

NO. 91475-3 RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

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

Petitioners,

v.

WHATCOM COUNTY, and WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD,

Respondents,

and

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY;
WASHINGTON REALTORS; BUILDING INDUSTRY ASSOCIATION
OF WASHINGTON; WASHINGTON STATE FARM BUREAU; and
WASHINGTON STATE ASSOCIATION OF COUNTIES,

Amici Curiae.

**STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY'S
AMICUS CURIAE BRIEF**

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Washington State Supreme Court

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. IDENTITY AND INTEREST OF AMICUS CURIAE3

III. SPECIFIC ISSUE ADDRESSED BY AMICUS CURIAE4

IV. ARGUMENT4

 A. The Court of Appeals Correctly Upheld the Board’s
 Conclusion That the Rural Elements of Comprehensive
 Plans Must Ensure the Protection of Water Resources.....4

 B. The Board Erred by Concluding That Whatcom County’s
 Comprehensive Plan Fails to Adequately Protect Water
 Availability5

 1. WCC 21.01.040, the provision relating to
 subdivision applications, ensures that water
 resources will be adequately protected by preventing
 circumvention of water right permitting requirements.....6

 2. The requirements that development cannot occur in
 areas that Ecology has closed to new water uses
 ensure that water resources will be adequately
 protected7

 3. The Board misinterpreted the Nooksack Rule.....11

V. CONCLUSION20

TABLE OF AUTHORITIES

Cases

Department of Ecology v. Campbell & Gwinn, L.L.C.,
146 Wn.2d 1, 43 P.3d 4 (2002)..... 7

*Kittitas County v. Eastern Washington Growth Management
Hearings Board (Kittitas)*,
172 Wn.2d 144, 256 P.3d 1193 (2011)..... 1, 2, 4, 5, 6-7, 8, 9, 18

Port of Seattle v. PCHB,
151 Wn.2d 568, 90 P.3d 659 (2004)..... 12

Postema v. Pollution Control Hearings Bd.,
142 Wn.2d 68, 11 P.3d 726 (2000)..... 12, 19

Whatcom Cty. v. W. Wash. Growth Mgmt. Hearings Bd.,
186 Wn. App. 32, 344 P.3d 1256 (2015)..... 5, 9, 10, 12, 17, 18

Statutes

RCW 34.05.570(2)..... 9, 19

RCW 90.22 19

RCW 90.22.010 19

RCW 90.22.030 19

RCW 90.44.050 7, 16

RCW 90.54 19

RCW 90.54.020 19

RCW 90.54.040 19

Regulations

WAC 173-501..... 2

WAC 173-501-010.....	12
WAC 173-501-020.....	12
WAC 173-501-030.....	13
WAC 173-501-030(2).....	13, 15
WAC 173-501-030(4).....	13, 15
WAC 173-501-040.....	13
WAC 173-501-040(2).....	14, 15
WAC 173-501-060.....	14, 15
WAC 173-501-070.....	14, 15
WAC 173-501-070(2).....	14
WAC 173-503.....	16
WAC 173-503-040(5).....	16
WAC 173-517-110.....	17
WAC 173-518-070.....	17
WAC 173-545-060(4).....	17

I. INTRODUCTION

The State of Washington, Department of Ecology offers this amicus curiae brief to address the water quantity issue in this case.¹ The Court of Appeals properly reversed the Growth Management Hearings Board's decision that Whatcom County's Comprehensive Plan fails to comply with provisions of the Growth Management Act (GMA) requiring the protection of water resources. The Board erroneously ruled that the Comprehensive Plan violates the GMA because it "fails to limit rural development to protect ground or surface waters with respect to individual permit-exempt wells." CP 1557.

The interrelationship between land use planning and permitting laws and the laws governing water rights and the management of water resources in Washington is becoming increasingly important as our state's population has grown and competition for limited water resources has increased. In *Kittitas County v. Eastern Washington Growth Management Hearings Board (Kittitas)*, 172 Wn.2d 144, 256 P.3d 1193 (2011), this Court held that, under the GMA, local governments must find that water supply is both legally and physically available before they may approve subdivision and building permit applications. And the Board's

¹ In this brief, Ecology is addressing only the Court of Appeals' and Board's decisions as they relate to the management of water use and the maintenance of instream flows, i.e., water "availability" or "quantity." Ecology expresses no opinion on the remaining issues in the case.

decision is correct in pronouncing that principles of *Kittitas* must be applied in the context of land use planning activities by local governments and that, under the GMA, the rural elements of comprehensive plans and development regulations must ensure that water resources, including water availability, are protected.

However, the Board erred in concluding that Whatcom County's specific Comprehensive Plan fails to adequately protect water availability. The Plan comports with the GMA because it is consistent with Ecology's water management rule for the Nooksack River Basin, WAC 173-501 ("Nooksack Rule" or "Rule"). The Board erred in ruling that, to comply with the GMA, the County must be more restrictive with respect to water use than the Nooksack Rule. Under the GMA, while counties could adopt provisions that are more restrictive of water use than Ecology rules if they deem they are necessary to address concerns over water availability in their areas, they are not required to do so.

The Petitioners' arguments fail because they are based on three erroneous premises. First, they are wrong in contending that the Nooksack Rule expressly regulates permit-exempt groundwater use, because its plain language only makes its instream flows and stream closures applicable to water right permit applications. Second, the Petitioners argue that the Rule should be applied to govern permit-exempt

groundwater use notwithstanding its actual language so that the Rule can operate in compliance with the relevant statutory scheme. But this contention is without merit because this case is not a challenge to the Rule's validity and it cannot be read to do something different than it actually states.

Lastly, the Petitioners argue that if the Court of Appeals' and Ecology's interpretation of the Rule is upheld, then the County must act independently to ban permit-exempt wells in its land use regulations in order to comply with GMA provisions requiring the protection of water resources. This position should be rejected because counties act in compliance with the GMA when they adopt land use plans and regulations that are consistent with Ecology's water management rules. The Legislature charged Ecology with the role of being the administrator of water resources in Washington and the counties should be able to act in reliance on Ecology's water management regulations in meeting their land use regulatory responsibilities under the GMA.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

Ecology's identity and interests are fully described in the State of Washington, Department of Ecology's Motion for Leave to File Amicus Curiae Brief, which accompanies this brief. As the administrator of water resources in Washington, Ecology has a strong interest in the water

availability issue in this case because it has statewide ramifications related to the overlap between Ecology's water resources management authority and counties' GMA and land use regulation authority when such authority addresses local water resources.

III. SPECIFIC ISSUE ADDRESSED BY AMICUS CURIAE

Did the Growth Management Hearings Board err by ruling that the Growth Management Act requires Whatcom County to adopt land use regulations that are more restrictive of water use than the Department of Ecology's water management regulations? (County's Issue No. 1.)

IV. ARGUMENT

A. The Court of Appeals Correctly Upheld the Board's Conclusion That the Rural Elements of Comprehensive Plans Must Ensure the Protection of Water Resources

Ecology—and, indeed, all parties—agree with the Board's general statements that GMA planning actions are required to protect water resources. Several provisions of the GMA support the Board's pronouncement that comprehensive plans adopted by counties “must include measures governing rural development to protect water resources.” CP 1536.² These GMA provisions are discussed in Ecology's

² While Ecology is not addressing the water *quality* issue in this case, Ecology agrees with the Board that the GMA requires that comprehensive plans and development regulations adopted by counties must ensure adequate protection of water quality. The Board correctly pronounced that: “The Supreme Court's reasoning in *Kittitas County* concerns water availability, but is equally applicable to water quality.” CP 1537–1538.

Amicus Curiae Brief to the Court of Appeals at pages 6 through 7. The Board correctly stated the legal principle that “[r]ead together, these GMA provisions indicate that patterns of land use and development in rural areas must be consistent with protection of instream flows, groundwater recharge, and fish and wildlife habitat.” CP 1536.

And the Court of Appeals was correct in affirming the Board’s conclusion that, under *Kittitas*, in order to comply with the GMA the County’s Comprehensive Plan must include measures that ensure that future development in rural areas will not adversely affect water availability. See *Whatcom Cty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 186 Wn. App. 32, 46, 344 P.3d 1256 (2015).

B. The Board Erred by Concluding That Whatcom County’s Comprehensive Plan Fails to Adequately Protect Water Availability

The Court of Appeals correctly held that, although the Board correctly stated GMA requirements based on *Kittitas*, it erroneously ruled that the County’s Comprehensive Plan³ runs afoul of them. The Plan meets the GMA’s requirements for protection of water resources for two

In order to protect water resources, it is axiomatic that the quality of water must be protected.

³ Whatcom County Ordinance No. 2012-032, referred to herein as the “Comprehensive Plan” or “Plan.” In this brief, the term “Comprehensive Plan” refers to the Plan and its associated Zoning Code, and future zoning map. This brief will also cite to specific Whatcom County Code regulations that are incorporated into the Plan through Policy 2DD-2.C, which was adopted as part of Whatcom County Ordinance No. 2012-032.

significant reasons: (1) it ensures the efficacy of restrictions relating to permit-exempt wells by preventing circumvention of the requirement that each residential development can only qualify for one group domestic exemption from permitting requirements; and (2) it ensures compliance with Ecology's Nooksack Rule by requiring that the County will not approve a subdivision or building permit application that relies on a permit-exempt well for water supply when the well is located in an area where water is unavailable for new uses under the Rule.

1. **WCC 21.01.040, the provision relating to subdivision applications, ensures that water resources will be adequately protected by preventing circumvention of water right permitting requirements**

The County's subdivision regulations require that "contiguous parcels of land in the same ownership shall be included within the boundaries of any proposed long or short subdivision of any of the properties" and that "lots so situated shall be considered as one parcel." WCC 21.01.040(3)(a).⁴ This provision addresses the practice that this Court found objectionable in *Kittitas*: the unlawful slicing of a larger residential development project that would require more than 5,000 gallons per day of water into multiple smaller subdivisions in order to circumvent water right permitting requirements. *See Kittitas*,

⁴ The Whatcom County Code (WCC) provisions referenced in this brief are contained in Appendix C to the Supplemental Brief of Respondent Whatcom County.

172 Wn.2d at 177. This “single application” requirement enables the County to determine whether applications for land divisions would contravene RCW 90.44.050, as interpreted by this Court in *Department of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002), through the use of multiple permit-exempt groundwater withdrawals in excess of 5,000 gallons per day. Inclusion of this provision is harmonious with the permit-exempt groundwater statute and is consistent with the GMA requirement to protect water resources.

2. The requirements that development cannot occur in areas that Ecology has closed to new water uses ensure that water resources will be adequately protected

The Court of Appeals was correct in concluding that the Board erred by failing to recognize that the Comprehensive Plan is harmonious with Ecology’s Nooksack Rule. The County’s building permit and subdivision regulations provide that the County will only approve a subdivision or a building permit application that relies on a private well for water supply when the well site “proposed by the applicant does not fall within the boundaries of an area where [Ecology] has determined by rule that water for development does not exist.” WCC 24.11.090(B)(3); WCC 24.11.160(D)(3); WCC 24.11.170(E)(3).

Under these provisions, if the Ecology water management rule that is applicable to the area provides that water is not legally available (either

because the area is closed to new appropriations, or there are minimum instream flow requirements that are not being met) a subdivision or building permit application relying on a permit-exempt groundwater withdrawal for water supply must be denied—unless the applicant demonstrates that the groundwater they seek to tap is not connected to a regulated surface water body, proposes a plan to adequately mitigate for the adverse effects of their proposed water use on instream flows, or acquires another water right and transfers it to their location.

Ecology concurs with the County's argument that this regulation provides for the degree of cooperation between the County's exercise of its land use management authority and Ecology's management of water resources that is required under *Kittitas*. Suppl. Br. of Resp't Whatcom County at 6–8. As discussed below, Ecology interprets the Nooksack Rule, which covers rural Whatcom County, to not govern permit-exempt groundwater use, so the Rule's closures and minimum flow requirements are not applicable to permit-exempt wells in Whatcom County. However, if Ecology were to amend the Rule to make it applicable to permit-exempt groundwater use, or if this or another Court issues a decision with an interpretation of the Rule that is contrary to Ecology's, then, under the County's regulation, all development that would rely on permit-exempt wells tapping groundwater that is connected to surface water would be

prohibited under the Comprehensive Plan (unless an adequate mitigation plan is proposed).⁵

The Court of Appeals correctly pronounced that “the supreme court in *Kittitas* anticipated **consistent** local regulation by counties in land use planning to protect water resources.” *Whatcom Cty.*, 186 Wn. App. at 51 (alteration in original). The Petitioners erroneously contend that, under the GMA, the County must regulate water use in a more restrictive fashion than Ecology allows under its water management rules. Ecology agrees with the County that, under *Kittitas*, a county complies with the GMA’s requirements to protect water resources in its land use planning function when its comprehensive plans and development regulations are consistent with Ecology’s water resources regulations and the agency’s interpretations of them. Under the GMA, counties are *not required to be more restrictive of water use* under their land use regulatory authority than Ecology is in exercising its water management regulatory authority in the basin where the county is located. As such, the GMA does not require

⁵ Ecology agrees with the County that the Petitioners’ real dispute is with Ecology over its interpretation and implementation of the Nooksack Rule, rather than with the County over its GMA measures. Suppl. Br. of Resp’t Whatcom County at 2, 10–11. Ecology has the authority and responsibility to amend instream flow rules when it determines that additional water resource protections are necessary under them. The County also correctly explains that the Petitioners have other avenues to challenge Ecology’s water management approach in the Nooksack Basin. *Id.* at 11 n.26. For instance, if the Petitioners believe that the Rule is unlawful because it does not expressly regulate permit-exempt wells, they can file a petition in superior court to challenge its validity pursuant to the Administrative Procedure Act, RCW 34.05.570(2).

counties to adopt land use plans and regulations that are more restrictive of water use than Ecology's water management rules.

Although counties are not required to adopt more protective regulations than Ecology, they do have authority to do so if a county determines that taking such an approach is necessary to protect water availability and instream flows. For instance, a county can go further than Ecology's rules in limiting water use under land use plans and regulations if it has specific understanding of an actual or potential water resources problem, such as seawater intrusion into groundwater aquifers or the dewatering of streams that provide fish habitat, and deems that its plan must prevent such adverse impacts. But the GMA does not require a county to do so.

The Petitioners mischaracterize the Court of Appeals' decision in asserting that it holds that "the mere existence of cooperation between Ecology and the County is sufficient" for meeting the GMA's water protection requirements. Suppl. Br. of Appellants at 7-8. To the contrary, the Court of Appeals concluded that the County's Plan is "consistent with the laws regarding protection of water resources under the GMA" because it incorporates the operation of Ecology's Rule into the Plan. *Whatcom Cty.*, 186 Wn. App. at 51. Thus, the Court of Appeals held that under *Kittitas* there must be more than just cooperation between a county and

Ecology in order for a county to comply with the GMA. Rather, a county's comprehensive plan and land use regulations must be consistent with Ecology's water management rules.

By its inclusion of WCC 24.11.090(B)(3), WCC 24.11.160(D)(3), and WCC 24.11.170(E)(3), the County's Plan provides that subdivision and building permit applications cannot be approved if sufficient water is not available under Ecology's Nooksack Rule to supply proposed developments with water. As such, the Plan is adequate to meet the GMA's requirements relating to water resources because it provides for consistency with Ecology's Rule. Under the GMA, the County could adopt provisions that are more restrictive of water use than Ecology's Rule if it deems they are necessary to address concerns over water that are specific to the County, but, contrary to the Board's decision and the Petitioners' arguments, the County is not required to do so.

3. The Board misinterpreted the Nooksack Rule

The Board's conclusion that the Comprehensive Plan fails to protect water availability by inadequately regulating permit-exempt wells and preventing the impacts they may cause rests on its erroneous interpretation of the Nooksack Rule. The Board mistakenly assumed that the Nooksack Rule's closures of certain water bodies to new uses include a bar on permit-exempt groundwater use. CP 1555–1556. The Court of

Appeals was correct in concluding that the Nooksack Rule does not govern permit-exempt groundwater use. *Whatcom Cty.*, 186 Wn. App. at 58–60.

This Court has recognized that Ecology’s water management rules do not all contain the same provisions, and held that they each must be interpreted based on their specific language. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 86–87, 11 P.3d 726 (2000). As the agency designated by the Legislature to regulate water resources, Ecology’s interpretation of water resources statutes and regulations “is entitled to great weight.” *Port of Seattle v. PCHB*, 151 Wn.2d 568, 593, 90 P.3d 659 (2004).

By its express language, the Nooksack Rule only governs water uses proposed through the water right permitting system, and not permit-exempt groundwater withdrawals. As described below, in each instance in which the Rule addresses closures or limitation of water sources, it makes reference to denial of water permit applications, and makes no mention of permit-exempt uses.

The Rule begins with a general provision stating that it applies to waters within the Nooksack River Basin. WAC 173-501-010. The second section of the Rule, WAC 173-501-020, states that “[t]he purpose of this chapter is to retain perennial rivers, streams, and lakes in the Nooksack water resource inventory area with instream flows and levels necessary to

provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental values, and navigational values, as well as recreation and water quality.”

The third section of the Rule establishes stream management units within the Nooksack River and its various forks, and in several creeks that are tributary to the river, and establishes minimum instream flows for all of the stream management units. WAC 173-501-030. The instream flow figures for many management units, during specific months, are marked with asterisks, which denote a “closure period” during which “[n]o further consumptive rights” will be issued. WAC 173-501-030(2). This section also states that “[f]uture consumptive *water right permits issued hereafter* for diversion of surface water in the Nooksack WRIA and perennial tributaries shall be expressly subject to [the prescribed instream flows].” WAC 173-501-030(4) (emphasis added).

The fourth section of the Rule, WAC 173-501-040, establishes “[s]urface water source limitations to further consumptive appropriation.” This section establishes “closure[s]” and “partial year closure[s]” of the north and south forks of the Nooksack River, and of several creeks. With regard to the “closure[s],” the Rule states that “[w]hen a project . . . is proposed on a stream that is closed to further appropriations, the department *shall deny the water right application* unless the project

proponent can adequately demonstrate that the project does not conflict with the intent of the closure.” WAC 173-501-040(2) (emphasis added).

The sixth section relates to the Rule’s applicability with respect to groundwater use:

If department investigations determine that there is significant hydraulic continuity between surface water and the proposed groundwater source, any water right permit or certificate issued shall be subject to the same conditions as affected surface waters. If department investigations determine that withdrawal of groundwater from the source aquifers would not interfere with stream flow during the period of stream closure or with maintenance of minimum instream flows, *then applications to appropriate public groundwaters may be approved.*

WAC 173-501-060 (emphasis added). The next section, WAC 173-501-070, provides exemptions from the operation of the Rule:

Single domestic, (including up to 1/2 acre lawn and garden irrigation and associated noncommercial stockwatering) shall be exempt from the provisions established in this chapter, except that Whatcom Creek is closed to any further appropriation, including otherwise exempted single domestic use. For all other streams, when the cumulative impact of single domestic diversions begins to significantly affect the quantity of water available for instream uses, then any water rights issued after that time shall be issued for in-house use only, if no alternative source is available.

WAC 173-501-070(2).

The express language of the Rule pertains only to whether water rights can be established under the permitting system administered by

Ecology. This emphasis on the permitting system indicates that Ecology did not intend for this Rule to govern permit-exempt groundwater use. WAC 173-501-030(2) includes language stating that “[n]o further consumptive rights” will be “issued” allowing water use during periods in which stream management units are closed, and WAC 173-501-030(4) states that “[f]uture consumptive water right permits issued hereafter for diversion of surface water in the Nooksack WRIA and perennial tributaries shall be expressly subject to [the prescribed instream flows].” Moreover, WAC 173-501-040(2) states that “when a project . . . is proposed on a stream that is closed to further appropriations, the department shall deny the water right application”

Under WAC 173-501-060, if Ecology determines that withdrawals of groundwater would not interfere with flows during stream closures or when minimum instream flows are not met, “then applications to appropriate public groundwaters may be approved.” As such, it governs whether groundwater permit applications may be approved, based on whether or not there is hydraulic continuity with surface water bodies.

Further, WAC 173-501-070, the section that provides an exemption from the instream flows and closures, says nothing about the groundwater permit exemptions and allows the use of water for “single domestic” purposes. There is no language in this section stating that the

exempted domestic use is limited to groundwater or is associated with the permit exemptions for wells under RCW 90.44.050. Thus, this provision provides an exemption from the Rule's instream flows and closures for surface water use, and does not supersede RCW 90.44.050's groundwater exemptions, which are not affected by the Rule.⁶

The language in all the above sections pertains to the issuance of water right permits, and cannot be read to also apply to permit-exempt groundwater withdrawals which occur outside of the permitting system administered by Ecology. As a result, the Nooksack Rule, in its present form, does not govern permit-exempt groundwater use.

This is especially clear when it is read in contrast to water management rules for other basins, which include express language indicating that they govern permit-exempt uses of water. For instance, WAC 173-503, the rule for the Skagit River Basin states that “[f]uture consumptive water right permits issued hereafter for diversion of surface water in the Lower and Upper Skagit (WRIA 3 and 4) and perennial tributaries, *and withdrawal of groundwater in hydraulic continuity with surface water in the Skagit River and perennial tributaries*, shall be expressly subject to instream flows” WAC 173-503-040(5)

⁶ If the Nooksack Rule is interpreted to govern permit-exempt groundwater use, then this exemption from its instream flows and closures would allow domestic water use for a single home (but not for a subdivision) from a permit-exempt well.

(emphasis added). This language indicates that regulated groundwater withdrawals are not limited to those that would be authorized by permits; *all* proposed withdrawals of groundwater that are connected to the Skagit River, including permit-exempt uses, are subject to the Rule's instream flow provisions.⁷

The Court of Appeals correctly determined that the Board erred in relying on a letter from Ecology to Snohomish County relating to the agency's interpretation of a different rule (the Skagit Rule). *Whatcom Cty.*, 186 Wn. App. at 56–57; CP 616–23.⁸ The Board misread the Bellon Letter to mean that, in all basins, a county “must deny a permit for a new building or subdivision unless the applicant can demonstrate factually that a proposed new withdrawal from a groundwater body hydraulically connected to an impaired surface water body will not cause further adverse impact on flows.” CP 1557. However, the Bellon Letter specifically provided Ecology's interpretation of the Skagit Rule, and it

⁷ Several other basin rules include express language making them applicable to permit-exempt groundwater use. *See, e.g.*, WAC 173-518-070 (Dungeness River Basin Rule, stating: “[a]ll new groundwater appropriations must comply with the provisions of this chapter.”); WAC 173-517-110 (Quilcene-Snow Rule, stating: “[a] new surface or groundwater appropriation (including any permit-exempt groundwater withdrawal) or other new use may occur only if consistent with the surface and groundwater statutes and the applicable requirements of law and if any one of the following seven conditions . . . apply.”); WAC 173-545-060(4) (Wenatchee River Basin Rule, stating: “[a]ll water rights (surface and groundwater) established after the effective date of this rule . . . are subject to these instream flows.”).

⁸ Letter from Maia Bellon of Ecology to Clay White of Snohomish County Department of Planning and Development Services, dated December 19, 2011 (Bellon Letter).

did not pertain to the Nooksack Rule. The differences between these rules are important: the Skagit Rule governs permit-exempt groundwater use on its face, while the Nooksack Rule does not. Thus, it was wrong for the Board to apply Ecology's interpretation of the Skagit Rule to the Nooksack Rule to determine that the instream flows and closures in the Nooksack Rule are applicable to permit-exempt groundwater use.

Contrary to the Board's assumption underlying its ruling, the Nooksack Rule does not mandate that water is no longer available for certain new permit-exempt groundwater uses in rural areas of Whatcom County and that land use applications relying on private wells for water supply would have to be denied in all instances. The Board erred by ruling that the County's land use regulations must do more than be consistent with Ecology's water management regulations. In contrast, the Court of Appeals correctly held that:

By incorporating Ecology's regulations to determine availability of water for development, the County's regulations provide for cooperation between the County's exercise of its land use authority and Ecology's management of water resources. This method is consistent with the cooperative relationship contemplated by *Kittitas* and is consistent with the laws regarding protection of water resources under the GMA.

Whatcom Cty., 186 Wn. App. at 51.

The Petitioners also erroneously contend that regardless of the actual express language of the Nooksack Rule, it must be read to regulate permit-exempt wells under this Court's decision in *Postema* and relevant statutes. Suppl. Br. of Appellants at 12–13. The Court should reject this argument because, in essence, the Petitioners are asking this Court to rule that Ecology acted contrary to statutory authority in adopting the Nooksack Rule by making its instream flows and closures applicable only to water permit applications. But this case does not involve judicial review of an agency rule under the APA, RCW 34.05.570(2), and the Rule cannot be read to do something different than it actually states.

And, if the Court reaches the question of whether Ecology acted within its statutory authority in adopting this Rule, Ecology acted in compliance with the provisions in RCW 90.22 and RCW 90.54 that authorize Ecology to adopt water management rules in basins throughout the state. *See, e.g.*, RCW 90.22.010, .030; RCW 90.54.020, .040. Under those statutes, in adopting the Nooksack Rule in 1985 to establish minimum instream flows and closures of streams to new water appropriations, Ecology crafted the Rule based on the available scientific information.⁹ Based on the scientific understanding at the time, Ecology

⁹ *See Postema*, 142 Wn.2d at 76 (“Ecology’s understanding of hydraulic continuity has altered over time, as has its use of methods to determine hydraulic continuity and the effect of groundwater withdrawals on surface waters”).

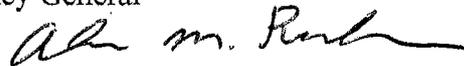
determined that only limited instances would occur in which groundwater withdrawals might impair instream flows. Accordingly, Ecology determined that only permitted water uses in hydraulic continuity with streams could potentially impair instream flows. Ecology acted within its discretion to determine which types of water uses would be subject to the minimum instream flows and stream closures under the Rule, and did not make the flows and closures applicable to permit-exempt groundwater use.

V. CONCLUSION

Ecology respectfully requests the Court to affirm the Court of Appeals' reversal of the Board's Order insofar as it holds that the County's Comprehensive Plan violates GMA provisions requiring the protection of water availability and quantity. The Court should rule that the Plan includes measures that are adequate to ensure that rural character will not be harmed as a result of unlawful permit-exempt groundwater use.

RESPECTFULLY SUBMITTED this 4th day of September 2015.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on September 4, 2015, I caused to be served a copy of State of Washington, Department of Ecology's Amicus Curiae Brief in the above-captioned matter upon the parties herein as indicated below:

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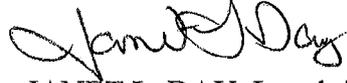
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DATED this 4th day of September 2015 in Olympia, Washington.

A handwritten signature in black ink, appearing to read "Janet L. Day". The signature is written in a cursive style with a large initial "J".

JANET L. DAY, Legal Assistant

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Subject: RE: Hirst, et al., v. Whatcom County, et al., Supreme Court of Washington Case No. 91475-3

Received on 09-04-2015

Supreme Court Clerk's Office

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Attached please find the State of Washington, Department of Ecology's Motion for Leave to File Amicus Curiae Brief and State of Washington, Department of Ecology's Amicus Curiae Brief for filing in *Hirst, et al., v. Whatcom County, et al.*, Supreme Court Case No. 914753, prepared by Alan Reichman, WSBA # 23874, Senior Counsel, for the Attorney General's Office, Ecology Division.

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

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