

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]
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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.

