

From: Jacques Dulin [REDACTED]
Sent: Thursday, June 28, 2012 1:16 PM
To: Wessel, Ann (ECY)
Subject: Ltr in Oppn to Rule 06-28-2012 Final
Importance: High

Ms. Wessel:

Please consider the attached opposition to the Rule. Look forward to seeing you and other DOE reps tonight in Sequim.

Regards,

Jacques Dulin

[REDACTED]

[REDACTED]

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June 28, 2012

Ms Ann Wessel,
Instream Flow Rule Lead
WA Dept of Ecology
Olympia, WA
ann.wessel@ecy.wa.gov

Dear Ms. Wessel:

We are opposed to the DOE Rule being crammed down throats of our valley citizens in spite of extensive, knowledgeable opposition from PABA, The Dungeness Valley Association, Red Ink Revolt.org, CAPR, City of Sequim, Realtors groups, and individuals.

We as Basin residents add our voice, and vote, against the Rule, and the total lack of statutory due process in your cram-down rush to expropriate our water rights. This is nothing more than a raw exercise of bureaucratic power contrary to the wishes of the affected citizens.

The Rule, at best would protect .29 - .77 cfs, a trivial amount of water from the watershed, even assuming, arguendo, that DOE is justified in relying on the flawed baseline measurements of historic stream flow and toe width values. There is no proof that the Rule will save any fish, much less large quantities of fish. It also begs the question of for whom fish are being saved and for what purpose? For gil netting, or for looking at and saying "how wonderful"?

In addition to the well-articulated objections of the above-identified groups, the Rule and the DOE process do not meet the maximum net benefits test of WA Statute, RCW 90.54.020. Nor does it meet the legal requirements of the APA, RCW 34.05.328.

The DOE's reasons for rejecting Tryg Hoff's economic analysis showing the costs of the Rule to the Dungeness Valley would be \$41.9 Million (which far exceeds the benefits of possibly preserving an unknown number of fish that .77cfs additional water might support), is Steve North's erroneous assertion that "the value of the [water] use does not attach to the use until it is established". That is, he asserts that a prospective use has no value.

It is clear to me as a small farmer (organic wheat and rye; orchard and tree nursery) that Mr. North has no experience in futures markets, much less agriculture futures. We suggest he follow CNBC's morning financial news. We can sell the rights to our crop even before it is planted. Check out corn and wheat futures.

Further, if the Dungeness Basin is closed, something that DOE has no statutory authority to do, real estate values will take an even greater hit than the 35% drop of the past 3 years. If the loss in real estate value

was not a real economic taking, the concept of compensation for lost value, including eminent domain, would not be recognized at law. It is; Mr. North is wrong; Mr. Hoff is correct, and forcing Mr. Hoff out was political retaliation. DOE simply did not like the truth of the economic analysis because it wants to cram the rule down our throats.

Why the DOE would subject the citizens of the Dungeness Valley to pay \$42 million in mitigation costs for no proven benefit, whether to fish or habitat, much less benefit to the people, is beyond belief.

This is not an exercise of government of, by and **for** the people – this 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.

DOE politicians did not like the reality of the economic analysis, so you forced Mr. Hoff out and got a toady to tell you what you wanted to hear and needed to cram the rule down the throats of the citizens of the Dungeness Valley. It has to stop.

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, and seriously

Jacques M. Dulin

