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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR SKAGIT COUNTY

IN RE THE MATTER OF:

THE CITY OF SEDRO-WOOLLEY, a
Washington municipal corporation,

Appellant,

v.

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

Respondent.

No. PL12-0191

PARTICIPANT LARRY J. KUNZLER'S
MEMORANDUM IN SUPPORT OF
APPELLANT CITY OF SEDRO-
WOOLLEY'S APPEAL

COMES NOW PARTICIPANT submitting the following Memorandum Supporting the City of Sedro-Woolley's appeal of the Decision of the Skagit County Hearing Examiner approving the Shoreline Substantial Development Permit, under File NO. PL12-0191.

I. INTRODUCTION

As the Board of County Commissioners (hereinafter "BCC") know, I have been involved with the Skagit River flood issue for almost 4 decades. I own and operate the web page www.skagitriverhistory.com wherein many of the documents submitted in the instant case can be found. I submitted comments on the Respondent's [DEIS](#) which were woefully addressed or were not addressed at all in the [FEIS](#) much the same as Respondent treated [the County's letter](#) dated March 13, 2009 rendering the [FEIS](#) a totally useless document for purposes of relying on

1 same for the foundation for issuing a Shoreline Development Permit. [My comments](#) on the
2 [DEIS](#) were submitted into the record. Unfortunately the Honorable Hearing Examiner (“H/E”)
3 took all the documents I submitted and labeled them under one exhibit labeled Exhibit #35. (*See*
4 TRANSCRIPT “TR” Pg 42 Line 19 [EXHIBIT A](#) attached hereto and by this reference
5 incorporated herein.)¹

6 I also submitted a comment letter to the H/E before the hearing on April 24th. *See*
7 [Exhibit 21](#) of the H/E’s record of which was recognized and answered by Respondent. *See*
8 [Exhibit 28](#) of the H/E’s record.

9 Subsequent to the hearing on April 24th it became apparent that the required recording of
10 the proceedings had not been made as promulgated pursuant to SCC 14.06.240(8) and I brought
11 that to the attention of the H/E [by letter](#) dated May 12th. The H/E, apparently realizing that this
12 would be grounds for an appeal scheduled another hearing for June 12th. (*See* TR Pg2 Ln24) At
13 the June 12th hearing I participated by orally testifying and submitting numerous exhibits. (*See*
14 attached TR beginning at Pg37 Ln3 through Pg52 Ln 15.)

15 The reason for the above introduction is that I want to put to rest any objection by
16 Respondent that I don’t have standing to submit a Memorandum in Support of Sedro-Woolley’s
17 Appeal. I have been participating in this fiasco of a project since [my comments](#) on the [DEIS](#)
18 therefore my standing and right to participate is unquestionable and undeniable. If the
19 Respondent is allowed to continue not only to artificially flood upstream property owners let
20 alone their own district and the City of Burlington, and that result is attributable to the approval
21 of the permit by Skagit County then every taxpayer in this Valley will become an aggrieved
22 party.

25 ¹ [Exhibit A](#) was prepared by www.skagitriverhistory.com and was submitted as a public
26 service by same. Comments in the form of footnotes are entirely my own. We also provided
links to the documents referenced before the Hearing Examiner.

1 **II REASONS TO DENY OR REMAND HEARING EXAMINER DECISION**

2 **A. The Record is Incomplete**

3 While I applaud the Honorable H/E’s decision to reopen the hearing unfortunately not all
4 the same individuals testified at the June 12th hearing. However according to [the H/E decision](#)
5 he relied on “notes” that “captured the gist of each person’s testimony”. To the best of my
6 knowledge those notes were never made part of the record. Therefore we do not know exactly
7 what the H/E took into consideration or if he was misled by testimony from the Respondent.

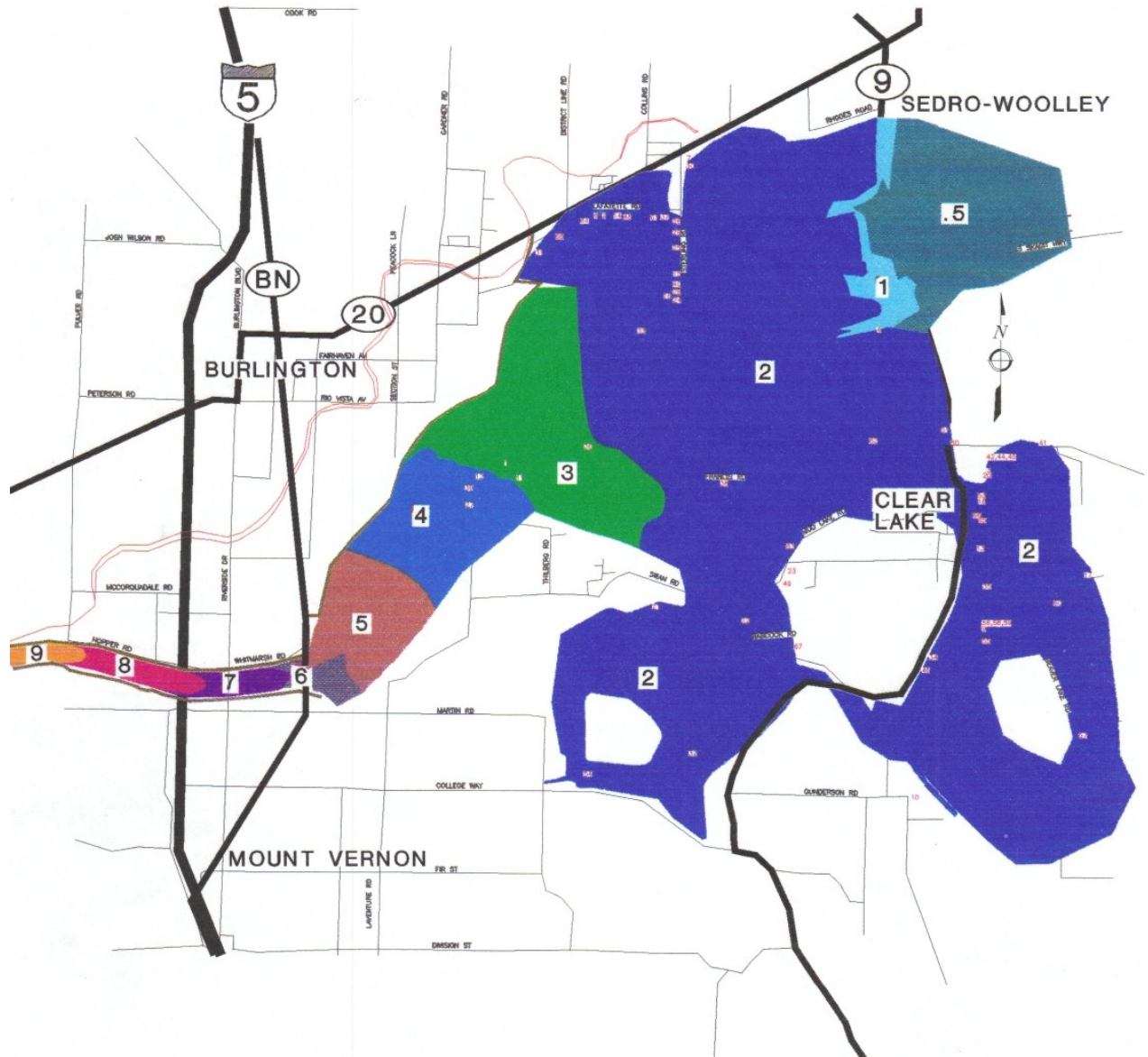
8 **B. The Proposal Does Not Adequately Address Impacts To Sedro-Woolley nor Any**
9 **Other Upstream Property Owner**

10 The Respondent has only evaluated the 100-year “hypothetical” flood event. Yet they
11 admit that they want to raise their levees three feet above the 100 year event in order to meet
12 FEMA/Corps standards for a certified levee. Setting aside a disbelief in anything the
13 Respondent’s consultants have put forth the real question that remains unanswered is what the
14 impacts will be to upstream property owners in any event larger than a 100 year event. The
15 Respondent tries to justify their project by stating they want to turn their levee system into
16 overtopping levees. At what level of flooding will the levees overtop? At that level how much
17 additional water will the additional 3 feet above the 100 yr. flood add to the flooding in the
18 Samish River Basin, the United General Hospital, the Sedro-Woolley sewage treatment plant, the
19 Nookachamps, Clear Lake or Sterling. There is no piece of evidence in the record that addresses
20 that issue.

21 **C. Respondent’s Levee System Is The Cause of Upstream Flooding Not the BNSF**
22 **Railroad Bridge**

23 At the second hearing I introduced the results of a hydraulic analysis that shows the
24 impact the levee system that was in place in 1990 impacts upstream property owners. See TR at
25 Pg49 Ln22. That same analysis was contained in [my comments](#) on the [DEIS](#) which were totally
26 ignored by the [FEIS](#). It was also contained in [Exhibit 21](#), my letter to the H/E who evidently

1 did not understand that Respondent's levee is flooding Burlington and adding additional height
2 to the levee system will aggravate an already intolerable situation. The graphic piece of evidence
3 follows:



22
23 **GRAPHIC SUMMARY OF INCREASES IN 1990 FLOOD LEVELS**
24 **DUE TO LEVEE SYSTEM**

25 The hydraulic analysis was performed by **nhc**. The numbers represent the amount of
26 water that the levee system added to the flood flows of the Skagit River. As one can tell, the

1 levee system raises the water of the Skagit River even downstream of the BNSF Railroad Bridge
2 because the pinch point is downstream of Interstate 5. However, more importantly the flood
3 waters from Respondent's levee system is responsible for the water that breaks out at Sterling
4 and floods the people who are paying taxes into Respondent's coffers. Any attempt by
5 Respondent's smoke and mirrors approach or outright lying about the impacts of the bridge
6 should be discounted by the BCC as it should have been discounted by the H/E. See TR . Pg17
7 Ln7; Pg72 Ln25;

8 In what could be considered "new testimony" something the H/E clearly stated would not
9 be allowed on appeal (See TR Pg2 Ln16). Respondent wants to blame all the upstream flooding
10 on the "debris load" on the bridge by using some mythical testimony that is not in the record...
11 See : Respondent's Response Brief Pg9 Ln12, Ln23.

12 The hydraulic analysis submitted and pictured above, prepared by **nhc** clearly showed
13 that during the actual flood event the "debris load" does not back up any water when the scour
14 factor is considered, something that none of the studies referenced in Respondent's brief took
15 into account. (See Respondent's Response Brief Pg9 Ln23.) When the floodwaters go down the
16 argument could be made that the debris load slows down the water from exiting the artificial
17 storage basin the Respondent has created, but during the flood the debris load has no impact.

18 At the risk of being labeled "new testimony" given the fact that the testimony explaining
19 the **nhc** hydraulic analysis shown above was given to Respondent DD12 Commissioner Lorna
20 Ellestad when she worked for Skagit County as well as the testimony of Dr. Melone, Skagit
21 County's hydraulic expert who testified that at a maximum the bridge contributed only 5 inches
22 spread evenly upstream, I find it unfathomable that Respondent could make such an argument.
23 If the BCC remands this issue to the H/E I will introduce the complete testimony of **nhc** and Dr.
24 Melone. Respondent is guilty of flooding their own community and that community needs to
25 know that fact.

1 **D. The Floodway Issue Was Not Taken Into Consideration by the H/E.**

2 In [my comments](#) on the [DEIS](#) which were totally ignored by the [FEIS](#), and also
3 contained in [Exhibit 21](#) the issue of the floodway designation was raised with a series of quotes
4 from letters from FEMA officials. At the H/E hearing on June 13th I submitted actual copies of
5 all the letters referenced. See Exhibit 35. All of those letters, memorandums and e-mails prove
6 conclusively that contrary to what Mark Carey stated in his letter to Respondent's contained in
7 the FEIS; FEMA's Washington DC Headquarters designated the levee as part of the floodway.

8 Much to my surprise, the engineering consultant introduced a copy of the 1984
9 Burlington FIS (See TR Pg69 Ln12) labeled [Exhibit 36](#). That study states in part at Pg 18 §4.2:

10 For the study area downstream of Sedro Woolley, flood plain encroachment must
11 be restricted in certain definitive areas. **For the Skagit River proper, the levees**
12 **confining the channel and adjacent areas have been designated as floodways.** In
13 the vicinity of Whitmarsh Road and the old U.S. Highway 99 Bridge (Garl
14 Street), **the most landward levees were used to establish the floodway boundary.**
15 The purpose of these floodway designations is to preclude any encroachment
16 which would reduce the capacity of the river channel or jeopardize the integrity of
17 the levee system. (*Emphasis added.*)

18 There was some discussion by the Respondent's that all the letters I submitted were
19 before the FIS was adopted. (See TR Pg 68 Ln18) This is totally untrue. One of the documents
20 introduced was an October 10, 1996 [USACE MFR Re: Skagit River Levee Repairs](#) . Clearly
21 12 years after the designation and the FIS the Corps of Engineers through a former FEMA
22 employee recognized that the levees were designated as part of the floodway.

23 I also introduced a copy of an e-mail exchange I had with a FEMA employee regarding
24 the floodway designation dated October 15, 2001 [E-mail RE: NFIP Policy Enforcement and](#)
25 [Floodways](#) } (See TR Pg46 Ln 14), some 17 years after the adoption of the FIS entered into the
26 record by Respondent. The FEMA representative states very clearly that "**since a floodway has**
been designated along the lower Skagit within the levee c 10 doesn't apply. **Yes, the floodway**
established in 1985 is located between the landward toe of the levee so yes this means that

1 **there can be no fill or other kind of development outside of the original cross-section**
2 **located within this designated floodway. (Emphasis added)**

3 The Respondent wants everyone to believe that a “compromise” was reached with FEMA
4 yet no document from Washington DC, FEMA Headquarters was submitted. When did that
5 compromise occur and what documentation and/or justification were there for the change? None
6 was submitted into the record.

7 The consultant referenced RCW 90.058.030 when he stated “we’ve got these definitions
8 and we work within those. (See TR Pg69 Ln16) Really?? That would be the same section of
9 the State Shoreline Management Act that states at §.030(2)(d)(i) “*Any county or city may*
10 *determine that portion of a one-hundred-year-flood plain to be included in its master program as*
11 *long as such portion includes, as a minimum, the floodway AND THE ADJACENT LAND*
12 **EXTENDING LANDWARD TWO HUNDRED FEET THEREFROM. (Emphasis added.)**

13 Clearly even if you accepted Respondent’s foolish designation of where they think the floodway
14 is, their levees fall within the 200 feet of the requirement of the State Shoreline Management
15 Act.

16 The consultant also referenced WAC 173-27-040 Developments exempt from substantial
17 development permit requirements as a definition Respondent’s work within. The only sections
18 that addresses levees is §.040(2)(k) which states:

19 (k) **Operation and maintenance** of any system of dikes, ditches, drains, or other facilities
20 existing on September 8, 1975, which were created, developed or utilized primarily as a part of
21 an agricultural drainage or diking system; **(Emphasis added.)**

22 Maintenance is defined by the same WAC at §.040(2)(b) which states in part:

23 (b) Normal maintenance or repair of existing structures or developments, including
24 damage by accident, fire or elements. **“Normal maintenance”** includes those usual acts to prevent
25 a decline, lapse, or cessation from a lawfully established condition. **“Normal repair”** means to
26 **restore a development to a state comparable to its original condition, including but not limited to**

1 its size, shape, configuration, location and external appearance, within a reasonable period after
2 decay or partial destruction... **(Emphasis added.)**

3 Clearly the entire project and or projects described in the Respondent's DEIS and FEIS
4 do not constitute maintenance however it does explain their infatuation with the word. The four
5 feet of fill material placed on the riverward side of the levee along Whitmarsh Road after the
6 1990 flood event was not maintenance but an illegal improvement to their levee system. Just
7 like the installation of keyways that used the material removed from the keyway areas was used
8 to place on the riverward side of the levee.

9 **E. Respondent Has Made Comments Unsupported By Evidence Which Were**
10 **Relied Upon By the Hearing Examiner.**

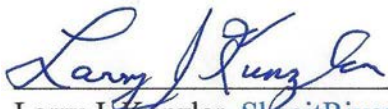
11 The Respondent has stated several times that they have all the permits required to
12 conduct their "maintenance" of the levees which boiled down to "grading permits". No grading
13 permits were submitted into the record. Respondent provides no evidence that the grading
14 permits received SEPA review nor did they provide any evidence that what the alleged grading
15 permits allowed was all that they did. Therefore the record is incomplete and Sedro-Woolley's
16 appeal should be given serious consideration and the permit denied or remanded in order that the
17 H/E can be sure that he was not misled on this issue. This issue was raised during the hearing.
18 (See TR Pg 47 Ln17)

19 Respondent has stated that the cumulative impact of all the fill placed in Burlington since
20 1985 is only .3714 feet. (See FEIS Pg 13. See also TR Pg49 Ln8.) Yet no document was ever
21 produced to support such an outrageous statement. At a minimum for this reason alone the
22 permit should be remanded to the H/E in order that the documents could receive adequate public
23 scrutiny. (See Pg49 Ln 13)

1 **CONCLUSION**

2 Sedro-Woolley’s appeal while admittedly lacking some substance is on the entire record,
3 not just on their testimony before the H/E. Respondent has condemned Sedro-Woolley for not
4 wasting millions of dollars on hydraulic analysis with questionable engineering companies (one
5 of the Respondent’s engineer’s work product has not been accepted by any federal agency
6 involved) in order to support their appeal. The fact is that a hydraulic analysis showing the
7 impacts of the levees on upstream property owners as well as the Respondent’s own taxpaying
8 properties during the 1990 flood event was in fact submitted. That analysis proved conclusively
9 that it is the Respondent’s own levee system, not the “debris load” on the BNSF Bridge that
10 backs up the water. Respondent has proven themselves to be concerned about no one but
11 themselves. As a resident of Sedro-Woolley, the City has every right to be concerned. H/E has
12 relied on Respondent’s false and misleading testimony. The permit should be denied and/or sent
13 back to the H/E for clarification on the testimony before the H/E.

14
15 Respectfully submitted this Second Day of September 2013;

16
17 

18 Larry J. Kunzler, SkagitRiverHistory.com Publisher
19 floodway@comcast.net

20 Electronically Served on:

21 Skagit County Commissioners via Clerk Linda Hammons, lindah@co.skagit.wa.us;
22 Will W. Honea, willh@co.skagit.wa.us;
23 John Cooper, johnc@co.skagit.wa.us;
24 Appellant Craig D. Sjostrom, [cgsjostrom@comcast.net](mailto:cdsjostrom@comcast.net);
25 Appellant Sedro-Woolley Mayor Mike Anderson, manderson@ci.sedro-woolley.wa.us;
26 Appellant Eron Berg, eberg@ci.sedro-woolley.wa.us;
Respondent John R. Shultz, shultzja@comcast.net

EXHIBIT A

1 **SKAGITRIVERHISTORY.COM**

2 **TRANSCRIPT OF JUNE 12, 2013 PUBLIC HEARING BEFORE THE SKAGIT**
3 **COUNTY EXAMINER, RE: SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**
4 **PL12-0144.**

5 **SKAGIT COUNTY HEARING EXAMINER WICK DUFFORD (HE):** Good morning, my
6 name's Wick Dufford and I'm the Hearing Examiner for the county.
7 We're here today to hear our regular land use agenda and what we have
8 on the agenda is two items. One is an application for a special use
9 permit by the Conway School District, and the other is to continue a
10 hearing that was begun in late April on the application of Skagit
11 County Dike and Drainage and Irrigation District Number 12 for
12 improvements to the Skagit River dike that is just beyond the
13 Burlington city limits upriver. So first of all, we'll do the Conway
14 School District matter because I think that will be pretty quick and
15 then we'll take up the second one.

16 So, um, just by way of introduction this will apply to both of the
17 hearings. What we do is we have the staff summarize their analysis
18 of the application and what they have to say is largely shown in a
19 staff report of which I think there are copies in the back of the
20 room. Once we've heard from the staff, we'll ask the applicant - in
21 the first case, it'll be the school district to uh, give their, uh,
22 pitch on what they're applying for and to tell us what they think
23 about what the staff had to say. Then we'll hear any members of the
24 public that want to testify about these requests. At the end of
25 that, we'll let the applicant and the staff respond to any public
26 comments that they want to respond to and then we'll close the
27 hearing. We'll take the record then with all of the exhibits that
28 are a part of that record and then I will make a written decision
29 which will be within about two weeks of the hearing.

1 Now in, starting with the uh, Conway School District matter I have
2 the staff report and it has listed ten exhibits. So, and those are
3 all matters from the uh, the city's, excuse me the county's official
4 file so they're, they're, materials that were used by the staff in
5 reaching the decision that they came to. Those will be all included
6 in the record and given exhibit numbers as shown on the staff report.
7 Then if anyone has any additional information they want to include in
8 the record, when they get an opportunity to speak they should bring
9 that material to my attention and we'll deal with getting it into the
10 record at that time.

11 These cases are decided by the Hearing Examiner and then are
12 appealable to the County Commissioners. But the appeals to the
13 Commissioners are on the record made here. So it's important that we
14 have a good record for them to review in case they have to and, uh
15 all they're really doing when they hear an appeal is deciding whether
16 the things that were done here were done right. That is to say
17 whether the correct decision was reached on the evidence given but
18 you don't get to put a new case on these appeals. The evidence is
19 already in, it's just an argument over what the result was. So
20 that's the way it works, after that then things go on to the court
21 system if indeed they go any further. So, we'll start with the
22 Conway School District matter and then take up the Dike District 2nd.

23 [ABRIDGED FROM 0:04:43 TO 0:21:30]

24 **HE:** Call the hearing to order. On April 24th, we had a hearing about
25 the application of Dike, Drainage and Irrigation District Number 12
26 to, uh, do some shoreline stabilization and dike improvement on the
27 Skagit River Dike that extends from Lafayette Road in the north to
28 Gardner Road in the south just east of Burlington. After the
29 hearing, we discovered that some of the record that we had hoped we
30 were making on the machinery wasn't too intelligible. So we decided

1 to continue the hearing and take another crack at making sure that we
2 have a good record and, um, on that subject I guess I should say that
3 we do have a lot of documentary evidence as well as pretty good notes
4 about what everybody said last time so I think that we can recapture
5 that fairly clearly but in case anybody wants to say it again and
6 make sure that they get a verbatim transcript then this is an
7 opportunity to do that.

8 In between, at the end of the hearing I left the record open for a
9 week for additional comments because there was some suggestion there
10 was some problem with notice of the hearing and people felt they
11 needed more time. Just in order to deal with that, as a, I am going
12 to include as a, we are up to exhibit 30 I think aren't we?

13 **HE AIDE:** 29, 29 is the last.

14 **HE:** So the next one would be 30. Uh, what I'm going to do is mark
15 the notice of the April 24th hearing and the, uh, that was published
16 in the paper as well as the notice that was sent out to people as
17 Exhibit 30 so that will be in the record that those notices were in
18 fact made. Then for today's hearing I'm going to do the same thing
19 as Exhibit 31 - Notice of Continued Hearing June 12th, both the
20 published version and the mailed & posted version. So, uh, those two
21 additional items will be in the record and we're up to Exhibit 31
22 now.

23 I, note that during the interim while the record was open there were
24 several additional exhibits that were submitted. So we have three
25 from John Semrau - I have not seen these so I don't know what they're
26 about - but one from Margaret Fleek, a letter from John Schultz; the
27 Corps of Engineers sent a letter on the 1st of June; another letter
28 from, another two letters from John Schultz; and finally a
29 communication from Chal Martin, the City of Burlington. So we have
30 all those items and they are now part of our record. We will expand

1 our record by whatever happens here today. I'm going to ask the
2 County to sort of recapitulate what they did last time and so
3 speaking for the County we have...

4 [0:25:36]

5 **John Cooper [JC]:** John Cooper.

6 **HE:** Alright Mr. Cooper, do you swear and affirm that the testimony
7 you'll give you'll tell the truth, the whole truth and nothing but
8 the truth, so Help you?

9 **JC:** I do.

10 **HE:** Okay, why don't you go back over your staff findings?

11 **JC:** Okay, I'll just be brief. This is a continuance for the hearing
12 for the Shoreline Substantial Development Application PL12-0191.
13 This is for Skagit County Dike, Drainage and Irrigation District
14 Number 12. The area is subject to the proposed shoreline
15 stabilization and flood protection improvements. It's located along
16 the right, which is the north and west, bank of the Skagit River
17 extending from Lafayette Road in the north to Gardner Road in the
18 south, which is east of Burlington. The project is an eastern
19 extension of the levee maintenance project initiated by the City of
20 Burlington and the Skagit County Dike, Drainage and Irrigation
21 District Number 12. It's intended to increase flood protections for
22 the City of Burlington. Skagit County Dike and Drainage District
23 Number 12 proposed to enlarge both the width and the height of the
24 existing Skagit River levee along a 1.3 mile long project site. The
25 elevation at the top of the levee will be increased by approximately
26 4 feet and the toe or base of the levee will be increased by
27 approximately 60 feet. The widening of the dike will be limited to
28 an area landward of the existing levee toe. The purpose of the
29 improvement is provide structural reinforcement of the levee system

1 to prevent failure during elevated flood events and to obtain, see,
2 levee certification from the United States Army Corps of Engineers.
3 The subject property is designated as agricultural, natural resource
4 lands as indicated in Comprehensive Plan Zoning Maps as adopted
5 December 23rd, 2008. The subject site has a shoreline designation of
6 rural as indicated in the current shoreline county or Skagit County
7 Shoreline Management Master Program. You'll note the Skagit River is
8 considered a shoreline of statewide significance. A determination of
9 significance was issued by the City of Burlington and a Draft
10 Environmental Impact Statement was completed on February 13, 2009 for
11 the dike stabilization project. The Final EIS or Final Environmental
12 Impact Statement was issued on July 16th, 2010.

13 We reviewed the application according to the criteria in the
14 shoreline management master program, and in general found the
15 application to be in compliance with that criteria. Based on that
16 information we went ahead and recommended approval of the, this
17 shoreline management or shoreline substantial development permit with
18 the inclusion of seven conditions which are included in the staff
19 report. That concludes this summary. I can try to answer any
20 additional questions that may have resulted.

21 **HE:** I think the record is unclear on a couple of things so I wanted
22 to ask you about the different kinds of hydrology studies that have
23 made with respect to the river. The Corps has done their work and
24 then there's something called nhc.

25 **JC:** Right.

26 **HE:** Then there's something called PIE.

27 **JC:** Yes.

28 **HE:** Now as I understand it, the PIE, uh, hydrology is basically the
29 basis for the City's application here. Is that right?

1 **JC:** They've used a lot of the Pacific International's hydraulic
2 information. They also provide the Army Corps of Engineers model um,
3 or flood evaluation, use their numbers for evaluation of the impacts
4 that may result in the surrounding area from the, uh, increase in
5 height of the dike.

6 [0:30:15]

7 **HE:** I know they've done that analysis as well.

8 **JC:** Okay.

9 **HE:** The one that isn't explained is the nhc which is kind of the
10 middle range of numbers. Who did that and why?

11 **JC:** Let's see, that was Northwest Hydrologic Consultants I believe.
12 I think this was, uh, I don't know a lot about that, I really don't
13 but I believe that there were three, um, the City of Burlington had
14 Pacific International do their modeling to figure out the maximum
15 flood could be. The Corps provided theirs, which was the upper end,
16 the higher volume, and then I think there was, a, the third, the
17 consultant was, uh, they took all the information and tried to figure
18 out what the flow would be and they came in the middle range for the
19 maximum flow in a 100 year flood that came in the middle range. So.

20 **HE:** I just didn't know kind of what to do with that piece of
21 information.

22 **JC:** Okay. (Chuckling)

23 **HE:** I may be, somebody can explain it, maybe it doesn't matter.

24 **JC:** I guess I thought it might have...

25 **HE:** I thought it might have been done for the GI work.

26 **JC:** I think it was done for the GI work.

1 **HE:** What the deal was, we'll find out.

2 Uh, okay, uh, in just a couple of questions of you and then I'll
3 leave you alone. On the noticing of things at this time, uh, there
4 is a notice that is published in the paper and there is a notice that
5 is mailed to people in the area as well as posted?

6 **JC:** Yes.

7 **HE:** And, uh, who does that? How can I be sure that sort of
8 activities really happened?

9 **JC:** Um, the list of people that were included in the mailings was
10 provided with the application. I sent out those mailings.

11 **HE:** So you do that?

12 **JC:** I did it all. I posted, I got it in the paper, I, yes.

13 **HE:** Okay, so you can testify those things were done with respect to
14 the April 24th hearing?

15 **JC:** Yes. Yes, absolutely.

16 **HE:** You are testifying?

17 **JC:** I am testifying, yes.

18 **HE:** And also with respect to today's hearing?

19 **JC:** Yes, that was put out in the paper as well.

20 **HE:** Alright then, let's hear from the applicant then, whatever it is
21 they may want to add to what they've already said or repeat.

22 [0:32:59]

23 **John Schultz [SCHULTZ]:** Mr. Hearing Examiner, could I go up there or...

24 **HE:** I think you're fine where you are Mr. Schultz.

1 **SCHULTZ:** Okay, thank you.

2 **HE:** Identify yourself for the record if you will.

3 **SCHULTZ:** Yes, my name is John Schultz, I'm an attorney in Burlington.
4 My address is 160 Cascade Place in Burlington, Washington. I've been
5 an attorney for the Dike District 12 and other dike districts for
6 many years.

7 **HE:** Okay assuming that you are testifying I'm going to swear you in.

8 **SCHULTZ:** Yes.

9 **HE:** You swear the testimony you give you'll tell the truth, the whole
10 truth and nothing but the truth so Help you?

11 **SCHULTZ:** I do.

12 Mr. Hearing Examiner, I wanted to make just a few brief comments. We
13 did have the gap in the record and I wanted to make sure that, um,
14 that after myself and Mr. Semrau discuss this we've filled all those
15 gaps in the record. So what I wanted to do is just summarize what
16 I've seen so far and I will try to be brief.

17 I notice the process is a little different than court. In a court
18 process people testify or submit documents, they're ruled on at the
19 time. They're either objected to or accepted or excluded. It seems
20 to be a little different process here where, um, I think we're in a
21 search for the truth here but it seems like in many of these hearings
22 kind of go afield as far as emotional comments, derogatory comments,
23 some things that are stated that are not under oath, and so that
24 prompted our submitting comments after the hearing about some of one
25 commentator we have some disagreements regarding what was factual and
26 what was emotional. So I'm hoping that my letter of April...

1 **HE:** So these letters that we, that I'm noting, that have been
2 submitted, refer to things like that?

3 [0:34:59]

4 **SCHULTZ:** Yes. So I just wanted to recap that. I don't think I need
5 to remind the Hearing Examiner but, you know, this should be
6 determined on, the permit should be determined on the facts of the
7 case. I look at this and I see just a huge amount of facts that
8 militate in favor of submitting and approving this permit. I'll go
9 through a couple of these things that are self-evident because the
10 county's discussed these and these are part of the record.

11 The EIS has been approved in July 2010 and I would submit that all
12 the comments that we're hearing today and at the prior hearing in
13 written comments have already been addressed in the EIS including
14 some of the commentator's submitted voluminous information at the
15 time of the EIS and those have been dealt with. So nothing new under
16 the sun here as far as the evidence.

17 This project has been going on since 2007 and when I say this project
18 I mean Phase I of the project where there's been some widening. Thus
19 far there hasn't been any raising of the height of the levee and I
20 wanted to make sure that the Hearing Examiner knew about the concept
21 of freeboard. **There's a certain height that has to be met if we're**
22 **going to certify the levee.**¹ That doesn't mean that willy-nilly the
23 Dike District's going to go out and raise the levee 4 feet. It means
24 that **some areas would not be raised because they're already at the**
25 **submission height**², other areas would be filled in, other areas would
26 be raised possibly 3 feet. So, the heightening of the levee, the
27 height of the levee would increase later and the EIS looked at this

¹ Certifying the levee is not the same as flood protection. Certification has more to do with promoting development than flood protection.

² Those areas that would not be raised were never identified.

1 and said there would be some minor impacts to folks **downriver**³ but not
2 a great deal of impact. We have wetlands assessments that have been
3 approved - they're in the record, we have fish and wildlife
4 assessment and in the record by Graham Bunting, we have - there was
5 some reference that the Dike District is working without a permit. I
6 think Mr. Semrau testified that as far as the number of permits and
7 the date of issuance and the whole thing - all the permits that we
8 needed were applied for and the fill & grade permits were all
9 appropriate.

10 I wanted to, just briefly, look at oversight here. This project has
11 had just unbelievable oversight since **early 2000s when it was**
12 **proposed**⁴. We have PIE Engineering doing engineering and Mr. Semrau
13 will discuss the issue that you just raised with the County and I'll
14 tell you what I know as far as the long and short of it. The Army
15 **Corps of Engineers has done hydrology which included four historic**
16 **biblical floods, huge in proportion to all the rest**.⁵ You see the
17 graph of these four floods stand out like this - everything else is
18 pretty much consistent? PIE Engineering did probably 4, 3 or 4 years
19 of work on this, **spent many - a couple of million dollars** and they
20 found that these historic floods weren't necessarily accurate so they
21 lowered those a little bit. By the evidence that we've seen in
22 various studies, uh, **there was a prior geologist**⁶ who walked the site
23 many years ago and so the PIE lowered those amounts a little bit. nhc
24 - and you heard Mr. Cooper refer to this - nhc was hired by the
25 county, they're the county's engineer and they took a second look at
26 this so we have the Corps up here, we have PIE here and the
27 difference really is maybe, well, **it's not a great deal of difference**

³ No impacts were identified downriver, just upstream of the project.

⁴ And at what flood control meeting was it ever discussed? Ans: None.

⁵ There is no debating that these floods happened, the only debate is the volume and depth of the floods. See section re Stewart Reports.

⁶ Mr. Stewart was a hydrologist not a geologist.

1 between those two⁷. nhc was kind of in the middle. They were not too
2 hot, not too cold, but just right like Goldilocks⁸. The Dike District
3 is okay with that, we've incorporated that in our work so we looked
4 at all these issues and there have been many millions of dollars
5 spent on nhc, and on PIE to get the engineering right and we're pretty
6 close to getting it right. As right as anybody else has gotten it
7 the last 20 years.

8 We also had oversight with Golder and Associates, Riechert and Ebey
9 Engineers were on this.

10 US Army Corps of Engineers has been a partner with us for many years
11 and you heard at the last hearing that Doug Weber - he's one of the
12 officials from Seattle District Army Corps of Engineers, he came and
13 testified, 'Yeah, this is good project.'

14 [0:39:53]

15 We've talked about the GI Study, that's somewhat of a red herring
16 because the GI Study's been in process for 17 years, they have not
17 yet identified a project, they're starting to cut down the time
18 period to 3 years now. So we're working with them but there's no
19 guarantee the GI Study will be completed or when or if it is
20 completed there will there be funding or if there is funding that
21 dike districts will or any dike district in the county will reach
22 cost-benefit ratio accepted, acceptable to getting funding from the
23 Corps. In the meantime, Dike 12 has been working on this project
24 diligently with Burlington to get levee certification. Once we get
25 levee certification that's going to affect the FEMA flood rating for
26 the entire valley.⁹ It will, uh, Dike 12 work will be a component of

⁷ The difference between the Corps and PIE is huge. So huge that no federal agency will accept PIE's report.

⁸ Really?

⁹ Out of all the ridiculous statements this one takes the cake. Nothing they are proposing will impact the FEMA flood ratings for the entire valley.

1 the GI study if it gets done but I want to make one thing clear: The
2 GI Study is part of this but it is not a precondition for Dike 12
3 doing its work. There is no contingency for Dike 12 doing their work
4 as conditioned upon the GI Study. So I wanted to make that point
5 clear because I don't think that was made clear.

6 In any event, um, we've had other people testify here, we've had
7 let's say Doug Weber from the Corps, Tom Sheehan - he goes way back
8 he knows a lot about flooding, Margaret Fleek testified, Chal
9 Martin's been involved - he was employed with the County, he worked
10 on these issues for many years and then he went to Burlington and
11 he's worked on the certification. So they're a lot of people in
12 favor; I think those opposed may have, um, other issues or other
13 agendas but I would submit to you that all the evidence points in
14 favor of approving this permit as evidenced by the fact that the
15 county does recommend it¹⁰. The county says 'we've looked at all
16 this, the evidence is submitted, it's consistent with all the
17 regulations and this permit should be issued'. If it's not issued
18 that stymies Dike 12 because we can't complete projects now, we can't
19 work for levee improvement, urban levee protection, the next several
20 years, uh and so what if, what if at the end of the day the GI
21 Study's not approved and we're stopped from doing work? The people
22 in Skagit County¹¹ will suffer because there will not be this added
23 protection for the river and once we have this added protection we
24 can embellish that and add other protections to other areas because
25 they'll be more certainty about [the] river, the hydrology, and the

¹⁰ All that is really evidence of is that the county planning department is just as willing to look the other way as DD12 and Burlington.

¹¹ The truth of the matter is that the "people" of Skagit County and Burlington said no to this project in 1979. Clearly the City of Burlington government public employees and DD12 do not care what the people want.

1 certification of levees. FEMA would be happy because we're doing
2 what we need to do to certify our levees¹².

3 So with all that I know I repeat myself but I would urge the
4 Commissioner, er, the Hearing Examiner to approve the permit and
5 there are conditions to the permit. They're fine with Dike 12.
6 We've already complied with most of those anyway but we certainly
7 would work with the county to comply with anything they're required
8 to help us get this job done.

9 **HE:** Thank you. Mr. Semrau?

10 Alright, state your name.

11 [0:43:35]

12 **JOHN SEMRAU [SEMRAU]:** John Semrau.

13 **HE:** Right. Do you swear and affirm the testimony you give in this
14 hearing is the truth, the whole truth and nothing but the truth so
15 Help you?

16 **SEMRAU:** I do. I had a fairly lengthy presentation the last time, um,
17 I have updated it in written form and will submit this at the end
18 {See Exhibit 32: Presentation Notes of John Semrau} but I want to
19 make sure that some of these things, uh, are brought into the record
20 to this recording also. Uh, so, I did mention the last time that
21 I've been working on this project since, uh, about 1997¹³. I've been
22 a consultant for Dike District 12 throughout this process. Um, this
23 portion of the plan, uh, that we're dealing with this permit is found
24 on pages 68 through 76 of the EIS {See FEIS Page 68}. " This
25 project, uh, is located both within Skagit County and the City of
26 Burlington. The plan for this portion in the City of Burlington is

¹² Not if they realized that all the work you are doing was supposed to be prohibited.

¹³ Didn't the attorney say 2000? So they have been lying to the county and the Corps and the flood committee for over a decade?

1 found on pages 62 through 68 in the EIS {See FEIS Page 62}. That
2 portion is permitted under shoreline substantial development permit
3 SMA 1 dash 12 through the City of Burlington. This hearing was
4 permitted on June, or heard on June 20th, 2012 and the appeal period
5 ended in July 2012. I previously submitted a copy of the, uh, of the
6 minutes from that hearing and that's Exhibit 18 in the record. (See
7 Exhibit 18).

8 [0:45:16]

9 I also showed you this vicinity map which is Figure 2 in the Golder
10 Report {See Golder Report} and then the red here is the area in
11 question on this shoreline substantial development permit. This area
12 right here, this is the portion that's already been permitted to the
13 City of Burlington. Of course these studies also include other areas
14 - the Three-Bridge Corridor and other things that are included in the
15 EIS. {See FEIS}

16 This project relates strictly to the enlarging of both width and
17 height of the existing levee¹⁴ in place for the 1.53 mile portion
18 within Skagit County. Project extends from the Burlington City
19 Limits at Gardner Road north to the terminus south of the Burlington
20 Northern Sante Fe Railroad on Lafayette Road. Construction will
21 occur on top of and landward of the existing levee. This project is
22 undertaken for the protection of life and property in the City of
23 Burlington and Skagit County and for maintenance of flood control
24 facilities relating to the Skagit River.¹⁵

25 Okay, this is Figure 13 {See Golder Report} in the Golder Report
26 which I showed you at the previous hearing. Again, these are the
27 areas, this is the area that's being worked on and you'll see in the

¹⁴ In other words an improvement.

¹⁵ The project as described has nothing to do with maintenance.

1 red, the pink, and the green these are the type of cross-sections in
2 the work that will occur along this portion of the levee.

3 Then I, uh, I'm just skipping through because you can read what I
4 submit to you. I also, uh, spent some time explaining the difference
5 between certification and accreditation and also I think there was
6 some confusion about the third component which is community rating.
7 I want to make sure that we're clear on these different, uh,
8 descriptions. The **certification**, that's the portion that the design
9 team, the engineers, the geotechnical engineers, and things - that's
10 where we take and study the existing facility, we do borings, lots of
11 soils tests, do the engineering analysis, and do the design criteria
12 to build these levees to meet the requirements of the Corps of
13 Engineers. Then we go out and **we build these levees to those through**
14 **maintenance**¹⁶ and through this construction process and then the
15 engineering team we certify that this meets that criteria. That's
16 what we're proposing to do. We're proposing to take these levees to
17 the Corps' certification standard. You have a new exhibit **{See**
18 **Exhibit 27}** that, that apparently you haven't seen yet, that, um
19 where the Corps of Engineers concurs that they expect us to be
20 building these uh, levees **through maintenance**¹⁷ and through these
21 construction process and bringing them up to their standards.

22 Now the accreditation, that's what FEMA does. We take this
23 certification package, these 300 documents that we're gonna have, and
24 the last 10 years of work plus our construction process and we're
25 going to have 15 to 20 years of update plus the GI Study. **We're not**
26 **gonna, we're not gonna get accreditation until after the GI Study's**
27 **essentially done**, alright, okay but we're positioning ourselves to do

¹⁶ So since the Corps got out of the certification business it will be up to the local engineers to put their professional insurance on the line not to mention the poor people who have chosen to trust them.

¹⁷ Again with the maintenance thing. Maintenance is mowing the grass and repairing damage to the levee, not raising them 3-4 feet.

1 what we know we have to do, we have to do it whether or not the GI
2 Study is finished or not but that's bringing these levees up to the
3 Corps' standards. Um, but once we take this package, the GI Study's
4 done, then we can go to FEMA for the accreditation.

5 [0:49:57]

6 Essentially when these levees are accredited, then they're actually
7 included in the computer modeling that FEMA does or their consultants
8 but the modeling that is done to develop the flood rate insurance
9 maps or the flood insurance rate maps, the FIRM.

10 Now there's also community rating process and we don't want to
11 confuse the flood levels we say in community rating with
12 accreditation or certification flood levels. But that's a process
13 that Margaret can better explain because she's actually in the
14 process of it right now with these updates and things. That's where
15 when these levees get certified or accepted to a certain flood level
16 then they are, the community gets a break on the insurance, they are
17 able, they accept a certain level of protection. One of the goals
18 that Burlington has is to get these levees to a 25 year acceptance¹⁸.
19 We know they've, they've come through flood events of from 25 to 50
20 years but until we do this maintenance work¹⁹ and have these levees
21 built to a better standard of the Corps', we're not going to get that
22 25 year acceptance for the rating. So we've got those 3 different
23 things out there.

24 FEMA does not include nonaccredited levees in their flood modeling.
25 Currently there are no certified and accredited levees along the
26 Skagit River²⁰. Once levees are accredited by FEMA, they can be

¹⁸ I'm not sure that there is such a thing as 25 year acceptance.

¹⁹ He really believes he is doing maintenance.

²⁰ No documentation was submitted to support this claim of 25 year acceptance will result in lower flood insurance rates.

1 included in the hydraulic modeling that is conducted to define the
2 100-year floodplain²¹. This is found on page 10 of the EIS. {See FEIS
3 Page 10} The Golder geotechnical study found that the levees in
4 general were already constructed soundly enough to withstand
5 significant flooding which has been confirmed in the 1990, 1995,
6 2003, and 2006 flood events. These floods have return intervals
7 ranging from 25 to 50 years.²² The primary constriction in the
8 floodway is the Burlington Northern Santa Fe Bridge. This bridge can
9 only pass 150,000 CFS²³. That's found on pages 11 and 12 in the EIS.
10 {See FEIS Page 11}

11 Um, probably the best explanation of freeboard and how it's applied
12 in this situation is found on page 10 of the EIS. {See FEIS Page 10}
13 FEMA requires riverine levees to have a minimum freeboard of three
14 feet and in some cases a half a foot in addition along the length of
15 the tieback levees and an additional foot either side of structures
16 such as bridges. In other words, the top 3 to 4 feet of this levee
17 will be freeboard to the Corps and FEMA guidelines for certification
18 and accreditation. This portion of the levee is above the floodwater
19 level and does not change the flow of the floodwaters. This is what
20 prevents the overtopping and potential catastrophic failure or breach
21 of the levee during a flood event.²⁴

22 At this point there's no proposal for a tieback levee and Burlington
23 and Dike District 12 are hopeful FEMA will consider benefits of
24 conveying some of the peak out of the system. This discussion you'll
25 find on pages 10 and 11. {See FEIS Page 10} The tieback levees can
26 affect upstream and downstream properties. If the GI Study

²¹ Yes, the 100 yr fld plain not the 25 year flood plain.

²² While I personally believe that the floods were larger then 25-50 year events no government agency has stated that any of the floods mentioned were 50 year events.

²³ The primary constriction point is created by the levee system primarily DD12 changing the natural course of the river and throwing additional water towards the corridor that they created.

²⁴ Thats true for the 100 yr event but what about the 150 or 500 yr event? All you've accomplished is creating the "potential catastrophic" flood event. Levees are the worse form of flood control.

1 determines that a tieback levee is required then this would also be
2 needed to be constructed before accreditation. If a high ground
3 tieback is required, this could occur to Sedro-Woolley, Sterling
4 Hill, or Burlington Hill.²⁵ This is really a GI question that needs
5 to be answered. The proposed project will take from the current; the
6 project we're proposing now is going to take us from 5 to 6 years to
7 build. If they tell us we need to go even higher because of the
8 hydrologic things that work would need to occur²⁶. But even in
9 addition to that, if a tieback levee is required that's going to take
10 additional time. What we do know is these levees need to be brought
11 to the certification levels and the standards²⁷. This project has
12 always been an integral part of the GI Study. The discussion on page
13 10 of the EIS {See FEIS Page 10} also answers the questions raised by
14 the County on the exceptions to the tieback because a tieback will
15 likely affect upstream and downstream properties, we've been leaving
16 this question to the GI study to answer.

17 [55:00]

18 A key component - and again I'm quoting from the EIS - a key
19 component of develop, developing the levee certification project is
20 addressing impacts of the proposed action on the upstream and
21 downstream areas. The choose, the choice to proceed with work to
22 certify the current levee gives the GI another 5 to 6 years to
23 determine the bigger flood picture. Reducing the flood risk every
24 year, sorry I missed some of that, but, okay... hydrology, okay, the
25 Skagit, uh, the hydrology for this project has been performed by
26 three different entities. We've got the Corps of Engineers, the nhc

²⁵ Tieback levees to either one of the hills would require fill in Gages Slough, something that is already prohibited, and to SW as the 1979 levee project stated would raise floodwaters over 4 feet in the Nookachamps/Sterling/Clear Lake area. Not to mention allow development from Hwy 20 to Cook Road.

²⁶ So this is just the beginning of raising the levees.

²⁷ So that they can develop flat on the ground and not require flood insurance. This project has nothing to do with flood protection. Follow the money, it's always about the money.

1 or Northwest Hydraulic Consultants, and Pacific International
2 Engineering or PIE. The best kind of the, and they call it the
3 synopsis, the difference of the work is found on page 44 of the EIS.²⁸
4 {See FEIS Page 44}

5 There's also if you look on page 9 of the EIS, {See FEIS Page 9}
6 you'll find little more brief table um, this particular project - the
7 choice that Burlington made and it's all based on the, the
8 conclusions of the EIS, PIE was a consultant for the County at first,
9 they came up with flood numbers that differed from the Corps. Lower
10 numbers. They were a little more realistic numbers in my opinion but
11 that's not to say being a little more conservative than that you can
12 still have flood events greater than a 100 year event. Northwest
13 Hydraulics or nhc was the next and I think they're still the current
14 consultant for the county, um, they essentially came in between the
15 two. They said, you know, made some adjustments on the PIE numbers
16 but still came in below the Corps of Engineers. Now I did submit to
17 you and its Exhibit 19 in the record, {See Exhibit 19} I submitted a
18 draft report dated January 12, 2012 from nhc. Now it's my
19 understanding nhc at that time they were using the Corps' hydrology.
20 The County and the GI Study moving forward is using those larger
21 numbers. This project because of the decisions made initially -
22 we've gone with the lower numbers partly because we want to reduce as
23 much risk as we possibly can to the City of Burlington in this
24 floodplain area and to do that we don't feel we need to build it to
25 the higher level now²⁹. We can wait until the GI Study's done and if
26 they tell us they're going to use those Corps numbers which is very
27 likely then we will be raising the levee³⁰. The levee design has, is

²⁸ And that difference is anything but "Goldilocks" in nature.

²⁹ So if you don't build it now how are you going to get it certified? Sounds like to me that they are saying something different out of both sides of their mouth at the same time.

³⁰ So what the dike districts have done is use the taxpayers to fund a 13 million dollar engineering plan so that they can raise the levees on their own.

1 incorporated so that it can accommodate that additional 2 or 3 feet,
2 whatever it ends up being to meet the certification and the
3 accreditation at that higher levee standard.

4 But all this project is about is reducing the risk to the City of
5 Burlington and actually Dike 12 when you start looking at the
6 floodplain maps especially the Dike District maps, if we breach then
7 Dike 1's affected, most of the, every dike district on the west side
8 of the Skagit River is going to be affected because we're upstream of
9 them. If we, if our levees fail, there's other dike districts that
10 are going to be affected.³¹

11 [1:00:00]

12 Okay, this is the important part of the, um, EIS showing the effects
13 of this proposed project so this is found on page 47 of the EIS {See
14 FEIS Page 47}. This is the effects of an uncertified levee using the
15 Corps of Engineers' hydrology.³²

16 This map is found on page 48 of the EIS, {See FEIS Page 48} this is
17 the uncertified levee using the PIE hydrology. The difference
18 between the two is basically most of the area floods and there really
19 is no difference.

20 Okay, this is the - found on page 49 of the EIS {See FEIS Page 49}-
21 this is the effects of flooding, you can see the flooding through the
22 Gages Slough. This is a proposed certified levee using the PIE
23 hydrology. This is the project that we're proposing at this time.

24 This is found on page 50 of the EIS, {See FEIS Page 50} this is the
25 same project that we're proposing but the effect of this levee with
26 the Corps hydrology. As you can see there, a large portion of

³¹ And if you raise you levees you will also be impacting the other districts.

³² What the map clearly shows us is that it is Burlington, not the Nookachamps that is the lower area.

1 Burlington under the PIE hydrology is affected by this, the higher
2 flows and the Corps hydrology.

3 I also just wanted to note we spent an awful lot of time talking
4 about the 100 year events here, something that we've not experienced,
5 um, and most of these events are, that we've experienced are you know
6 25 to 50 year events³³ so we're talking about a theoretical event.

7 Okay this map is found on page 57. {See FEIS Page 57} This is a base
8 flood elevation map and it shows the impact upstream based on the
9 proposed project and this is to the PIE hydrology. It's showing a .1
10 foot base flood elevation impact³⁴ and this is alternate number 2 that
11 we've, that was included in the EIS and this is the impact by the PIE
12 hydrology for the upstream. Now I did and the EIS was completed in
13 2010 and I submitted that January 2012 Northwest Hydraulics report
14 prepared for Skagit County. Now that was using the Corps' hydrology
15 and that's your Exhibit 19. {See Exhibit 19} In that report that
16 called, it was called the northeastern levee, or the Burlington Urban
17 Levee and they performed analysis for both the 50-year and 100-year
18 events. On page 16 the results were .1 foot and .4 feet respectively
19 at the Sterling area. That's for the 50-year and the 100-year
20 events. I also wanted to note that study also included projects; the
21 Mount Vernon floodwall which is now under construction. The measures
22 considered in the final work by Northwest Hydraulic Consultants were
23 defined in a series of meetings of the Skagit River Flood Risk
24 Management GI Project Delivery team and discussions with several of
25 the project stakeholders. None of that work has been held back from

³³ The 50 year event using the PIE hydrology? This is nothing more than smoke and mirrors comparing apples to oranges.

³⁴ No true hydraulic engineer can be that accurate. The model hasn't been invented that can truthfully be relied on for an inch of rise.

1 all these stakeholders that have been involved in this project from
2 the start.³⁵

3 [1:05:10]

4 Are you just confirming that it's Exhibit 19 there? Okay?

5 Have I answered your question in regard to the hydrology?

6 **HE:** Yes

7 **SEMRAU:** Okay.

8 Alright, in summary, and I'm going to start with quoting again page
9 11 of the EIS, in the case of the riverine levee and the Skagit River
10 delta area, the protection goal for Burlington is to have a levee
11 system that will solidly withstand the 100-year flood event, lower
12 base flood elevations in the City, remove a percentage of the City
13 from the 100 year floodplain³⁶, and ensure that the established base
14 flood elevations adequately communicate the best estimates of the
15 100-year water surface elevations to property owners. I think that,
16 that paragraph summarizes our project. You know, we're proposing the
17 PIE hydrology because we felt at the time that was the best estimate
18 of the 100-year. That's a reasonable 1st target for us to be spending
19 the public's money to build these levees to. If we're told we need
20 to go higher, we will go higher.³⁷ If we're going to use the Corps
21 hydrology which is pretty apparent that the GI Study is using that,
22 that's what we'll do.

³⁵ But it was held back from the flood committee by the public works department who sits on the GI Project Delivery team.

³⁶ He left out the part about what area would be out of the 100 year floodplain with this project. He left out the part about that kind of project opening up ag lands to development or forcing floodwaters into the Samish Basin or the Nookachamps.

³⁷ And the hell with the impacts to anyone else? This will make the 4th time DD12 changed the natural course of the Skagit River.

1 The, we've got a project here that removes a good portion of the City
2 from the flood maps,³⁸ um, we can't build these things in 1 or 2
3 years. We got 5 to 6 years here just to do what we've got, we know
4 we've got more work, we need to continue to do work every year to
5 continue to reduce the risk to these areas. Essentially you have a
6 levee improvement project³⁹ that proposes to minimize the upstream and
7 downstream impacts on existing conditions while maintaining or
8 enhancing current levels of flood protection in achieving FEMA
9 accreditation of a segment of levee⁴⁰. Most of the new height is
10 freeboard required to certify the levees to the current level of
11 protection, it has no more impact on the upstream and downstream
12 portions of the system as indicated by the nhc 2012 report. The 20-
13 foot top will provide more stability during an overtopping situation
14 and the levee can be further raised in the future to meet the crest
15 of the higher Corps' hydrology. This alternative of enlarging, of
16 enlarging the upstream levee will not remove the risk of flooding,
17 however it will reduce the risk of a catastrophic levee failure and
18 make the specific flood risk for each individual property easier to
19 quantify through modeling of surface water elevations at various
20 river discharges and that's from page 17 of the EIS {See FEIS Page
21 17}. So in regard to this actual permit, the Shoreline Substantial
22 Development Permit, I did comment in regard to page 2 that the parcel
23 numbers weren't complete. I did submit additional, um, exhibit
24 letter that summarized those as of the date that I did that work. We
25 have been in the process of doing, continuing with some purchases and
26 exchanges of land so I can't guarantee that they're going to be the
27 same next week. But we will, um, they have been updated.

³⁸ Again, what portion are we talking about?

³⁹ Now its a levee IMPROVEMENT project.

⁴⁰ FEMA will not certify a segment of a levee. Either your levee system is 100 year or it is not. Flooding your own district which is what this project is doing is not providing 100 year protection.

1 **HE:** So this lists the parcel numbers? Is a list of those parcels
2 that are affected by this project?

3 **SEMRAU:** There they list, yes. That are, that are, that the levee is
4 on or contiguous ownerships of the, of the, uh, dike district. Now
5 you did have a question in regard to the, you know the mailings and
6 things and that and the process we prepare that for the county and we
7 give that to the county. The process that we used is we used the
8 title company to prepare those for us and then we went individually
9 to the assessor maps and pulled up every one of those parcel numbers
10 and confirm that everyone was included. Now we did that, we did an
11 update of that before this last, before this third mailing. This was
12 the third time we mailed out to that list. The first list was
13 prepared, updated in October and then the 2nd list was I guess the 1st
14 weekend, the middle of May that we re-updated that list.

15 [1:10:10]

16 Developments scheduled, previously we said construction would start
17 mid-July 2013 that's not going to happen. [Chuckling] So we're
18 probably middle of August at the earliest, if not next year um, so,
19 we'll wait until we get your findings before we can really update our
20 schedule but we have, we're kind of in a bind getting fill and grade
21 permits and NPDS permits and things so it will start as soon as we
22 can and we have the weather. Pretty much this work occurs from July
23 to September and that's when it will occur as we finish this
24 permitting process. So I also commented on number 11.

25 Um, my comment there because we had submitted the 2012 Northwest
26 Hydraulics, we felt that section should reference that because that
27 was part of our materials that we had submitted.. Number 13 on Page 10
28 I wanted to make sure that the wording in that section does not
29 preclude us from being able to get the 1 year extension that says 5
30 years. Current code language is, and also the, can't remember if

1 it's the WAC or the RCW, it's 5 years plus a 1 year extension - we
2 certainly have enough work under this permitting that we would want
3 to make sure that we have that option for that 6th year and that's
4 from when we pull the permit so if we get into a situation where we
5 can't effectively do work this summer we're going to pull the permit
6 next summer and we need that five to six years to do that work.

7 I also, just briefly, in summary, those exhibits 22, 23 and 24 {**See**
8 **Exhibit 22, Exhibit 23 & Exhibit 24**}, were letters prepared by
9 myself, um, one was the parcel number discrepancies, um, one was in
10 regard to fill and grade permit 0702067, that permit I mentioned in
11 the previous hearing that we had applied for the extension of that
12 permit - we have now received that extension and that permit will
13 expire November 14th, 2013 - again that's new information since the
14 previous hearing and since I submitted that last letter so but that
15 permit has been extended and that work will continue this summer. **I**
16 **also submitted, there's a summary of our permitting activity within**
17 **this area - there was some other testimony about areas outside of**
18 **this particular area and we're just trying to limit it to here. We**
19 **do an awful lot of, we permit everything that we're expected to**
20 **permit here so unless you have any other questions...**⁴¹

21 **HE:** Uh, only one. Just going back to the very beginning of your
22 testimony. You were trying to tell me what the difference between
23 certification and accreditation are.

24 **SEMRAU:** Uhum.

25 **HE:** Certification is, you went into how it has to do with how its
26 designed and somebody can take a look if its properly built from an
27 engineering standpoint. **Who does the certifying - is that the Corps,**
28 **is there a, do you get certification from somebody?**

⁴¹ Why weren't copies of the actual permits submitted? How does the H/E know that they actually exist and the work authorized was performed in accordance with the permits.

1 **SEMRAU:** No, it's the engineering design team.

2 **HE:** Okay, it's a team of people that are working on the levee.

3 **SEMRAU:** That's correct, it's the same team that has prepared the
4 plan, and, and, there's a Corps standard and we've studied it and
5 designed it, the improvements to meet that Corps standard. Now the
6 District needs to build it.

7 **HE:** Uhum.

8 **SEMRAU:** Then once it's built and it actually meets that standard that
9 was outlined in the, in the design - then the engineering team is the
10 one that certifies it. The Corps of Engineers no longer certifies
11 levees. They used to in the past. But they don't anymore.⁴²

12 **HE:** Okay, so, if then assuming that all happens then you take that
13 certification that the engineering team has given you to FEMA and
14 they then look at the question of accreditation, is that right?

15 **SEMRAU:** That's correct.

16 [1:15:10]

17 **HE:** That, sort of, two terms, two terms of different meaning.

18 **SEMRAU:** Right and, but then again if again you get to the GI Study,
19 we need to be consistent with the GI Study, so if the height isn't
20 correct, I mean, once we've certified it to the level we have
21 designed today.

22 **HE:** I understand that if the GI comes up with something else, you may
23 have to go back to the drawing board.

⁴² And when those levees fail, and fail they will, the engineering team will be liable to the people they hurt. .

1 **SEMRAU:** Right. But the City after we certify it can take it for
2 community rating so there's, there's still every part of this process
3 is going to give the public benefit. That's why we're doing this.⁴³

4 **HE:** Alright, thank you very much.

5 Anything else on behalf of the applicant there? Sir?

6 **HE:** Okay, now this is a written version of basically of the kinds of
7 things you were just telling me?

8 **SEMRAU:** Yes sir.

9 **HE:** Okay. So what exhibit number are we up to?

10 This will be exhibit 32 and we'll admit it to the record. {See
11 Exhibit 32}

12 Now, sir would you state your name?

13 [1:16:55]

14 **Dan Lefeber:** [DL]: Yes, my name is Dan Lefeber, I'm the Operations
15 Manager for Dike District 12.

16 **HE:** Okay let me swear you in. Do you swear affirm the testimony
17 you'll give the truth, the whole truth, and nothing but the truth so
18 Help you?

19 **DL:** I do.

20 **HE:** Okay.

21 **DL:** Okay, I have because the question has come up - and I thought it
22 might based upon the last hearing and these are copies of recent, the
23 notice mailings that came to the Dike District because the Dike

⁴³ So the people in the Samish, Sterling, Sedro-Woolley, Nookachamps, and Clear Lake get a benefit how? Aren't they members of the public?

1 District owns many of the parcels adjacent to and where the levee is
2 situated so right in the corridor of the project that's proposed and
3 so I have substantiation as far as that mailing took place. Uh, if
4 there's a question you know, for the properties all in general, not
5 just the ones that the dike district own. But if you would like that
6 as an exhibit, I'm not sure.

7 **HE:** It's up to you.

8 **DL:** So...

9 **HE:** It would be fine.

10 **DL:** Okay, then uh, I'd like to again, uh, show on a map. I brought a
11 larger rendition so maybe it will show a little bit better those
12 parcels that these mailings connect to. So that there's a good
13 understanding of the lay of the land and the impacts of the project
14 on the neighboring lands.

15 **HE:** Okay you have a map?

16 **DL:** Yes, I do.

17 **HE:** Okay so we'll call your mailing notices [unintelligible] Exhibit
18 33 and then the map will be Exhibit 34.

19 **DL:** Okay. Would you like them now or would you like me to show the
20 map and then bring them to ya? Okay?

21 **HE:** You, uh, you have more testimony while you're there?

22 **DL:** Not really more testimony. I could either show the map on the
23 overhead or just include it and you can recognize the parcels?

24 **HE:** Show it to me and I'll take a look at it.

25 **DL:** Okay, great.

1 [1:19:10]

2 [COLLOQUOY]

3 **HE:** We don't need to make them a separate exhibit.

4 [COLLOQUOY]

5 **DL:** South Gardner Road.

6 [UNINTELLIGIBLE]

7 **HE:** Okay, great. So what the witness was showing me is properties
8 that the District owns on the map that are within the project.

9 **DL:** ...And show clearly Dike District 12.

10 [1:20:07]

11 **HE:** Okay, great. Alright, so, thank you.

12 [UNINTELLIGIBLE]

13 **DL:** A bit more time to speak.

14 **HE:** Okay, sure.

15 **DL:** Okay, so I would also like to state for the record that I
16 believe, uh, the dike district's mission all along is to have
17 consistent effort towards improving public safety for lives,
18 property, infrastructure, I think we're all pretty aware of what
19 happens to the community if a little infrastructure is damaged these
20 days. Uh, that we desire to do our best to protect those types of
21 things - as mentioned earlier because of the weather and what happens
22 with soil moisture for the materials being imported and existing
23 conditions at the site, we usually only have 2 to 3 months a year so
24 we have to, um, be as efficient as we can and take advantage of those
25 work window opportunities to have this consistent effort. That's why

1 it's been ongoing for many years as the dike district was originally
2 formed in 1895 by farmers to protect farm area and the surroundings
3 and so it's, uh, you know, it's just this consistent effort that's
4 been ongoing and I don't think, um, is really out of line with what
5 the district was formed back all those years ago when - and is
6 continuing to do. I think that really is the gist of it. Thank you.

7 **HE:** Alright, thank you very much.

8 [1:22:30]

9 Uh, alright if that concludes the applicant's - does anybody have
10 something else?

11 [UNINTELLIGIBLE]

12 **Lorna Ellstad [LE]:** I'm with Dike District 12.

13 **HE:** Kinda speak into the mike, it's important that the machine hears
14 you.

15 [Colloquy]

16 **HE:** Okay, I got 'em both wrong. Uh, alright. Let me swear you in if
17 I may. Raise your right hand and swear the testimony you give you'll
18 tell the truth, the whole truth and nothing but the truth so Help
19 you? Okay.

20 [DEAD SPOT 1:23:22 to 1:23:45]

21 **HE AIDE:** This one's not picking up.

22 **LE:** This one's better.

23 **HE AIDE:** Yes.

24 **LE:** Okay, Thanks Betta.

1 Because of differences in hydrology as has been discussed today it
2 kind of delayed, funding delayed, but, uh, I would like to point out
3 that the community has been utilizing information from this GI and
4 I'll just throw out there since 1999 when they completed a work group
5 where a lot of the community and particularly dike district
6 commissioners were involved and Dike 12 started to purchase
7 properties in anticipation of some of these larger projects - City of
8 Burlington put a building moratorium in place and, uh, Dike 3 down
9 below Mount Vernon utilized Corps information, water surface
10 elevations to establish a new levee height when they installed a
11 setback levee. The City of Mount Vernon utilized Corps information,
12 GI information, when they, um, began designing their floodwall - they
13 currently have a four-foot extension on their levee system as well.
14 It's the enhanced brick concrete wall.

15 [1:25:00]

16 **LE:** Looks a little different than what the structure we're proposing
17 is but again that structure is parallel to the flow, and the
18 structure we're proposing is directly perpendicular to the main
19 course of the Skagit River - a breach at that point has the potential
20 to capture the entire river and you know, then it's not always so
21 easy to put things back as we're finding⁴⁴.

22 I'd also like to mention a couple other projects that have utilized
23 Corps or the GI information to date. Um, the, any, I don't want to
24 say, any improvement work but the majority of the improvement work
25 completed by other districts have engaged the county technical staff.
26 In particular when Torey Nelson was working on the GI and myself
27 would provide the water surface profiles, developed by the GI, we
28 would work with them to establish a levee profile and in particular

⁴⁴ In 1897 Burlington/DD12 built the Sterling Dam which tried to keep the river from going back into its old channel Gages Slough. When that failed in 1909 they blew up the river in 1911 to take out the Hart Island Bend. They changed the natural course of the river and are still doing so today with this project.

1 in the rural levees we do not put this freeboard - the purpose of
2 this Skagit GI was to try to provide 100 year protection for our
3 urban areas and less than that to the rural areas.⁴⁵

4 A point I'd like to make on that is that when the GI is completed the
5 purpose of the GI from the federal standing is to establish a federal
6 interest or the economic interest in assisting a local community
7 provide flood protection. They will do so at whatever the benefit-
8 to-cost ratio supports. So when they finish which is currently what
9 they're attempting to identify, we've been looking at damage areas
10 and they're currently looking to identify the benefit area from the
11 proposed alternatives and then they will come up with a curve that
12 will establish at what level they will participate in funding those
13 projects. If at the end of the day, worst case scenario for our
14 urban areas that the Corps determines that they can't justify 100-
15 year protection - there's two things the community could do:

16 1. They could accept that.

17 2. Or they could then buy up the project and assume 100% of the
18 cost of the difference in that.

19 So as a member of the responsible party, as a dike district
20 commissioner, we are taking our annual budgets and I'm sorry that
21 Steve Sexton had to leave but working as diligently as we can to
22 participate at a norm level when projects are identified, when areas
23 have been determined to be beneficial or an integral component of
24 whatever the final alternative would be. That is where we're at and
25 I'd like to thank our engineer John Semrau for going through some of
26 those alternatives because there is an alternative in this levee cert
27 project that could extend and I noticed the Corps has actually picked
28 one of those alignments as part of their alternative that would then

⁴⁵ And the rural areas would be what? Will there be 100 year protection from Burlington to South Mt. Vernon? Does that mean that ag land from Burlington West could be developed?

1 make a determination on where the rest of the water goes - I believe
2 the current modeling is 52,000. Existing conditions would leave the
3 system at Sterling.⁴⁶ But our District and our City - going to speak
4 for Burlington - that has chosen to wait and participate in the
5 bigger study to determine what is the cost-effective, most beneficial
6 to our community on how - and Sterling is the big unknown.

7 So the other thing I would like to, um, mention is that, um, that, 1
8 other project, the Anacortes Water Treatment Plant also utilized
9 Corps information, the GI information when they put in their \$60
10 Million dollar improvement, and so they too, um, couldn't really wait
11 for the GI to maybe reroute water away from their structure but had
12 to move forward because economically, risk-wise, sometimes you just
13 have to do these things and they have too been collecting kind of a
14 war chest to get that done. As our engineer spoke, we've been
15 working on this project acquiring land since 1999 we still are
16 probably halfway there when it comes to this construction phase where
17 we can start constructing this.

18 I'd also like to address the FEMA risk mapping that's going on. I
19 think most of the folks in this room have seen some type of
20 presentation on what the preliminary new base flood elevations would
21 be. They're significantly higher than the current ones and I know
22 one of the concerns in this project was, 'Does this project raise the
23 base flood elevation by a foot and then be in violation of the flood
24 ordinance I believe?'

25 [1:30:20]

26 The new flood, base flood elevations would be 3 to 4 foot higher in
27 Burlington and even higher in this location. By constructing this
28 project, and this community was very instrumental in getting FEMA to

⁴⁶ And it does so because of the water the current system backs up.

1 readdress their levee mapping policy, because they completely ignored
2 these levees that have withstood some significant flood events and by
3 getting this type of geotechnical work in place and levees
4 constructed we can ensure that our community is able to have this
5 levee represented in those flood models not at the 100 years
6 certified level but at the current level of protection. Currently
7 their mapping policy removes the entire levee so that is the
8 significant benefit to the community and it also is able then to
9 provide a known geotechnical structure.

10 One of the things I've been back to DC several times and I'm part of
11 the national levee task force. I'm also a member of the national
12 levee safety committee and we've been looking at ways to utilize both
13 local information, utilize Corps information under PL 84-99 program
14 so that we can start building a database so they can make a
15 determination on what level existing levees will be included in the
16 mapping. In particular for our community that is a real big deal.

17 Ummmmmm, I think I've covered - and again I think I heard at some
18 point earlier in the conversation that hydrology and hydraulics was
19 kind of being used interchangeably. I just wanna make note that
20 while there are some disagreements over the hydrology, it's the
21 hydraulic modeling that has been performed for this project.
22 Basically, in a nutshell difference hydrology is how much, hydraulics
23 is how deep and where and that this project has had multiple
24 hydraulic modeling runs performed - nhc through the county's contract
25 is the Corps' contractor as well. So we think we've kind of landed
26 on some common ground on how to address this but one other reason for
27 the amount of freeboard that is required by FEMA is that there's an
28 8% uncertainty band in all of this data⁴⁷ that we would like to take
29 as you know, verbatim that we have something we can count on. But an

⁴⁷ 8% uncertainty. Is that plus or minus? Plus could be a big deal.

1 8% uncertainty band when you're looking at the 235,000 CFS is a
2 significant degree of uncertainty⁴⁸ and that is one of the other
3 reasons why you want to have this freeboard and the reason why we're
4 also going with the long overtopping slope is in the event we do get
5 some overtopping our levee can withstand and doesn't start on a
6 breach that would widen at a rate of like 100 feet a minute. I mean
7 they have calculations on that and we would end up with the entire
8 river running through on out, flooding La Conner.

9 Oh, that was one other point I wanted to make on the GI that it's
10 been a two-way street on the technical exchange and that as part of
11 the GI, we incorporated the City of Sedro-Woolley's sewer treatment
12 plant ring configuration that they've been kind of looking at over
13 the last 10 years. We've incorporated the ring dike that Dike 12 has
14 been working with United General Hospital to develop in the past -
15 the GI incorporated again the floodwall, they incorporated all the
16 soil work, the hundreds of thousands of dollars' worth of soil work
17 that has been performed by the City of Burlington and Mount Vernon.
18 They incorporated La Conner's flood study on the ring dike that they
19 are proposing, and then eventually they incorporated the Anacortes
20 Water Treatment. So our community has had this hand-in-hand working
21 relationship with the, uh, well the Corps-slash-County GI and that it
22 hasn't been this wait and you're going to get this mystery, I refer
23 to it as the 'silver bullet' and so I see our community continuing to
24 work through this, to support our Congressionals as we work to finish
25 this and get it approved and get it authorized but you know, right
26 now, we're in a situation where we can.

27 [1:35:18]

28 I think this bridge and I thank Dan for bringing it up, we can't wait
29 and have, expect to have someone come in with a large checkbook and

⁴⁸ Almost 2 feet of uncertainty.

1 fix things because if that was at all true we would be getting a new
2 bridge over I-5 that was longer in length to accommodate an eventual
3 flood risk reduction project similar to how the Mount Vernon bridge
4 was built so that there were additional piers put, so it could be
5 extended if necessary but that's just not a current, a realistic
6 immediate financial prospect and that we're going to have to
7 continue.⁴⁹ This is a lifelong endeavor, I personally have been
8 involved with flood fights for, I think I was probably about 6, 1st
9 time - my Dad went to, living on Fir Island and my father was Virgil
10 Ellstad was involved with levee repairs for probably 30 years before
11 I went to school to be able to have some technical input into solving
12 the problem. So I'd also like to ask if there's any questions you
13 think I could help answer or...?

14 **HE:** I don't think so.

15 **LE:** Alright. Okay, thank you for giving the opportunity to enter
16 some technical information into the record.⁵⁰

17 **HE:** Alright, anybody else on the applicant team wants to speak? If
18 not, uh, let's take 5 minutes to relax and then come back and we'll
19 hear public testimony and then we'll finish up, thank you.

20 [1:37:06]

21 **HE:** I don't know what's happened to our [COLLOQUOY]. Uh, yeah.
22 [UNINTIPELLIBILE] Council and the Engineer. We can start.

23 [1:37:25]

24 **HE:** Okay I'm calling the hearing back to order and this is the time
25 for public testimony, so anyone who wants to be heard on this matter

⁴⁹ So the three bridge corridor project is out is what she is saying.

⁵⁰ What was technical about any of her testimony?

1 should come up there and give their testimony at that microphone. I
2 guess we have a gentleman who beat you to his feet.

3 **Larry Kunzler ("LK"):** Mr. Examiner, you want to swear me in before my
4 name or...

5 **HE:** Just tell me who you are.

6 **LK:** Okay, yeah. Do you wanna.

7 **HE:** I will swear you in. Do you swear or affirm that the testimony
8 you are about to give is the truth, the whole truth and nothing but
9 the truth, so Help you?

10 **LK:** Absolutely sir. I have some exhibits I want to enter.

11 **HE:** I still need your name.

12 **LK:** Larry Kunzler. I thought you said you knew who I was. I do
13 have exhibits I would like to submit into the record.

14 **HE:** Okay.

15 **LK:** They are in the order that I will be submitting them.

16 **HE:** Where are we at?

17 **EXAMINER AIDE:** The next exhibit would be 35.

18 **HE:** Alright, Mr. Kunzler, go ahead.

19 **LK:** Thank you sir. In late 1999 I was approached by the Chairman of
20 Dike District 12. He was a farmer and a good man and a good friend.
21 He told me that he had found some "mystery mud" while putting in a
22 keyway project and he knew I was working with geologists down in
23 Kelso on that huge landslide that took place where over 57 homeowners
24 lost their homes because a city councilman fired a geologist who told
25 him not to build there. So he (Chuck Bennett)gave me a huge chunk of

1 this mud, it was like the size of a soccer ball, I took it and I gave
2 it to the geologist, the same one that is working with Dike District
3 12 now. {See 6/1/2000 Golder Associates Letter to LJK}

4 [1:40:00]

5 He stated that "the hand specimen is composed of a yellowish gray,
6 weakly indurated, silt size, non-plastic, monolithologic sediment. I
7 guess that means a lot to Mr. Cooper, it doesn't mean much to me.
8 Apparent glass shards are visible under the handheld lens. No
9 stratification was observed. Based on these observations, the sample
10 appears to be a volcanic ash deposit or tephra. **I brought an actual
11 jar of the mud, this is the jar of the mud in question that he found.**

12 HE: I don't really know how to deal with a jar of mud.

13 LK: I don't either. I also brought, this was given to me, a sample
14 by the Anacortes Water Treatment Plant on August 18th, 1992 when the
15 Skagit River ran chocolate brown and all of that material that came
16 down was from the Chocolate Glacier on Glacier Peak. If you feel the
17 difference between the two, the problem I have with the Golder Report
18 that the Dike District relies on, all 393 pages of it, is that it
19 only mentions the word lahar twice. In one of those that they
20 mention the lahar it states, anyway it says that they treated the
21 entire valley floor as glacial, I mean not glacial but volcanic
22 outwash (See Golder Report Page 14). In other words they did not
23 make a distinction between the actual volcanic lahar and the stuff
24 that comes down the river from the volcano on every single flood
25 event which is what this little jar would be and then this would be
26 the actual lahar that Chuck had me get tested for him.

27 Five days after I got that letter Chuck Bennett asked me to give a
28 presentation to the Skagit River Flood Control meeting on what I
29 found. (See 6/5/2000 Skagit River Flood Control Committee Meeting)

1 Minutes) You can see that begins on page 6. It says, "Kunzler then
2 presented a short presentation on the volcanics of the Skagit River
3 floodplain. He had been contacted by flood committee Chairman Chuck
4 Bennett about some strange "mud" Chairman Bennett found while working
5 on a keyway project in the vicinity of the Burlington Sewage
6 Treatment Plant. I had mud analyzed by geologist who found the mud
7 to be "volcanic tuff" or in translation for a laypersons terms, it is
8 a volcanic lahar. It's, what I did was and I won't do it here today
9 but I used my Mr. Rodgers interpretation, I took the mud out, put it
10 into my hand, shook it to show the liquefaction part and I know that
11 Mr. Cooper you have no idea how envious I am of you having a geology
12 degree because Skagit County is one big geologic happening. You've
13 got everything here, you've got active earthquake faults, you've got
14 volcanoes, you've got floods. In my public presentations I always
15 use the comment that **Mother Nature has left Her footprints in the**
16 **sand, walk in Her moccasins. She will show you your past, and in so**
17 **doing She shows you your future.**

18 I found it interesting in the FEIS that they gave some smart-aleck
19 answer to some of my concerns on the Draft EIS and it was said that
20 "There is lots of information out there about the geology of the
21 area. See Beget - B-E-G-E-T is how I think you say it - and
22 Dracovich. (See FEIS) What evidently they don't know is that I had
23 been in personal contact with Mr. Dracovich over 13 years ago. He
24 gave me a portion of his study for DNR before it actually was
25 released publicly. I quoted from it in this, at this meeting, "The
26 sediments contained abundant dacite fragments that appear to be lahar
27 runout deposits. These deposits are exposed in **10 to 50 feet high**
28 terraces, you can see them in the, the county had a project, they
29 were looking at buying out Cockreham Island, and it shows these lahar
30 deposits all along Highway 20. It goes on to say that, the
31 floodplain, the **lahars underlies the floodplain that sits the Cities**

1 of Burlington, Sedro-Woolley, Lyman, Hamilton, and much of the
2 agricultural area of the lower valley. We have traced the stratum
3 its both exposed and buried to the vicinity of La Conner. So this is
4 something that's missing in the Golder Report that the Dike
5 District's relying on, they should have located the lahars especially
6 near the sewage treatment plant, and under Dike District 12's
7 levees.⁵¹

8 [1:45:05]

9 Okay enough about mud. So, I'm probably going to be the most
10 controversial speaker you have here today. It's a hat I'm used to
11 wearing. There's a huge question as to whether or not any of Dike
12 District 12's levees should be raised because of one word: Floodway.

13 This actually first came to the valley in 1981 when we had a very
14 controversial building official in the City of Mount Vernon, he wrote
15 to FEMA if the designated floodway included all of our existing
16 dikes, would we be able to maintain the dikes, repair the dikes, or
17 increase the dikes as needed? {See 6/19/1981 Mt. Vernon ltr to FEMA
18 re Floodway Designation} Later on July 17th 1981 FEMA responded, 'If a
19 floodway is designated in the future and the dikes are included in
20 that zone, you would be able to maintain and repair the dikes to
21 their present profile elevation. **Raising the dikes is another**
22 **matter, hydraulic studies of the river have shown that increasing the**
23 **height of the dikes would cause an increase in flood levels**
24 **upstream.**⁵² On that basis, your ordinance would have to prohibit such
25 improvements. {See 7/17/1981 FEMA response to MV 6/19/1981 ltr}

26 Later, 1982 FEMA wrote a letter to the Mayor of the City of
27 Burlington, 'Concerning floodways in the Skagit River Lower Delta, we

⁵¹ But they did not locate the lahars, they only identified the "washout."

⁵² And this is why the levees were designated as being part of the floodway, because FEMA didn't want the flooding conditions to get any worse than they already were.

1 have ruled out floodways developed either through the conventional
2 equal conveyance methods or through unsteady state flow modeling at
3 this time. Instead we had decided to build on and refine your
4 thoughts regarding density criteria in conjunction with establishing
5 a minimum floodway that will encompass the channel and overbank areas
6 including the levees. {See 3/24/1982 FEMA ltr to Burlington re
7 floodway designations}

8 In April 1982, FEMA had hired Dames & Moore, to do the hydraulic
9 analysis for the density floodway. The instructions Dames & Moore
10 received was "as a result of meetings held in the Region 10 during
11 the week of March 15th 1982, it was determined that a conventional
12 floodway would not be established for the communities within the
13 Skagit Valley area. These include Skagit County, the Cities of
14 Burlington, Mount Vernon and possibly others. These communities
15 should show floodways delineated to include only the main channel of
16 the Skagit River and the levees. {See 4/2/1982 Memorandum for Record
17 re Dames & Moore Study}

18 At this time I think it's appropriate I explain to you the difference
19 between a conventional floodway - I don't know how familiar you are
20 with Skagit County but take Hamilton and there's a mountain, there's
21 a land, the town, the river, more land, and then, other mountains on
22 the other side. They take that floodplain the conventional way they
23 squeeze it together until the water surface raises one foot and then
24 everything in between that, is prohibited from putting landfill in
25 that area.

26 This is the next exhibit, is the Dames & Moore Report in December of
27 1982. {See 12/1982 Dames & Moore Report} The good ole boys in Skagit
28 County at that time had thought that they could put a floodway using
29 the density criteria and leaving 25% of each parcel of property open
30 and then they could develop the rest of it.

1 On the next page, page 9 it states the density criteria - now
2 remember they took into consideration the entire lower valley. The
3 density criteria varies from 5% to 14% depending on the flow path and
4 the collapse size. For example, suppose a landowner wishes to
5 construct a building on a 1-acre lot in Flowpath 4, the table shows
6 that the owner can raise a maximum of 10% of his property. So to
7 make floodplain management regulations easier to enforce a 10%
8 density criteria, outflow of all lot sizes is recommended. Needless
9 to say, that was not adopted in Skagit County.

10 [1:50:01]

11 I do think for purposes of the record, that if you drive over to
12 Burlington and just look east of Interstate 5 you can determine that
13 more than 10% of that community has been developed.⁵³

14 In August of 1983, FEMA and I don't know what the proper terminology
15 here, if John or I were in court we would ask you to take judicial
16 notice but I'm asking you just to recognize that all these letters
17 I'm going to submit to you from this point on come from Washington
18 DC, they made the decision to designate the levees as part of the
19 freeway, er, as part of the floodway. They said that because of the
20 lack of adequate topographic mapping and field survey data, it is not
21 possible to determine the distribution of flood flows between
22 Burlington proper, Gages Slough, and overbank areas. The 63,000 CFS
23 discharge identified by John Norman who was a hydrologist with the
24 Corps of Engineers before he had his own firm, hired by the Cascade
25 Mall Developers, is not supported by any scientific or technical data
26 and must be considered as speculation. But that didn't stop
27 Burlington from building the Cascade Mall. From a qualitative
28 perspective we agree with your conclusion Gages Slough is a
29 conveyance area which should be protected. Then it goes on to say

⁵³ Of course it has.

1 part of this requirement will be to ensure no new construction
2 improvements or other development including fill is permitted in the
3 zones of the flood insurance rate maps unless it is demonstrated that
4 the cumulative impact of a proposed development when combined with
5 all other development will not increase the water surface elevation
6 of the base flood **more than one foot at any point in the community.**
7 That last part is perhaps the most important - because if you raise
8 your levee to 100-year event, are you not raising your, the level at
9 that part **in your community and then the ramifications of that is**
10 **you're done building.** Burlington will not issue another single
11 **building permit**⁵⁴. So they haven't really thought this through the
12 way they should have.

13 December 15th, 1983 {See **12/15/1983 FEMA letter**} again it says Section
14 60 c 3 10 of the program regulations, that is quoted substantially
15 throughout the EIS and again the most important thing to me is that
16 it states the base flood at more than 1 foot **at any point in the**
17 **community.**

18 February 1st, 1984 {See **2/1/1984 FEMA letter**} letter to the Mayor of
19 the City of Burlington: Conventional floodway analysis was not
20 consider appropriate due to the unpredictability and the variability
21 of the flow paths between various flood events which is complicated
22 by uncertainties about where the levee failure will occur. The
23 sequence of barriers and volumes of flow **thus only lands within and**
24 **including the Skagit River levees were designated as floodways in the**
25 **conventional manner.** That throws us back to the example I gave you
26 in Hamilton that no fill is allowed in the conventional manner of
27 determining a floodway. I raised the question about who's the legal
28 authority, well I'm getting ahead of myself, however **FEMA recognizes**
29 **the majority of the overbank flow occurs over Interstate 5 in the**

⁵⁴ Of course that would require FEMA Region X to actually enforce their own regs, something they are not doing.

1 vicinity of the George Hopper Interchange between Gages Slough and
2 the drive-in theater, the drive-in theater is now the Target store.
3 From near Edison High School to just south of Cook Road, there's all
4 kind of developments that have been put in that location as well.
5 Approximately 80% of the total overbank flow crosses the highway in
6 those segments.⁵⁵

7 April 9th, 1984 a letter to the State Department of Ecology {See
8 Department of Ecology Letter to FEMA re FIS}, they objected as I
9 objected to FEMA's flood insurance study and they state the elevation
10 of the [UNINTELLIGIBLE] intersection and they're talking about
11 downtown Burlington is 34 feet mean sea level which would make the
12 flood elevation be about 37 feet. The FEMA map showed the elevation
13 of the 100-year frequency flood of 240,000 cfs to be about 31 feet in
14 that location.

15 [1:55:25]

16 On May 22nd, 1984 again FEMA from Washington D.C. wrote to the Mayor
17 of the City of Burlington {See 5/22/1984 FEMA letter}. This was a
18 response to the Department of Ecology letter, "Since the Skagit River
19 levees are inadequate to contain the local 100-year discharge of
20 240,000 CFS our hydraulic analysis was performed as though the levees
21 did not exist. That's always been a huge contention of mine. It's
22 why when the Burlington Planner makes statements in the Draft EIS as
23 well as at many public hearings I've attended that FEMA adopted a
24 project failure point of Sterling, that's untrue because they
25 determine their flood elevations as if the levees did not exist at
26 all. So when the City of Burlington issues letters to developers
27 that they can tell the people that buy these homes that they're out
28 of the 100 year floodplain when they're really only maybe 100 yards

⁵⁵ Given the fact that the freeway sits several feet off the ground wouldn't that suggest that the 100 yr flood has already been raised over one foot. And what about the land fill in those areas that Burlington has issued permits for?

1 away at the most from the levee itself - uh, those levees break and
2 those people are definitely in the 100 year floodplain.

3 FEMA's on the next page, paragraph 6, FEMA's analysis which assumes
4 failure of all levees along the Skagit River therefore results in
5 lower elevations for the Avon area. Any given area near a levee that
6 fails may experience flooding more severe than that shown in the
7 preliminary FIS, Flood Insurance Study.

8 November 1st, 1984 {See Letter from FEMA to Skagit County Planning}
9 conventional analysis floodways are to be kept free of encroachment
10 that would include the levees themselves. Here's a memorandum for
11 the record, fast forward to 1996 from the Joseph Weber {See
12 10/10/1996 USACE MFR Re: Skagit River Levee Repairs⁵⁶}, the program
13 manager, he used to be a hydrologist with FEMA, then he went to work
14 as a floodplain manager for the Corps of Engineers, then he went back
15 to work for FEMA and now he's retired but this was pulled out of the
16 Corps' files. Conventional floodways were not adopted for the entire
17 delta downstream of Sedro-Woolley and this area of the Skagit River
18 proper, the levees confining the channel and adjacent areas have been
19 designated as floodways⁵⁷. In the vicinity of Whitmarsh Road and this
20 is when I first started complaining about 4 feet of fill on the
21 riverward side of the levee along Whitmarsh Road. That wasn't there
22 during the 90 flood event. What the dike district has never told the
23 residents of the City of Burlington is that the floodwaters were in
24 the process of crossing Whitmarsh Road in that location so I
25 understand them wanting to put 4 feet of fill but they're still
26 putting 4 feet of fill in the floodway. The reason I know that the
27 water was crossing is because I drove over there and you can tell
28 exactly where the high water line was from the river at that time.

⁵⁶ This letter was sent after the 1984 FIS was issued that Mr. Semrau entered into the record.

⁵⁷ So 12 years after the FIS a former FEMA employee knows that the levees were designated as part of the floodway.

1 Joe Weber goes on to state as long as any repairs we make to the
2 Skagit River levees **replace them in kind** we comply with that
3 standard. They, **all of the work that they have been doing is**
4 **improvements - they're not maintenance**. Why the County and the City
5 of Burlington issued them permits for maintenance work, I don't know.
6 But they, when I told, when I stated that they didn't have permits, I
7 mean where are the floodplain permits? I don't really blame Mr.
8 Semrau or even Mr. Schultz because if I had a client and a city
9 government official tells me I don't need a permit, why the hell
10 would I want to go and force them to get a permit. So I don't really
11 blame them or the dike district, I do blame the county and city
12 officials that have allowed this to continue for so many years.

13 [1:59:55]

14 This you're going to find kind of humorous, this is a nasty e-mail
15 exchange between myself and FEMA in 2001. {See **LJK Exchange With FEMA**
16 **Region X Official, RE: NFIP Policy Enforcement and Floodways**} This
17 is a response by a young man called Patrick Massey who worked for
18 FEMA. He says first your entire long argument about the lack of
19 enforcement of cumulative rise standard of Section 3 c 10 is wrong.
20 Section 3 c 10 only applies in floodplains where a floodway has not
21 been designated, **since a floodway has been designated along the lower**
22 **Skagit within the levee c 10 doesn't apply.** **Yes, the floodway**
23 **established in 1985 is located between the landward toe of the levee**
24 **so yes this means that there can be no fill or other kind of**
25 **development outside of the original cross-section located within this**
26 **designated floodway.**⁵⁸ By the way, there is a regulatory floodway, I
27 don't know what your point is just being a floodway, not a regulatory
28 floodway but the two terms are synonymous. **If the development has**
29 **occurred between the levees, this would be a NFIP compliance issue.**

⁵⁸ So now we are 17 years after the 1984 FIS and a FEMA employee acknowledges that the levees were designated as floodways.

1 Have the levees been raised or widened since the community joined the
2 NFIP and the FIRMs were published in 1985?⁵⁹ If so, this would be a
3 violation of d 3.

4 Were these fills used to improve the levees or simply return them to
5 their previous condition? Obviously four feet of fill on the
6 riverward side of a levee is an improvement. I don't know why the
7 words maintenance and improvement are so difficult for some to
8 understand. Maintenance given its ordinary definition means you have
9 something, it breaks, you fix it. Improvement is when you make
10 something better so when you put in keyways, that is an improvement.
11 When you put in extra 4 feet of fill, that is an improvement. That
12 is not maintenance. This entire charade of smoke and mirrors by the
13 City of Burlington and Dike District 12 is really, I just don't
14 understand, it's not a maintenance project, they're not fixing
15 anything, and they're improving it.

16 So that requires permits, it requires floodplain permits on behalf of
17 the County and the City, there are none. The grading permits, who
18 goes out and inspects that what they did was what the grading permit
19 authorized them to do? I know for a fact that when they put in their
20 keyways they backfilled onto the levee, in the floodway, next to the
21 Skagit River. They did not take that material out of the river
22 channel; they put it in the river channel.

23 Then Mr. Massey goes on to call me a Muslim, so I don't know what
24 that was all about but he's evidently got a problem. The fact is a
25 lot of the letters that I've submitted to you, I submitted these same
26 letters to FEMA, I've been submitting them to the City of Burlington
27 for many years, I submitted them in on my comments to the Draft
28 Environmental Impact Statement, I will submit them to you here today,
29 this whole notion I heard earlier testimony from the applicant that

⁵⁹ The answer to that question is an emphatic yes.

1 everything was addressed that was on the Draft EIS, these people
2 didn't address half of what I stated in here. As you as an examiner
3 and Mr. Schultz as an attorney and me as a person who worked for
4 attorneys for the last 34 years sometimes it's much more important
5 what they do not say than what they do say. I submitted in here
6 portions of the letters that I've given you today, {See Dike District
7 12 Levee Substantial Development Permit Issues Page} they ignored
8 them, you won't see those addressed anywhere in the FEIS, you will
9 not see the map that I submitted anywhere addressed in their EIS, and
10 then here, this to me is an example of an applicant speaking out of
11 both sides of its mouth at the same time. On page 14, I quote from
12 the draft EIS and it says extensive levee enlargement work has been
13 in the process since 1990 by Dike District 12. Well of course it
14 was, that includes that 4 feet of fill they put along Whitmarsh Road
15 riverward of the existing levee. But again extensive levee
16 enlargement, that's not maintenance work, that's an improvement and
17 improvements require permits.

18 [2:05:14]

19 Their final environmental impact statement again to me and you know
20 who I used to work for, and my job for 20 years was to review
21 environmental impact statements. The attorney would come in, drop
22 the draft on my desk and say take it apart. That's what I did for
23 them for their clients and a lot of their clients had big Ws in front
24 of their names and/or very important companies in the State of
25 Washington. We built developments; we also built all the Eagle
26 Hardware stores in the State of Washington. The one permit they kept
27 away from me was the Mount Vernon permit because that permit got
28 approved in 12 days and they knew I would be opposed to putting all
29 that fill in the floodplain. So I didn't really find out about it
30 until the construction took place.

1 It says in the EIS that in addition FEMA included a floodway area
2 aligned within 300 feet of the landward toe of the levee. That would
3 be the area that now they want to put fill in and again, I have
4 nothing against them turning their levees into overtopping levees, I
5 really don't. That's a sound, safe thing to do. But the regulations
6 of the Federal Government have said you can't put fill in that area
7 and yet they are anyway.

8 Then, this is, I find an interesting comment, Burlington recently
9 conducted a study to determine the cumulative amount of fill from
10 1985 to the present. The documented rise across Burlington's .371
11 feet. That's, I really looked, I spent a lot of time, on, over the
12 weekend, going through all of their documentation. I don't see that
13 study anywhere in the EIS. I'm hoping that you would require that as
14 part of, before you would approve their permit so it can receive
15 public scrutiny⁶⁰ because it is one thing to make a statement, it is
16 something else to have the engineering to back it up. They again
17 make the same statement on page 38 where based on the record of
18 cumulative fill from 1985 Burlington is well below the limit. Again
19 I submit to you that if you raise the 100 year flood level on the
20 levee, are you not raising it cumulatively to above the 100 year
21 flood level & the answer has to be yes. Why else would you raise it?

22 Finally, I'd like to submit to you what I consider; this is one of
23 the things that Mr. Schultz in his letter to you being so outraged of
24 my comments I submitted to you the last time. He doesn't mention
25 this. In fact I submitted it to the City of Burlington, they don't
26 mention it. I submitted it to Dike District 12, they don't mention
27 it. This is the results of a hydraulic analysis performed by nhc on
28 how much the levees already impact the upstream property owners. {See
29 1995 Graphic Summary of Increases in 1990 Flood Levels Due to Levee

⁶⁰ Unfortunately the H/E did not make that a requirement and as such is more than enough reason for the County Commissioners to send the decision back to the H/E for reconsideration.

1 System} This is, it was entered into a court of law in Snohomish
2 County Cause 93-2-05201-2 so it is a matter of public record. Nhc was
3 paid approximately \$250,000 dollars to conduct this. So if you
4 follow the river down, Burlington in their EIS and the Dike District
5 Commissioners want to continually blame the railroad bridge and
6 something I have to add that was stated here earlier was that
7 Burlington's using the January 12, 2012 nhc report. In that report in
8 January 2012, Dr. Leytham did not know that the railroad bridge does
9 not back up any water onto anybody **it is the constriction of Dike 17**
10 **and Dike 12 just west of the freeway where the two come together.**
11 **That's what's backing the water up as well as the current levee out**
12 **there.**

13 [2:10:14]

14 You can see it as you go down the channel; it's already been raised 7
15 feet, 8 feet. Where does that fit into allowing them to raise it
16 even more?

17 One other last thing that was stated about they used nhc's report of
18 January 12th. This is before Dr. Leytham realized that the water does
19 not flow that goes out at Sterling, does not flow between Burlington
20 Hill and Sterling Hill, it goes straight to Gages Slough to Gages
21 Slough straight out to Bayview Ridge, from Bayview Ridge it splits to
22 the Samish and Padilla Bay. Like the young man said from FEMA, I
23 would have put a floodway through there 20 years ago because that's
24 where it belongs. So in reality when you look at this the water
25 that's going out in Sterling and flooding the area north of Highway
26 20, **the Dike District is flooding their own people.** If I was a
27 resident along Dike District, along Highway 20 and a lot of those
28 people are inside Dike District 12, **I'd be suing the shorts off that**
29 **Dike District because I've been paying that Dike District all these**

1 years for protection and they are the ones responsible for backing
2 the water up into my house.

3 So with that sir, thank you very much and I really applaud your
4 decision to reopen the hearing so that people that have worked on
5 this issue for over thirty or forty years can come forward and
6 testify. You have any questions, I'd be happy to try and answer
7 them. If not...

8 **HE:** Maybe you could clarify what you just said because I kind of lost
9 it on water that breaks through at Sterling and where it goes. You
10 were saying something.

11 **LK:** The water that currently goes across Highway 20 as it did in 1990
12 after the dike district ran out and put up a bunch of sandbags on the
13 railroad to try and keep the river from flooding. It goes there but
14 it's because the water is being backed up by the levee system that
15 these people are being flooded across this area here. They are
16 flooding themselves, they are flooding the City of Burlington and yet
17 they come up here and try and tell you with this smoke and mirrors
18 approach that they're not harming anyone.

19 Oh and the reason this is such a red flag and such a tender issue for
20 me is because 40 years ago I sat in a room in the Skagit County
21 Courthouse and had the Skagit County Flood Engineer say that we're
22 gonna do this ourselves and we're going to provide 25-year flood
23 protection for everyone. Even as a Nookachamp resident that sounded
24 okay with me that 25-year flood protection. I asked him how much
25 more floodwater would that put on the Nookachamp-Clear Lake-Sterling
26 community and he said, 'Oh maybe half an inch'. Then they went ahead
27 and we had the 90 and 95 floods and these people suffered 100-year
28 event levels because FEMA never took the levees into consideration.

29 So all that talk in the EIS is so much BS. They did not take the
30 levees into consideration so Sir I'm trying to be as diplomatic as I

1 can but this whole project is outrageous. How they've tried to
2 present it is outrageous. That's why I said the comment that I did
3 that I was personally outraged at this. Because I don't know how
4 somebody sleeps at night that puts water in a 98-year-old
5 grandmother's house and thinks that's okay. Because that's exactly
6 what happened on Francis Road where a lady who moved her house to a
7 location along Francis Road, she moved it in 1911 from Clear Lake,
8 she moved it into the Nookachamps. She had to be rescued from her
9 house through her kitchen window by the Clear Lake Fire Department.
10 Never had water in her house before. So all this work that Burlington
11 had been doing before the 90 flood event they've never seen a flood
12 that big. I don't know, I can't treat people like that.

13 [2:15:15]

14 **HE:** Thank you.

15 **LK:** Thank you sir.

16 **HE:** What I'm going to do because I don't quite know how else to deal
17 with this, what exhibit are we up to? 35?

18 **HE AIDE:** 34 was the last one.

19 **HE:** Okay 34 was the last one so I'm just going to include your packet
20 as an exhibit which will be Exhibit 35, Kunzler Packet. {See Dike
21 District 12 Levee Substantial Development Permit Issues Page}

22 Okay, who's next then?

23 **Roger Ridgeway [RR]:** Hi, my name is Roger Ridgeway and I'm not really
24 offering testimony so much as a request.

25 **HE:** Let me swear you in any event if I may: You swear and affirm the
26 testimony you give will be the truth, the whole truth and nothing but
27 the truth, so Help you?

1 **RR:** Yes. So I have a relatively much shorter presentation here. I'm
2 here to express my desire that the, that there's some assurance that
3 this Dike improvement project makes provision for public access to
4 the Dike. State law provides, except of course, in times when there
5 are danger of a flood or an actuality of a flood. So it's important
6 to those of us concerned about trails and public access that public
7 benefit that the, um, that this dike and eventually others as well
8 but specifically this dike at this point make provision for public
9 access in some sort of a trail along the top of the dike.

10 **HE:** Okay, what you're talking about is a pathway along the top of the
11 dike?

12 **RR:** Yes. Thank you.

13 **HE:** Thank you.

14 **Mike Anderson [MA]:** Hello, my name's Mike Anderson.

15 **HE:** Alright. You swear and affirm the testimony you give you'll tell
16 the truth, the whole truth and nothing but the truth so Help you?

17 **MA:** Yes.

18 **HE:** Thank you.

19 **MA:** Okay I'm going to wear two hats today. First, I'm going to start
20 off with the Mayor's Hat. As a Mayor of Sedro-Woolley I'm concerned
21 about anytime you might slow up or back up water towards our
22 community. We've worked with Burlington and Mount Vernon over the
23 flood issues, we've spent our own money going back to Washington D.C.
24 to try to work with our congressional delegation and work with
25 Burlington and Mount Vernon with the idea of working together and
26 not, uh, and solving this problem. It's kind of ironic now though
27 that I'm hearing like it's every city for their selves. Oh yeah when
28 I heard them talk about that we don't have time to wait for the GI

1 Study or to do it right, we're gonna raise the dike; I'm thinking of
2 the iceberg effect when any time you raise anything in water it's
3 going to push water back somewhere else. That's east and that's
4 toward our community upriver and, um, Clear Lake and um, so I'm
5 against that.

6 I'm really concerned we just had this bridge failure here on I-5 and
7 we've had some ambulance issues because of the traffic and then
8 there's obviously no freeway so we've been taking some of our
9 ambulances to Bellingham and I have seen and I've lived here 33
10 years, I've seen the Cook Road flooded, I've seen Highway 20 where
11 the water crossed over, I'm concerned the safety issues and I was
12 looking in your county's report and they were saying there really was
13 no public safety concern in their report. Well, there is. Because
14 obviously we're a, we're right now having that issue, we're just
15 having a little traffic on 9 and in the freeways in the traffic out
16 on Riverfront, Riverside. So this is a big deal for our community
17 that if more water's pushed back and Highway 9 is closed and then
18 Cook Road could be closed and Highway 20, I want to work with our
19 neighboring communities - and we have but I think we should work for
20 the final solution and it doesn't' make sense to, I heard a comment
21 that Mount Vernon and Dike District 3 raised theirs 4 feet so now
22 Dike District 12 in Burlington wants to raise theirs 4 feet. Then in
23 a few more years or 5 years someone else is going to want to raise,
24 it's just insanity to keep raising it when we should work for a
25 solution to get the water out and then we don't back water up on
26 everybody in the Nookachamps and Sedro-Woolley and Upriver.

27 [2:20:35]

28 I'm going to go on my own personal issue. I own a piece of property
29 just to the east of the dike, 21421 Lafayette. I've owned it for 30
30 years now, and we've had, never flooded until 1990 and it flooded

1 twice and then in 95 it flooded twice so my wife and I we decided to
2 raise it because we were tired of you know, dealing with the flooding
3 inside. So we decide to spend money out of our own pocket and we
4 raised it and we went to the County, we went to FEMA, we got to hire
5 a surveyor to get it the right elevation and we did. We were 1 foot
6 above the 100-year flood. We're right there about District Line
7 Lafayette and the water would go over the railroad tracks and
8 couldn't get into our property because we were a foot above the
9 railroad tracks and it would always cross over. Well then, I don't
10 know what year that was, in 2003 or something Dike District 12 came
11 up and started sandbagging that, pushing the water back on our house
12 property. It didn't flood but, I'm thinking why would we spend all
13 that money to raise it and then have them push the water back and so
14 I'm concerned that if you're gonna, they keep saying it's not a big
15 deal where they're going to raise it but why are they going to raise
16 it if it's not going to push water back. I mean obviously it's going
17 to push water back and someone's going to suffer and I think we
18 should work towards the final solution and not these Band-Aid
19 approaches.⁶¹ There you go.

20 **HE:** Thank you.

21 **MA:** Thank you.

22 [2:22:26]

23 **HE:** State your name.

24 **DB:** My name is Dan Berentson.

25 **HE:** You swear and affirm the testimony you give you'll tell the
26 truth, the whole truth, and nothing but the truth so Help you?

⁶¹ Great testimony. Great questions.

1 **DB:** I do. My name is Dan Berentson, I'm the natural resources
2 division manager for Skagit County. I've been involved in working on
3 the General Investigation for approximately 11 years with a number of
4 you. I would just like to just make a few clarifications as I did
5 last time.

6 First thing I'd like to clarify is that during the course of the GI,
7 we have never from the Public Works perspective, we have never
8 requested that a city or dike district wait on any plan they may have
9 until the GI is completed. Now we're fairly confident the GI's going
10 to be completed in a timely fashion by 2015, and hopefully it'll give
11 us a comprehensive roadmap for flood protection for everyone. We do
12 appreciate the support from cities and dike districts in that effort.

13 But I'd really like to clarify or add some clarity is to the
14 hydrology issue. We've heard today mentioned PIE's hydrology, **nhc's**
15 hydrology, and the Corps' hydrology. A few years ago in 2002 the
16 county contracted with PIE to take a look at the Corps' hydrology and
17 after a significant amount of work PIE's findings came in
18 substantially lower than the Corps' hydrology. In 2005 the county
19 discontinued work with PIE, and hired **nhc** to take another look at the
20 hydrology since there was substantial difference between PIE and the
21 Corps. So we contracted **nhc** and the numbers they came up fell
22 somewhat in the middle. We had never adopted **nhc's** hydrology or PIE's
23 hydrology. We have supported the Corps' hydrology for the General
24 Investigation. The, so, I guess I just liked to clarify that also **nhc**
25 right now is contracted with the Corps of Engineers to do the
26 modeling for the three alternatives and they are using the Corps'
27 hydrology.

28 So I'd like to make that clarification because I'm hearing that, you
29 know, all three are being utilized and also another question I would
30 like to ask is that for this project as you seek certification,

1 you're seeking certification to the PIE level or I heard you say it
2 at a later date if that is not the acceptable level you want to
3 rebuild the levee to meet that standard, is that what I'm hearing?⁶²

4 Just a question.

5 [2:25:40]

6 **HE:** Okay. Thank you.

7 **LH:** Leonard Halverson.

8 **HE:** Let me swear you in sir. You swear and affirm the testimony you
9 give you'll tell the truth, the whole truth and nothing but the truth
10 so Help you?

11 **LH:** Yes, I do. Just a few words here to clarify the stuff that's
12 been said and done, and 19 well something Halverson versus Skagit
13 County courtroom, Skagit County surveyed the floor, the first floor
14 of my house at 39 and 87 hundreds inches. Here too later Chuck
15 Bennett was asked in this same room what the Dike District's
16 elevation was, he said 46 feet, give or take so the way I read this
17 thing here now is that we're going to have about a 50-foot elevation
18 on the dike or that's what they're asking for. Well if you add that
19 to my floor level and I got 8-foot ceiling to get to the upstairs of
20 my house and I sleep there, that puts a foot and a half of water in
21 my bed what they're asking for. I think that's a hair excessive.

22 Lot of the, lot of our infrastructure here is in your, I feel is in
23 danger from this. United General Hospital Life Care Center, Sedro-
24 Woolley Sewage Treatment Plant and the school in Clear Lake
25 definitely are in harm's way from raising this dike. Thank you.

26 **HE:** Thank you.

⁶² That is exactly what he heard. They are preparing the levees to be raised to the Corps 100 yr flood level.

1 [2:28:00]

2 **HE:** Uh okay, who else? Your name sir?

3 **Keith Waggoner [KW]:** Sir, Keith Waggoner, Commander, United States
4 Navy retired and City Councilman for Sedro-Woolley.

5 **HE:** You swear and affirm the testimony you give you'll tell the truth
6 the whole truth and nothing but the truth so Help you?

7 **KW:** I do. I'll try and keep this short. I took a lot of notes.
8 First, I want to tell you that I am a graduate of the Naval Academy
9 with a degree in physical oceanography and my masters is from the
10 University of San Diego so I know something about fluid dynamics and
11 fluid statics and I think I can speak with some credibility.

12 Mr. Kunzler had a lot of data up here, I kind of would like to
13 distill how I see that and I talk about this last time. The way the
14 water in the river works when its backed up by a dam or by a dike
15 system which acts just like a dam is it makes a wedge that goes back
16 upstream and I know there's been arguments about hydrology reports
17 and data. But the last slide that Mr. Kunzler showed, this is a
18 fact. {See 1995 Graphic Summary of Increases in 1990 Flood Levels
19 Due to Levee System} This already happened. So we know what
20 happened with the dikes at their state in 1990. This water backs up
21 to my town Sedro-Woolley, that's a fact so there's no argument about
22 what model may or it might not do, *it's already done it.*

23 Now Mr. Schultz asked us to not take emotional things into account
24 here and just deal with the facts.

25 [2:30:00]

26 I agree with that. But then immediately afterwards he went on to
27 dismiss some of these, some actual documented events as biblical to
28 give you the idea that well that'll never happen but I want to tell

1 you that a 100-year flood doesn't mean you're going to get 1 of those
2 in 100 years. You might get three of them in the next 3 years or you
3 might not get one for 500 years, we really don't know. They're
4 talking about raising the dikes whatever, 3, 4 feet as if that's just
5 a wall above the water that isn't going to have any effect -
6 freeboard they're calling it as if it has no effect. At the same
7 time the dike district commissioner mentioned there, at least she has
8 8% error rate and they talk about overtopping. That tells me that
9 there's a possibility even in Burlington's mind that all of that
10 freeboard might be used up. If this is the result of the 1990 dikes,
11 clearly it's going to be worse if it's raised another 4 or 5 feet⁶³.

12 Now if I were Burlington and Burlington was operating in a vacuum, in
13 isolation, I think this is a great plan. It's well thought out, it
14 will protect at least the people downstream of the dikes, we've seen
15 it causes some havoc upstream so I don't really blame them for that
16 but human beings and organizations tend to act in their own best
17 interests. In common language, we call that selfishness and we all
18 know that selfishness is not the best way for communities to work
19 together. That's why this is a county issue and that's why we're
20 sitting here in front of you to help solve this.

21 I thought about what a Sedro-Woolley solution might look like
22 hypothetically if we decided in Sedro-Woolley that we ought to dig a
23 big ditch below our town and dump the water outside the City Limits
24 say over by Cook Road somewhere - that'd solve the problem for us⁶⁴.
25 But it's not a very good solution for everybody else.

26 That's why I think Burlington's sort of has the cart ahead of the
27 horse. I think that their dike improvement or dike maintenance might

⁶³ It's always been all about them. They have never cared about who they hurt.

⁶⁴ Sort of like if the Nookachamps put up levees Burlington would go underwater because Burlington is the hole in the ground. There is a 12 foot difference between Sedro Woolley and Burlington. Water still flows downhill unless a levee backs it up.

1 be part of the total solution. I think we should wait for the GIS
2 and see where it fits in, in a coordinated flood prevention plan so
3 it helps all of the cities it wants. Right now, it's like if you and
4 I had a washbucket between us filled to the top with water and we
5 need to move it somewhere, neither one of us wants to get wet. Well
6 if we're careful and we work together, we can do that. But if I get
7 the bright idea, hey I can not get wet if I just lift my end of it up
8 that's not going to make you very happy. That's what I feel
9 Burlington is trying to do to us right now on this go-it-alone
10 solution.

11 The proponents act like all this dike does is protect Burlington and
12 downstream and they don't want to talk about what happens upstream.
13 That's because this is a fact that already happened, that Mr. Kunzler
14 talked about. It's going to exacerbate that situation. We have some
15 pretty high value assets up there, I think that the County missed a
16 couple of things, Mike Anderson already alluded to it but I'll hit it
17 again - item G and item H on the document signed by Senior Planner
18 March Lindh [sic] and John addressed it earlier. If you look at
19 those items, it says the proposed use is not in conflict with the
20 health and safety of the community, Mike's already talked about what
21 can happen to our Ambulance System and we've got United General up
22 there. We also have our Water Treatment Plant that the Commissioner
23 alluded to earlier, the Dike Commissioner. Item H says will not
24 adversely impact public services or the surrounding areas or
25 conditions could be established to mitigate those impacts. I don't
26 think that's been demonstrated and based on those two items alone, I
27 think you should rule against this project. Thank you sir.

28 **HE:** Thank you.

29 **SCHULTZ:** Mr. Examiner, I would like to comment on something this
30 commentator said.

1 HE: Well, you'll have a chance.

2 SCHUTZ: Okay.

3 HE: Let's let other people testify.

4 [2:34:58]

5 HE: Any other persons wishing to speak?

6 Thomas J. Sheehan [TS]: Thomas J. Sheehan.

7 HE: Alright, Mr. Sheehan. Raise your right hand, you swear, affirm
8 and testify the testimony you give you will tell the truth, nothing
9 but the truth and the whole truth so Help you?

10 TS: Yes I do.

11 First of all I want to clarify I am a native of Skagit County and
12 I've lived here my entire life along with my 13 brothers and sisters.
13 I went to work for Skagit County in 1969 in the engineering
14 department which I spent 17 years in engineering and a great deal of
15 time working on flood projects. I was there for a total of 42 years.

16 One of the 1st projects that I was called out on in engineering was
17 Cook Road in 1969 we started that project where we were going to
18 rebuild Cook Road. With a great deal of frustration after about a
19 year of engineering it was tabled because certain people didn't want
20 to sell their right of way. I'll come back to that. But that
21 project was built in 2000.

22 In 1983, I became the Director of Emergency Management, Fire
23 Marshal's Office, Homeland Security⁶⁵, and I was a major player in the
24 development of 911. As the Director of the Department of Emergency
25 Management, I don't want to give you the, um, portrait that I just

⁶⁵ I didn't know we had Homeland Security in 1983.

1 sat in my office and pushed paper because when there was a disaster,
2 I didn't and that was probably one of my downfalls when it come to
3 the elected officials.

4 As an engineering part, in the early part of my career, the West Side
5 Bridge in Mount Vernon, coming north from there, on the opposite side
6 of Mount Vernon, we build a levee and what we would do in the
7 summertime - we would go out and do the engineering, surveying,
8 dadada and accumulated all the information when it took to build a
9 dike - and then, in the wintertime I should say. In the summertime,
10 we would go out and build the project. I was the inspector on that
11 project - and Ms. Ellstad said her father was on that project as
12 well. We took the dike down to ground level. We graded all the
13 river from the edge of the water back to the dike and dug down into
14 the dike and made a core about 8 to 10 feet wide and filled it up
15 with clay. We built that because behind that levee, the water was
16 perking through and popping up the road and lot more water was going
17 on the outside of the dike then there was on the inside of the dike.
18 So we rebuilt that project. It's a relatively stable dike at this
19 time in life compared to some others.

20 In the, in my career also, was the, um, we have the Emergency
21 Operations Center - you have heard that term, it's the EOC and, uh,
22 in that Emergency Operations Center when there's a disaster such as
23 the bridge falling down all of the players that are important part of
24 the players come together and determine what shots should be called.
25 In that Emergency Operations Center there's Mayors or Mayors'
26 appointed officials, other city officials, Dike Districts have a
27 representative there, da, da, da, da and they respond to the
28 different emergencies.

29 The three major players in that, that actually will call the shots is
30 the Sheriff, the Public Works Director, and the Director of Emergency

1 Management. And, um, in this disaster, in a disaster, uh, before,
2 and during and after a disaster - that's three parts. Before you
3 have plans - and the plans is are how you are going to function
4 during a disaster - and one is the operation of that Emergency
5 Operations Center. The next is, uh, during a disaster, you have the
6 warning system which is how you are going to let the people know that
7 there's a flood that's eminent. Then, after the disaster, is a lot
8 of the mitigation stuff. One example of that is Sedro-Woolley during
9 one of the major floods their sewer outfall was broke. We can blame
10 Dike Districts for building dikes but I kind of think it's Mother
11 Nature's fault for letting it rain so hard. But nevertheless, uh,
12 we, we're the avenue for the federal money coming to our office and
13 giving it back to the communities. An example of that was the flood
14 of 1990, there was \$54 Million Dollars⁶⁶ distributed to the cities,
15 the counties, and the dike, and the dike districts.

16 [2:40:01]

17 There's a flood warning that's put out at 28 feet. That's the 28
18 feet in Concrete. Well 28 feet in Concrete is one thing, but 28 feet
19 down in Burlington and Mount Vernon it's not a big deal. But I'm
20 here to tell ya that in Concrete 28 feet it is because that means the
21 people in Marblemount and Rockport and Darrington and Sauk-Suiattle -
22 they're already being flooded. I would take my vehicle and I would
23 drive up there and I would try to determine how much water was really
24 coming because that's just showing what's in the river. The
25 tributaries below the, below this point is really important. How
26 much water is coming down those tributaries? How much of a flood are
27 we really going to have?

28 The other thing I would do is right below the gauge is the community
29 called Cape Horn, Cape Horn to me is probably one of the scariest

⁶⁶ \$54 million? What did they do with the money?

1 parts on Skagit River. There's hundreds of people that live in this
2 development and what happens when it floods the water runs across the
3 back of Cape Horn and it cuts these people off. You go and ask them
4 to evacuate, most of the time: 'We've seen it, we experienced it,
5 it's going to be okay'. I'm here to tell ya that many times they
6 said it was okay and it wasn't okay. We had Army rescue trucks up
7 there, we've had Search and Rescue Boats in there in the middle of
8 the night pulling people out because they didn't leave.

9 Anyway, um, 28 foot is the flood fight and in my opinion, um, 38 feet
10 is about where it starts overtopping down on the dikes down here.
11 Keeping those numbers in perspective a little bit.

12 In 1975, there was a flood that impacted and there was a statement in
13 the last hearing about United General being flooded. That's United
14 General Hospital, which is out towards Sedro-Woolley. It did flood.
15 The water did flow back into the basement. Uh, they did have their
16 generator in the basement.⁶⁷ They did lose their emergency generator
17 but we were able to get a generator in the parking lot and allow that
18 to run. That was with the existing dike system that we have now.
19 It's just the water coming down the river is more water than the
20 capacity of the two dikes - the dike on the left and the dike on the
21 right.⁶⁸ It runs around the end of the dike, just up above
22 Burlington, we've talked about Highway 20, and the Mayor's talked
23 about he's raised his property, and the gentleman sitting right
24 beside him I've stood on his front porch when it was flooding.
25 Talked about, because his garage was about to be flooded. But this
26 is outside the existing dike.

27 Mr. Halverson, I drove back to his property during a flood. We asked
28 him to evacuate him and his family. I drove back there and the water

⁶⁷ This is interesting from the standpoint that the 1975 flood was the first flood since DD12 moved their levees in 1956 closer to the edge of the river.

⁶⁸ Exactly, its not the railroad bridge, its the levees that create the backup.

1 was up to my headlights in my vehicle to get them to come out. His
2 family came out, he stayed.

3 The 28 foot warning is just exactly what it is: That's to let people
4 know that there's going to be a flood. 30 to 32 to 34 feet you start
5 talking about evacuation and 38 you should be gone. I'm telling you
6 should be gone. The floodwater naturally backs up into the
7 Nookachamps,⁶⁹ you heard a little talk a bit about the Nookachamps.
8 One of the things I would do, I would go out in my vehicle and I
9 would drive out in the Nookachamps and you can actually see the water
10 pushing back through the Nookachamps, goes into, around the back of
11 the hills and it comes back around into Clear Lake and then into Mud
12 Lake and it's just a natural pushback because of the levees⁷⁰. I'm
13 sorry, the levees on both sides. That's, it's a natural thing. They
14 get more water; they're complaining that they get more water than
15 they ever had. Well it's the fact is we're getting more rain than
16 what we've ever had. It's a natural thing.

17 The present levee system we have is a very false sense of security
18 for the people. Here's what I believe the people think: The people
19 of Skagit County could care less if it's gonna flood.

20 [2:45:02]

21 They aren't thinking about it. They're thinking about their families,
22 they're thinking about their jobs, they're thinking about Church,
23 they're thinking about birthdays, they're thinking about soccer, they
24 don't care because they expect the people in this room to take care
25 of them if there's a flood and that means levees.⁷¹

⁶⁹ There is nothing natural about the water backing up into the Nookachamps.

⁷⁰ What is natural about the "pushback" of the levees? This shows the culture of the bureaucratic mind, blame Mother Nature for mans mistakes.

⁷¹ There are a lot of people who are being hurt by DD12. They expect that the DD12 would not hurt them.

1 In 1980 or so, the population was probably about 65,000. When I
2 first started my job it was 50,000 people. I think it's up to about
3 120 or 130,000 people and I'm telling ya that the people in the
4 130,000, everything above that 50,000 people, they're not really
5 familiar with flooding. They have no idea what that Skagit River can
6 do to them and I think it's our responsibility to do something.

7 The water that backs up and runs through Highway 20 that Dike
8 District 12 is responsible, no. The water that's coming down Highway
9 20 is more capacity that can go through the 2 levees. It's gotta go
10 around.⁷² That's exactly what it's doing. You talked about it goes
11 out to the Bayview Area. Or it goes out to Samish Area. I live in
12 the Samish; I'm here to tell ya it does go out there. There's no
13 place for it to go. I get flooded. But I expect that. But that's a
14 natural thing for it right now, it runs down Highway 20.

15 I'm not here to testify on behalf of Dike District 12 or on the
16 behalf of anybody that's against it, I'm here to say something needs
17 to be done and I believe that the proposal is an approach to start
18 the process. Start the process. How many years are you going to
19 study it?⁷³

20 The Cook Road project, you heard me mention that when I first
21 started, 39 years we dealt with Cook Road as a 2-lane road. I can't
22 tell you how many fatality accidents that I went to on Cook Road. It
23 never happened until 2000 that they rebuilt that road. There was no
24 reason for, the only reason there was the politicians got enough
25 pressure from the people that they did not want it. They didn't want
26 people to buy their right of way⁷⁴. They wanted to keep their lawns
27 clear out to the edge of the road. The only accidents that we have

⁷² And who built the those levees. Certainly wasn't anything natural about them.

⁷³ On that point I am in agreement with him.

⁷⁴ Isn't that why the government has the power of eminent domain?

1 on Cook Road right now is the backup from the railroad tracks. Cook
2 Road, Old Highway 99, those are rear end collisions. Before we used
3 to have T-bone accidents, head-on collisions, what we called
4 grinders, all kinds of accidents. I think that if these parties will
5 come together and this is allowed, I think this is the beginning
6 point for Skagit County to develop a diking system that they'll be
7 proud of. I think they all need to be in concert on that⁷⁵.

8 With that, I don't have anything more to say, thank you very much.

9 [2:48:28]

10 **HE:** Thank you. Are there other people who want to be heard here?
11 Any public testimony?

12 Well, as I mentioned at the outset, it's about noon but I don't see
13 any reason why we can't just finish up and eat lunch late. I would
14 let the applicants respond, I hope briefly, to what they've heard and
15 let the county respond with and get to make any responsive remarks
16 they might want to.

17 So we'll do that now. Who wants to talk first? I see a hand raised,
18 Mr. Schultz?

19 **SCHULTZ:** Can I do that here? From here?

20 **HE:** You can do that there.

21 **SCHULTZ:** My comment will be about 15 seconds. Um!

22 **HE:** Let's see here.

23 **SCHULTZ:** Okay. [Chuckling] I do have to object a little bit to, uh,
24 to Mr. Keith Waggoner. Mr. Waggoner's, I think, unfair

⁷⁵ Its hard to be "in concert" with someone who wants your money and sends you water in return.

1 mischaracterization of my testimony saying I just dismissed factual
2 evidence when I was talking about the engineering.

3 If he was listening, I did not dismiss out of hand the, quote,
4 biblical proportions found by the Army Corps. What I did was I
5 explained the three positions. You were interested why we had three
6 different hydrology's. I explained that the Corps hydrology was very
7 high because of that, because of those floods. The PIE hydrology
8 after several years and millions of dollars, even when they were the
9 county engineers determined that those numbers probably were not
10 correct and nhc came in the middle.

11 [2:50:10]

12 So any implication I was dismissing the facts, I think was inaccurate
13 and little unfair given the caliber of the education of that witness,
14 I think.

15 **HE:** Alright. Mr. Semrau?

16 **SEMRAU:** Yes, I'm going to submit to you for the record a copy of the
17 1984 Flood Insurance Study for the City of Burlington. {See Exhibit
18 36} Mr. Kunzler showed you several documents that were prior to that
19 flood insurance study. The flood insurance study is the, kind of the
20 starting point for the professionals - you know, as a professional
21 engineer, I don't, there's certain points in our regulatory stream of
22 how we regulate things from the sitting county and federal standpoint
23 that I have to accept as an engineer. Most of those documents he
24 submitted to you have no bearing⁷⁶ on where we're at today and what's
25 required by the county and the cities, and by FEMA and the Corps in
26 regulating that.

⁷⁶ All of the documents were directly on point and they submitted nothing including the FIS to refute that.

1 The questions in regard to the floodway, we've answered those
2 questions. We've answered the questions as to where the special
3 flood risk areas are, they are mapped on the FIRM, the Flood
4 Insurance Rate Map. Unfortunately I don't have a copy to give you,
5 but we've even heard testimony from some people off Lafayette Road
6 that it made revisions to their house and things, yet we've heard
7 testimony from Mr. Kunzler that we shouldn't be allowed to place fill
8 in the same area⁷⁷. That area's not in the floodway. It's not even
9 within 200 feet of the river; it's not within shoreline's
10 jurisdiction of the Skagit River. It is within shoreline
11 jurisdiction of Gages Slough.⁷⁸

12 So, but I'll submit this Flood Insurance Study, we have defined the
13 floodway, the floodway is basically riverward of the levee, we are
14 allowed to make improvements to the levee, we make those improvements
15 according to the Corps' requirements, we make those improvements when
16 the Corps tells us to make those improvements. But we're covered
17 through the WAC 1, the WAC 173.27.040, our shorelines substantial
18 development permit process in the RCW 90.058.030 we've got these
19 definitions and we work within those. So here's the flood insurance
20 study July 3rd, 1984⁷⁹.

21 **HE:** Alright, we'll call this Exhibit 36. {See Exhibit 36}

22 **SEMRAU:** There was a question in regard to what hydrology we'll use
23 when we certify. The certification, the only hydrology that'll be
24 accepted when certification occurs is the Corps'. Certification will
25 be to the 100-year Corps hydrology. When a levee's certified it's
26 basically certified - or when it's accredited they take the level of
27 the levee and they reduce, they remove the freeboard from it. If the

⁷⁷ No he didn't. He heard that the levees were part of the floodway. Not peoples property on Layfayette Road. He lied.

⁷⁸ Like the house the County permitted in Gages Slough, in the wetland.

⁷⁹ That's the same flood insurance study that says the levees are in the floodway.

1 levee's accredited, they take the level of it, move the freeboard and
2 then they stick that into the computer model to determine the Flood
3 Insurance Rate Maps. So whatever level it's at when that's the
4 certification and the accreditation occurs. That's what level it'll
5 be at and the modeling of the river flows or the flood flows will
6 occur from that. The exhibits that I showed you from the EIS showing
7 where the floodwaters go, they're still floodwaters going through
8 Burlington and down Gages Slough even with these levee improvements.
9 That's because we don't have the tieback yet⁸⁰. There are modeling
10 scenarios in the EIS of the tieback but those are not being proposed
11 at this time.

12 [2:55:00]

13 Then, just a quick comment on the 1990 flood map. The flood maps
14 that I showed as well as the FIRM - the Flood Insurance Rate Map -
15 they show a whole lot of other areas that are going to be flooded at
16 the 100-year flood event. Those are the maps people need to be
17 looking at. I'm a certified LOMA administrator, I have, I do a lot
18 of flood works, elevation certificates, when I do an E-LOMA I
19 actually am preparing the LOMA - the Letter of Map Amendment for the,
20 for FEMA, and I get that immediately. I do a lot of flood map work
21 as a consultant and unfortunately there's a lot of people in this
22 county that are in denial that they're in the floodplain. People
23 argue with me everyday that, you know, they've never flooded, they're
24 never gonna flood, and, you know, those flood maps there's portions
25 of Sedro-Woolley that are gonna flood in a 100-year flood event and
26 it's not going to be because of this levee system.⁸¹ As I showed in
27 those exhibits on page 48 and 49, they're well upstream of the 1/10th

⁸⁰ So they know how much the water will back up when they put in their tieback? Shouldn't they have shared that information during the hearing?

⁸¹ Maybe, maybe not, but the severity of the depth of the flood water will be directly attributable to the levee system.

1 of a foot impact. Those areas are going to flood in those larger
2 events unless something else is done in those areas. But the, but
3 the whole concept behind the flood insurance, the FIRM, is flood
4 damage reduction. FEMA would like to change that to flood damage
5 elimination but we just don't have the means to provide flood
6 protection to that, to that level in most parts of the country. **Just**
7 **because somebody is built to one foot above the base flood elevation,**
8 **doesn't mean that they're not going to get wet during a flood event.**⁸²
9 One of the reasons why, well, I don't want to, well it's probably not
10 important.

11 That's all I'll address.

12 [2:57:31]

13 **HE:** Alright, thank you very much. [UNINTELLIGIBLE] We have some
14 other remarks? You're still under oath.

15 **LE:** Okay. Just a couple points.

16 One, Mr. Kunzler was using some older documents and I need to point
17 out that topographic information wasn't available. In those early
18 FEMA maps they used a 5-foot contour, we now have contours to the
19 basically I guess the 100th of a foot but more common we use like a
20 10th of a foot, we have LIDAR, these topographic maps that have been
21 provided by the cities and the county so we have state of the art
22 digital topography that modeling is conducted on which are to great
23 improvement over what was available in the past.

24 Another comment is that FEMA did use a split flow. They no longer
25 use that method, they haven't used that method for years - again they
26 use a FLO2D model and they use the more current, accurate digital
27 topography. **The statement was made that the water doesn't flow out**

⁸²Especially if you keep raising your levees.

1 to the Samish,⁸³ that it flows to Gages Slough - you can look at
2 county tax records, and this is I have kind of a poor map that I
3 could share, I say poor map because it was generated for another
4 purpose and only includes parcels in the Dike District. But it shows
5 the Joe Leary drainage that is District 14 that runs out towards the
6 Samish and runs along the north side of, um, I can just, I'll give
7 you this for lack of something better.

8 **HE:** On the like, show up? Yeah. You can point out what you're
9 talking about.

10 **LE:** Okay. [UNINTELLIBLE] So I just wanted to point that this blue is
11 Joe Leary Slough's assessment area that is in the Dike District, it
12 goes beyond this and runs up to capture up above the United General
13 Hospital and that the flow, the reason that drainage area starts up
14 there is because the flow does go out Joe Leary and out towards
15 Padilla Bay into the Samish watershed while Gages Slough runs down
16 through Burlington City proper.

17 [3:00:16]

18 The other thing that this map shows is that a lot of these areas
19 aren't in Dike 12 but that the benefit area for this project, the
20 yellow, let me see, the yellow here is Dike 1, now here's La Conner,
21 and should there be a breach, water would want to run through the
22 path of least resistance. But currently because the levee system
23 stops here, the flow that is predicted to be 52,000 CFS out, Malcolm
24 Leytham, **nhc**, is very aware of the conditions at the railroad bridge.
25 Part of the uncertainty that I spoke to the 8% is because of the
26 debris load on that railroad bridge which really does have an impact

⁸³ The statement that was made above was that the floodwaters do not flow btwn Burl. and Sterling Hill. It goes out through Gages Slough to Bayview Ridge and then to the Samish.

1 on how much water gets backed up⁸⁴. Some of the hydraulic modeling
2 shows up to a 4 foot difference in the water surface elevations with
3 the low debris flow versus the high debris and the folks that were
4 around the 95 became 100% debris blockage⁸⁵ that backed up and I'm
5 sure Tom was probably an eyewitness to a lot of that event. That, um
6 and those are conditions that you can research, you can bring in
7 every expert you want, we've been in rooms full of people that work
8 for the county that maintain the bridges, people that, DNR that do
9 timber assessment. But you have to have a degree of uncertainty in
10 your modeling because there's just too many conditions that you can't
11 put an exact number on. I know that's been some of the delay and
12 some of the technical work coming out of the GI is getting everyone
13 to agree on how you can model and assess the damages happen where
14 because of the debris uncertainty.

15 The other one is, is the comment about Sedro-Woolley and folks not
16 doing things to protect themselves versus Burlington. Years ago,
17 Brickyard was rerouted because it was flooding Sedro-Woolley and a
18 ditch was dug around and had it entered the Skagit below Sedro-
19 Woolley. So whereas people have the wherewithal and have localized
20 flooding experience, communities do work to try to improve their
21 localized flooding. One of the other, I guess I'll say half
22 [unintelligible] term from Thomas, is years ago as a member of a
23 county advisory committee I chaired the frequently flooded areas
24 committee as part of the environmental element of the Growth
25 Management Act and you could take these - and that's one of the
26 precursors of the drainage utility so that there was a way to help
27 these localized flooding things that happen and you're going to have
28 large projects and you're going to have smaller projects then to

⁸⁴ The debris doesn't back up any water. The river simply goes under the debris scouring out the river bottom as we experienced in 1995.

⁸⁵ A 100% debris "blockage" yet we still had 141,000 cfs at the gauge. If it was 100% blocked the gauge would have read zero.

1 address some of these areas that - 'Devil in the Details' - but need
2 to be dealt with on a more of a localized impact.

3 **And I think...**⁸⁶

4 **HE:** You want to submit this?

5 **LE:** You know I can't, I can because I spoke about it but because it
6 doesn't show the blue extending up.

7 **HE:** I, I.

8 **LE:** I could ask that?

9 **HE:** It does show. That's fine.

10 **LE:** Okay.

11 **HE:** You could.

12 **LE:** I'm fine.

13 **HE:** You don't have to make it into an exhibit unless you want to.

14 **LE:** I guess I would like ask my attorney would you like me to submit
15 this, or?

16 **SCHULTZ:** Yeah, that'd be a good idea. You could get a better copy.

17 **LE:** I could ask maybe the county to maybe provide a map of Drainage
18 District 14.

19 **HE:** This would be Exhibit 37. {See Exhibit 37}

20 **SCHULTZ:** You testified to this so go ahead and submit that.

21 **HE:** Sure. What I kind of you want you to tell me is kind of what it
22 is, though.

⁸⁶ Let me know if anyone can figure out what she is trying to say.

1 **LE:** This shows the parcels that are assessed and that contribute to
2 Dike 12. It shows the overlap with the drainage districts in the
3 county and so while these in the white are still blue, there are
4 still in the drainage district, they aren't in the dike district.
5 Since the primary mapping is the dike district, it didn't show all
6 these other districts in their entirety.

7 **HE:** What's the source of this?

8 **LE:** The source of this, I believe it's from the county GIS
9 department.

10 **HE:** Okay. **Dike Drainage Assessment is what it says.**

11 **LE:** Right. It's just to show basically an overlap and basically the
12 drainage utility prepared for a taxation assessment purpose, not to
13 try to show the boundaries. It could be, if you want to make a note
14 to have us provide you with a map that shows the drainage area in its
15 entirety. I'd be happy to work with Kara.

16 **HE:** Well I think we're going to have to close our record after this
17 hearing, so thank you.

18 **LE:** Alright.

19 **HE:** Exhibit 37. {See Exhibit 37} Okay, I think we've reached the end
20 of the road here, at least as far as this hearing is concerned. Has
21 the county have anything they want to add?

22 **JC:** I don't think so.

23 **HE:** We're concluded.

24 **JC:** I think a lot's been said today, enough to digest.

25 **HE:** Well thank you all for your patience, I have had a fair amount of
26 time to look at the material I've already received so I don't

1 anticipate it'll take very much longer for me to get a decision.

2 Thank you very much.

3 [3:06:48]

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