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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 30288-1

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

JOSEPH LEMIRE,

Respondent,

v.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Appellant,

and

POLLUTION CONTROL HEARINGS BOARD,

Respondent Below.

AMICI CURIAE BRIEF OF WATERKEEPERS WASHINGTON
IN SUPPORT OF STATE OF WASHINGTON, DEPARTMENT OF
ECOLOGY

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I. INTRODUCTION

This case is about the authority of our Department of Ecology (“Ecology”) to regulate the waters within our State and the pollution that threaten the health of those waters. Mr. Joseph Lemire (“Lemire”) is a Columbia County rancher that repeatedly allowed his cattle to have extended access to the Pataha Creek without any regard to pollution entering into the creek. Lemire’s practices resulted in cattle defecating in the creek and destruction of the stream banks surrounding the creek. These practices have created a substantial potential to pollute by introducing fecal coliform, sediment, and other pollutants into the creek as well as raising the temperature of the creek.

The degradation of the Pataha Creek and other Washington water bodies from unmanaged nonpoint sources of pollution, such as cattle, are serious concerns to Waterkeepers Washington. Without the authority to regulate nonpoint source pollution and its precursors, Ecology lacks essential tools necessary to control water pollution and meet the requirements of both state and federal law. The burden of all water pollution within Washington will rest upon point source operations and community groups to find non-regulatory methods of combating nonpoint source pollution. Ecology is better suited to implement the necessary best

management practices to combat nonpoint source pollution and mitigate the regulatory burden on point source pollution.

Waterkeepers Washington joins with Ecology and respectfully requests that this Court reverse the superior court's decision and affirm Ecology's Order recognizing its authority to address nonpoint source pollution.

II. STATEMENT OF THE CASE

Lemire's property is intersected by Pataha Creek running approximately 5,000 feet through the property. AR Doc. 7, Atkins Decl. at 2, ¶ 6 Pataha Creek is on a state list of impaired and polluted water bodies, as required under the federal Clean Water Act for water bodies that fail to meet state water quality standards. *Id.* at 2, ¶ 4. Pataha Creek does not meet state water quality standards due to unacceptable levels of levels of fecal coliform, pH, temperature, and dissolved oxygen. *Id.*

Despite the impaired status of Pataha Creek, Lemire allows his cattle uncontrolled access to the riparian area surrounding the Creek without control measures for erosion, over grazing, and discharge of fecal pollution into the Creek. *Id.* at 3, ¶¶ 9-10, at 4-5, ¶ 11. These conditions lead to a serious degradation of the already impaired quality of the Pataha Creek. *Id.* Ecology issued an administrative order pursuant to RCW 90.48.080 and WAC 173-201A-510 requiring Lemire to develop a plan to

prevent pollution and protect water quality, implement the practices in the approved plan, allow Ecology to inspect Pataha Creek property, and have changes in the plan be approved by Ecology.

Lemire appealed the Order to the Pollution Control Hearings Board (“Board”), taking issue with the Order’s requirement of livestock fencing from the streambank. The Board granted summary judgment for Ecology, holding that there were no material facts in dispute and Ecology’s Order was supported by the record. CP 18-19. Lemire appealed the Board’s decision to the Columbia County Superior Court. The court overturned the Board’s decision, finding that there were genuine issues of material facts. CP 190-92. The court failed to apply the appropriate Administrative Procedures Act standard of review to the Board’s decision and invalidated the underlying order. *Id.* Ecology appealed the superior court’s decision.

III. INTERESTS OF THE AMICI

Washington Waterkeepers is comprised of Spokane Riverkeeper, North Sound Baykeeper, Puget Soundkeeper Alliance, and Columbia Riverkeeper. Washington Waterkeepers are licensed public interest programs under the national Waterkeeper Alliance nonprofit corporation. The goal of each Washington Waterkeeper is to further the environmental health and integrity of its local water body. In order to achieve this goal, Washington Waterkeepers collaborate with state, tribal, and local

governments, educate the public, and litigate in the interest of the public in order to preserve Washington's water bodies' present and future health. Nonpoint source pollution threatens each water body that Waterkeepers Washington is tasked to protect.

Waterkeepers Washington strives to address nonpoint source pollution. Nonpoint source pollution is the largest form of water pollution in the United States. Water quality is severely impacted when organic matter is introduced into streams. The presence of organic matter increases biochemical oxygen demand, which means there is less dissolved oxygen available for aquatic life. The introduction of untreated animal waste into a water body causes bacterial contamination of the water, which in turn decreases the viability and health of the water body.

While natural sources of nutrients can deplete the available dissolved oxygen in the water through eutrophication, the introduction of nutrients from farming, animal husbandry or ranching and erosion severely decreases the availability of dissolved oxygen. Additionally, high water temperatures compound the decline in water quality by causing more oxygen to leave the water and by increasing the rate of eutrophication. Removal of streamside vegetation, among other factors, influences high stream temperature and, via erosion, increases sedimentation of streams. These are the precise conditions present at the Lemire property.

The determination of Ecology's authority to regulate nonpoint source pollution in Washington's waters will impact the scope that Waterkeepers Washington can protect and restore the integrity of Washington's waters.

IV. ARGUMENT

A. THE CLEAN WATER ACT DOES NOT PROHIBIT ECOLOGY FROM MANAGING AND REGULATING NONPOINT SOURCE POLLUTION OR ITS PRECURSORS WITHIN WASHINGTON'S BORDERS.

Contrary to Lemire's argument, Ecology has the authority to manage and regulate nonpoint sources of pollution and its precursors within its borders. The CWA regulates point source water pollution within the "waters of the United States". The regulation of nonpoint source pollution is delegated to the states in the CWA, sections 208 and 319, which establish the federal funding mechanism for state nonpoint source control programs and a state's duty to address nonpoint source pollution issues. 33 U.S.C. §§ 1288; 1329. States have a duty to address nonpoint source pollution by identifying waters that "cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements" of the CWA and identify best management practices and control measures for nonpoint sources of water pollution. 33 U.S.C. §1329.

The states' duty to manage and control nonpoint source has been

recognized by the Ninth Circuit in several cases: *Oregon Natural Desert Assoc'n v. Dombeck*, *Pronsolino v. Nastri*, and *Oregon Natural Desert Assoc'n v. U.S. Forest Service*. The Court in *Oregon Natural Desert Association v. Dombeck* clearly stated that the CWA does not regulate, through its National Pollutant Discharge Elimination System (“NPDES”) permit program, nonpoint sources due to Congressional intent and the statutory delineation between point sources and nonpoint sources. *Oregon Natural Desert Assoc'n.*, 172 F. 3d 1092, 1096-1097 (9th Cir. 1998). Lemire relies on *Dombeck*'s reasoning to deem his ranching actions completely exempt from regulation. However, Lemire takes the reasoning of *Dombeck* out of context. *Dombeck* merely outlined the applicability of the NPDES permit program under the CWA to nonpoint sources of pollution:

In 1972, Congress passed the Clean Water Act, which made important amendments to the water pollution laws. The amendments placed certain limits on what an individual firm could discharge, regardless of whether the stream into which it was dumping was overpolluted at the time. . . . The Act thus banned only discharges from point sources. The discharge of pollutants from nonpoint sources - for example, the runoff of pesticides from farmlands - was not directly prohibited. The Act focused on point source polluters presumably because they could be identified and regulated more easily than nonpoint source polluters.

Id. at 1096 (quoting *Natural Resources Defense Council v. EPA*, 915 F.2d 1314, 1316 (9th Cir. 1990)). Lemire is correct in asserting that the NPDES

permit program is the primary mechanism to enforce effluent limitations from point sources and his ranching operation does not fit the type of pollution that is targeted for a NPDES permit. However, the CWA's focus on point sources for the NPDES permit program does not preclude regulation by the Act.

In *Pronsolino*, the court held that the CWA's goal to achieve water quality standards applies to both point source and nonpoint source pollution for impaired waters under section 303 of the Act. The court illustrates the purpose of water quality standards, "to provide federally approved goals to be achieved *both* by state controls and by deferral strategies other than point-source technology-based limitations." 291 F.3d 1123, 1132 (9th Cir. 2002). "This purpose pertains to waters impaired by both point and nonpoint source pollution." *Id.*

More importantly the CWA's involvement in state water quality standards does not preempt or otherwise prohibit regulation and management of nonpoint source water pollution by the states, rather the CWA encourages it. In *Oregon Natural Desert Assoc'n v. U.S. Forest Service*, the Court held that "states are *encouraged* to promote their own methods of tracking and targeting nonpoint source pollution." 550 F.3d 778, 785 (9th Cir. 2008)(emphasis added). The court emphasizes the primacy of state control of nonpoint source pollution and the connection

between the nature of nonpoint source pollution and the local nature needed for nonpoint source pollution control. *Id. See also Shanty Town Associates L.P. v. EPA*, 843 F.2d 782, 791(4th Cir. 1988). Both Congress and the Ninth Circuit have articulated the states' jurisdiction over nonpoint source pollution and its conformity with the sections 208 and 319 of the CWA. 33 U.S.C. §§ 1288; 1329.

Other jurisdictions have concurred with the Ninth Circuit's interpretation of states' authority over nonpoint source pollution. California's Court of Appeals held that the federal Water Pollution Control Act was not designed to "oust the state of its own powers to control nonpoint sources of water pollution." *Tahoe-Sierra Preservation Council v. State Water Resources Control Bd.*, 210 Cal. App. 3d 1421,1431, 259 Cal. Rptr. 132 (1989). The court reasoned that there is no "implied repeal of existing regulatory authority" when there is no accompanying express intention to accomplish that result and "federal law does not preclude the state from utilizing its broader authority to regulate nonpoint source pollution" by means of its own regulatory system. *Id.*

The CWA's structure confirms this point. Although the term "nonpoint source" is not defined in the CWA, the statute clearly indicates that there is a category of nonpoint source pollution, and leaves the regulation of nonpoint source pollution to the states. *See* 33 U.S.C. §

1251(a)(7). To effectuate federal effluent limitations and state water quality standards the state “coordinates among agencies, local authorities, and nongovernmental organizations to further reduce both point and non-point source pollution.” *Anacostia Riverkeeper, Inc. v. Jackson*, 798 F. Supp. 2d 210, 217 (D.D.C. 2011). Nonpoint source pollution reductions can be enforced against responsible parties only to the extent that the state institutes a regulatory requirement for such reductions pursuant to state authority. *City of Arcadia v. EPA*, 265 F. Supp. 2d 1142,1144 (N.D.Cal. 2003)(citing *Pronsolino v. Marcus*, 91 F. Supp. 2d 1337, 1355-56 (N.D. Cal. 2000), *aff’d sub nom. Pronsolino v. Nastri*, 291 F.3d 1123 (9th Cir. 2002)). Further, the Supreme Court in *PUD No. 1 of Jefferson County*, held that the CWA did not limit the scope of water pollution controls that may be imposed and preserved the states authority to implement such controls pursuant to state law. *PUD No. 1 of Jefferson County v. Dep’t of Ecology*, 511 U.S. 700, 720 (1994).

Ecology has used the authority under both the CWA and the Washington Water Pollution Control Act to regulate the water quality of Pataha Creek and the nonpoint source pollution that threatens its integrity. The Order, which requires best management practices to prevent Lemire’s cattle from entering the Pataha Creek, rightfully invokes the Washington Water Pollution Control Act as its source of authority. The CWA opened

the door for Ecology to regulate Lemire's ranching practices, but it is the Washington Water Pollution Control Act that has the force of law as to the nonpoint source pollution in Pataha Creek.

B. ECOLOGY HAS INDEPENDENT AUTHORITY UNDER STATE LAW TO IMPOSE REQUIREMENTS TO CONTROL WATER POLLUTION.

Washington's own Water Pollution Control Act governs a larger scope than the CWA and contrary Lemire's argument that the Water Pollution Control Act's sole purpose is to implement the CWA, the Water Pollution Control Act is a separate and distinct statute from the CWA.

The CWA and the Water Pollution Control Act work in harmony and are not contradictory in effect. Where there is a point source and effluent limitations for such point sources at issue, Washington's Water Pollution Control Act implements the CWA. *Puget Soundkeeper Alliance v. State, Dept. of Ecology*, 102 Wn. App. 783, 790, 9 P.3d 892 (2000); *Tukwila Sch. Dist. No. 406 v. City of Tukwila*, 140 Wn. App. 735, 739, 167 P.3d 1167 (2007). The two statutes diverge and return to their parallel status with regard to nonpoint sources and precursors to water pollution.

1. *Washington's Water Pollution Control Act is not federally preempted from regulating nonpoint source pollution or precursors to water pollution.*

The Washington Water Pollution Control Act's concurrent jurisdiction with the CWA over water pollution in the Washington's

waters is valid and allows for Washington's independent regulation of nonpoint source pollution and precursors to water pollution within its borders. The states have a preliminary presumption "that the historic police powers of the States were not to be superseded" by a federal act "unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Preemption can either be explicit or implicit within a field of regulation. Explicit field preemption is obvious within the federal statute itself. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157(1978).

Implicit field preemption occurs where the federal statutory scheme is so pervasive that it indicates Congress did not leave room for state action. *Ray*, 435 U.S. at 157. Preemption can also be inferred when "the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Rice*, 331 U.S. at 203. A "savings clause" reserving the state's right to govern the same field will prevent a state statute from being federally preempted either explicitly or implicitly.

However, it can be discerned from reasoning in both *Oregon Natural Desert Association v. Dombeck* and *Oregon Natural Desert Association v. U.S. Forest Service*, as discussed above, that Congress did not have the intention limiting a state's ability to regulate nonpoint sources

or occupy the entire field of water pollution. The Supreme Court of Washington has already stated that field of water pollution is not fully occupied by the CWA. *PUD No. 1 of Pend Oreille County v. State, Dept. of Ecology*, 146 Wn. 2d 778, 820, 51 P.3d 744 (2002).

There, the Court agreed that the broad scope of Washington's Water Pollution Control Act and the limited scope of the CWA work in conjunction with each other and the state statute is not preempted by the federal. *PUD No. 1*, 146 Wn. 2d at 820 (explaining RCW 90.48.020, "This definition is, if anything, broader than the definition of 'pollution' in the Clean Water Act."). No savings clause needed. *Id.* ("[T]he ... argument respecting the lack of a savings clause in chapter 90.48 RCW is without merit.")

The best illustration of the distinction between the two statutes and their separate spheres of regulation of water pollution is the different treatments of the term "discharge" within the stator schemes.

2. *The term "discharge" in the Water Pollution Control Act differs from the meaning of the term "discharge" in the federal Clean Water Act, and does not preclude the State of Washington's authority to regulate nonpoint source pollution within its borders.*

The term "discharge" in the CWA is one of the *sine qua non* aspects of the statutory scheme much like the term "point source." In Washington's Water Pollution Control Act, the term "discharge" is

equally essential to the statutory scheme, however, it has a more expansive scope than that of its federal counterpart. First, the plain language of both terms as proscribed in their respective statutes differ. “Discharge,” as defined in the CWA, “when used without qualification includes a discharge of a pollutant, and a discharge of pollutants. 33 U.S.C. §1362(16). The terms “Discharge of a pollutant” and “discharge of pollutants” mean “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. §1362(12). Between these two definitions, there is a clear connection between discharges and point sources.

In contrast, Washington’s Water Pollution Control Act, describes “discharge of polluting matter in waters” as the action of “any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department.” RCW 90.48.080. The statute does not mention a distinction between point source and nonpoint source or a method of conveyance for pollutant into Washington’s waters. The expansive description of what constitutes a discharge under the Act, does not mirror the CWA’s definition of the term “discharge” in any way.

Additionally, the statute gives Ecology ample discretion to

determine what constitutes a discharge. RCW 90.48.020. Aside from traditional discharges of polluting matter into waters of Washington, the Water Pollution Control Act extends Ecology's authority to discharges that "shall cause or tend to cause pollution" of Washington's waters. *Id.*

Ecology's jurisdiction, as described in RCW 90.48.030, is expansive and centers on its obligation to "control and prevent" pollution in the "streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington." The language of the Water Pollution Control Act make it clear that Ecology has jurisdiction over any action that will or tend to cause pollution within Washington's waters. Lemire argues that his actions as owner and operator of his ranch are not discharges or point sources of water pollution, and therefore cannot be regulated under either the CWA or the state Water Pollution Control Act.

Lemire's argument disregards the broad nature of Washington's Water Pollution Control Act and Ecology's jurisdiction over actions that cause water pollution as upheld by both the Ninth Circuit and the Washington Supreme Court. Equally as broad, the definition of the term "pollution" as:

such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or

odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

RCW 90.48.020.

Ecology's jurisdiction to prevent pollution as defined in the statute is not restricted by conveyance, industrial sector, or physical properties. The definition of "discharge" and "pollution" focuses on the effect of a party's actions. Under the plain language of the Water Pollution Control Act, Ecology has the authority to determine what constitutes a discharge of pollution and prevent such discharge by the methods it sees fit. Here, Lemire does not dispute that his actions, such as allowing his cattle to erode the banks of the Creek, have led to the substantial potential for pollution. AR Doc. 7, Atkins Decl. ¶¶11-17. Lemire has been presented with evidence of the detrimental impact of his action on numerous Ecology site visits and he has done nothing to improve the pollution which he is causing. AR Doc. 7, Atkins Decl. ¶9; Order at 1. Lemire's actions may not be subject to a permit requirement under the CWA, but his actions are well within the state's jurisdiction to prevent and control pollution within its borders as discussed above. Ecology's determination that Lemire is discharging pollutants into Washington's waters and the

order that required measures to prevent such pollution should be given the full efficacy of law as authorized by the Washington's Water Pollution Control Act.

C. THE GOALS OF BOTH THE WASHINGTON WATER POLLUTION CONTROL ACT AND THE CLEAN WATER ACT ARE SUPPORTED BY ECOLOGY REGULATING AND MANAGING NONPOINT SOURCE POLLUTION AND ITS PRECURSORS.

When considering the text of the statutes and their purpose, the court must also consider “the context and structure of the statute as a whole.” *Cordiano v. Metacon Gun Club, Inc.*, 575 F.3d 199, 218 (2nd Cir. 2009) (quoting *Nussle v. Willette*, 224 F.3d 95, 101 (2nd Cir. 2000), *rev'd on other grounds*, *Porter v. Nussle*, 534 U.S. 516 (2002)); *see also Bailey v. United States*, 516 U.S. 137, 145 (1995); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291(1988). The purpose of the CWA is clear: “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C § 1251(a). The Act also demonstrates that “it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U.S.C § 1251(a) (2). Further, “it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of ...[the Clean Water

Act] be met through the control of both point and nonpoint sources of pollution.” 33 U.S.C § 1251(a) (7).

Similarly, the Washington Water Pollution Control has the broad purpose declared as:

[T]he public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end *require the use of all known available and reasonable methods* by industries and others to prevent and control the pollution of the waters of the state of Washington.

RCW 90.48.010 (emphasis added). The dichotomy between the two statutes’ purpose is centered around the conveyance of the pollutants into a water body. The CWA makes the distinction between point source and nonpoint source pollution; in contrast, the Washington Water Pollution Control Act has no such distinction for the method used to pollute Washington’s waters. Both statutes, however, aim to maintain the health and integrity of surface waters for the protection and propagation of fish, wildlife, recreation and enjoyment by the public.

Pollution from diffuse sources, federally known as “nonpoint sources,” is a large component of pollution in nationally EPA assessed waters in 2000 and pollution from agricultural operations is the primary source of pollution for rivers and streams. EPA Office of Water, *National*

Water Quality Inventory ch. 2, 14-15 (2000)¹; *see also* EPA Office of Water, *Nonpoint Guidance* 3 (1987).² In Washington, the majority of nonpoint source pollution comes from forest and agricultural (including rangelands) operations. State of Washington, Department of Ecology, *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution* 10 (2005).³ The undisputed record shows that Lemire's practices have led to the increased pollution within Pataha Creek and the degradation of the riparian area around the Creek. Ecology's Order cited the various reasons in which Lemire's actions contributed to the pollution of the Pataha Creek, including the proliferation of bacteria in the creek (fecal coliform) via cattle defecation in the creek and sediment pollution through erosion of the stream banks. Order at 1. The purpose and intent of both statutes seek to prevent such dangers to human health and the environment through the broad language of their governing purpose and the subsequent definitions within the statutes themselves. The broad purpose of both statutes give the context in which Lemire's actions and refusal to comply with Ecology's Order must be viewed.

¹ Available at http://water.epa.gov/lawsregs/guidance/cwa/305b/upload/2002_09_10_305b_2000report_chp2.pdf.

² Available at http://water.epa.gov/scitech/swguidance/standards/upload/1999_11_03_standards_npscontrols.pdf.

³ Available at <http://www.ecy.wa.gov/pubs/0510027.pdf>.

V. CONCLUSION

Ecology has the authority to regulate and manage nonpoint source water pollution. Ecology's Order represents the proper manifestation of the Ecology's authority pursuant to both the CWA and the Washington Water Pollution Control Act to control nonpoint source and its precursors. Lemire's cattle ranching practices posed a substantial potential to pollute the Pataha Creek. Ecology's ability to regulate similarly situated land owners that violate the Washington Water Pollution Control Act is of great importance to Waterkeepers Washington and the residents of Washington.

Nonpoint source pollution is the largest threat to water quality in Washington and its pervasive nature requires a state wide regulatory scheme to manage the adverse environmental impacts nonpoint source pollution poses to Washington's water bodies. The court's decision in this matter will determine the strength of the Washington Water Pollution Control Act and where the burden of Washington's water pollution will be placed: nonpoint sources and its precursors or point sources and community groups. Waterkeepers Washington seek the balanced approach envisioned in the Washington Water Pollution Control Act.

It is imperative that this court reverse the superior court's decision and uphold the Board's decision affirming Ecology's Order that is supported by the record.

RESPECTFULLY SUBMITTED this 11th day of May, 2012.



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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III**

STATE OF WASHINGTON,)	
DEPARTMENT OF ECOLOGY)	
)	No. 30288-1
Appellants,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JOSEPH LEMIRE,)	
)	
Respondent.)	
)	
POLLUTION CONTROL HEARINGS)	
BOARD,)	
)	
Respondent below.)	

Pursuant to RCW 9A.72.085, I hereby certify that on the 11 day of May, 2012, I presented true and correct copies of the foregoing MOTION FOR LEAVE TO SUBMIT AN AMICI CURIAE BRIEF OF WATERKEEPERS WASHINGTON IN SUPPORT OF STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY and the attached AMICI CURIAE BRIEF OF WATERKEEPERS WASHINGTON in the above-captioned matter via USPS, postage prepaid, to the following:

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