No. 91475-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ERIC HIRST, LAURA LEIGH BRAKKE, WENDY HARRIS and DAVID STALHEIM, and FUTUREWISE,

Appellants,

and

SQUAXIN ISLAND INDIAN TRIBE and
CENTER FOR ENVIRONMENTAL LAW AND POLICY,

Amici Curiae,

v.

WHATCOM COUNTY and WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

AMICUS BRIEF OF SQUAXIN ISLAND TRIBE

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I. IDENTITY AND INTERESTS OF AMICUS CURIAE

The Squaxin Island Tribe is a federally recognized Indian tribe located in this state. It bases its participation on the impact to its federally protected rights of the matters being considered in this case.[1] Under the Treaty of Medicine Creek, the Tribe holds the right to fish on all runs that pass through its "usual and accustomed" fishing areas ("U&A").[2] The Tribe's U&A includes all of Southern Puget Sound south of Tacoma Narrows. *United States v. Washington*, 384 F.Supp. at 378.

At stake here is the steady, cumulative dewatering of fish-bearing streams by unregulated permit-exempt wells. The importance of fish to the Tribe cannot be overstated.[3] Many Tribal members and their family devote themselves to salmon fishing. The Tribally-owned seafood company, Salish Seafoods, buys and sells Treaty salmon.[4] The Tribe's culture and economic well-being depends upon sustainable fisheries. The

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[1] The Tribe's arguments raised in this brief rest solely on state law. The Tribe reserves all arguments based on its federally reserved rights and any other rights arising under federal law.

[2] *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd.*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976).

[3] From the Tribe's website: "We believe the salmon people to be our relatives and that their homes must be respected and protected. The first salmon to return each fall is welcomed and honored in a sacred ceremony. The salmon are linked with immortality, eternity, and rebirth. Salmon run not only in the ocean and streams; their spirit runs through our blood and in our souls."
http://squaxinisland.org/government/departments/natural-resources/salmon/

[4] *See* http://www.salishseafoods.com/ (accessed Aug. 31, 2015).

Supreme Court characterized the treaty fishing right as being "not much less necessary to the existence of the Indians than the atmosphere they breathed." *United States v. Winans*, 198 U.S. 371, 381 (1905). For the fish themselves, adequate stream flows literally are the "atmosphere they breathe," for without sufficient water for spawning, rearing and migration, there will be no salmon. *See id.*

The Court of Appeals' decision undermines state and local protections for instream flows that were established to protect fish and fish habitat. If upheld, the decision will adversely affect streams and salmon habitat throughout the Tribe's U&A, at the expense of the Tribe's economy and culture, and the livelihood of its members. The Ecology water resource rule at issue (Water Resource Inventory Area" or "WRIA 1") bears great resemblance to two water resource rules that cover a significant portion of the Tribe's South Sound U&A: WAC 173-513 (WRIA 13); WAC 173-514 (WRIA 14). The Tribe has a vital interest in the honoring of state statutes that require maintaining adequate instream flows. It also has an interest in ensuring, as the Growth Management Act requires, that local planning for and regulation of water availability in rural areas is well-informed and protective of rural character, which includes instream flows and fisheries. RCW 36.70A.070(5)(c)(iv), .030(5).

II. STATEMENT OF THE CASE

The Tribe concurs with and adopts the statement of the case set forth in the Hirst Petition for Review at pp. 3-8.

III. INTRODUCTION

The Growth Management Act ("GMA") requires that comprehensive plans and development regulations protect rural character, by mandating that rural land use and development be: (1) consistent with protecting natural surface water flows, groundwater and surface water recharge; and (2) compatible with fish habitat. RCW 36.70A.011, .030(15)(g), .070(5)(c)(iv); 070(1). And, the GMA requires that plans and regulations ensure the protection and enhancement of "the availability of water." RCW 36.70A.020(10).

The Court of Appeals held that the Rural Element of Whatcom County's Comprehensive Plan complied with the GMA because it incorporates several County development regulations. These regulations require the County to assume that water is available for permit-exempt wells unless the water source "fall[s] within the boundaries of an area that [Ecology] has determined by rule that water for development does not exist." WCC 24.11.060, .090, .100, .110, .120, .130, .160 and .170. However, since the rule sets no such boundaries, the County is excused from asking whether groundwater is legally available for

development: in other words, the County will not ask whether the new, junior groundwater use might impair senior instream flows and closed basins.[5]

The decision subverts the GMA's requirement of fostering informed, long-term planning for rural land use and development that is compatible with sustainable fisheries. So does the resulting shortcut around comprehensively planning and regulating, as the GMA requires, to ensure that water is legally available. The Court of Appeals' decision only encourages "uncoordinated and unplanned growth" – exactly what the GMA disfavors. *See* RCW 36.70A.010. In an era of water shortages and climate change, it is more important than ever to implement the GMA's prescient planning requirements.

IV. SUMMARY OF ARGUMENT

Section V.A describes how Ecology has taken inconsistent positions on whether WRIA rules trump the statutory priority scheme and prohibition against interference with senior instream flows. Section V.B explains that the proliferation of unregulated permit-exempt wells in rural areas is a real problem. Section V.C describes why this case is an appropriate challenge to the county's actions. Section V.D explains how

[5] A closure recognizes that water in the stream is insufficient to meet existing rights and provide adequate base flows. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 94, 11 P.3d 726 (2000).

counties ensure a sustainable future by preventing new buildings and subdivisions from using groundwater at the expense of senior instream flows.

V. ARGUMENT

A. Ecology Has Taken Inconsistent Positions on Whether WRIA Rules Trump the Statutory Priority Scheme and Prohibition Against Interference with Senior Instream Flows.

Ecology has taken diametrically opposed positions before the Court of Appeals about the effect of its WRIA rules on permit-exempt wells and instream flows. Before describing how, some statutory background is needed. An instream flow established by rule is a water right with a priority date as of the rule's adoption. RCW 90.03.010; RCW 90.03.345; RCW 90.44.030. Where controversy arises over the relative rights as between ground and surface water appropriators, the law of "first in time, first in right" applies. RCW 90.03.050; WAC 508-12-230. And, if a stream has pre-existing instream flow rights, then those are senior to and trump junior water rights – including rights obtained through new permit-exempt wells. *Id.*

Ecology's amicus brief informed the Court of Appeals that, since the WRIA 1 rule did not govern permit-exempt groundwater use, the WRIA rule's instream flows and closures "are not applicable to permit-exempt wells in Whatcom County." Ecology Amicus Br. at p. 11. The

Court of Appeals agreed, deferring to the interpretation in Ecology's Amicus Brief. *See Whatcom County v. Western Wash. Growth Mgmt. Hgs. Bd., 186 Wash. App. 32, 344 P3d 1256,* 1268, 1269 (2015).

In contrast, Ecology took an entirely inconsistent position in a case that the Tribe brought several years ago. The Tribe challenged the validity of portions of the WRIA 14 rule, and sought rule amendments. *Squaxin Island Tribe v. Washington State Dept. of Ecology*, 177 Wash.App. 734, 736, 312 P.3d 766 (2013). Like the WRIA 1 rule, the WRIA 14 rule does not expressly regulate permit-exempt wells. Ecology informed the court that while permit-exempt uses "were not part of the [WRIA 14] Rule," that rule still complied with the statutory priority system because "[e]ven permit-exempt groundwater uses [...] are still 'appropriations' within the meaning of the water code" and "[a] water management rule cannot abrogate water law or the doctrine that regulatory instream flows constitute appropriations (water rights) that cannot be impaired by junior users."[6] Ecology further stated, "[T]hose exempt uses, even though not part of the Rule, are still part of the priority system and a senior user is not without remedies should that senior user maintain that junior permit

[6] Ecology Opening Brief at pp. 40-41, available at http://www.courts.wa.gov/content/Briefs/A02/427109-Appellants'%20Brief.pdf#search=squaxin ecology response brief (accessed Aug. 26, 2015).

exempt uses are causing impairment." *Id.* at p. 44 (emphasis added). Ecology thus flatly denied that the WRIA 14 Rule implicitly allowed new permit-exempt rights to impair senior instream flows. *Id.* at p. 45.

Ecology took the correct position in the *Squaxin* case.[7] So did the Board in this case. Accordingly, the Court should reverse the Court of Appeals decision and affirm the Board.

B. Uncontrolled Proliferation of Permit-Exempt Wells in Rural Areas Throughout South Sound is a Real Problem.

The health of South Puget Sound streams within the Tribe's U&A particularly depends upon their being fed by ample cold groundwater, as opposed to snowpack. *See Squaxin*, 177 Wash.App. at 736. For the following reasons, dewatering these streams greatly compromises their ability to support vigorous fisheries for future generations.

In many cases, new permit-exempt wells are hydraulically connected to fish-bearing streams with unmet instream flows. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 75-76, 11 P.3d 726 (2000). When these wells pump and intercept groundwater that is hydraulically connected to a stream with senior instream flows,

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[7]Ecology also took the legally correct position in its recently-issued Groundwater Permit Exemption guidance, stating: "Water use of any sort is subject to the 'first in time, first in right' doctrine of Washington State law. This means that a senior (older) right cannot be impaired by a junior right. Seniority is established by priority date." (Emphasis added.) Available at https://fortress.wa.gov/ecy/publications/documents/1511016.pdf (accessed Aug. 22, 2015).

dewatering occurs. *See id.* Dewatering is particularly harmful during the drier months when salmon spawn. *See id.* at 112-113. Low flows attributable to surface water diversions and groundwater withdrawals diminish fish runs by decreasing wetted habitat, increasing temperatures, impairing channel configuration, and exacerbating other water quality impediments – ultimately decreasing the quantity of fish that can be harvested from saltwater.[8] While the impact of one or several of such wells on a stream is usually small, scores or hundreds of them over time – including subdivisions pumping from a single permit-exempt well – will cumulatively dewater fish-bearing streams and diminish fish habitat. *See Chandler v. Ecology*, PCHB No. 96-35, 1997 WL 241278 (1997). It is death by a thousand cuts.

Unfortunately, the high dependence of South Sound streams on groundwater coincides with the applicability of older WRIA rules that greatly resemble the Nooksack WRIA 1 rule. Ecology's WRIA 13 and 14 rules cover large swaths of Mason and Thurston County. The WRIA 14 rule, WAC 173-514-030 and -040, establishes instream flows and closures

[8] *See* GMA regulations at WAC 365-195-925 (describing salmon habitat considerations); *Concerned Neighbors of Lake Samish v. Ecology*, PCHB Nos. 11-126, 11-127, 11-128, 2012 WL 3577479, at *12 (July 24, 2012) (WDFW scientist testimony about harmful effects of low flows); *Cheney v. Ecology*, PCBH No. 96-186, 1997 WL 241280, at *3 (April 18, 1997) ("[L]ow summer flows, high water temperatures and low levels of dissolved oxygen are critical factors in limiting the size of fish populations").

for 24 fish-bearing streams in Mason County; and the WRIA 13 rule, WAC 173-513-030 and -040, establishes the same for seven Thurston County streams. These two rules, like the WRIA 1 rule, do not expressly regulate permit-exempt wells or establish boundaries where groundwater from permit-exempt wells is unavailable for development.[9]

Accordingly, the planning vacuum and regulatory free-for-all that the Court of Appeals' decision sanctions in Whatcom County's rural areas only guarantees more of the same in Mason and Thurston counties. Neither county asks during permit reviews whether the groundwater pumped from a proposed building or subdivision could impact the flows of a fish-bearing surface stream with senior, unmet instream flows.[10] Thus, the instream flows and protective closures that Ecology established

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[9] Ecology adopted these rules in the 1980's, when it was more preoccupied with surface diversions and permitted wells. *See Postema*, 142 Wn.2d at 88 (""Ecology concedes that when adopting minimum flow rules it did not believe that withdrawals from deep confined aquifers would have any impact on stream flows . . . significant leakage occurs across aquifers, and thus withdrawals from deep aquifers will impact surface waters more than was thought. . . Nor can there be any serious thought that Ecology intended groundwater withdrawals be allowed to deplete surface streams; Ecology's aim has been to protect instream flows as required by statute.").

[10] The Thurston County Code lacks such requirements. Although the Mason County Code requires applicants to assure that the water source will not interfere with existing water rights, MCC § 6.68.040(c)(2)(C), as of 2012 Mason County had undertaken little to no inquiry as to whether these assurances are accurate, and had not denied a building permit or subdivision application based on water unavailability in the Johns Creek Basin. Tribe's Response Brief at p. 11, http://www.courts.wa.gov/content/Briefs/A02/427109-Respondent's%20Brief.pdf#search=squaxin gregoire (accessed Aug. 26, 2015).

in South Sound, which statutorily trump later withdrawals of groundwater (permit-exempt or permitted), are rendered meaningless pieces of paper.

Moreover, the counties' ignoring of senior minimum flows and closures when evaluating proposed new development contradicts the Court of Appeals' decision in *Squaxin*:

> Permit-exempt wells are legislatively exempt from the public ground waters code's permitting requirement. RCW 90.44.050. But they are subject to the priority system; thus, permit-exempt wells may not impair senior surface water rights such as instream flows. RCW 90.44.030.

Squaxin, 177 Wash. App. at 737 n. 3 (emphasis added). Accordingly, contrary to the Court of Appeals holding in the instant case, Ecology's rules do not have to expressly apply the instream flow rules to permit-exempt wells in order for the prohibition against impairing senior rights to apply. Rather, permit-exempt wells are subject to minimum flows by operation of state law.

And, even assuming *arguendo* that WRIA rules could legally excuse new permit-exempt wells from the prohibition against interfering with senior appropriations[11], none of these three WRIA rules contain any such exemptions for new subdivisions reliant on permit-exempt wells.[12]

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[11] The Tribe asserts that such exemptions are invalid because they are inconsistent with state statutes, an issue that the Court of Appeals did not decide. *Squaxin*, 177 Wash.App. at 736, 773-774; Tribe's Response Brief at pp. 49-52, cited in n. 9 *supra*.

[12] *See* Nooksack rule, WAC 173-501-070(2), exempting "[s]ingle domestic, (including up to 1/2 acre lawn and garden irrigation and associated noncommercial stockwatering) . . .

Rather, the exemptions only excuse new single domestic uses and, in some cases, stock watering. Nonetheless, the Court of Appeals ruling lets counties approve new subdivisions reliant on permit-exempt wells, even if they impair senior instream flows.

Finally, the Court of Appeals' decision has negative implications statewide. Ecology is currently developing guidance to assist counties in their water adequacy determinations.[13] Given the Court of Appeals' ruling, the guidance will likely allow counties to find that permit-exempt groundwater is legally available for new buildings and subdivisions regardless of their impact on streams with senior unmet instream flows and closures, unless a WRIA rule expressly regulates permit-exempt wells or designates areas where groundwater is unavailable for permit-exempt wells.[14] The Tribe is currently aware of only three WRIA rules that meet these criteria. *See* Ecology Amicus Brief at pp. 18-19 n. 16.

."; Kennedy-Goldsborough rule, WAC 173-514-060(2) exempting "[s]ingle domestic and stockwatering use, except that related to feedlots, . . ."; Deschutes rule, WAC 173-513-070(2), exempting "[d]omestic use for a single residence and stock watering, except that use related to feedlots, . . ." All three rule exemptions also contain limits on outdoor water use if the cumulative effects of numerous single domestic diversions would seriously affect the quantity of water available for instream uses. (In the *Squaxin* case, the Tribe also challenged this part of the WRIA 14 rule as invalid based upon its inconsistency with the governing statutes. Tribe's Response Brief, at pp. 48-51, cited in n. 9 *supra*).

[13] *See* http://www.ecy.wa.gov/programs/wr/wrac/rwss-wag.html (Accessed August 27, 2015).

[14] *See* http://www.ecy.wa.gov/programs/wr/wrac/images/pdf/08052015-meetingnotes.pdf (Accessed Aug. 22, 2015).

C. The Appellants Appropriately Challenged the County's Actions.

Whatcom County complains that Hirst should take its concerns to Ecology, reflecting the County's attempt to deflect from its independent responsibility under the GMA to protect surface waters, fish habitat and rural character. *See* Whatcom County Supp. Brief at pp. 10-12. For numerous reasons, the Court should disregard these arguments.

First, the GMA imposes duties on local governments that are independent of Ecology's statutory duties under the water codes. The GMA recognizes the fish-surface flow connection, and establishes accompanying planning and regulatory mandates for counties. It requires that comprehensive plans and development regulations include measures that apply to rural development and protect rural character, by mandating that rural land use and development be: (1) consistent with protecting natural surface water flows, groundwater and surface water recharge; and (2) compatible with fish habitat. RCW 36.70A.011, .030(15)(g), .070(5)(c)(iv); 070(1). And, the GMA requires that these plans and regulations ensure the protection and enhancement of "the availability of water." RCW 36.70A.020(10). Accordingly, counties, in their long-term planning efforts and before approving new buildings and subdivisions, must ensure that water will be both physically and legally available for the

proposed use. *See* RCW 19.27.097; RCW 58.17.110; *Kittitas County v. Eastern Washington Growth Management Bd.*, 174 Wn.2d 144, 179, 256 P.3d 1193 (2011); WAC 365-196-825 (citing AGO 1992 No. 17). These duties are imposed on counties, not Ecology.

Second, counties have independent duties under the 1971 Water Resources Act that are directly implicated here. Counties "shall, whenever possible" carry out their vested powers consistent with the Act. RCW 90.54.090 (emphasis added). The Act declares that "comprehensive planning" "be given a high priority" "to ensure that available water supplies are managed to best meet both instream and offstream needs." RCW 90.54.010(1)(b). The Act, while recognizing a need to accommodate the water needs of a growing population, also declares that "instream resources and values must be preserved and protected so that future generations can continue to enjoy them. RCW 90.54.010(1)(a) (emphasis added). It prohibits water withdrawals that conflict with base flows, except in narrow circumstances that do not include private domestic wells for buildings and subdivisions. RCW 90.54.020(9); *Swinomish Indian Tribal Cmty. v. Dep't of Ecology*, 178 Wn.2d 571, 311 P.3d 6, 13 (2013). Finally, counties, "whenever possible," must administer programs involving water use with "full recognition" "to the natural interrelationships of surface and groundwaters" and the public interest.

RCW 90.54.020(9), (10); RCW 90.54.090. Again, these obligations exist separate and apart from Ecology's statutory duties.

Third, the relevant question for the Court is whether the Board's decision was clearly erroneous, not whether Ecology should take action. This court in *Kittitas* confirmed that the Board should consider the intersection of the GMA and water law, 172 Wn.2d at 177-181; *see* WAC 365-196-705 ("it should be presumed that neither the [GMA] nor other statutes are intended to be preemptive. Rather they should be read together and, wherever possible, construed as mutually consistent."). Accordingly, the Board's decision is no "collateral attack" on the WRIA 1 rule. *See* Whatcom County Supp. Brief at p. 2. Rather, Board appropriately considered the County's Rural Element policies and found that they did not meet the GMA's protective requirements.

Finally, the County takes the red herring position that the fix is for Ecology to amend its WRIA rule. Whatcom County Supp. Br. at p. 11. The Tribe unfortunately has first-hand knowledge of this dead end path. The Tribe in *Squaxin* had petitioned Ecology under the Administrative Procedure Act ("APA") to amend the WRIA 14 rule to expressly regulate permit-exempt wells, among other things. *Squaxin*, 177 Wash.App. at 738 n.6. The Tribe was frustrated with the over 280 permit-exempt wells that had been drilled in the small Johns Creek basin after 1984, the priority

date for Johns Creek's instream flows. *Id.* at 737. Johns Creek flows had declined to the extent that the rule-established instream flow levels were rarely met from mid-February through September. *Id.* Johns Creek is fed by groundwater, which contributes cold water that is critical to anadromous fish habitat. *Id.* Reduced flows and higher temperatures in Johns Creek were harming its small and fragile summer chum population. *Id.* Ecology recognized the connection between unmet instream flows and hydraulically connected permit-exempt wells. *Id.* at 738.

Ecology, however, refused to amend the WRIA 14 rule to make it expressly regulate permit-exempt wells. *Id.* at 738-739. Why? Ecology said that its priority was developing new instream flow rules, not fixing existing older rules to make them effective. *Id.* at 747. While the Court of Appeals agreed that the problem was real, it upheld Ecology's rulemaking discretion under the APA. *Id.*

D. Counties Can Ensure Growth in Rural Areas that is Sustainable and not at the Expense of Surface Flows and Fish.

Comprehensive plans and development regulations offer counties meaningful opportunities to creatively plan for long-term water availability in rural areas. These efforts can require and/or incentivize a local portfolio of alternative water systems, conservation and efficiency that results in no net loss to overappropriated area surface waters. There is

no reason that county plans and regulations should not require and/or entice practices such as water conservation, metering, water use efficiency, reclaimed water use, and/or extending water supply pipelines in rural areas. *See* RCW 90.54.020(7).

Nor are counties required to embark on these efforts alone. Ecology is statutorily obligated to provide a measure of assistance to counties when they make water adequacy inquiries and plan rural development densities.[15] Nor is Ecology starting from scratch. It has access to a wealth of groundwater modeling and other hydrogeologic information to help assess whether groundwater use by new development will interfere with instream flows. Ecology could make this information readily available to counties and developers, and provide assistance in interpreting it. In overappropriated basins with compromised stream flows or closures, data may exist that helps show which aquifer layer presents less likelihood of depleting stream flows. Ecology can also distill existing

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[15] For example, Ecology has:

1) the authority to "recommend land use management policy modifications it finds appropriate for the further protection of ground and surface water resources in this state. Such advisory recommendations may be made to . . . local governments. . ." (RCW 90.54.130);
2) the authority to "offer technical assistance to counties. . ." under the GMA (WAC 365-196-715);
3) the authority to promulgate guidelines "on what constitutes an adequate water supply" under the GMA (WAC 365-196-825); and
4) the mandate to "[d]evelop alternate courses of action to solve existing and foreseeable problems of water and related resources" (RCW 90.54.030).

data sources such as well logs and building permits to develop maps that show where and when permit-exempt wells are being drilled, the distance of the well from compromised fish-bearing streams, and the aquifers that the wells are likely tapping. And, Ecology can assist counties with devising water budget-neutral mitigation plans that allow development to proceed at little to no cost to streamflows.

Moreover, contrary to the County's assertion, a meaningful effort to ascertain groundwater availability will lower, not raise, legal risks for counties, developers and the real estate community. The court of appeals decision, if let stand, exposes counties to legal risks when they approve building permits and subdivisions for which water use is later curtailed to serve senior instream rights (*see* Skagit County[16]). These risks only rise with the predicted water scarcity that accompanies climate change. *Cornelius v. Washington Dep't of Ecology*, 182 Wn. 2d 574, 344 P.3d 199, 216 (2015). And, County inaction further increases the stakes as Indian tribes seek to declare and enforce their federal reserved water rights to instream flows, which are both senior to state instream flows and often

[16] *See* http://www.ecy.wa.gov/programs/wr/instream-flows/skagitbasin.html (accessed Aug. 31, 2015) (describing overappropriated status of Skagit River and the significant efforts to avoid curtailing permit-exempt groundwater use).

reserve more water.[17] *See, e.g., United States v. Adair*, 723 F.2d 1394, 1410, 1414 (9th Cir. 1983).

Finally, the Court should reject Whatcom County's argument that counties will be exposed to damages claims by permit applicants, when counties deny permits on the basis of water determinations that contradict Ecology's interpretation of WRIA rules. Whatcom County Brief at p. 10, citing RCW 64.40.020. Rather, the opposite is true. It is far riskier for a county to blindly sanction new development where groundwater is not legally available, only to later see such use curtailed due to senior rights. While a county may argue that it relied on the WRIA rule's silence as to permit-exempt wells, this argument is undermined by the county's illogical failure to ask the right questions before approving the development. And, the WRIA rule's silence does not eliminate the county's mandates under the GMA and 1971 Water Resources Act, as well as the state's statutory water allocation and priority system.

VI. CONCLUSION

For the above reasons, the Tribe respectfully urges the Court to uphold the Board's decision. The Court of Appeals' decision contradicts the statutory framework that governs water allocation in Washington. In

[17] *See, e.g.*, http://www.celp.org/pdf/Curtailment_DOE_2d-Notice_Teanaway_(8-13-15).pdf (Ecology ordering curtailment of diversions that are junior to Yakama Nation's most-senior, federally-reserved instream flow water right for fish and other aquatic life).

an era of climate change, drought, endangered salmon listings and rising populations, the wise course is for counties to plan for long-term, sustainable rural growth as the GMA requires.

Respectfully submitted this 4th day of September, 2015.

Squaxin Island Tribe

*__s/ Sharon Haensly*_____
Kevin Lyon, WSBA No. 15076
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DECLARATION OF SERVICE

I, Sharon Haensly, certify that I am a resident of the State of Washington, residing or employed in Shelton. I am over 18 years of age, and not a party to the above entitled action. I declare that on September 4, 2015, I caused the following documents to be served on the following parties in the manner indicated: Supplemental Brief of Appellants in Case No. 91475-3.

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Attached please find the Squaxin Island Tribe's Motion for Leave to File Amicus Curiae Brief and the Tribe's Amicus Curiae Brief for filing in *Hirst, et al., v. Whatcom County, et al.*, Supreme Court Case No. 914753.

Please do not hesitate to contact us if you have any questions.

Sincerely,

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