

July 6, 2012



Ms. Ann E. Wessel
Department of Ecology
Water Resources Program

Re: Dungeness Water Management Rule

Dear Ms. Wessel:

Public Utility District No. 1 of Clallam County (District) respectfully submits to you our comments on the May 9, 2012 draft rule language for Chapter 173-518 WAC-- Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18. On January 30, 2012, District Staff submitted to you via e-mail a report entitled: "Review of the 1991 Fish Habitat Analysis and Its Application to Setting Instream Flows for the Dungeness River--30Jan2012." Please include this report in your collection of comments on the draft rule.

The District is concerned about the findings discussed in the report. Arithmetic errors were found in Table 5 of the report on the 1991 Fish Habitat Analysis (the 1991 Report). This brings into question the accuracy of the entire report and the thoroughness of any prior peer reviews (Department of Ecology Staff claimed prior peer reviews were conducted, but they did not provide any documentation of any such review).

Contrary to the 1991 Report's description of hydraulic model data collection, not all water surface elevation data were related to a permanent benchmark that was established for the study. Side channel water surface and channel cross-section elevation data were referenced to another benchmark. This presents a problem with the vertical control of the elevation and cross-section survey data. This problem causes uncertainty in the determination of the in the range of mainstem flows below which there is no longer a surface water connection to side channels. The optimum weighted usable area (WUA) for fish in the river is highly sensitive to this range of flows. The optimum WUAs were used to determine the instream flow levels for the Dungeness River in the draft rule language. Consequently, there is uncertainty in these instream flow levels.

Furthermore, with regards to the mainstem connection to side channels, latter reports on the physical habitat of the Dungeness River do not corroborate the 1991 Report. In 2003, the U.S. Bureau of Reclamation (BOR) reported on their instream flow side channel study of the Dungeness River. BOR conducted a survey of side channels in the lower 11 miles of the river. They found 10 side channels with surface water connections. BOR predicted that the range of mainstem flows below which there is no longer a surface water connection ranges from 0 cfs to 156 cfs. The average of this range of flows is 69 cfs. The 1991 Report indicated that this flow was 260 cfs. This report omits a description of how the 260 cfs value was calculated. It appears

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that this value was selected arbitrarily. The side channels investigated in the 1991 Report are not representative of the side channels that the BOR found in their more comprehensive survey.

The January 30, 2012 Report by District Staff raised additional technical concerns regarding the application of the method used to determine instream flow levels in the draft rule language. This report described a review of only a portion of the hydraulic analysis presented in the 1991 Report. The report by District Staff provides evidence of technical errors and omissions and raises a valid question about the existence of such problems in the other portions of the 1991 Report. The District recommends an independent review of the entire 1991 Report. This review should look for any similar errors, omissions and/or arbitrarily selected values that are critical to setting instream flows for Chapter 173-518 WAC.

The District is suggests the following changes to the draft rule language.

WAC 173-518-030 Definitions

Change this section to the following:

"Water budget neutral" means an appropriation for a project where withdrawals of ground water are proposed in exchange for:

- (1) placement of other water rights into the trust water right program or stream flow improvement with appropriate assurances, that are at least equivalent to the amount of consumptive use for the project, or
- (2) return of Class A reclaimed waters to the watershed that are at least equivalent to the corresponding avoided volume of diversion from surface water, or
- (3) return of Class A reclaimed waters to the watershed that are at least equivalent to the corresponding volume of effluent from on-site septic systems that due to the project no longer diminish the quality of the water source, or
- (4) water imported from a source outside of the Dungeness portion of WRIA 18.

This change is intended to allow mitigation credits to be added to the water exchange for reuse of reclaimed water. Reclaimed water that replaces direct diversions of surface water and is reused for the same purpose of use should be credited in the total diversion amount avoided. This full diversion amount is consistent with the amount of water that is widely perceived to be conserved by irrigation ditch piping projects. Sections 173-518-070 and 173-518-075 in the draft language refer to mitigation of proposed consumptive use and stream depletions. According to Section 070 (3) (a) (i), depletion is determined by the groundwater flow model with the input of the proposed consumptive use. However, this is only a flow model, which calculates mitigation credits using the quantity of stream depletion. A method is needed to calculate mitigation credits for the reduction of prior consumptive use due to diminishment of the quality of the water source and of all other water bodies hydraulically connected to the water source.

Also, this change is intended to allow mitigation credits to be added to the water exchange for the water imported from Morse Creek via the District's Fairview Water System. Unconsumed

water from Morse Creek recharges groundwater in the Bagley, Siebert and two coastal sub-watersheds, and enhances streamflow in these creeks and possibly McDonald Creek, as well.

WAC 173-518-070 Future ground water appropriations.

Section (3) (a) (i) refers to the Dungeness water exchange. Water use may be mitigated through the purchase of credits through the exchange. More detail is needed about the mitigation via the exchange. Purchase and transfer of water rights is a common method means of mitigation. The purchase and transfer does not change the period of use of the water right. Apparently the period of use specification is not considered because the exchange determines credits for offsetting consumptive use. Nothing in this language refers to the timing of consumptive use. The language should be clear regarding this period of use issue. There needs to be an assurance that irrigation water rights purchased for mitigation credit through the exchange can be used for mitigating future use outside of the irrigation season specified in the water right.

Furthermore, existing leakage of water through irrigation ditches should be used for mitigation credit in the exchange. This water has not been "wasted." Because of ground-surface water interactions the leakage water recharges the shallow aquifer and enhances streamflow later in the season. These interactions were demonstrated by Pacific Groundwater Group in their March 31, 2009 report entitled: "Aquifer Recharge Feasibility Study for the Dungeness Peninsula."

WAC 173-518-040 Establishment of instream flows.

Because of the questions raised regarding the 1991 Report, the District recommends reconsideration of the instream flows for the Dungeness Mainstem after an independent review of this report is completed.

WAC 173-518-050 Closures.

Because of the questions raised regarding the 1991 Report, the District recommends reconsideration of the closure period of the Dungeness Mainstem after an independent review of the 1991 Report is completed. Mitigation methods relying on withdrawals from the Dungeness Mainstem for aquifer recharge may only be successful if withdrawals are allowed after July 15th. The quality of withdrawals from the Dungeness Mainstem to storage for potable water use will be affected by aging. Water treatment will become more expensive as storage time increases. Allowing withdrawals for potable water purposes after July 15th would reduce treatment costs.

WAC 173-518-070 (3) (a) (i)

Drilling to the middle or deep aquifer, where available, will be encouraged only if adequate measures are taken to prevent cross-contamination from the shallow aquifer. The District's LUD

#10 well in Carlsborg has had steadily increasing nitrate concentrations since March 2009, which is about 1 year after the nearby Carlsborg Mobile Estates replaced their shallow well with a deeper well. The shallow well had nitrate concentrations near the maximum contaminant limit. Encouraging moving withdrawals to the middle or deep aquifers will induce more leakage of water from the shallow aquifer and cause cross-contamination, unless preventative measures are required.

WAC 173-518-090 Future maximum allocation from the Dungeness River mainstem.

There needs to be an exception inserted for withdrawals during non-closure periods to off-channel storage for the purpose of mitigating during closure periods.

WAC 173-518-120 Regulation review.

Explain the rationale for (2).

Comments on Preliminary Cost Benefit and Least Burdensome Alternative Analysis

Page 33 Increased certainty in development

Provide details of Ecology's assessment of risk that a larger (basin-wide) lawsuit would be brought by a tribe or at the federal level (e.g., because of salmon loss and tribal claims to instream flow to support the treaty right to take fish), that would halt future development in the basin. How were the cost and the probability of a successful outcome of the lawsuit determined?

Thank you for considering our comments.

Sincerely,

for
Doug Nass
General Manager