

**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 28<sup>th</sup>, 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

