

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

