



SKAGIT COUNTY BOARD OF COMMISSIONERS

RON WESEN, First District
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November 21, 2011

Brian Cladoosby, Chairman
Swinomish Indian Tribal Community
11404 Moorage Way
La Conner, WA 98257

Chairman Cladoosby,

We have your letter dated November 17, 2011, addressed to Governor Gregoire. In the interest of moving forward and identifying a solution, perhaps we should agree to disagree about the substance of our prior conversations and the history leading to the basin closures.

Swinomish is currently challenging the Skagit Instream Flow Rule's exempt well allocation, through litigation now pending in the Court of Appeals. We understand you generally agree that the finite quantity of water Ecology allocated for exempt wells in the Skagit Basin is reasonable. Skagit County does not intend to seek a larger exempt well allocation as long as the Rule remains valid, having signed a 2006 agreement withdrawing the County's Rule appeal. Accordingly, reasonable minds might question why the Swinomish litigation persists.

As we understand the situation, Swinomish is suing to create new judge-made law through judicial precedent that would prevent Ecology, on a statewide basis, from allocating water for exempt wells *after* establishing minimum instream flows (using the statutory OCPI test), rather than establishing minimum instream flows and exempt well allocations at the same time.

In short, the point of the litigation seems to have morphed into an effort to change the way state government interprets a relatively obscure provision of the water code, something only relevant to other areas of the state besides Skagit. From our perspective, this does not seem like a good reason to keep our community embroiled in a battle over the water supply for the next several years and beyond.

Besides the direct expense of litigation, the broader costs to the community are significant. If Swinomish prevails in the Rule challenge, it will invalidate legal access to water for over 5,600 Skagit County landowners, including some 400 homes already built and occupied. It will launch another lengthy and expensive basin-wide battle over exempt wells despite our apparent agreement as to the quantity of water allocated. Even if Swinomish does not prevail, these landowners have no certainty while the litigation is pending whether they have legal access to water, casting an even darker cloud over a struggling real estate market.

Moreover, the uncertainty created by the litigation precludes mitigation planning in basins already closed, because any mitigation efforts are entirely dependent on the Rule's continued validity. To use an analogy, mitigation planning while the Rule challenge is pending is akin to building a hotel with pending litigation over the hotel's building permit.

We respect that your expression of tribal sovereignty involves vigorous advocacy for salmon, and there is little question Swinomish has become a force in the salmon habitat restoration industry.

Yet Swinomish is a significant participant in Skagit County's economy and community in many other ways, which deserves due consideration when contemplating major environmental litigation involving the land and homes of thousands of Skagit County citizens.

Nearly two decades of litigation over salmon habitat has accomplished very little for salmon, has wasted millions on legal fees that could have otherwise been used for on-the-ground habitat restoration and other constituent needs, and, perhaps most unfortunate, has perpetrated a cycle of animosity in our community.

We are prepared to enforce the basin reservation system, but have little enthusiasm when the validity of the Rule is held in doubt by unnecessary litigation. With the understanding that Skagit County must balance a spectrum of diverse interests, we invite you to work together with us for meaningful progress on salmon habitat.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON



RON WESEN, Chairman



KENNETH A. DAHLSTEDT Commissioner



SHARON D. DILLON, Commissioner

cc: Northwest Indian Fisheries Commission
Affiliated Tribes of Northwest Indians
Swinomish Tribal Senate
The Hon. Rob McKenna