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 been 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 an 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