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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.**<sup>1</sup> 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 <sup>1</sup> 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.**

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3 *Remand Consideration (c)*

4 The final remand consideration is that the proposed project must comply with the NMFS  
5 bi-op. The County states that the proposed alteration of the existing levee will require a  
6 floodplain development permit under SCC 14.34.100, which is not currently pending. **Staff**  
7 **Report, page 6.** However, the County did require that Dike District 12 perform certain  
8 environmental review undertakings, which were completed and which (apparently) satisfied the  
9 County. **Staff Report, page 7.** However, these actions were all taken prior to the instant remand,  
10 and so the County did contact NMFS for further technical assistance. The response by NMFS  
11 was attached as an exhibit to the Staff Report, and it is troubling, to put it mildly.

12 NMFS begins by stating the obvious; it is difficult to imagine a project of the magnitude  
13 proposed by Dike District 12 to not have any impacts. **Sibley (NMFS) letter, page 1.** There are a  
14 number of theoretical impacts of effects of the proposed project that have simply not been  
15 evaluated. **Id.** Even maintaining existing levees can have adverse consequences, and “the effects  
16 of creating additional levees or expanding the existing footprint are expected to be at least as  
17 great as maintaining existing levees.” **Id.** Levee modifications that provide additional flood  
18 protection are likely to have adverse effects on habitat to Endangered Species Act listed species.  
19 **Id.** NFMS, in conjunction with other resource agencies and Indian tribes, have commented on the  
20 GI Study preliminary EIS, and a common theme of their comments is that there has been  
21 insufficient study of the effects of the proposed actions on endangered or listed species; that any  
22 proposed mitigation of the negative effects of levee modifications are questionable at best; and  
23 that the project should not go forward in its current form. NFMS states that a similar analysis  
24 would apply to the instant proposal. **Id.**

25 NMFS goes on to state that the proposed project does appear to create additional risk to  
26 listed species both upstream, and downstream of the project area. **NMFS letter, pp. 1-2.** “For  
27 projects that may have an adverse effect in the floodplain, FEMA requires a habitat assessment  
28 - and mitigation - as part of the floodplain development permit issued by the local jurisdiction.”  
29 **NMFS letter, page 2.** Even if a satisfactory assessment has been completed, which is not the  
30

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.

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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.

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19 DATED: 1/7/15

Respectfully submitted:

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