



SKAGIT COUNTY BOARD OF COMMISSIONERS

RON WESEN, First District
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November 15, 2011

Governor Chris Gregoire
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Governor Gregoire,

We write regarding recent stream basin closures in Skagit County, and to propose a path forward.

In 2001, the State established a Skagit Instream Flow Rule that allocated no water for exempt wells in rural Skagit County. This led to contentious multi-party litigation, which the Department of Ecology attempted to resolve in 2006 by allocating a small quantity of water for exempt wells.

The amount of water allocated for exempt wells is truly minimal. Ecology calculates that the total well allocation is less than 2% of the minimum instream flow in each tributary basin. For example, in the Fisher-Carpenter sub-basin, the State allocated 11,633 gallons per day for wells. This equates to 8.08 gallons per minute – roughly speaking, the flow of a garden hose, to be shared among 549 landowners.

The Swinomish have opposed this meager allocation of water for over 5,600 rural landowners across the Skagit Basin, maintaining suit since 2008 aimed at invalidating the exempt well allocation. In addition, the Swinomish have opposed mitigation planning through litigation and threat of litigation, precipitating the sudden closure of the Fisher-Carpenter Basin and the imminent closure of the Nookachamps Basin.

Skagit County is far ahead of the rest of the state in dealing with exempt wells. Skagit County was the first county to accept a basin-wide limitation on the use of exempt wells, and the Department of Ecology routinely holds out Skagit County as a model. Representing the Center for Environmental Law and Policy (CELP), Earthjustice recently threatened suit against King County to demand exempt well restrictions similar to what Skagit County already has in place. The small streams in question produce little if any of the tribe's treaty harvest, and the base flows were developed using information furnished by the Swinomish in the first place.

Swinomish Chairman Cladoosby recently told the three of us that he intends to control land use in the Skagit Basin by controlling the water supply, effectively bypassing Growth Management Act (GMA) process. From our standpoint, this sentiment explains the present conflict over water rights in the Skagit Basin.

Skagit County has prohibited most development on floodplain, farmland, and forestland, consistent with the GMA. The stream basins at issue are the same narrow swath of pre-foothill land in Skagit County identified under the GMA for limited rural growth.

Skagit County supports tribal sovereignty, to the extent that idea is afforded a reasonable interpretation. For example, we have actively assisted fee-to-trust applications by the Upper Skagit, Sauk-Suiattle and Samish tribes in furtherance of their economic plans. We actively supported the Sauk-Suiattle in their successful bid to obtain surplus federal property for tribal housing. Skagit County routinely partners with all the Skagit tribes on a host of activities, environmental and otherwise.

Skagit County has a strong track record on salmon habitat restoration. For example, Skagit County recently partnered with the Upper Skagit Tribe on a large Chinook habitat project, contributing county-owned land for alluvial fan restoration managed and funded by the Upper Skagit. Skagit County has dedicated a substantial level of resources to cleaning up the Samish River, leading to recently-reported water quality improvement. The full list of our habitat accomplishments is too long to include here.

But support for tribal sovereignty and salmon habitat restoration does not equate to the notion that one of four Skagit tribes, consisting of less than 700 tribal members, should effectively dictate off-reservation land use by attacking the water supply. As we recover from a crippling economic downturn, Skagit County is unable to afford the legal costs inherent in defending against that idea.

Skagit County is committed to reducing reliance on exempt wells, and will continue supporting the State to that end. In exchange, we request that the State afford Skagit County landowners the benefit of the very limited exempt well allocations and meaningful, adequately funded mitigation efforts, both of which were the entire basis for the County's 2006 agreement to withdraw its appeal of the Skagit Instream Flow Rule. Ultimately, we are simply asking that Skagit County landowners be dealt with fairly, openly and transparently. We seek your proactive support to that end.

Sincerely,

**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 Indian Tribal Community Senate
The Hon. Rob McKenna