



Board of Clallam County Commissioners

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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.

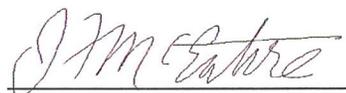
In closing, Clallam County has a long history of leadership on water issues in this watershed, particularly through the Dungeness River Management Team. We recognize that the development of an instream flow rule for the area is highly important but contentious, due to the long-lasting effects on current 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