but unlike during the question and answer period staff will
3 not be responding to those questions, but you may ask them
4 as part of the record. So it can be a question or a
5 comment; but if it's a question, do not expect a response of
6 any kind from the ecologists here.

7 MS. BEITEL: That's right. Questions asked for
8 the record, Ecology cannot enter into any discussion or
9 answer any questions.

10 MR. HALE: Thank you. Each and every one of you
11 who own property will be directly affected by this. Why
12 haven't they thought of putting this on the ballot and
13 putting this to a vote? This means everything to your
14 children and your grandchildren, all the land and all the
15 things, all the real estate and the investment properties
16 that you have here in this state -- if you want to use the
17 word "investment." Because I can tell you now, if this
18 continues, they'll never make another investment property in
19 the state of Washington. Thank you.

20 MS. BEITEL: Thank you. Hal Beecher.

21 MR. BEECHER: Thank you. I'm Hal Beecher. I work
22 for Washington Department of Fish and Wildlife. The address
23 is 600 Capitol Way North, Olympia, Washington 98501-1091.

24 The Washington Department of Fish and Wildlife
25 supports adoption of WAC 173-518, the Instream Flow Rule for

1 the Dungeness River, its tributaries and adjacent streams.
2 Protecting and restoring its stream flows in these waters is
3 an essential part of recovering and maintaining populations
4 of salmon, steelhead, trout, and char in these waters.
5 Adequate flow is needed by the fish. Success of all other
6 fish management efforts depends on adequate water.

7 The proposed rule is the result of extensive
8 study, analysis, and deliberation about water management and
9 the fish in the Dungeness River Basin. The Department of
10 Fish and Wildlife, including its predecessor agencies, has
11 participated for many years in these efforts along with many
12 other interested parties.

13 The collaborative process that led to the
14 watershed plan on which the rule is based is an example of
15 successful community problem-solving and forward thinking.
16 It was highlighted by the Instream Flow Council as one of
17 eight such examples across the United States and Canada.
18 The cooperation of the agricultural community, local
19 government, state government, federal agencies, and treaty
20 tribes have led to a proposed rule that will support salmon
21 recovery and maintenance of fish and wildlife while
22 accommodating other values and interests.

23 Low summer flows in the Dungeness River have long
24 been recognized as a severe limiting factor for salmon,
25 steelhead, and bull trout. Listing under the Federal

1 Endangered Species Act for some of these types of fish
2 further emphasize the importance of restoring and protecting
3 flows. Small streams near the Dungeness River, including
4 tributaries, are generally small enough that they are
5 clearly flow sensitive that any additional withdrawal during
6 the summer would be detrimental to their fish production
7 capacity. Flows aren't the only factor that can limit fish
8 production, but they are a necessary component of fish
9 habitat.

10 Thanks to all who contributed to making this plan
11 and associated rule that addresses an important limiting
12 factor for salmon and other fish.

13 MS. BEITEL: Thank you. I have Fernando Poven and
14 then after that, David Unruh. Do we have Fernando or Linda
15 Poven?

16 Okay. We'll go on to David Unruh. After David,
17 we will have Suzanna Fleaning, I believe it is.

18 MR. UNRUH: Thank you. My name's David Unruh.
19 It's spelled U-n-r-u-h. I live at 492 Osprey Glen Road,
20 Sequim, Washington.

21 I just want to go on the record following my Q & A
22 and some of my comments and questions, but I just want to go
23 on the record opposing the metering. I feel it's
24 unnecessary, and I think it's over the top.

25 I also believe that when you look at the flow of

1 105 cubic feet per second in a 30 day period, I would
2 recommend that Ecology study retroactively the data of ten
3 years going backwards, as well as going forwards. Thank
4 you.

5 MS. BEITEL: Suzanna, I believe her last name
6 Fleaning?

7 Okay. We'll move on to Joan Irwin and Dennis
8 Schultz; are they here? Dennis Schultz? Joan Irwin? Okay.
9 After Dennis, then we will move on to Ed Bowen.

10 MR. SCHULTZ: I'd like to stand, rather than sit,
11 while addressing the audience. Sitting in front of you like
12 this is highly demeaning and puts us down.

13 So my name is Dennis Schultz, 250 North Jacob
14 Miller Road, Port Townsend. I'm here to represent to the
15 Olympic Stewardship Foundation and in the south, I represent
16 over 300 families who live in the rural areas or own
17 property in the rural areas of the North Olympic Peninsula.
18 My comments are on the order of our experience with WRIA 17,
19 the Quilcene-Snow Watershed.

20 Three years ago, we were at this stage when they
21 were writing the rule. The first thing you have to
22 understand is that DOE is not accountable to anybody for
23 their actions. They interpret the state laws the way they
24 want to in order to meet their goals. An example, this
25 350-gallon-a-day in-house limit that they imposed in parts

1 of our watershed. The State Attorney General issued an
2 opinion that that was illegal, but they went ahead and did
3 it anyway.

4 They adopt the best available science by picking
5 only the studies that agree with their views. Their science
6 has never been subjected to an independent scientific peer
7 review. They will respond to comments made here tonight at
8 a later date, just before the rule becomes final. The
9 comments we make will probably not effect any changes in the
10 rule per se, but they're very important because they become
11 the basis of suing DOE over this rule.

12 (Whereupon, there was applause.)

13 MS. BEITEL: You need to continue.

14 MR. SCHULTZ: What -- then don't interrupt.

15 The cost benefits of the environmental impact
16 statements are slanted to make this rule look good. There's
17 no official review of these reports by an independent
18 economist; it's all in-house.

19 East Jefferson saw its Environmental Impact
20 Statement. It said we would get 819 new jobs in Jefferson
21 County. That's just ludicrous. If anything, we've lost
22 jobs, we've lost business opportunities, and people have
23 made the decision not to move there or build there. DOE has
24 a history mandating, mandating responsibilities such as
25 processing water rights.

1 The question that I ask: What is the time frame
2 for processing these mitigation requests? Will it take as
3 many years as it does for water rights? I've had one
4 pending for 14 years, myself.

5 What we really need is some kind of a legislative
6 overview of the Department of Ecology. Right now, they
7 don't answer to anyone. The only recourse citizens have who
8 are unhappy with their actions is to take them to court. If
9 we don't like what we hear tonight, then be prepared to
10 financially support the organizations that will take them to
11 court. Thank you.

12 MS. BEITEL: Ed Bowen; and after Ed Bowen, we'll
13 have Wilbur Hammond.

14 MR. BOWEN: My name's Ed Bowen, P.O. Box 111
15 Clallam Bay, landowner of the Ozette Basin, visiting WRIA 18
16 and WRIA 20.

17 I've seen this coming for a long time. I was
18 actually involved in WRIA 17 with the Instream Flow Rule. I
19 saw a lot of questions brought about reserves then. I
20 thought I had a good handle on what reserves meant. My
21 comment is: I don't believe we're playing a fair game here
22 with reserves.

23 I want to comment to the fact that, in regard to
24 metering, I oppose that. I was very strongly advised
25 throughout a lot of the past sort of management planning

1 that metering was not a tool in investigating and solving
2 our water issues; but I'll go on the record to say, I will
3 think about metering the day the federal government, in its
4 trust responsibilities, quantifies its water rights. I
5 think they're a failure in this basin.

6 I also want to go on record to say that I have a
7 real concern -- this was brought up in WRIA 17 in its
8 proposed rule making -- stream connectivity groundwater
9 withdrawal. I have a real problem with this because it was
10 huge then, and I don't see where the model that's being used
11 in the Dungeness is anywhere close to answering that same
12 question that was done during WRIA 17. Groundwater
13 withdrawal and it's connectivity to the stream, who
14 identifies that and where's the science to that really
15 well-documented?

16 Also, the reason I'm here is because we're always
17 the end of line on WRIA 20. And what happened in 17 is now
18 happening in part of 18, and it's coming my way and it's
19 steamrolling. And this is my only real public voice, to
20 catch it here before it winds up crossing the Elwha Bridge
21 and heading towards 20.

22 I have an interest here though, whether you go
23 with the water trust or water passage -- I'm a little
24 familiar with it. I listened to the Kittitas Concept quite
25 a bit -- but I don't believe in an advisory board. I think

1 that this bank is going to be put in place. And I do
2 realize it's the process, I believe at the county. It can't
3 be an advisory board. It has to be accountable. It has to
4 be responsible. So I'm going to advocate my testimony that
5 it be voted for, and that it be voted in by the people of
6 this water district and that way, it's well-established.

7 And last, but not least, I do believe there's a
8 lack of due diligence, which was brought up here tonight, to
9 talk with the people. DOE does not represent us in 20, we
10 do not have the same level that you do, we don't have staff
11 members that we can consult with anymore, and I want the
12 record to understand that. Thank you.

13 MS. BEITEL: Wilbur Hammond -- if you would please
14 hold your applause, we are trying to get a recording.
15 Wilbur Hammond, and Kaj Ahlburg after that. Thank you.

16 MR. HAMMOND: Wilbur Hammond, 114 Hogans Vista,
17 here in Sequim. My reason for coming tonight pertains to
18 Lots 7 and 8 of Fat Cat Lane that I acquired several years
19 ago for my retirement and to enjoy farming. I have vested
20 water rights. I understand that that is senior rights.
21 I've been busy working. I'm about ready to retire. There's
22 a question whether or not I can put them to beneficial use.

23 I installed the pipeline with the gentleman that
24 was sharing the use of it with me; unfortunately, he passed
25 away and there hasn't been any continuous use. I feel that

1 if these rights are taken from me for lack of beneficial use
2 that, certainly, there should be some compensation.

3 The other pitfall is that I haven't been able to
4 apply for a building permit to commence building on my
5 property and if the rule is adopted prior to that, then I'm
6 going to be faced with not only having lost my water, but to
7 have to pay for the right through mitigation to drill a well
8 on my property. So, potentially, I'm a double loser here.

9 So I just want to go on record that if property
10 rights are taken there's just compensation, and there needs
11 to be issues of mitigating circumstances addressed. Thank
12 you very much.

13 MS. BEITEL: Kaj Ahlburg.

14 MR. AHLBURG: My name is Kaj Ahlburg, 4513 Mount
15 Pleasant Road, Port Angeles. I'm here to speak on behalf of
16 the Port Angeles Business Association, a business
17 organization of approximately eighty members with the
18 purpose that promotes business and jobs in this area.

19 We have thoroughly analyzed the Proposal, the
20 preliminary Cost Benefits and the Least Burdensome
21 Alternative Analyses, and the Small Business Economic Impact
22 Statement. We believe that the economic analyses are
23 incomplete, that the benefits of the proposed rule do not
24 exceed its costs, and that it does not constitute the least
25 burdensome alternative to achieve the desired results; thus,

1 we believe that the rule as currently drafted does not
2 comply with RCW 34.05.328(1)(d) and (e) and, therefore,
3 contradicts state law. We are submitting a more detailed
4 formal comment, but I would like to summarize quickly the
5 principal points here in the next two or three minutes.

6 The economic analyses did not address at all the
7 following:

8 Decrease in property values of the properties
9 subject to the proposed water restrictions.

10 The effect on the local economy's jobs and tax
11 revenues due to decreased demand for land, building, well
12 drilling, and landscaping. When you increase the cost of
13 something demand declines unless the price and demand is
14 zero, which is not for any of these goods.

15 The analysis also underrates the cost of
16 mitigation by the injured parties if the rule goes into
17 effect as currently proposed.

18 The Cost Benefit Analyses greatly inflates or it
19 creates out of nothing supposed benefits and understates
20 costs to arrive at the desired result. This is evidenced by
21 ecologist or economist, Mr. Tryg Hoff, who we applaud for
22 his courage and integrity, who wrote on March 19, "This is
23 the formal notification to the WRIA 18 Rule writers, if you
24 value the draft rule presented on March 15 for the Dungeness
25 watershed, it does not meet the legal requirements outlined

1 in RCW 34.05.328(1)(d) of the Administrative Procedures
2 Act."

3 We believe the whole economic analysis is fatally
4 flawed. It ignored the conclusions of their own economist
5 who went on record complaining about being pressured by his
6 supervisor to ignore scientific evidence and break the law.
7 It was then prepared by someone who was totally unfamiliar
8 with the process in this phase in just a few weeks after
9 Mr. Hoff was reassigned.

10 You have also failed to consider the least
11 burdensome alternative which would meet similar and easier
12 ways, as has been done in Skagit County, by having the
13 State, through its capital budget, purchase a deminimus
14 amount of senior water rights necessary to compensate for
15 the alleged effect of future previous exempt well usage.
16 This would allow doing away with the water exchange and
17 owners' mitigation fees as well, which would cost millions
18 to implement and millions more to monitor and administer. By
19 contrast, purchasing the .77 cfs of water in your house as
20 needed, could probably be done for a one-time incentive of
21 less than half a million dollars.

22 We, therefore, respectfully request that you
23 prepare new preliminary Cost Benefit and Least Burdensome
24 Alternative Analyses and Small Business Economic Impact
25 Statement addressing the points raised above and in more

1 detail in a formal comment letter, that you make your
2 presentation of rule contingent upon funding by the state of
3 acquisition of the necessary senior water rights as was done
4 in Skagit County, and that you remove the well metering
5 requirement substituting for it a methodology on estimated
6 permits and well usage through elective use patterns. Thank
7 you.

8 MS. BEITEL: Next, we have Yvette Sabin and after
9 that, we have Jeff Monroe. Do we have Yvette Sabin? How
10 about Jeff Monroe?

11 Okay. Moving on, we will -- oh, okay.

12 MR. MONROE: My name's Jeff Monroe. I'm at 72
13 East Anderson, Sequim, formerly of Quilcene.

14 In 1992, twenty years ago, we got a gasoline spill
15 in Quil, contaminated water. Ecology came out and tested
16 the well -- actually, the State Health Department did --
17 1400 parts per million benzine. Ecology said it would take
18 20 years for it to naturally flush. All the old-timers
19 said, don't worry about it. It will be gone in six.

20 It was Thanksgiving day, we had a freeze. We came
21 off the water tanker, tested the wells, they're clean.
22 Ecology comes back and says, obvious lab error, test it
23 again; so they did. The same result; it's gone. So
24 according their time period, it was all wrong. Their
25 science is off.

1 Now, going through the tanker through that
2 eight-month period -- one of the 5,000-gallon tankers leased
3 by Huntingford's Farms, stainless steel -- we lived on that
4 for eight months. There were three households of ten people
5 using it. And now these rules are out saying that we're
6 supposed to only use 150 gallons for two-and-a-half people.
7 The reality is, it takes 1300 to 1500 gallons a day to
8 service that many people in a real world, and that's on an
9 emergency basis because we're not watering lawns, we're not
10 washing cars. It's just for sanitation, washing dishes, and
11 laundry because a benzine laundry -- it's the worse thing
12 you can do is wash your clothes in gas because it gets into
13 your skin.

14 Now, they aren't talking about these instream
15 flows as far as the river can't hold silt. I want to touch
16 on one house in particular down in Brady on the Satsop.
17 I've been all over in western Washington. I know the road
18 gets flooded. And I've gone up and sat in this woman's
19 house. I walked inside and her waterline's four feet up.

20 Well, what's unusual about this house is, it's on
21 a full basement. And I said, why would you build a house on
22 a full basement in a floodplain? She said, it never flooded
23 for 40 years. We stopped using the basement in the '70s,
24 that's when we first had trouble. And I said, what's
25 changed? And she said, well, we're all farmers down here.

1 We're not allowed in the rivers anymore, and we're not going
2 to maintain them. They're full.

3 So here we go. And this is everywhere I go, from
4 the Chehalis all the way up and down. Every river is that
5 way. We're not maintaining the rivers. They're full of
6 silt. The instream flows are off. The channels are too
7 full. There's no water for the fish. That's my opinion.

8 MS. BEITEL: Next we have Chuck Blood, and after
9 that we have Kevin or Francine Lopez. Do you have Chuck
10 here? How about Kevin or Francine Lopez?

11 Okay. Let's go on. What about Lloyd Pederson?
12 Dick Pilling? Okay. After Dick Pilling is Eric Miller.

13 MR. PILLING: My name is Dick Pilling. I live at
14 72 Mount Pleasant Heights Lane. And I represent the Clallam
15 County Republican Party.

16 The Department of Ecology is proposing a number of
17 significant, even draconian limitations on water usage in
18 our area. These limitations will also stifle development,
19 decrease land values, adversely impact the business
20 generated, and real estate related tax bases, and likely
21 result in lawsuits over what could be construed as a
22 government taking of land. Lastly, and most importantly,
23 they will divide the citizens of the right to use their land
24 in keeping with traditions established over many years.

25 In the big event however, DOE has proposed a

1 solution in desperate search of a problem. And there is no
2 problem. And moreover, if there was, DOE's proposal will
3 have no impact on it. In essence, DOE's scientists search
4 has been the hydrology connectivity between aquifers and the
5 waters flowing into streams and rivers. And, furthermore,
6 the increase in the number of wells drawing from these
7 aquifers will cause a corresponding decrease in the flow
8 levels of the rivers. May other equally knowledgeable
9 scientists contend that this supposed hydrological
10 connectivity has not been proven and is merely a hypothesis.

11 Moreover, if such a connectivity did exist, the
12 effects of the wells on the flow levels is minimal, and
13 that's where the hardships inflicted on the general populace
14 will far outweigh any potential benefits. In fact, DOE's
15 own economist, Tryg Hoff, indicated that the probable cause
16 of implementing the rule far outweigh the potential benefits
17 that would be achieved upon implementation. It should be
18 noted that shortly after Mr. Hoff voiced his concerns, he
19 was relieved of his duties and transferred elsewhere in the
20 Department.

21 Accordingly, we propose that you delay
22 implementation of the Instream Flow Rule and these rules
23 until impartial studies have presented sound, peer-reviewed
24 evidence that the hydrological connectivity exists; confirm
25 that limited water usage by well users has more than a

1 passing effect on instream flow levels; assessments of
2 instream flow levels mandated by DOE are actually achievable
3 and not impossible goals that have only been rarely achieved
4 in past decades; determine that DOE has the statutory
5 authority to impose these limitations; review the unintended
6 consequences on property owners, tax bases, area
7 development, etc.; and more fully examine creative
8 innovations to actually increase the availability of water
9 rather than nearly concentrating on restricting usage. Such
10 innovations could be water storage, water bagging, whereby
11 spring surpluses could be captured for use during times
12 where there's less flow. Maybe you could even build a dam.

13 MR. THIELEN: You have 60 seconds.

14 MR. PILLING: First, do no harm, is one of the
15 principal precepts of medical ethics and needs given an
16 existing problem. It may be better not do something or even
17 to do nothing, rather than risk causing more harm than good.
18 If this philosophy is good enough for physicians, it should
19 be good enough for you. Thank you.

20 MS. BEITEL: Eric Miller?

21 Okay. We'll move on. I have M. Worman, and after
22 that we have Roger Short.

23 MS. WORMAN: I'm Melvina Worman, 1232 Post Office
24 Box, Carlsborg.

25 I just want to say: We don't want it, it's not

1 needed, and God has provided all these years -- many, many
2 years -- ever since anybody's been living here, even
3 including the Indians. It's just more control. And we see
4 it coming down in every way, every shape, and every form,
5 and more costs.

6 Our economy is slow, as we all know, in the last
7 few years. There's much less building, much less new homes,
8 and much less need for extra water. And, you know, we
9 should be able to vote on this, if anything else; but like
10 Dick said, if there's no problem, then why create a problem
11 when there's no problem. When you're out in the desert --
12 and I have never in my 20 years of living here, driven by
13 and seen a dead crop from lack of water or lack of the
14 ability to water and irrigate.

15 So I didn't quite see -- and I know there was a
16 question earlier of who's against it and who's for it -- but
17 I'd like to see the raised hands of the few that are up here
18 now as to who is against this, please.

19 (Whereupon, there's a showing of hands.)

20 MS. WORMAN: Thank you very much. I hope the
21 Department of Ecology sees this and knows that's it's not a
22 problem, and we don't want it. Thank you.

23 MR. SHORT: My name is Roger Short, 1720 Center
24 Road, Chimacum, Washington. I'm a longtime farmer down
25 there. I was also on the Dungeness Quilcene Board back in

1 the early '90s. I've been on the Quilcene Board, the WRIA
2 situation. I know a lot about what's happening.

3 About three years ago, after WRIA 17 in Jefferson
4 County, I had a stroke. I lost the sight in my eye. I was
5 in a very serious depression because of my feelings towards
6 the way the government manipulates the audience and tells
7 them the crap that it's not going to be happening, but it
8 really does happen.

9 I was also asked about metering my water. There
10 were several questions tonight about that. It took
11 two-and-a-half years to get a written statement from Ecology
12 saying they would not charge me for the water I was using.
13 And when I got the letter they said, well, we can't do
14 anything about what the legislature will do, which meant
15 that the legislation would meter it. So they only tell you
16 about what they're personally able to tell you. There's a
17 lot of issues that's outside the area is going to be
18 happening.

19 The Dungeness-Quilcene Watershed, we learned there
20 were two aquifers in the Dungeness area -- one was
21 contiguous to the river, the other one was not connected to
22 the river -- and I've heard nothing about the difference in
23 the aquifers here tonight.

24 I've had a look at the way that conservation
25 things in agriculture is done in saving and conserving water

1 and stuff, and now they are looking for more things to do.
2 And I've used this expression down in my area, "it's another
3 slap in the face for the good stewards," and I don't like
4 that part of it.

5 I've also thought of bringing suits, which I think
6 Shultz talked about. And I certainly support and think that
7 all the questions and issues raised in the Small Business
8 Economic Statement should be answered completely. And I
9 would assume that Ecology has a copy of this, otherwise, you
10 can have mine. It's all about -- my bumper stick says,
11 "It's not about salmon, it's not about water; it's about
12 control of the weakest link that's out there." Thank you.

13 MS. BEITEL: Michael, the last name is
14 M-c-A-l-e-e-r, McAleer. After that, we will have Marguerite
15 Glover and then we will have Helen Watkins.

16 Mr. MCALEER: I'm Michael McAleer, 179 Sunny View
17 Drive. I'm speaking on behalf of myself and Michael E.
18 McAleer, 383 Fawn Lane. Most of my questions are going to
19 revolve around the CBA, the Cost Benefit Analysis. They are
20 questions. You've got my email address, and I'd like those
21 back to me in writing before the rule is posted.

22 So over the years, significant resources of time,
23 staff, and taxpayer money has been invested in meeting the
24 requirements of RCW 90.82.020, 90.71.010, and 90.74.010. I
25 believed the proposed final administrative rule is seriously

1 flawed. There are parts and questions that have yet to be
2 addressed. The following are questions that are of utmost
3 importance to our community. The rule will take away free
4 water for more than 5,000 parcels of land. Why does the CBA
5 ignore the economic impact of doing so?

6 Using County data, there appears to be about 65
7 new uses per year. This translates into a very small amount
8 of water use. Why hasn't Ecology just mitigated this water
9 use? It appears economically unsound sound to create a
10 water exchange for such a small use of water. How is this
11 justified?

12 Why did Ecology use in the CBA a discount rate
13 that is inconsistent with their other Instream Flow Rule
14 analysis? The CBA predicts over 400 new uses per year.
15 This is eight times more than County records show for
16 building permits. Did you base fish savings benefits on
17 this; if so, your fish impacts and losses are eight times
18 what they should be. How does this effect the imagined fish
19 savings benefits. How does Ecology calculate avoided fish
20 losses? You credit a \$6 million benefit. Please provide
21 the documentation.

22 Increased certainty in development is a quote from
23 the CBA. That is entirely speculative. Do you believe it
24 will stand up in court? How is protecting existing
25 restorative investment a function of the proposed rule? How

1 this is achieved isn't spelled out in the rule, but it is
2 still included as a benefit.

3 The Small Business Economic Impact Statement
4 should include an analysis of those who are required to
5 comply with the rule. Why wasn't this included? How can
6 the SBEIS not find disproportional impacts if businesses
7 vary in size, hours, labor, and sales? Why doesn't the
8 SBEIS examine new businesses that would be required to
9 followed the rule? As described in your executive summary
10 to the SBEIS, existing businesses would be affected by the
11 proposed rule. Why was this not analyzed?

12 MR. THIELEN: Sixty seconds, sir.

13 MR. MCALEER: Thank you.

14 Why does the SBEIS say there won't be costs at
15 times then contradict themselves by saying there will be
16 costs? The assumption that all industries would have equal
17 water rights per employee is clearly false. Why did you use
18 that assumption? Why is present value calculated in the
19 SBEIS as cost only accrued in the first year? RCW 19.85
20 requires a description of how the Agency will involve small
21 businesses in the development of the rule. Why is this not
22 done?

23 I would appreciate an answer to those questions in
24 writing. Please consider the above as my formal comment on
25 the proposal. Thank you.

1 MS. BEITEL: Marguerite Glover, and after that
2 we'll have Helen Watkins.

3 MS. GLOVER: I'm Marguerite Glover, 103 Pond Lane
4 in Sequim. I represent the Sequim Association of Realtors
5 and I represent myself. And I wanted to put into the record
6 all those emails from Tryg Hoff, which I brought with me,
7 Hal Beecher and other Ecology emails that were obtained
8 through the Freedom of Information Act, and an Instream Flow
9 Review from Tom Martin of the PUD.

10 The first Dungeness River water diverted for
11 agricultural irrigation was the Sequim Prairie Ditch of
12 1896. The 1924 adjudication of Dungeness water rights
13 allocated the potential from 518 cubic feet per second of
14 surface water to be withdrawn from the Dungeness River with
15 a potential to irrigate up to 26,000 acres. Obviously, this
16 was more water than what's in the river and was not
17 sustainable.

18 In 1998, an MOU between Ecology and the Dungeness
19 Water Users Association was established. In it, the
20 irrigators agreed to not withdraw more than 50 percent of
21 the river flow at any time. They also agreed to maximum
22 acreage and aversion amounts. The legal limit was set at
23 0.02 cfs drawn per acre. This is far less than many water
24 right certificates have on them, and many of those old water
25 rights have been relinquished due to non-use. You probably

1 heard of Woodcock Farms over on Woodcock Road. They had
2 deed of water rights that had a priority date of 1899.
3 Well, the family didn't know that this piece of paper would
4 expire because it doesn't say so on it and so after five
5 years of non-use they lost that water right.

6 There's plenty of examples like that in this
7 valley. I have another one, somewhere in here, from the
8 area where I happen to live where everybody who built in the
9 area of Miller Tract, we all got to share a water right from
10 Cassalery Creek. Well, most of us didn't do it and we lost
11 that water right, a couple of them still do and I suspect
12 that maybe that's where the Washington Water Trust is going
13 to get some of that water, which would be just fine. I
14 don't have a problem with that.

15 Now, currently, Ecology and the members of the
16 Water Use are working on a new memorandum of agreement. In
17 recent history, irrigation withdrawals have hit up to
18 93.5 csf for some individual ditches; but the normal
19 withdrawal, per Gary Smith, in the last five years is 40 to
20 50 cfs. At the March 14, 2012 meeting, Cynthia Nelson said
21 that with all the irrigation and conservation improvements,
22 even with evaporation in some parts, heat diversion has only
23 been about 70 to 75 cfs. This is a far cry from the over
24 appropriation of 518 cfs.

25 Each year due to irrigation efficiency,

1 relinquishment, piping, and less withdrawal from the
2 Dungeness River and other streams, the Dungeness Watershed
3 has seen less usage and consumption of river and stream. I
4 go on to say more about the buildout and how much we're --
5 we're using less and less water every year, but I want to go
6 quickly --

7 MR. THIELEN: Sixty seconds, ma'am.

8 MS. GLOVER: Okay. I do want to point out
9 something that I don't think was accounted for in the Cost
10 Benefit Analysis. It's been mentioned before. Did you know
11 that with your exempt well, you can water up to 5,000
12 gallons per day. You can use up to 5,000 gallons per day
13 for domestic use. You can water up to a half-acre of lawn
14 or garden. You can provide stock water in unlimited
15 quantities. And you can use up to 5,000 gallons a days for
16 commercial or industrial uses.

17 Think of all the farms we have. Think of the
18 greenhouses. Think of all the stuff that the day before the
19 rule gets into place, you can do all this; the day after it,
20 you can't. And if you don't think that's going to devalue
21 the property -- I mean, that's incredible. It should be in
22 there. A friend of mine, a broker, came up with this little
23 cartoon. It's really kind of cute, but it's very sad, with
24 all the money and water flowing out of the water bank and
25 the family there being held up by DOE. And the son has a

1 goldfish in a bowl of water and the dog has his water dish
2 around his neck.

3 MS. BEITEL: Helen Watkins.

4 MS. WATKINS: My name is Helen Watkins. I'm a
5 longtime resident here. I've been here for 30 years. I am
6 reading this letter. It was drafted by Bill Clark, who is a
7 water attorney and well respected in this state.

8 And he says -- it's to Mr. Sturdevant -- Our
9 organizations are writing to request that the Washington
10 Department of Ecology not adopt the proposed Dungeness Basin
11 Water Management Rule. Instead, we ask that Ecology develop
12 a similar, fair, and less costly approach through which the
13 agency uses capital funding to protect streamflows.

14 We are concerned about the actual economic impact
15 that the rule will have on current and future water uses in
16 the basin, as well as the impact to the economy of the
17 region. We ask that Ecology reconsider the economic
18 analysis done today to fully encompass the impact of closing
19 the basin through the proposed rule.

20 Additionally, with the dramatic reduction of
21 withdrawal from the Dungeness and its tributaries over the
22 last several years, we believe that the new instream flow
23 rule is overly restricted and would unnecessarily impact the
24 lives of citizens in light of the dramatic increases in the
25 efficient uses of water in this basin.

1 In the past two decades, Ecology has spent tens of
2 millions of dollars in public funds in the Dungeness Basin
3 to reduce the direct impact on stream flows caused by large
4 surface water withdrawals. A fraction of the cost of this
5 recent public investment in senior water rights would offset
6 future junior exempt well impacts throughout the Dungeness
7 Basin.

8 As seen throughout the state, Ecology's new policy
9 of requiring exempt well mitigation on a project-by-project
10 basis simply does not work. Exempt well mitigation disputes
11 of the agency's own making consumes significant agency staff
12 resources, impose unwarranted regulatory burdens and costs
13 on homeowners, and make local building permit and land use
14 decisions more complicated -- all to address extremely small
15 consumptive uses of water whose impact on streamflows are
16 difficult to precisely determine.

17 If water rights are now available for the
18 Dungeness water exchange to function as promised by Ecology,
19 then these same water rights should be used by Ecology to
20 mitigate for impacts on streamflows caused by consumptive
21 water use. If such water rights are not available, then the
22 proposed rule should not proceed, as the absence of the
23 proposed mitigation will create the same morass of red zones
24 and moratoria caused by Ecology's exempt well regulation in
25 other counties.

1 MR. THIELEN: You have 60 seconds, ma'am.

2 MS. WATKINS: Recent experience has shown that
3 Ecology should not prohibit exempt wells in the hopes that
4 homeowner-developed, non-profit, or for-profit water
5 mitigation proposals will suffice.

6 In 2012, to address the exempt well moratorium
7 caused by Ecology's Skagit Basin Rule, the Legislature
8 provided capital funding for the agency. In prior decades,
9 significant capital funds were provided for water
10 acquisition and instream flow protections throughout the
11 state.

12 If ecology believes that future exempt well uses
13 in the Dungeness Basin are of such concern, then Ecology
14 should continue using capital funds to protect streamflows.
15 This approach will ensure consistency with the county's
16 Growth Management Act comprehensive plan to protect
17 landowners from the financial ruin of moratoria seen in
18 other counties, while allowing Ecology to offset further
19 exempt well impacts to the same extent as would occur in the
20 proposed rule.

21 Please consider the wisdom of our request and do
22 not adopt the present rule, but work with our organizations
23 to find a solution that addresses the agency's streamflow
24 concerns without creating an unmanageable regulatory
25 structure that is costly and unnecessary.

1 Sincerely, Washington Realtors, Washington Farm
2 Bureau, Building Industry Association of Washington,
3 Washington Cattlemen's Association, Washington State Grange,
4 Association of Washington Business, North Peninsula Builders
5 Association, Sequim Association of Realtors, and Jefferson
6 County Association of Realtors.

7 Ms. BEITEL: Next, we will have Carol Johnson,
8 after that will be Steve Marble.

9 MS. JOHNSON: Good evening. My name is Carol
10 Johnson. I'm executive director of the North Olympic Timber
11 Action Committee. Typically, I work on issues directly
12 related to the timber industry, and there's certainly been a
13 lot of issues there; but tonight, I'm here to speak directly
14 to you citizens as a citizen of Clallam County concerned
15 about the impacts that these rules will have on our
16 individual properties and the future economic health of our
17 county specifically and, certainly, our rural communities.

18 I spent several hours one day looking through the
19 Department of Ecology website to gather the information on
20 this. And I probably am not alone in saying that it was
21 like you have got to be kidding me. I ended up with about a
22 three inch pile of paper, much of it I printed because I
23 thought I could read it at home in the evenings.

24 And I don't think this is an issue that has been
25 well-explained by Ecology. And I know that they put out

1 newsletters and there's reports and there's 50-page
2 documents, but I have not yet then able to find the Cost
3 Benefit Analysis. I did find the small business one, but
4 not the other. So I think that proceeding with this rule,
5 given the lack of knowledge that those of us that will be
6 impacted are going to have to deal with when it's almost
7 virtually impossible to understand it, it just seems like we
8 have to find a way to slow the rule and get more people
9 involved in understanding the impacts of this.

10 I have prepared written comments with a number of
11 questions, which I will get answered through this process,
12 but NOTAC is actually asking that the Department of Ecology
13 delay the decision on the final rule until more education
14 has been done to the citizens that will be impacted.

15 And another logger was here, Jim Bower, earlier
16 tonight that had to leave because he gets up at three
17 o'clock in the morning to go to work, and he asked if I
18 would deliver this message. And I told him I'd use a couple
19 of seconds of my time to do that. His comment was, Cowboy
20 Poet Baxter Black said, "Common sense is illegal and no
21 consideration is given to economics." Thank you.

22 MS. BEITEL: Steve Marble. After Steve Marble,
23 we'll have Tom Williamson.

24 MR. MARBLE: Steve Marble, 85 Fawndale Place,
25 Sequim.

1 We're here tonight to comment on a rule that was
2 born by an agenda built on fraud and assumptions and jammed
3 through by biased committees. Removing the economist who
4 wrote the impact -- who was writing the economic impact
5 report, because they didn't like his assessment and sacked
6 him, is systematic of the whole water rule process. The
7 committees that pounded out this rule were stacked with
8 agency personnel and environmentalists; the people that were
9 actually impacted by the rule need not apply.

10 The first assumption is that low river flow is
11 what got us endangered salmon population, nevermind that the
12 salmon population practice has been reported in the local
13 press as far back as the 19th century, and prior to that in
14 Native legend; nevermind that most oceanographers attribute
15 large fluctuations in salmon population to oceanic
16 conditions; nevermind that large population swings can be a
17 natural phenomena augmented by bad management decisions.

18 DOE has spent a ton of money and effort in
19 ratcheting down on domestic uses for what they SAC calls
20 two-tenths of one percent of the river over a hundred year
21 buildup. In other words, all this concern, all this
22 excitement is over a negligible immeasurable amount of
23 water. With all the work in water conservation in the basin
24 over the past several decades and the downward trajectory of
25 water use, this rule would seem unnecessary.

1 Country living will certainly take on a new norm
2 with the newcomers to the valley of outside watering rights
3 or indoor use. You can move to Sequim, don't plan to water
4 the animals or the garden or wash the car, except for those
5 taxpayers living where they can take advantage of some vague
6 mitigation seed or funds extorted. We have to pass to see
7 what's in it; the process does not create a good policy, nor
8 does it enter confidence in our public servants. Did DOE
9 ever tell you how many salmon we're saving?

10 The impact these wells have on rivers is
11 conjecture based on models, not comparable science. Were
12 DOE's computer models crafted with the same lack of scruples
13 demonstrated by their Economic Impact Statement? Are flow
14 thresholds that are rarely, if ever met, appropriate in the
15 river?

16 The Department of Ecology contends that the river
17 is over allocated and they throw around big numbers. They
18 then turn around and tell us water rights that have been not
19 been used for five years, a significant portion of their
20 batting about big numbers are gone. Which is it DOE? You
21 can't have it both ways. You have to subtract out the
22 rights of single use or non-use right and arrive at the real
23 allocation number.

24 MR. THIELEN: You have 60 seconds, sir.

25 MR. MARBLE: Similarly, in the DOE Economic Impact

1 Statement, they determined water use arbitrarily and arrived
2 at numbers that a lot of citizens that have never been
3 threatened as justification for this rule. With science
4 conducted like your Economic Impact Statement and
5 assumptions that don't hold water, what this rule is is a
6 naked power grab by an out of control agency.

7 The real ambition appears to have nothing to do
8 with fish populations. Honest discussions of these issues
9 cannot occur with a deceptive, disingenuous, and dualistic
10 agency like the Department of Ecology.

11 My recommendation is that this rule is flawed
12 beyond redemption and should not be adopted. Any new rule
13 process should require Ecology to perform a full SEPA
14 analysis, just as they would require of anyone else
15 proposing changes as sweeping as this rule. Clearly, this
16 agency has demonstrated a crying need for close oversight.

17 In your agenda, you say there's a box to put
18 written comments in. Where might that box be?

19 MS. BEITEL: The box is right outside. You can
20 just go ahead and leave them with me, that would be fine.

21 Okay. We have Tom Williamson. And after Tom
22 Williamson, we have David Kent, K-e-n-t-f.

23 Mr. WILLIAMSON: Tom Williamson, 300 North Sequim
24 Avenue.

25 I visited the very first presentation put on by

1 the Department of Ecology for WRIA 18, and it was dubious
2 from the get-go. I had lived in Sequim for at least 20
3 years at that point and have crossed the Dungeness River, on
4 average, twice a day. Like any ordinary curious person, I
5 look over the rail to see what's going on.

6 In over 20 years, despite his many, many people
7 moving here and many, many wells being drilled, there was no
8 apparent change in the river. It fluctuates up and down
9 year after year, never goes dry, never once was there a
10 salmon struggling to get up the river. It couldn't happen
11 because, if there had been, the Sequim Gazette would have
12 been there to take pictures. That would have been big news.
13 It never happened. It won't happen.

14 I'm not a hydrologist, but I do have a reasonable
15 portion of common sense. Now, a lot of what they told us at
16 that meeting just -- it just made no sense. I was also
17 really intrigued in that meeting when someone got up and
18 identified himself as in some position with the Jamestown
19 S'Klallam Tribe and what had been a very calm presentation,
20 he was very agitated and shouting that we have a serious
21 crisis here and we've got to do something about it right
22 now.

23 And, again, I could not wrap my mind around what
24 in blazes could he be talking about and why was he from the
25 Jamestown S'Klallam tribe here about it one way or the

1 other. Once again, it makes no sense. But what was even
2 more bizarre was when DOE begins describing their solution
3 as mitigation. I'm thinking, how do you mitigate for a
4 shortage of water because that does not resolve -- couched
5 in the form of we're running out of water, we're sucking the
6 river dry, the salmon are going to die, a big problem. How
7 do you mitigate for a shortage of water?

8 Well, then they started talking about money for
9 mitigation and banks of virtual water and then all of a
10 sudden, the lights go on. This has never been about
11 anything except money. There is no other way to explain all
12 the existing factors. DOE has spent years and millions of
13 dollars to affect what they have described as an
14 insignificant change in the amount of river. They are quick
15 to point out that they cannot be held liable if not a single
16 additional fish returns as a result of all of this
17 mitigation.

18 MR. THIELEN: You've got 60 seconds, sir.

19 MR. WILLIAMSON: Thank you.

20 When they get done with us, they're going to move
21 on to the Sol Duc, then the Queets and the Quillayute
22 because they, obviously, need their help as much as we do.
23 And someday when they're all done with all the watersheds in
24 the state, this mitigation payoff is going to be huge.

25 In both the recent presentations by the Department

1 of Ecology include the information that, "we never said that
2 there was a shortage of water," which is true. All the
3 propaganda pieces they put out -- go back and read what they
4 said -- they never said that there was a shortage of water;
5 they implied it 15 or 20 different ways, but they've never
6 said it.

7 It seems that the mission of the DOE now is
8 defined as to protect the interests of senior water right
9 holders. How did they get that job? Sounds like a job for
10 the courts or maybe the Department of Commerce. Who are the
11 senior water right holders, you might wonder; I do. We are
12 told that it's the municipalities and irrigators. And when
13 we asked, well, aren't the tribes water right holders; they
14 said, well, the tribes may have some undefined interests,
15 but we don't know. We don't know about it.

16 I'd say that it is morally wrong for the
17 Department of Ecology to proceed with this until they have
18 identified how much money they're taking in and who's
19 getting the money.

20 MS. BEITEL: David Kruth. And after David, we
21 will have Robert Crittenden.

22 MR. KRUTH: I'm David Kruth, 501 Three Crabs Road
23 in Sequim. I'd like to read a letter from the City
24 Attorney, Craig Ritchie, to the Director of the Washington
25 Department of Ecology. I'm going to paraphrase certain

1 sections and if Mr. Ritchie is in the audience, I will ask
2 him to correct me if I've interpreted anything wrong, but
3 this is what he says. He makes some very valid points where
4 the rule is not following the Revised Code of Washington and
5 the current law. He wrote nine pages on the errors in this
6 current proposed law and 37 paragraphs. I'll highlight the
7 most grievous ones.

8 He starts out saying, the rule in its entirety has
9 a defect which is clearly set forth in the proposed rule.
10 That defect is that the statutory definition of WRIA 18, as
11 recognized by the Legislature in much of the enabling law,
12 RCWs, includes the Elwha-Morse Creek watershed, Morse
13 Creek-Bagley watershed, the Dungeness watershed, and the
14 Bell-Johnson watershed. With that broad area, the statute
15 requirement for a voting member to be the largest city in
16 WRIA mandated that Port Angeles be the voting city, and,
17 therefore, excluded Sequim from a vote and from the direct
18 funding under 90.82.040.

19 However, the new rule only covers the Dungeness
20 watershed and several other minor watersheds makes, but
21 specifically excludes the Elwha-Morse Creek watershed. That
22 means that now Sequim is now the largest city in the WRIA,
23 thus the City of Sequim should be entitled to a vote and the
24 funding for rule development.

25 WRIA rules mandates that the largest city in WRIA

1 and county and irrigation district users get to sit at the
2 table and try to agree on a rule utilizing state funding.
3 In fact, such a city and the county have a vote. When the
4 voting members approved the concepts in this rule, the City
5 of Sequim did not have any authority to vote; consequently,
6 the City of Sequim did not have any power to structure the
7 proposed watershed rule upon which the rule is based. Had
8 the City of Sequim been able to vote, an entirely different
9 rule may have been proposed. A different rule definitely
10 would have been proposed by Sequim.

11 By excluding the Elwha-Morse Creek watershed basin
12 from the current rule definition for WRIA 18, the Department
13 of Ecology is creating a new and different WRIA. This is
14 not authorized by the enabling statute. The rule is flawed
15 from its inception. Sequim is placed at a disadvantage in a
16 number of ways.

17 In addition to the City of Sequim's concerns that
18 we may have been able to agree on a rule without DOE
19 imposing a rule, the exclusion of the Elwha-Morse Creek
20 watershed basin presents essential obstacles to the City of
21 Sequim's potential desire to use Elwha-Morse Creek watershed
22 basin water both from a direct purchase of water rights
23 standpoint and from an intertie standpoint.

24 MR. THIELEN: You have 60 seconds, sir.

25 MR. KRUTH: Okay.

1 He goes on, and this is the whole letter. Another
2 concern he has is the concern that it is not intended to
3 affect federal and tribal reserved rights. There is no
4 definition of federal and tribal reserved rights. There
5 are, of course, various speculative federal and tribal
6 reserved rights. It would seem more reasonable to change
7 the sentence to federal and tribal legally protected rights
8 to the extent of such legal protection. This issue has not
9 been fully litigated and there is no reason for language in
10 this rule that would be construed as either an admission by
11 the State of Washington or as a grant of rights by the
12 State.

13 MR. THIELEN: You have 15 seconds.

14 MR. KRUTH: And it goes on for the 37 paragraphs,
15 there are so many flaws in here. It's going to create more
16 litigation, on and on, than it's ever going to solve. And
17 the agency says it's not going to create more litigation,
18 it's going to create a lot more litigation when the City
19 Attorney of Sequim, who should be a friend of the water
20 rule, is saying you've got problems here. Thank you.

21 MS. BEITEL: Robert Crittenden. And after Robert
22 would be Jackie Dulin.

23 MR. CRITTENDEN: I'm Robert Crittenden, P.O.
24 Box 222, Carlsborg, Washington.

25 I've examined the three principle studies that

1 this rule is based on, and I've found that each of them has
2 very significant flaws. These are the groundwater models,
3 that's the 2008 model by the Pacific Groundwater Group. It
4 has zero degrees of freedom and, therefore, has infinite
5 variances. It tells you exactly nothing.

6 The second study is the IFI Study. Now if you
7 read the review of IFI that was written by Mr. Beauvais, he
8 says the fact that that qualitative element in that study
9 that has a huge effect on its output. The fact that there's
10 a qualitative element tells me that the output is not
11 scientifically based; it is political.

12 And the third study that is surface collated
13 method. It was developed by using regression, but they
14 failed to discount the alpha value. That's a technical
15 issue, but it means that the model that they're using is not
16 valid.

17 Because the scientific basis of this rule is
18 fundamentally and deeply flawed, I recommend that the
19 department not adopt it. Thank you.

20 MS. BEITEL: Jackie Dulin.

21 MR. DULIN: Jacques.

22 MS. BEITEL: Jacques Dulin.

23 MR. DULIN: I'm Jacques Dulin. And I live in
24 Sequim, P.O. Box 3386, up on Woodcock Road.

25 You've heard a lot of folks up here about the Cost

1 Benefit Analysis, and I'm not going to repeat that and
2 that's because in order for the DOE to adopt the rule, they
3 have to satisfy what's called the maximum net benefits test.
4 They haven't done that. They have an in-house economist.
5 His name was Tryg Hoff. He did the analysis. He's a very
6 experienced gentleman. He came up with the cost of about
7 \$42 million and the benefits to be almost intangible. That
8 is upside down. Oh, gosh. We can't have that guys, is the
9 DOE speaking, because we can't pass the rule if we adopt
10 what our economist said. So they argued with him, hassled
11 with him, and finally forced him out. Then they got the guy
12 from Jefferson County, who gave them a very nice convenient
13 review, and now the Cost Benefit Analysis, all of a sudden,
14 is positive. So now, they can go forward with the rule. It
15 is B-S, and I'm not so far from the farm that I can't smell
16 it.

17 Why the DOE would subject the citizens of
18 Dungeness Valley to pay \$42 million in mitigation costs for
19 no proven benefit -- and I'm honored to follow
20 Dr. Crittenden, who pointed out that the basic science is
21 completely flawed. It's worse than junk science. Whether
22 the benefit is supposed to be for fish or habitat, both
23 bogus reasons, much less benefit to the people is, to me,
24 beyond belief. I'm just getting warmed up.

25 This rule making of the DOE is not an exercise of

1 government by the people of the people and for the people,
2 rather, it's arrogant politics. The rule and DOE's
3 mismanagement of its rule making process is in violation of
4 state law and the EPA, as beautifully setout in the letter
5 by Craig Ritchie of the City of Sequim, and other people
6 here. I won't state the titles, the citations to the
7 statutes, but it's there. It's arrogant politics, as I say.

8 The rule and the rule-making process is in
9 violation of state law and the Administrative Procedures Act
10 in leaving stakeholders out of the process. You've heard
11 about Sequim, and you've heard about small farmers today,
12 two groups. It's top-down waste of taxpayer money.

13 I would like to know just how much money that they
14 have spent on doing this rule-making exercise over ten
15 years. Ten people are here from DOE today. What is their
16 take-home pay? While we have a recession, they have a cushy
17 job to make a rule that we don't need. It is your credit to
18 make work by remote unaffected government workers who ignore
19 the inconvenient truth that the rule does not stand the
20 smell test, much less the maximum net benefits test.

21 We urge a withdrawal of the rule and do not
22 restart the process until you can meet the maximum net
23 benefits test and, in the process, satisfy state law and
24 adhere to the EPA. The DOE needs to be repurposed from
25 expropriation of taxation via unnecessary rule making to

1 find other sources of water, as it claims it can't prove we
2 are short and let's close the basin contrary to your
3 authority and to state law.

4 Why don't you solve the real problem? If you
5 think we're short of water, go on out and find it. A couple
6 years ago, I was at a meeting with Mr. Sturdevant and I
7 said, find us new water. Oh, we can't do that -- you heard
8 it here today -- well, we don't do that. We're the
9 government. We make rules. We don't solve problems.

10 MR. THIELEN: Your time is up.

11 MR. DULIN: Okay.

12 Anyway, let me give you a couple of suggestions.
13 We've heard some here. How about tapping the deep aquifers
14 that are going directly out into the Strait and never being
15 used, pump it up, irrigate the farms. Create more small
16 farms. Preserve our open spaces. Quit subdividing
17 properties for homebuilding. Grow something.

18 MR. THIELEN: I need your summary, please.

19 MR. DULIN: Okay. I will. Thank you.

20 How about irrigation and transfer of water,
21 energize, as suggested by Craig Ritchie? How about
22 desalination? How about aquifer recharge of rivers by
23 runoff for beneficial use? Cloud seeding over the Olympic
24 Mountains, and pump the Elwha River.

25 Anyway, please withdraw the rule. It's in our

1 best interest. Thank you

2 MS. BEITEL: Teren MacLeod? Jim Bower? Okay.

3 Then I have Diane Johnson and after that, Ivan Sorensen.

4 MS. JOHNSON: My name's Diane Johnson,

5 Dr. Johnson. My address is 1521 Dabob Road in Quilcene. I

6 represent the Chimacum Grange, No. 681. Even Roger didn't

7 talk about agriculture very much. Roger?

8 I'm here to represent a voice of caution on behalf

9 of agriculture in the Dungeness Basin. This basin, like the

10 Chimacum Creek Basin, has some of the absolutely best soils

11 in the world for agriculture. The agricultural base has

12 already been decimated by urban residential growth leaving

13 only a fraction of the former open space available for

14 cultivation, all at a time when we see a resurgence of an

15 interest in activity in consumers for eating local for the

16 health benefits of fresh or nutritious food, once again

17 making agriculture profitable.

18 At the same time, fuel prices have quadrupled

19 making foods from there far more expensive, and traveling

20 there to shop becomes more difficult making food from here

21 much more attractive. Ultimately, maintaining the

22 wherewithal that it's the farmland and farmers who grow

23 enough food to feed ourselves locally seems like a better

24 and better idea.

25 Safety and health are not the only positives. We

1 are seeing small farm agriculture growing for local or
2 nearby markets become an economic driver in Jefferson
3 County. I know that Clallam County is experiencing similar
4 growth in this sector. There are tremendous opportunities
5 for economic development increasing the tax base of
6 businesses that serve agriculture and the creation of jobs
7 in a small area.

8 None of this can happen without water. Closing
9 the basin to new development in the Chimacum Valley has
10 killed the opportunity to develop new uses for old Ag land
11 and new small-niche growing operations on rural residential,
12 five, ten, and twenty-acre parcels. We know that the levels
13 set for the instream flow into Chimacum Creek were the
14 maximum needs for fish, rather than the minimums as
15 required.

16 We believe that actual use is based on importance,
17 even if they are not needed -- that is old water rights --
18 and includes the fact that the bulk of water users are
19 residential only and never use their maximum allotment.
20 I'll give you an example of when I lived in a house in
21 Irondale. I paid a water bill. I never used more than
22 3,000 gallons a month even though exempt well, as you heard,
23 can use 15 to 20 or unlimited water for stock a day. So
24 we're talking ridiculous numbers here.

25 But this unused water, they don't know who doesn't

1 use it, but it is taken into their calculations.

2 MR. THIELEN: You have 60 seconds, ma'am.

3 MS. JOHNSON: Thank you.

4 In the Dungeness Basin, figures are available to
5 show that overall usage has declined, and you've heard about
6 that before. Don't let environmental extremists and fear
7 mongers overrun actual data and state mandates for balanced
8 use. High fees for mitigation and use of water will kill
9 farming and small Ag. And, as you know, farmers are a lot
10 like starving artists, they operate on a shoestring. They
11 can't afford high mitigation fees.

12 The Chimacum Grange asks that you consider
13 carefully the unintended consequences of your decisions on
14 such a critical sector of water usage. They are important,
15 critically important to the well-being and even the
16 sustainability of the citizens who live here. Please make a
17 rule which will support the continued presence and success
18 of our farmers in feeding us all.

19 MS. BEITEL: Teran MacLeod.

20 MS. MACLEOD: Thank you. Teran MacLeod, and I'm
21 fortunate to follow Diane Johnson. I also met her at the
22 Chimacum Grange and I'd like these comments also to include
23 support for her comments, as well as the Jefferson
24 Association.

25 I'm testifying here this evening by invitation of

1 the Sequim Association of Realtors. I'm the Chair of
2 Government Affairs in Jefferson County and I also, in that
3 capacity, have served for seven years as a Realtor Member on
4 WRIA 17 Planning Unit, now the East Jefferson Watershed
5 Council. I ask that this testimony also include all the
6 formal testimony made by Tryg Hoff to ecology for the water
7 management rule adopted in WRIA 17. I'll be providing
8 formal written comment with attachments, so you'll have that
9 before the deadline.

10 And I'd also like to relate to you some experience
11 that we had with 17, with our rule adoption to what is
12 happening here. In WRIA 17, we had more reserves created
13 for future water use in subbasins. The Chimacum subbasin,
14 as you have heard, has had really severe restrictions to
15 water and land use for homes and for agricultural uses.
16 This is our breadbasket for our community. Now, there is no
17 new water allowed for outdoor gardens, for growing food in
18 this primary farming area.

19 A study conducted by Hydrological Services
20 presented to the WRIA 17 Planning Unit and funded by
21 Washington Realtors showed that full buildout of the
22 Chimacum subbasin would have a consumptive use of only
23 .3 cfs from permit exempt wells. You've heard a lot of
24 numbers. Those are very, very low numbers, very similar to
25 water projections that we are seeing here, and just a small

1 tiny fraction of the water that is being asked to be
2 provided to the streams in the water rights for the streams.

3 In fact, even in Chimacum, there are over 300
4 wells that have been built by people who wanted to retire
5 there and have farms. They are now subject to those
6 restrictions and not able to use their water for outside
7 use.

8 So you'd think we were really in dire straights
9 but, actually, in Chimacum and in the Dungeness here, there
10 is much good news that we don't hear about and it's not
11 being considered. A book from the Instream Flow Council
12 uses the Dungeness as one of its cases studies. It shows
13 150 cfs used for irrigation in 1979 is down to 54 in 2001.
14 With less and less water being used, wouldn't you'd think
15 that .3 cfs could be available to this community without
16 such great concern?

17 Rules are not supposed to cost more than the
18 benefit they provide. Ecology opted to conduct a cost
19 benefit and impact study here and also in 17. These
20 economic analyses are required to meet certain standards.

21 MR. THIELEN: You have 60 seconds, ma'am.

22 MS. MACLEOD: They are required to not only show,
23 but also to explain the real cost and benefits. An internal
24 Ecology emails suggests that the rule is upside down by
25 possibly twenty to one or more. In our subbasin, the Small

1 Business Economic Impact Statement said there would be 819
2 jobs created. We all know that that didn't happen. Close
3 to 390 were in construction. So you really have to look
4 closely at these rules.

5 We need answers. I've heard people say that
6 they've asked questions and they need answers. I would like
7 to suggest that the Administrative Procedures Act be changed
8 for rule making so that the responses, in concise
9 explanatory statements, be provided as part of CR-102
10 hearing process in a timely manner so that people can get
11 answers before the end of the hearing. And I'd also like to
12 ask that we have science that is clearly replicable. Thank
13 you

14 MS. BEITEL: Ivan Sorensen.

15 MR. SORENSEN: Thank you. I'll be very quick.
16 I'm just a local person that's been a small homebuilder here
17 living in this area about 22 years now. All of you people
18 that I've talked with, Ann Wessel, you've been very
19 professional and helpful. And I appreciate that -- and some
20 of you people are in the hot seat tonight -- and also you're
21 assistance as well.

22 You must have some empathy for what you see in
23 front of you because you're not the elected
24 representatives -- I think they're mostly gone now -- and
25 they're the masters of what you guys are doing. But I can't

1 understand how any of the political masters -- although, I
2 was talking to Steve Tharinger out in hall, and he still
3 seems to think that it is just a hypothetical that a
4 homeowner or property owner could lose their property
5 rights.

6 So if you have a lot, a building lot with a good
7 functioning well, 25 gallons a minute or something, near
8 McDonald Creek, up in the McDonald Creek area, it's very
9 possible, in fact, likely, that you won't be able to build
10 on that lot because -- not because of any rule, you pay
11 taxes on that thing for 10 or 20 years preparing for your
12 retirement, but because the Department of Ecology deems that
13 it needs more in McDonald Creek.

14 But there's no actual evidence that we can do
15 anything about that creek because the Department of
16 Ecology's own research shows that one home uses about the
17 same water as 75 -- excuse me -- 75 homes use the same water
18 as one irrigated acre of farm land. So this whole thing
19 makes no sense because all the burden is placed on
20 homeowners and future homeowners, and they're the ones that
21 use the least water. There is no more efficient water use
22 than the homes that are on individual septic systems.

23 So the Department of Ecology, or the state, could
24 easily obtain the irrigation rights to 10 acres, and they
25 would have equal water for 750 homes in the future creating

1 \$15 million in sales tax to the state, creating 3,000
2 employee years, because each home is equal to about 3.8
3 years of employment on average. So all these economic costs
4 aren't just to you people out here, we're going to feel them
5 immediately, but it affects all of us in the state. And
6 it's just a shame to see this.

7 I know you guys are good people and you're
8 enforcing something that, if you think about it, can't make
9 sense. That's about it. Thank you.

10 MS. BEITEL: That's the last one we have to give
11 public comment to tonight; but at this time, I would like to
12 open it up and ask if there is anyone else who would like to
13 come up and give it. I'll go with you, and then I will go
14 with you, and then I will go with you.

15 If you would please go ahead and come on up and
16 state your name and your address for the record -- I'm
17 sorry, he's first and then you. Go ahead, you can come on
18 up.

19 MR. DELACRUZ: My name is Francisco De La Cruz,
20 P.O. Box 281, Sequim. I'm a retired management consultant
21 engineer. And I saw this thing from WRIA 17. That was two,
22 three years ago. I immediately installed water meters --
23 one for domestic use and one for watering plants -- so I
24 know, more or less, what the law will do.

25 On average, we're going through about 150 gallons

1 of water per day -- I might need some of it now
2 (coughing) -- but what was interesting to me was that even
3 though over months and months, we averaged 150 gallons of
4 water. The minute I installed the meter on my ten raised
5 flowerbeds, those babies went through 2400 gallons in less
6 than 12 days. So there's some things that I learned.

7 But the other thing that I learned was that, I've
8 attended several meetings and in spite of all those
9 meetings, the rule is still moving forward and the rule will
10 come in one way or the other. What I don't see in this is
11 an undo button. What happens if all of these models, all of
12 these suppositions, all of these forecasts, all of these "we
13 thinks" don't work in the real world, what is the process to
14 undo this thing? Look at how much it's taken just to get it
15 to this stage. What happens at six, eight, ten months down
16 the road we find it's not working? It's going to cost
17 \$15,000 or \$20,000 to buy a water right. We don't know.

18 But what happens when that does happen where we
19 find that the rule, as well-designed as it might be today,
20 isn't working what we experience. I think that before this
21 group even consider it, it be rewritten to include a set of
22 criteria that says if these things happen this way, we'll
23 undo it or we have to revisit it or it's not working.

24 We talked about the Advisory Committee. One of my
25 professions, if you will, is management consulting. And

1 when you give a job to 17 or 18 or 19 people, you basically
2 get nothing; if you don't want anything done, just give it
3 to a committee. And once we start putting things in the
4 hands of committees, we're going to run into some
5 bureaucratic procedural issues.

6 So, again, I do not support the rule as written
7 for a lot of the reasons that were mentioned previously, and
8 what I would encourage is that there be an undo function
9 included in that with criteria. Thank you.

10 MS. BEITEL: Please state your name and address
11 for the record.

12 MR. CHANDLER: Thank you. My name is George
13 Chandler. I live at 3755 West Sequim Bay Road. The first
14 name is George, like a farmer; the last name is Chandler,
15 like a ship's chandler. And I know you folks are taking our
16 names down so you can go back and look at what it was he
17 said.

18 First of all, I'd like to thank everyone from
19 Jefferson County, all of you folks who came here to tell us
20 what happened in your county. I'd also like to thank all of
21 our elected officials. There's Commissioner Doherty. I'm
22 not sure if Tharinger's still here. I see our Commissioner
23 McEntire and Sheila Roark Miller. These are the folks that
24 we have talked to and shared our concerns about these rules.
25 These are the people who wanted to hear how it affects us,

1 so thank you Elected Officials for being here.

2 I am very troubled by the comments in the emails
3 that were referenced in the Sequim Gazette article of
4 June 6. And I thank the Gazette reporter for getting all of
5 those emails. That's over 1700 pages of emails. I haven't
6 gone through all of them, but I've gone through a lot of
7 them. A lot of what I saw, I would describe as duck and
8 cover from the Department of Ecology and by certain members
9 of the Department of Ecology.

10 It is obvious that your Department received a
11 certain outcome and when the individual assigned the
12 responsibility to do the Cost Benefit Analysis could not
13 provide your predetermined outcome, you applied enough
14 pressure that the individual asked to be reassigned --
15 that's in the emails -- and then you tried to cover it up.
16 Cover-ups don't work. Emails last forever.

17 Having spent more than 30 years in positions of
18 management in the private sector, I can assure you that your
19 methods were somewhat juvenile and, obviously, you need a
20 training session on how to conduct an exit interview. They
21 do have some good training sessions. I was fired one time,
22 I understand.

23 It is obvious from the emails that your proposed
24 rule is in violation of the state rule requiring that
25 probable benefits of the rule are greater than the probable

1 costs. You have heard several people talk about that. I
2 don't have to go through that.

3 MR. THIELEN: You have about 60 seconds, sir.

4 MR. CHANDLER: Thank you.

5 Are you prepared to stand here and say you're
6 going to put your name on a proposal that you know is in
7 violation of the state rule?

8 An interesting email read and I quote, "You can
9 disagree with me all you want, but you better check with
10 your attorneys." I continue to quote, "It's clearly bad
11 policy to put millions of gallons of water for fish over a
12 few gallons for people or, God forbid, not protect the water
13 for the people at all." Like I said, this rule is
14 antigrowth. That's a quote by one of your members. We
15 heard earlier by the Department of Fish and Wildlife, it's
16 more important for the fish than it is for you people here.

17 Your proposed rule is all about control. You and
18 your department consider yourselves members of the elite
19 part of our society and only you do and know what is best
20 for the good people in this neighborhood. Thank you.

21 MS. LARSEN: I'm Kathi Larsen, I'm here on behalf
22 of myself, 422 Griffith Farm Road in Sequim.

23 For the record, I just want to stay that I believe
24 that this rule should be halted. I believe the people have
25 a reasonable expectation to have been notified in a timely

1 manner -- not within a few months of the rule being
2 proposed, but probably several years notification -- of how
3 that will impact them so that people can make plans. People
4 who bought property years ago, have no knowledge of this and
5 they're wanting to pursue it as they gain knowledge in the
6 last few months. And it's certainly not sufficient time to
7 put things in place for the property they've spent -- many
8 of them -- all of their retirement money to be able to live
9 in this valley. So I believe it needs to be halted.

10 The analogy that came to my mind as I was thinking
11 of this earlier, if you had cancer and a new drug was
12 developed and you went to your doctor and he gave you that
13 pill and said, try this. And as you were about to take it,
14 you began to find out through your resources that the people
15 who developed that very drug that you're about to take,
16 found that there were numerous loss and that other
17 technology companies that knew of that developing drug, also
18 were able to point out numerous loss. Would you take that
19 pill?

20 I think we're all here tonight because we're not
21 going to take the pill and you want to do something about
22 it. And I think, for the record, it needs to be known that
23 everything that's been stated tonight goes to prove that the
24 pill that they're trying to give everybody to cure something
25 has tremendous loss. It needs to be stopped; it needs to be

1 studied. I think people have a reasonable expectation to
2 have been notified in a timely manner. Thanks.

3 MS. BEITEL: State your name and address for the
4 record, please.

5 MR. GALE: Good evening, ladies and gentlemen. My
6 name is Steve Gale.

7 Your plan of the water resource inventory area is
8 in different strategy than the state. It appears to be a
9 divide and to conquer strategy, which usurp our freedoms,
10 money, property access to divide. I have great concern due
11 to the Department of Ecology's proposed new rule making.

12 It is my opinion that the proposed new rule making
13 is a failure of your department. Your plans fail to
14 recognize the rights of citizens; indeed, your plan's a
15 failure of your department to give anything more than
16 dismissive consideration to the rights of the people. As
17 failure in that, it is contrary to the intent of the
18 permanent exempt well statute, a failure widely in your
19 economic justification you offered that you could take a
20 right which has not been yet exercised. Your department's
21 action is just that you can take the water rights of people
22 where they have not previously established that right is
23 nothing short of absurd and preposterous.

24 Your plan is a failure in that you did not
25 properly communicate to stakeholders of your attempt to

1 usurp water and property rights. A failure in natural
2 planning will cause economic hardships to the citizens of
3 the community. A failure in that you have not clearly
4 communicated the plans and strategies you intend for the
5 people to have to perform for mitigation for new water uses.

6 I am deeply concerned that the call for mitigation
7 is a form of extortion of the public in their unencumbered
8 use of their property. A failure in natural planning is
9 intently ambiguous to details, consideration criteria, and
10 logic. Your plan is based upon subjective, unrestrained
11 decision criteria in that it's evasive discussion on a
12 scheme of mitigation.

13 I believe this proposal rule is nothing but a scam
14 in an effort to scam the people of their rights. The people
15 should not be allowed -- excuse me -- this plan should not
16 be allowed to be enacted. Why has your Department not put
17 forth a beneficial plan which would meet the needs of the
18 community and the environmental necessities by application
19 of good stewardship programs and waste reduction efforts?

20 You should be focusing on helping people succeed
21 in supporting and contributing to a sound local ecology;
22 instead, you have sought to implement a plan to usurp our
23 freedoms, our rights, and put restraints on our property.
24 The only thing this plan would accomplish is a feeling of
25 bureaucratic imperative of creating an overbearing

1 government agency with the agenda of taking water rights,
2 property rights, and diminishing our prerogative for free
3 use and enjoyment of our land.

4 MR. THIELEN: You have about 60 seconds, sir.

5 MR. GALE: It is the people you seek to regulate
6 who afford your department with an excessive budget of
7 greater than \$1 billion and yet your department, with all of
8 its resources, did not even demonstrate the ability to
9 manage something as tangible as the control the Scotch
10 Broom.

11 In that my time is limited here this evening, I'll
12 cut my comments short. You, unfortunately, I think
13 published your notice in early June and there was a filing
14 deadline that occurred thereafter. And it is because of
15 your action, I put my name as a candidate this fall on the
16 ballot because I believe that what's going on here is
17 indicative that there is far less than adequate legislative
18 oversight of your department. It is clear that the people
19 need someone to represent them as well as not support bigger
20 government over the power of the citizens. Thank you.

21 MS. BEITEL: Is there any other comment else at
22 this time?

23 Okay. With that, I will go to closing.

24 MS. WORMAN: I would like to say -- I took about a
25 minute. There is something I would like to put on the

1 Record. It will take --

2 MS. BEITEL: Go ahead.

3 MS. WORMAN: -- me a very short period of time.

4 MS. BEITEL: Just state your name again.

5 MS. WORMAN: Thank you. Melvina Worman. And I
6 took a survey earlier of who was opposed to this rule, and I
7 looked around and I saw every hand raised. Now, it's hard
8 to tell for sure, and I don't know if our two distinguished
9 people from the Department of Ecology were sitting in the
10 audience at that time or that one guy from the Forestry
11 Department, but what I saw was every hand raised. So all I
12 want to do is put for the record that we here in this room
13 are against this thing. And I would say 99-plus percent
14 were against it. And that's for the record. Thank you so
15 much.

16 MS. BEITEL: Anyone else who would like to provide
17 a comment at this time? Okay. With that, we will close.

18 All testimony received at this hearing, along with
19 any written comments received no later than 5:00 p.m., on
20 July 9, 2012, will be part of the official hearing record
21 for this proposal. Ecology will send notice about the
22 precise explanatory statement or the CES publication to
23 everyone that provided written comments or oral testimony on
24 this rule proposal and submitted contact information,
25 everyone that signed in in today's hearing that provided an

1 email address, other interested parties on the agency's
2 mailing list for the rule.

3 The CES will, among other things, contain the
4 agency's response to questions and issues of concern that
5 were submitted here during the public comment period. If
6 you would like to receive a copy, but did not give us your
7 contact information, please let one of the staff know at the
8 hearing or contact Ann Wessel by email, the contact
9 information provided by submitted comments.

10 The next step is to review the comments and make a
11 determination about whether to adopt the rule. Ecology
12 Director, Ted Sturdevant, will consider the rule
13 documentation, staff recommendation, and will make a
14 decision about adopting the proposal. Adoption is currently
15 scheduled for no earlier than August 31, 2012. If the
16 proposed rule should be adopted that day and filed with the
17 code advisor, it will go into effect 31 days later. If we
18 can be further help to you, please don't hesitate to ask or
19 contact Ann Wessel if you have any questions.

20 On behalf of the Department of Ecology, we thank
21 you for coming. We appreciate your cooperation.

22 Let the record show that this hearing was
23 adjourned at 9:45 p.m. Thank you.

24 (Whereupon, the hearing was adjourned at
25 9:45 p.m.)

CERTIFICATE

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STATE OF WASHINGTON) I, VALERIE ALLARD, Notary
) ss. Public in and for the State of
COUNTY OF CLALLAM) Washington, residing at
 Sequim, do hereby certify:

That the foregoing proceedings we taken before me
and completed on the the 28th of June, 2012, and thereafter
transcribed by me;

That the transcript constitutes a full, true, and
accurate record of the proceedings; and,

That I am not a relative, employee, attorney, or
counsel of any party to this action or a relative or
employee of any such attorney or counsel, and I am not
financially interested in the said action or the outcome
thereof;

IN WITNESS WHEREOF, I have hereunto set my hand
this 5th day of July, 2012.

Valerie Allard
Washington State Certified Court Reporter
WA CCR No. 3040
Residing at Sequim, Washington.