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**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR SKAGIT COUNTY**

THE CITY OF SEDRO-WOOLLEY, a
Washington municipal corporation

Appellant

vs.

DIKE, DRAINAGE & IRRIGATION
DISTRICT #12, a special purpose district

Respondent

Nº PL13-0265

APPELLANT CITY OF SEDRO-
WOOLLEY'S REPLY TO SKAGIT
COUNTY STAFF REPORT

COMES NOW APPELLANT, by and through its attorney, and submits the following
Reply to the Staff Report filed by Skagit County.

Remand Considerations (a) & (b)

The first two remand considerations as set forth by the Board of Skagit County
Commissioners are essentially that Corps of Engineers hydrology is to be utilized in forecasting
the effects of the proposed project. The County correctly summarizes the modeled effects of Dike
District 12's proposed project, provided by Northwest Hydraulic Consultants (using Corps
hydrology) as "significant", to unincorporated areas of Skagit County during a 100 year flood
event. **Staff report, page 4.** The modeling also forecasts increases in water levels at both the
Sedro-Woolley wastewater treatment plant and also at United General Hospital, with some

1 variation based on the amount of debris buildup at the BNSF railroad bridge. **Staff Report, page**
2 **3.**¹ So, according to the models, the proposed project is expected to perform as intended, by
3 diverting water from Burlington and Mount Vernon to Sedro-Woolley and unincorporated areas
4 of the County, including Clear Lake. Obviously, Sedro-Woolley has a problem with that.

5 The County also provides a brief outline of the Skagit River Flood Risk General
6 Investigation (“GI Study”), which as the County points out is an indicator of the “currently
7 perceived path for flood protection from the Skagit River”. **Staff Report, page 4.** The
8 preliminary plan is what has been designated as the Comprehensive Urban Levee Improvement
9 Alternative, which has the proposed project as one of its components. **Id.** However, it is
10 important to note that the GI Study has not been completed; the final approval is not expected
11 until later in 2015, at the earliest. **Id.** Once the final Corps of Engineers recommendation is sent
12 to Congress, there is absolutely no guarantee that the project will be funded or that it will not be
13 changed as part of the appropriation process. In addition, the GI Study Environmental Impact
14 Statement has not been finalized, and is subject to judicial review upon its issuance. As the
15 County states, a number of factors, including “public response, policy reviews and independent
16 external peer review of the proposal may result in alteration or modification of the timing of final
17 Corps approval.” **Id.** The possibility certainly exists, as well, that the GI Study will not result in
18 any action at all.

19 The bottom line is that the project at issue cannot be viewed as necessary, or integral, to
20 the GI study, as that process is far from over. In addition, if the instant project is built prior to
21 completion of the GI Study, the options available as part of that process will have been
22 unnecessarily limited; it is extremely unlikely that the levee alterations as sought by Dike District
23 12 would be reversed once built. In sum, to go forward with the instant project in advance of the
24 completion of the comprehensive GI Study would be putting the proverbial cart before the horse.

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27 ¹ It should be noted that the model is based on two alternative assumptions, either no debris at the bridge, or
28 6,000 square feet. The GI Study used 6,000 square feet, but it is uncertain how that figure was arrived at. As was
29 noted by NHC in its report, “there is considerable uncertainty about this estimate.” **NHC Memorandum, page 2.**

1 case here, there is no floodplain development permit and no mitigation. There also appears to
2 have been no consultation with other resource agencies, and an EIS, by itself, is insufficient.

3 So, in conclusion, it cannot be determined that the proposed project even minimally
4 complies the NFMS bi-op, as required by the Commissioners' remand. Until the proposed
5 project has been shown to comply, it cannot go forward.

6
7 **Conclusion**

8 It is apparent that the response to remand considerations (a) and (b) support Sedro-
9 Woolley's contention that the proposed project will simply divert floodwater from Burlington
10 and Mount Vernon, to upstream areas. There has been little or no mitigation proposed by Dike
11 District 12 for this increase in flood waters to areas that have historically not flooded.

12 In addition, as Sedro-Woolley has argued previously, the proposed project should not
13 proceed in isolation from the actions taken resulting from the GI Study, whatever the final form
14 of those actions may be.

15 Finally, it is abundantly clear that the proposal does not pass muster with the NMFS bi-
16 op, as required by Federal law and by the Skagit County Code. Until that happens, the proposed
17 project should not go forward.

18
19 DATED: 1/7/15

Respectfully submitted:

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22 CRAIG SJOSTROM WSBA #21149
23 Attorney for Appellant City of Sedro-Woolley