WATER for PEOPLE, FARMS & FISH

A Community Forum:
Managing Water in Your Watershed

Topics we will cover:

- What is an instream flow and water management rule, and why is it needed?
- How might the new water use rule affect you?
- What options do we have for managing our water supplies?

March 26, 2008
John Wayne Marina
4:00-7:00 p.m.

WASHINGTON STATE
DEPARTMENT OF
ECOLOGY

The purpose of tonight's public forum

This is the second in a series of forums to talk about the water management challenges in the Dungeness watershed, which is part of Elwha Dungeness Water Resource Inventory Area (WRIA) 18. **(See map on page 3.)**

Because of the rain shadow of the Olympic Mountains, summer precipitation in the Dungeness watershed can be limited. The highest use and needs of agriculture, residential irrigation, and fish migration and spawning all occur when the least amount of water is available.

Your participation is essential

The Department of Ecology is asking for your input in crafting an instream flow and water management rule for the Dungeness watershed. The rule is a water management tool to help make water right decisions and manage water supplies to address the future needs of people, farms, and fish. Local participation is important to our success.

Ecology's Dungeness Watershed Team:

- Ken Slattery, Water Resources Program Manager, (360-407-6602)
- Brian Walsh, Water Resources Section Manager, Policy & Planning (360-407-6647)
- Brad Caldwell, Fishery Biologist, Water Resources Program (360-407-6639)
- Dave Nazy, Hydrogeologist, Water Resources Program (360-407-6038)
- Cynthia Nelson, Watershed Lead, Southwest Regional Office (360-407-0276)
- Sarah Ferguson, Environmental Planner, Water Resources Program (360-407-6780)

How to share your suggestions:

We welcome your input. There are many ways to share your suggestions with Ecology.

While you are here tonight, you may:

- Participate in the question and answer session.
- Fill out a comment card and place it in the suggestion/comment box.
- Speak with staff at the forum.

After the forum, you are welcome to:

- Enter your suggestions online at: http://www.ecy.wa.gov/programs/wr/instream-flows/suggestion_wria18.html
- Attend the Dungeness Water Working Group Meetings (4th Friday of each month at the River Center, 10:00 AM-2:30 PM). Contact Barb Anderson at btov461@ecy.wa.gov or by phone at (360) 407-6607 for further information.

In addition, you may:

- Mail or email comments or questions to:
  Sarah Ferguson (email sfer461@ecy.wa.gov)
  Department of Ecology Water Resources Program
  P.O. Box 47600
  Olympia, WA 98504-7600

Map of Dungeness Watershed

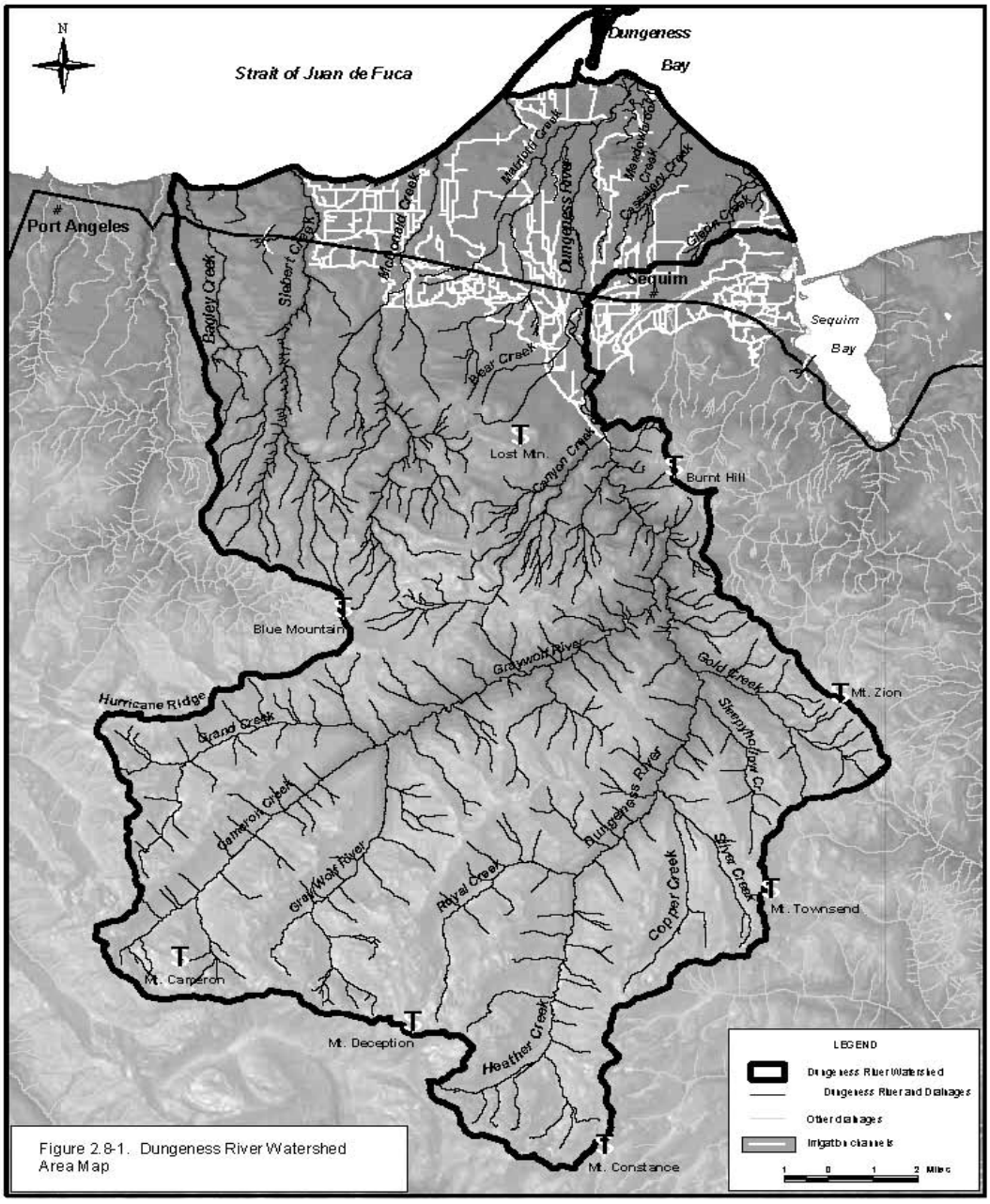

Figure 2.8-1. Dungeness River Watershed Area Map

Introduction to
Dungeness Water Management Issues

The following information is intended to provide you with a thumbnail sketch of the many factors affecting water management in the Dungeness. We are faced with the dilemma of restoring flows for salmon, while at the same time providing water for new users.

Water supplies are coming under increased pressure across the Dungeness watershed due to growing population and development, the stream flow needs of fish both listed and not listed under the federal Endangered Species Act, and what may be a trend towards lower summer flows.

Low Summer Flows and Flow Restoration Efforts

The irrigation districts and companies began in the Valley more than 100 years ago and they are the major diverters of Dungeness River water. Water from the river has supported commercial farms and dairies in the Dungeness for many years. When flows in the river needed to be improved, the irrigators and those working to recover salmon agreed to cooperate. Irrigators have been getting more efficient, and fisheries interests have focused on restoring salmon habitat in the river.

In the past several years, the companies and districts have substantially reduced the amount of water diverted from the river. Much of the efficiency in water use has occurred through replacing open irrigation ditches with pipes to eliminate water losses between the river and farms. Even so, the late season flows for fish are often much lower than what's needed for salmon stocks to recover. The irrigators have additional piping and other projects that will continue to improve flows in the river.

The water the irrigators are no longer diverting remains in the river and will be split between the river and the farmers.

Surface and Ground Water are Connected

Rain and melting snow feed flows in the Dungeness River and other streams. Water also moves from under the ground into the stream channels or from the streams into the ground to feed the aquifer. This varies up and down the river and over the year, with seasonal precipitation and irrigation.

A number of much smaller streams drain from the foothills to the coast. These streams are fed by aquifers in late summer when rainfall and snowmelt are low.

Records from well-drilling and monitoring studies in the watershed show that shallow ground water moves north-northeasterly towards the Strait. The data also show that more than one aquifer exists beneath much of the watershed, but that some aquifers have only limited supplies.

The proposed rule will take into account the degree that the aquifers are connected with surface water and how increased well uses affect stream flows.

Frequently Asked Questions

What is an instream flow and water management rule?

An instream flow and water management rule establishes a water right and priority date for the stream and is, essentially, a water right for fish and other instream resources. Once adopted, this rule has a priority date like any other water right.

Instream flows do not affect existing, or "senior," water rights. Setting flows does not put water in streams—it does protect streams from new withdrawals that could harm instream resources and existing water rights. Typical instream flow rules also include broader management strategies that address the need to manage water availability.

Why is it necessary to adopt an instream flow and water management rule?

The Department of Ecology has a legal obligation to adopt rules to protect instream resources including fish, wildlife, recreation, navigation, water quality, livestock watering, and aesthetic needs. Setting instream flows in a rule identifies the stream flows needed to protect instream resources and provides a key benchmark for future water management decisions.

Instream flows set by rule allows Ecology to determine whether and how much water is available for new out-of-stream uses. This in turn protects senior water rights. Such rules have already been adopted in a number of watersheds in the state and the Legislature has directed Ecology to adopt instream flow rules throughout the state.

Once the rule is in place, water users asking for new ground or surface water will be subject to the rule. New users must not impair senior water rights, either those being diverted or those held in trust.

If I already have a water right or a well, will a rule affect me?

No. Once adopted, an instream flow and water management rule affects only water right decisions made after the adoption date. The rule will not affect:

- Existing or "senior" water rights.
- Existing in-use wells established under the section of law exempting small well owners from going through Ecology's water right application process (RCW 90.44.050)
- People currently supplied by municipal or community water systems.

If I want a new water right or well, will the rule affect me?

Yes. Shortages of supply during some times of the year and increasing demand for water have led to the need for a more intensively managed water allocation system in the Dungeness watershed. This means people coming to Ecology requesting water rights or asking the County for building permits will be subject to the rule and will likely be affected by it.

What options is Ecology currently considering?

Future decisions on water use will need to take into account senior water rights and flows. The crunch time when demands are highest is when there's the least amount of water in the watershed. So we are focusing many of the possible approaches on the dry high-use time of year.

One idea is to offset effects of new ground water withdrawals by transferring existing water rights from agriculture to domestic water supply. This might be done through a type of water exchange. As part of the transfer, some of the irrigation right might be left in the river to help restore flows needed for fish.

We are also considering options to manage late-season water demand. Limiting outdoor residential uses by gallons per day or the size of lawns and gardens are two options we are looking at.

We are looking for additional suggestions and ideas from you. See page 2 for ways to provide input.

What is the history of this rule-making process for the Dungeness watershed?

The locally-led and comprehensive Elwha-Dungeness Watershed Plan was adopted by the Clallam County Board of Commissioners on June 7, 2005.

The watershed plan included recommendations on stream flow levels for most of the surface waters in the Elwha Dungeness planning area, excluding those in Olympic National Park. Strategies for securing supplies for out-of-stream uses during water-short periods were included, as were recommendations regarding protecting and restoring stream flows.

Ecology accepted the recommendation to adopt an instream flow and water management plan as one of its formal obligations in the watershed plan.

Many of the issues of concern in this rulemaking were discussed during the watershed planning process. Because of this there is some overlap in the conversations, but the rule process requires making difficult decisions regarding water allocation for future users.

What is the authority for setting flows in a rule?

Authority for adopting flows into rule is derived from state laws. The primary statutes are:

- The state Water Code, Chapter 90.03 RCW, in section 247, describes Ecology's exclusive authority for setting flows and describes the conditioning of permits for future use to flows established in rule.
- The Minimum Water Flows and Levels Act of 1967, Chapter 90.22 RCW, sets forth a process for protecting instream flows through adoption of rules. Among other provisions, it requires Ecology to consult with the Department of Fish and Wildlife and conduct public hearings.

- The Water Resources Act of 1971, Chapter 90.54 RCW, particularly section 020, includes language that says flow levels are to be retained in streams to protect, preserve and even enhance instream resources and values, except where there are "overriding considerations of the public interest." Waters of the state are to be utilized for the greatest benefit of all people of the state. This Act also authorizes Ecology to reserve waters for future beneficial uses.
- Construction Projects in State Waters, Chapter 77.55 RCW (formally Chapter 75.20 RCW), section 050, requires Ecology to consult with the Department of Fish and Wildlife prior to making a decision on any water right application that may affect flows for food and game fish. Fish and Wildlife may recommend either denial or the conditioning of a water right permit.
- The Watershed Planning Act, Chapter 90.82 RCW, in section 080, specifies that local watershed planning groups can recommend instream flows to Ecology for rule making.

What is the authority for putting conditions on development and use of future 'permit-exempt' wells?

In the state Ground Water Code, the "ground water permit exemption" (RCW 90.44.050) allows for certain uses of small quantities of ground water without obtaining a permit from Ecology. While exempt from the permitting process, these withdrawals are still subject to all other state water laws and regulations, including not impairing any existing water right.

Authority for restricting ground water uses, *which includes permit-exempt well use*, comes from state statutes and court decisions, including:

- The state Ground Water Code, Chapter 90.44 RCW, in section 030, states that any withdrawal of ground water that is connected to surface waters cannot affect existing surface water rights.
- A 2005 opinion of the State Attorney General (AGO 2005 No. 17), an interpretation of state statutes and court decisions, concluded that there are a number of laws that authorize Ecology to regulate ground water withdrawals under particular circumstances, although Ecology does not have the authority to categorically limit the exemption.
- The Supreme Court in Postema v. Pollution Control Hearings Bd., (142 Wn.2d 68, 94-95, 11 P.3d 726 (2000)), held that Ecology, by rule, may close ground water connected to surface water to new uses that "will have any effect on the flow or level of [a closed] surface water."
- The Water Resources Act of 1971, Chapter 90.54 RCW, in section 050(2), authorizes Ecology to issue rules that "withdraw" ground or surface waters from additional uses when there is not sufficient information and data to make "sound decisions."
- Courts have recognized that where a statute authorizes an agency to prohibit an action (such as closing or withdrawing waters to new uses), authority to restrict the action in question (here, new uses) may be implied
- The Water Well Construction statute, Chapter 18.104 RCW, allows Ecology to develop a rule with the Department of Health and the well-drilling technical advisory group to place "limitations on well construction in areas identified by the department as requiring

intensive control of withdrawals in the interests of sound management of the ground water resource."

Glossary of Terms:

The world of water resources has its own language. This list was prepared to help you understand terms that may be unfamiliar.

Aquifer – An underground geological water system that stores and/or transmits ground water, such as to wells, springs and streams.

Basin – A land area that drains to a common waterway. (Also called a watershed.)

Beneficial use – Refers to a reasonable quantity of water applied to a non-wasteful use, such as irrigation, domestic water supply, industry and power generation, to name a few.

Ground water – Water located under the ground.

Instream flow – A legal term that means a specific stream flow (typically measured in cubic feet per second, or cfs) at a specific location for a defined time, and typically following seasonal variations. Instream flows are usually defined as the stream flows needed to protect and preserve instream resources and values, such as fish, wildlife and recreation.

Instream flow rule – A formal legal document, adopted in the Washington Administrative Code (WAC), which describes and establishes instream flows and water management provisions for a watershed. Once adopted, an instream flow rule has a priority date just like any other water right.

Instream resources – In Washington State, the Department of Ecology is mandated under state law to establish state water management rules that protect and preserve water for "instream uses," that is, how water is used within the stream. Instream resources include use by/for fish, wildlife, recreation, navigation, aesthetics, water quality and livestock watering.

Junior water right – A water right that is subordinate to other water rights with older priority dates.

Permit-exempt wells – A well drilled to provide water that does not require going through the application process with Ecology for a water right permit. A property owner may use water from such wells for industrial or domestic uses up to 5,000 gallons per day, and including irrigating up to ½ acre of domestic lawn or garden, and stock watering. (RCW 90.44.050)

Prior appropriation doctrine – A tenet of water law known as "first in time, first in right." Those applying for and receiving water rights first have priority in water use over those applying later.

Priority date – The date an application was filed, for a permitted or certificated water right – or the date that water was first put to beneficial use, in the case of claims and permit-exempt ground water withdrawals. The effective date of a water right.

Seawater intrusion – The movement of saline ground water into a freshwater aquifer.

Senior water right – A water right with an older priority date that is entitled to be satisfied before junior water right holders can exercise their water rights.

Stream flow – Amount of water actually flowing in the stream, typically measured in cubic feet per second (cfs).

Surface water – Water located above ground, such as a river, stream, spring, or lake.

Water right – A legal authorization to use a certain amount of public water for a designated purpose. The water must be put to "beneficial use."

A right to use water can be established either through the state's formal application and permitting process (required for many water rights), or through the drilling of a small well under the "permit exemption" in the ground water code. In either case, a right to use water is defined by the amount of water put to use without waste, under the terms of the right or statutory language. The provisions of all other state water statutes and regulations apply to all water rights

Watershed – A land area that drains to a common waterway. (Also called a Basin.)

WRIA 18 – Acronym for Water Resource Inventory Area 18, also known as the Elwha Dungeness watershed.

References & Resources:

Web sites:

Ecology's Elwha Dungeness (WRIA 18) Instream Flow Web site:
http://www.ecy.wa.gov/programs/wr/instream-flows/dungeness.html

Ecology's WRIA 18 Watershed Planning Web site:
http://www.ecy.wa.gov/apps/watersheds/planning/18.html

Reports:

Elwha Dungeness Watershed Plan:
http://www.clallam.net/environment/html/wria_18_draft_watershed_plan.htm