



March 12th, 2014

APPROVED Meeting Notes

Dungeness River Management Team

Dungeness River Audubon Center,
2151 W. Hendrickson Road / Sequim, WA

2:00 – 5:00 P.M.

Notes prepared by: Melissa Coughlin

Team Members/Alternates in Attendance:

Scott Chitwood, Jamestown S'Klallam Tribe
Shawn Hines, Jamestown S'Klallam Tribe (alt)
Hansi Hals, Jamestown S'Klallam Tribe (alt)
Sheila Roark Miller, Clallam County- Community Development
Cathy Lear, Clallam County (alt)
Cynthia Nelson, WDOE
Robert Brown, Dungeness Beach Association
Dean Yoshina, USFS
Matt Heins, Estuary-Tidelands / Riverside Property Owners
Ben Smith, Water Users Association
Joe Holtrop, Clallam Conservation District
Don Hatler, Sports Fisheries

Lorenz Sollmann, Dungeness National Wildlife Refuge, USFW
Judy Larson, Protect the Peninsula's Future

Others in Attendance:

Greg McCarry, Olympic Resource Protection Council
Kristina Nelson Gross, Olympic Resource Protection Council
Gary Smith, Resident
James Beebee, Resident
Ann Seiter, Northwest Fisheries Commission
Jonathan Kohr, WDFW
Ivan Stockes, Graysmarsh
Marguerite Glover, Sequim Realtor
Phil Martin, Retired physicist, resident
Melissa Coughlin, DRMT Note-taker

2:00 P.M.

I. Introductions/Review Agenda/Review & Approve February 2014 DRMT Draft Meeting Notes

- Scott Chitwood welcomed DRMT members and attendees. Introductions all around. No changes to the agenda were made. Ben Smith moved to accept the February meeting notes; Robert Brown seconded the motion which was unanimously approved.

Public Comment

- Joe Holtrop announced the approval of the first cost-share agreement (for failing septic); it is the first in the state.
- Judy Larson brought up that Robert Beebe is running as the only candidate for the open spot on the Board of the Clallam Conservation District (CCD). The election is March 20th. Don Hatler noted there will be a lot of CCD presence on the (DRMT), though not all representing CCD on DRMT.
- Lorenz Sollmann announced the USFW has procured some funding for the initial restoration design work on the Refuge's Dawley unit on Sequim Bay. The plan is to remove pilings, abandoned tires in tidelands, and address failing seawall, will re-slope area and remove road and septic system.
- Robert Brown said the County Parks Department is trying to acquire permits for putting a dock in place with regards to Dungeness Landing (county-owned). Robert is concerned about mildew, algae and decomposition issues from the remaining pilings.
- Judy Larson noted Sheila Roark Miller was recently in the paper, crediting her vast local building zone knowledge.
- Cathy Lear said the National Association of Counties wrote a brief about coastal restoration which included information on the Earth Economics study, handouts, and the 3 Crabs restoration information.

II. Update on Petition to Amend the Dungeness Water Rule – Greg McCarry & Kristina Nelson Gross, Olympic Resource Protection Council.

- Olympic Resource Protection Council (ORPC) member Greg McCarry said the ORPC (non-profit) was organized shortly after the Dungeness Water Rule was adopted. Judy Larson asked if the organization was in existence at the timeframe set for comments on the Rule. Greg said the group was formed after the Rule's adoption, but they had started organizing earlier. Judy asked if the four board members lived in the Dungeness Rule area. Kristina Nelson Gross answered that the organization's Board of Directors may not live in the Dungeness Rule area, but many of the 200 members do and are directly affected. Members of ORPC include owners of businesses and property within the rule area.
- The ORPC is looking for reasonable regulation, consistent with county land use and planning policies, in addition of recognition of past restoration efforts.

- *Swinomish v. Ecology* (2013): Kristina Nelson Gross argued the following: Washington State Supreme Court decision found WDOE's use of OCPI (over-riding consideration of the public interest) was *ultra vires*. OCPI is a "narrow" exception to be used on a case-by-case basis. Re-allocation of water is a broad application of OCPI. Reserves must meet the same 4-part test as other appropriations (*Postema v. PCHB*). Skagit reserves failed to meet the water availability and no impairment prongs.
- Post- *Swinomish*: Tulalip Tribe letter Nov. 2013, "Given the Court's ruling in *Swinomish v. Ecology*, the reserves established by Ecology in the Stillaguamish instream flow rule are invalid." Senator Bailey with four other senators, Dec. 2013: "[W]e understand that there are other basins that rely on the type of reservations that were involved in the *Swinomish* decision. The status of those reservations are now in question and could lead to litigation to challenge them."
- RCW 90.03.345: The establishment of reservations of water for... beneficial uses... or *minimum flows* ...shall constitute appropriations
- Olympic Resource Protection Council Petition (January, 2014): Seeks to amend the existing rule. They expect the existing rule to remain in place. Based upon the *Swinomish v. Ecology* decision handed down in Oct. 2013. ORPC feels that Ecology needs to address legal uncertainty regarding reserves and minimum flows and ability for each to meet the 4-part test for appropriations: The water must be there; water has to be put to beneficial use; no impairment of flow; no detriment to public.
- ORPC has asked DOE to use its alternate, existing reservation authority to set aside a sufficient quantity of groundwater, as ORPC believes is required under the Water Resources Act to meet the demand for domestic water under the County's long-range land use planning, instead of utilizing "overriding considerations of the public interest" to create a reservation.
- Olympic Resource Protection Council goals: Amended rule consistent with *Swinomish*; address current uncertainties; yellow v. green areas; livestock; decision-making criteria; basin-wide mitigation instead of individualized mitigation. Consistency with land use/planning policies, e.g., approved plats.
- Robert Brown asked if the decision considers any aspect of the Endangered Species Act. Greg said the organization is narrowly focused. Kristina said they recognize ESA and noted this is a critical basin; that is why they are looking to amend, not remove, the rule. Judy suggested that, with climate change factors, an extreme drought situation can arise and asked if ORPC would consider that situation as an overriding consideration of the public interest. Kristina didn't want to speculate what the Supreme Court would consider. Judy said it is possible that some species will otherwise fail to exist without water reservations. Judy brought up treaty rights which protect salmonids. Kristina said the DOE consistently maintains that the Dungeness River is over allocated.
- Greg said in Clallam County 3,800 parcels of land will be affected by the rule and half of that is in the green area, half in the yellow area (per rule, yellow area can have no outside watering). It is difficult to determine use (livestock, watering trees, adding mother-in-law unit). Currently Mike Gallagher, WDOE, makes a case-by-case decision. Greg said the decision needs to be black and white and consistent with land and planning policies. Petition offers the most flexibility for conversations on how to manage water.
- Judy asked for the proposed language of the amendment. Kristina said there was no point drafting the rule language if the DOE denies (with reasons).
- Kristina outlined next steps: Recognize *Swinomish* "changed the game"; No likelihood of quick legislative fix; Encourage all stakeholders to engage in a real conversation; Recognize environmental protection/land use are not mutually exclusive; Opportunity for creative solutions.
- Contacts: Law Office of Kristina Nelson-Gross, PLLC kng-law.com kristina@kng-law.com (360) 477-2103
Olympic Resource Protection Council: www.Olympicresourcepc.org
Note-taker note: On March 18th, ORPC was notified that Ecology denied their petition.

III. Phil Martin's Dungeness Flow Gage Data Analysis – *Phil Martin, Watershed Resident and retired physicist*

- Phil last gave a presentation in 2010. He has taken the data provided for the USGS gage (located upstream of hatchery and all diversions; in place since the 1920's) and the DOE gage for data analysis and comparison.
- Showed graph, "Dungeness River Mean September – Streamflow 2000-2008. The gages both show levels going down during the 9 years of records. During the substantial irrigation efficiencies both gages recorded falling at the

same rate. Piping projects were originally implemented to address water quality, not quantity; however 22.3 cfs is the predicted savings from the irrigation efficiencies. Phil worked with monthly averages, and showed pages of data entries.

- USGS data to 2013 is approved, after 2013 the data is provisional. Phil looked at data for September and August and looked at the differences in data for the USGS gage and DOE gage. Phil had analyzed the data a number of ways, plotting the difference vs USGS gage and plotting ratio vs USGS gage. The downward trend did not continue beyond 2008.
- In his summary Phil listed the “fits” to the differences between the USGS and DOE gages for the 8 "one-week" periods for August and September, 2000-2013. For each of the first three weeks of August, the difference has shrunk dramatically much more than the savings from the piping alone – he wondered if other irrigation improvements resulted in decreased outtakes.
- For the last week of August and the first two weeks in September Phil noted there has been little or no change over the 14 years. For the last two weeks of September, there is less water downstream than there was 14 years ago. However, there was a large rainfall at the very end of September 2013. He did two checks to see if that could influence things: first, fit only for 2000-2012 period: 2000=28 cfs / 2013=17 cfs / change=10 cfs. Second, used data for the preceding week 2000=25 cfs / 2013=22 cfs / change=3 cfs. Phil concluded that yes, the storm at the end of September 2013 did distort the linear fit. Excluding that event, things look flat.
- Marguerite Glover remarked that the river has always gained and lost, the pre-piped irrigation ditches fed the upper aquifer which pushed on the river, and the river had water there. Piping stopped that process and some programs seem self-defeating. Phil commented that piping has possibly made changes to the aquifer, gaining and losing reaches, affecting the river. James Beebe has seen changes in Matriotti Creek where it runs through his property: James noted in the past the creek was 10' across i most of their property, now it couldn't get a duck wet. The creek is slowing down, silting up, there is a lot less water with no tailwaters and leakage from un-piped irrigation ditches. Ground is getting harder, and he's noticed a sulfur odor from one of his wells during September and October which is getting more prominent.
- Phil further observed that for the last week in August and the first two weeks in September still looks strange: not enough increase in downstream flows over the years resulting from the piping. The third week in September is even stranger: he found less water downstream than before.

IV. Update and Background on Fish Consumption Rates / New State Water Quality Standards – Ann Seiter, Northwest Indian Fisheries Commission

- Ann handed out a table of fish consumption rates. She stated that new state water quality standards are very important from a tribal perspective: traditional foods, treaty rights. There are human health issues that must be addressed. Washington State sets water quality standards to protect public health.
- Health experts recommend that we eat more fish, but fish consumption is a primary pathway for human exposure to toxic chemicals. We are used to seeing health advisories to avoid eating certain types of fish from certain areas. Toxics are a problem in Washington waters. Look up fish advisory on the Department of Health website before fishing a specific freshwater or marine spots.
- There are 683 listings identifying waters polluted by toxics in WA State. Human health criteria in water quality standards are established to protect public health. The amount of toxic chemicals that can be discharged is based on a formula using: body weight; toxicity of chemical; bio-concentration; duration of exposure; cancer risk rate; Fish Consumption Rate.
- Tribes are seeking water quality standards that will keep toxic chemicals out of fish in the first place. Instead of issuing advisories to tell people not to eat fish, tribes want to keep chemicals out of the fish. Although tribes have a treaty right to harvest fish and shellfish, this is not just a tribal issue. The health of all Washington citizens who eat fish depend on protective standards.
- One of the key components of the state's water quality standards is the fish consumption rate. Fish Consumption Rates (FCR) is a measure of how much fish people eat. Fish Consumption Rates: Washington State: 6.5 grams per day (1 meal per month). Oregon: 175 grams per day (1 meal per day). Does a standard of 175 grams of fish seem like a lot? 175 grams per day = 141 lbs per year; Average U.S. meat consumption is 270 lbs per year

(combined beef, pork, poultry). <http://www.npr.org/blogs/thesalt/2012/06/27/155527365/visualizing-a-nation-of-meat-eaters>

- Tribal Fish Consumption Rates vary depending on whether the tribe adopted an approved state or federal rate, or whether they used dietary studies or an analysis of historic rates. The dietary studies vary depending on when they were taken, and how much the access to fishing or the fisheries resources were suppressed at the time. Squaxin Island Tribe: 280 grams/day. Suquamish Tribe: 489 grams/day. Swinomish Tribe: 260 grams/day. Spokane Tribe: 865 grams/day; Tulalip Tribes: 268 grams/day. Historic Rates: 800-1,000 grams/day
- The fish consumption rate is not an average. It is an umbrella. The current fish consumption rate of 6.5 grams hardly protects anyone at all. If we used an average rate, it would only really protect about half of us. But with a rate of at least 175 grams per day, the standards could protect many more people.
- Which fish are included in the consumption rate numbers: salmon must be included. Puget Sound resident Chinook have shown higher levels of PCBs, leading to health advisories issued by WA Dept. of Health...2007 *Puget Sound Update*. Salmon are essential to tribal nutrition, cultures and economies.
- Washington has the highest incidence of cancer in the Western United States. The Washington Department of Ecology is considering a ten-fold increase in the cancer risk rate in state water quality standards, from one per million (10^{-6}) to one per 100,000 (10^{-5}). Tribes are asking for water quality standards that are at least as protective as those adopted by Oregon in 2011: FCR of 175 g/day; Cancer risk 10^{-6} .
- The Pacific Northwest is known for world-class seafood. Seafood and value-added support is a multi-billion dollar industry in Washington. Washington's seafood industry depends on keeping our reputation for quality.
- Don Hatler asked if returning Chinook bring back toxins into the river system, and said farm-raised Atlantic salmon would another, totally different situation. Ann said the Puget Sound Chinook have shown higher levels of PCBs leading the Health Department issue of health advisories.
- Judy was concerned about who is interested in changing the risk factor concern, and would those standards apply to all foods in the future if the new risk standards are applied. Ann said it applies to all toxic chemicals that are discharged into the water. WDOE water quality department sets standards and risk levels. Rule, FCR, and standards are determined by the WDOE.
- Over the years, tribes have discussed this issue with 2 governors, 3 directors of the WA Department of Ecology, and the Regional Administrator of EPA. It is not a question of if we should develop standards that reflect the information we have. The question is how do we do it? Business has been actively commenting and lobbying on the proposed rate (Northwest Pulp and Paper, Boeing, Association of Washington Business.
- Businesses and municipalities are concerned about their ability to meet new, more stringent standards for some chemicals in discharge permits from point sources. They are particularly concerned about pervasive and "legacy" chemicals including PCBs, Mercury, and Arsenic (which is high in Washington State). Proportionately address all sources of the pollution.
- New standards address only one portion of the toxics burden. Standards are the hub for all toxic reduction efforts.
- Standards Ensure Accountability: Identify sources of toxic chemicals. Share the burden of prevention and cleanup. Use compliance tools to provide flexibility for business and cities. Establish timelines for implementation. Monitor and measure progress. The health of future generations depends on achieving new standards.
- For more information: <http://keepseafoodclean.org>
- Cynthia asked Ann to explain the split tribes petition to WDOE in July 2012. Ann explained: WDOE has separate divisions: Water Resources, Water Quality programs, and Toxic Cleanup program (deals with toxic chemicals and sediments). Originally when tribes petitioned WDOE informally to take on standards they went to the Water Quality department to recommend new standards for FCR. WDOE thought it would be better for this issue to go to the Toxic Cleanup division. State OK'd FCR level that was recommended, but will not adopt as it waits for Water Quality. Investigative report on this cited Boeing's e-mails may have a part.
- James Beebee asked if changing the standards for FCR would mean a change in what can be discharged. Ann said that would be the result.

V. Clallam Marine Resources Committee Update – Cathy Lear, Clallam County

- Cathy handed out “the Whaletrail” and “Sequim Bay Olympia Oyster Project”; both are 3-fold color brochures and were co-sponsored by the MRC with partners.
- Cathy said a paid internship on the Sequim Bay Olympia Oyster Project was available to interested student.
- Clallam County Marine Resources Committee (MRC) has 254 miles of shoreline, bordering Jefferson MRC to the east and N. Pacific Coast MRC to the west.
- Clallam MRC Accomplishments:
 - Derelict Gear Removed. Clallam was actually the first MRC to initiate derelict gear removal, spearheaded by Joe Schmidt and Jeff June of NRC. Accumulative effect. Physically removed derelict crab pots and educated crabbers about behaviors and legal standards. Don Hatler added there has been a substantial reduction in illegal crabbing activity (undersize and female captures). There has been greater compliancy with recording catches by crabbers.
 - Sampling for PSP. One of the long-term projects has been volunteers monitoring for paralytic shellfish poisoning along the Straits and sending samples to Washington State Department of Health. This has increased opportunities for safe recreational harvest.
 - Eelgrass Mapping. Like many other MRCs, CCMRC initiated eelgrass mapping to establish baseline conditions. Area mapped: Freshwater Bay to Dungeness Bay. This is especially important in relation to sediment transport after the removal of Elwha River dams. Judy Larson asked about other eelgrass studies and Cathy suggested the DNR website. Discussion on importance of eelgrass in habitat (many species depend on it and it is a water quality indicator), was discussed.
 - Shoreline Property Owners Workshops. Co-sponsored outreach efforts with shoreline owners concerning bluff erosion and monitoring shorelines adjacent to the Elwha River mouth as new sediment transport is re-established.
 - Dungeness RiverFest presence. One of the outreach efforts is a booth at the annual Dungeness River Festival. This year over 2,500 people attended. Our biggest draw was live geoducks in an aquarium that were available for hands-on experiences. School kids and parents love the opportunity to ‘air-kiss’ the big clams and receive a sticker saying “I Kissed a Geoduck!”, (about 600 stickers were given away this year). While we have their attention with the geoducks, we also point out the links to water quality, Olympia oysters, and marine debris. Kids are our conduit to adults. Oldest geoduck was 120 years old.
 - Marine Debris. Co-sponsored community forums on tsunami debris. Another one of our hands-on programs is the volunteer efforts to clean up marine debris. There is an amazing amount and variety of debris that is removed, including some that are likely from the tsunami event. Need partners to sponsor more beach cleanups.
 - Oil Spill Training. Co-sponsored volunteer training for oil spill response including mandatory HAZWOPPER classes, to ensure a trained core of community volunteers are ready to respond. This also includes volunteer training on handling oiled wildlife in a rehab facility and demos on how to capture oiled birds. Volunteers are also trained for search and rescue of oiled birds along beaches even in the most increment weather.
 - Monitoring, Interns, and Elwha Nearshore Consortium. In relations to the Elwha River dam removals, CCMRC has co-sponsored community forums on monitoring the Elwha nearshore, including student interns helping record fish use of the changing nearshore habitats.
 - Olympia Oyster Restoration. Clallam MRC’s main goal and effort is to restore water quality to historical levels for sustainable harvest and ecosystem function. In partnership with the Jamestown S’Klallam Tribe and Puget Sound Restoration Funds, we’re continuing effort to rebuild the native Olympia oyster population in Sequim Bay. The goal is to establish 1 acre of Olympia oysters in Sequim Bay. Also to use this as an education opportunity on how the oysters filter the bay, contributing to clean water, and how this native oyster is more resilient to ocean acidification than its introduced cousin, the Pacific oyster.
- Contact Information: Web site: <http://www.clallam.net/ccmrc/> Cathy Lear, Clallam MRC Coordinator: 360.417.2361. Clallam MRC meets at 5:30 p.m. the 3rd Monday of each month in the Commissioners’ meeting room of the Clallam County Courthouse (open to public).

VI. Other Business / Announcements

- Reviewed “open actions” status: Took off the update from ORPC. Will look for someone to comment on Delta Farms. Canyon Creek fish ladder status: Scott heard that because of the permitting, they were not able to finish this low-flow project – probably will finish in August – September timeframe. Survey work from Army Corps of Engineers: waiting on Corps report. Since government shutdown they can’t assign a budget for this work. Robert Brown asked about a similar project that had been proposed on the other side (west) of the river, if it was still a plan. Scott Chitwood said there are other dikes in the system that are probably waiting to see what happens with the Army Corps dike before doing anything.
- Shawn made suggested revisions to the DRMT Operating Procedures based on comments from January meeting and emailed comments. Need approval. Judy suggested including all the revision dates in the document. Ben Smith made a motion to approve. Scott suggested the members and alternates review once more. Don brought up the interesting situation of the CCD having potentially 4 of its Board members also on the DRMT (though they all aren’t representing CCD on DRMT). Judy moved for a last chance to revisit the DRMT Operating Procedures; Robert Brown agreed, Shawn said the newest changes were from January. Cynthia Nelson seconded the motion which passed with one opposed.

Meeting adjourned at 4:50 P.M.

OPEN ACTIONS/TOPICS FOR FOLLOW-UP:

UPDATE ON DELTA FARMS – (FROM 4/10/13 MEETING REQUEST; AWAITING UPDATE FROM WDFW)
CANYON CREEK FISH LADDER STATUS FROM WDFW (TOPIC SUGGESTED AT 10/13 DRMT MEETING; HOPING FOR LATE SUMMER UPDATE)
UPDATE ON SURVEY WORK FROM CORPS OF ENGINEERS --- WHEN IT PROGRESSES FROM PLANNING STAGE. (TOPIC SUGGESTED AT 10/13 DRMT MEETING.)

DRAFT