



SKAGIT COUNTY BOARD OF COMMISSIONERS

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December 7, 2011

Ted Sturdevant, Director
Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Director Sturdevant,

We have your letter dated December 6, 2011, regarding exempt wells in the Skagit River Basin.

In 2006, Skagit County reluctantly agreed to withdraw its appeal of the Skagit Instream Flow Rule in exchange for Ecology's Rule amendment creating the exempt well reservations, setting aside nearly all groundwater to benefit salmon. This was a plan put forward by Ecology as a way to end years of litigation over exempt wells in the Skagit Basin.

This was *only* acceptable to Skagit County because Ecology promised meaningful mitigation – principally, the importation of piped water as necessary to “recharge” the reservations. The basic intent was to provide adequate water for existing GMA-compliant parcels of land. Although we were hopeful that Ecology's proffered solution would work as advertised, that plainly hasn't happened.

As an initial matter, the Swinomish Indian Tribal Community is suing to invalidate the Skagit Instream Flow Rule, for reasons that apparently have very little to do with protecting Skagit Basin salmon, potentially rendering all our efforts moot, considerably lowering our enthusiasm for Ecology's well reservation program.

Moreover, last year Ecology withdrew mitigation plans in response to another Swinomish lawsuit, shortly after Ecology's biologist reversed his litigation testimony and began supporting the Swinomish position. This dramatically reduced the amount of available water, leading to sudden depletion of the exempt well reservation in certain areas, creating the immediate crisis Ecology is now attempting to address.

Skagit County is more than willing to cooperate and fulfill our obligations under the law and our agreement with Ecology, and there is no evidence we have done otherwise. As we have repeatedly communicated to the Governor in recent days, Skagit County is not asking for a larger exempt well allocation. Moreover, Skagit County has and will continue to ascertain whether permit applicants possess a lawful water source, as required by the *Kittitas* decision. Since we already have the most restrictive scheme in place in the Skagit Basin and no other Skagit treaty tribe supports Swinomish on this issue, we view the threat of treaty rights adjudication as unnecessary.

We fully support the list of solutions identified on page 3 of your letter, but these put the cart before the horse. Pervasive litigation by Swinomish attacking nearly every aspect of the basin reservation system – as opposed to any shortcoming on the County's part – explains the problems over which your December 6 letter expresses concern.

From our perspective, until Swinomish leadership can be convinced that continuous litigation is unhelpful, your concerns will continue unabated – regardless of the County's and Ecology's best efforts, plans and intentions.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON



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