NO. 93203-4

SUPREME COURT OF THE STATE OF WASHINGTON

RICHARD A. FOX and MARNIE B. FOX, husband and wife,

Appellants,

v.

SKAGIT COUNTY, a municipal corporation, SKAGIT COUNTY BOARD OF HEALTH, an RCW 70.05 local board of health, DALE PERNULA, DIRECTOR of the SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES, and JENNIFER KINGSLEY, DIRECTOR of the SKAGIT COUNTY BOARD OF HEALTH AKA SKAGIT COUNTY PUBLIC HEALTH DEPARTMENT,

Respondents,

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY; and SWINOMISH INDIAN TRIBAL COMMUNITY,

Respondent-Intervenors.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Foxes seek a writ of mandamus for a building permit to construct a new house in the Skagit River Basin even though the Foxes have not demonstrated that water is available for their proposal as required by law. The Foxes' proposed well would tap groundwater that feeds the Skagit River and, thus, reduce flows on the river further below the minimum instream flows set by WAC 173-503 (the Skagit Rule). Based on settled law established in several decisions of this Court, both the superior court and the Court of Appeals correctly held that the Foxes do not qualify for a building permit under these circumstances. Before a building permit can be issued to them, RCW 19.27.097 requires the Foxes to develop a proposal that would prevent or offset the impact their new residence would have on the instream flows.

The Foxes request discretionary review, claiming conflict with decisions of this Court, and arguing that this case involves issues of substantial public interest that should be determined by this Court. The Foxes' arguments rely largely on the fact that their proposed well is permit-exempt. But they misunderstand the permit exemption in arguing that it entitles them to a super-priority water right regardless of any depletion of the more senior instream flows. That is contrary to the fundamental principles of Washington water law, under which water rights

that are established first are senior to rights established later in time.

As shown below, the Foxes' position is contrary to four key decisions of this Court relating to water rights: *Foster v. Department of Ecology*, 184 Wn.2d 465, 362 P.3d 959 (2015); *Swinomish Indian Tribal Community v. Department of Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013); *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144, 256 P.3d 1193 (2011); and *Postema v. Pollution Control Hearings Board*, 142 Wn.2d 68, 11 P.3d 726 (2000). The Court of Appeals' decision is a straightforward application of the holdings in these decisions. Accordingly, this case does not present any issues of statewide public importance that need to be resolved by this Court. Review should therefore be denied.

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals correctly held that the Foxes failed to demonstrate adequate water supply for a residence under RCW 19.27.097 when the uncontested evidence shows that their proposed water use would be subject to interruption because it would reduce flows on the Skagit River in conflict with the minimum instream flows established under WAC 173-503-040.

2. Whether the Court of Appeals correctly held that Skagit County complied with RCW 19.27.097, the Skagit Rule, and this Court's decision in *Swinomish* in not issuing a building permit to the Foxes without prior rulemaking by the County or Ecology.

3. Whether the Court of Appeals correctly held that the priority date of the Foxes' water right would not relate back to before the 2001 priority date for the Skagit River instream flow right when the

evidence in the record supports the conclusion that the Foxes did not act with reasonable diligence to develop their residence after the property was subdivided in 2000.

III. RESTATEMENT OF THE CASE

A. Factual Background

The Foxes own property near Sedro-Wooley. They subdivided the property in 2000, and, over the next 14 years, they rented the lot they intend to build on to their neighbors. *Fox v. Skagit Cty.*, No. 73315-0-I, slip op. at 20 (Wash. Ct. App. Apr. 11, 2016). The Foxes constructed a well on their property in 2011. CP 290. On March 5, 2014, the Foxes filed an application with Skagit County requesting a building permit to construct a house on their property. The County determined that the building permit application was "incomplete" because the Foxes had not demonstrated that they have access to an adequate and reliable source of water for their proposed residence. The Foxes do not hold a water right permit for this property and no connection to public water is available. They proposed to use groundwater, citing an exemption from water right permitting requirements for "single or group domestic uses in an amount not exceeding five thousand gallons a day" under RCW 90.44.050.

The proposed home site is located in the Skagit River Basin. On March 14, 2001, Ecology adopted the Skagit Rule. The Skagit Rule established minimum instream flow requirements for the Skagit River with

a priority date of April 14, 2001. At times when these flow levels are not met, the exercise of water rights that have later priority dates must be curtailed (i.e., shut off) if water use conflicts with the minimum flows.

The connection between the proposed well and the Skagit River is not disputed. *Fox*, slip op. at 2. The Foxes did not provide any information to the County to demonstrate that the groundwater they propose to pump is not in hydraulic continuity[1] with the Skagit River, or that their proposed use of groundwater would not reduce the river's flows.

Current best available science indicates that the general geology of the region is that of glacial deposits either overlain or truncated by later fluvial deposits created by the Skagit River. CP 460–61. The Foxes' property is located in historic abandoned channel and flood deposits known as alluvium, and lies in close proximity to Mannser Creek and Red Cabin Creek, which are tributaries to the Skagit River. CP 461.

The well on the property was installed to a depth of 31 feet into alluvial sand and gravel. *Id.* The alluvial aquifer tapped by the well is a water table aquifer which is "unconfined," meaning that water is free to rise and decline. Such aquifers are, as a general rule, directly connected to nearby streams. CP 461–62. Pumping a well on the Foxes' property will therefore intercept groundwater that would otherwise discharge to the

[1] "Hydraulic continuity" is a scientific term that describes the interconnection between groundwater (aquifers) and surface water bodies (such as rivers and lakes).

tributaries and then flow into the Skagit River. For these reasons, the groundwater under the Foxes' property is in hydraulic continuity with the tributaries and the Skagit River, and pumping the well will reduce instream flows on the Skagit River. CP 462–63.

Skagit River flows drop below the minimum instream flow levels on a regular basis. CP 463–64. For example, during 2014, through the month of September, there were 64 days when instream flows were not met. For the twenty-year period between 1995 to 2014, there were days when flows were not met during each year, ranging from a high figure of 181 days when flows were not met during 2009, to a low figure of 29 days when flows were not met during 2013. CP 464–66.

B. Procedural Background

After the County determined that their building permit application is "incomplete" for lack of an adequate water source, the Foxes filed a Petition for Writ of Mandamus in Skagit County Superior Court. CP 643–730. The superior court ordered the County to either issue a building permit or appear and show cause as to why they should not be mandated to do so. CP 964–66. The County filed an Answer requesting the court to dismiss the petition on grounds that mandamus was not warranted because the Foxes' application was incomplete as a result of failure to demonstrate an adequate water supply. CP 231–47.

The superior court also granted motions for intervention filed by Ecology and the Swinomish Indian Tribal Community. CP 638–39; CP 641–42. After reviewing the briefs and hearing oral argument, the court refused relief to the Foxes and dismissed the case. CP 629–32. The court subsequently denied the Foxes' Motion for Reconsideration. CP 640. The Foxes appealed and the Court of Appeals affirmed.

IV. REASONS WHY REVIEW SHOULD BE DENIED

Petitions for review are governed by the four criteria set forth in RAP 13.4(b). The Foxes contend that their Petition for Review (Petition) meets two of these criteria: first, that the decision of the Court of Appeals is in conflict with decisions of this Court, and, second, that the Petition involves issues of substantial public interest that should be determined by this Court. RAP 13.4(b)(1), (4); Petition at 7–8. The Foxes cannot satisfy either of these two criteria.

A. The Court of Appeals Decision Does Not Conflict With Any Decisions of This Court

1. The Court of Appeals decision is in harmony with *Postema*

The Foxes incorrectly contend that the Court of Appeals' decision conflicts with this Court's decision in *Postema* "by allowing a blanket assumption of 'hydraulic continuity' in the Skagit Rule (i.e., without any impairment findings) to justify denial of a building permit" for a home

relying on a permit-exempt well. Petition at 6. It is true that, under *Postema*, the existence of a hydraulic connection between groundwater and a regulated surface water body does not automatically mean that use of groundwater would cause impairment of instream flows. Rather, under *Postema*, there is impairment if groundwater pumping reduces flows at times when the minimum instream flows are not being met. Moreover, unlawful impairment can result from de minimis reductions in flows; it does not have to be discernible through standard stream measuring devices, and can be predicted based on modeling and other scientific methodology. *Postema*, 142 Wn.2d at 92–93. This principle was recently reaffirmed in *Foster*. *Foster*, 184 Wn.2d at 476 (citing *Postema*, 142 Wn.2d at 90) ("Our cases have consistently recognized that the prior appropriation doctrine does not permit even de minimis impairments of senior water rights.").

The Foxes argue that "[t]he Court of Appeals decision was erroneous and inconsistent with *Postema* because it found impairment from the Instream Flow Rule per se, not based upon any impairment findings." Petition at 10. But the County's decision was not based on any "blanket assumption" of a hydraulic connection between the Foxes' well and the Skagit River. Rather, the permit denial was based on RCW 19.27.097(1), which states:

> Each applicant for a building permit of a building necessitating potable water *shall provide evidence of an adequate water supply for the intended use of the building.* Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

(Emphasis added.) Thus, to qualify for a building permit, the Foxes needed to demonstrate that they have an adequate water supply for their proposed dwelling. The record shows that, during the building permit application process, the Foxes did not provide any information to the County to demonstrate that they had an adequate supply of water that would not impair senior instream flows, and that, later, before the superior court, they presented no evidence in that regard. CP 631–32.

In contrast, during the application process, Ecology sent a letter informing the County that pumping of the Foxes' well would in all likelihood impact the Skagit River. CP 239. And, in superior court, Ecology's hydrogeologist explained how pumping the well would, in fact, reduce river flows. CP 459–72. The Foxes' property lies in close proximity to Mannser Creek and Red Cabin Creek, which are tributaries to the Skagit River. CP 461. Pumping their well will capture groundwater that would otherwise discharge to those creeks and the Skagit River, and, thus, reduce the river's flows. CP 462–63. Ecology's hydrogeologist

provided scientific information showing how and why these effects would occur, and the Foxes did not present any counter-evidence. Simply put, the Foxes did not meet their burden under RCW 19.27.097(1).

The Foxes also claim a conflict with *Postema* because "[t]here is no evidence in the Skagit Rule or otherwise that Ecology ever closed the ground waters of the Skagit Basin by rule, and there is no finding in the Skagit Rule that new permit-exempt groundwater uses would impair the minimum instream flows." Petition at 6, 8–9. This does not present a conflict for two reasons. First, it is irrelevant that the Skagit Rule contains no groundwater closure. The Rule states that the "withdrawal of groundwater in hydraulic continuity with surface water in the Skagit River . . . shall be expressly subject to the instream flows . . . ." WAC 173-503-040(5). Thus, the use of all groundwater that is in hydraulic continuity with the Skagit River, including under permit exemptions, is subject to the instream flows, and cannot occur when such use would impair the minimum flows. There is no need for a more explicit "closure." Second, it is irrelevant that the Rule contains no "finding" that permit-exempt groundwater use would impair the instream flows because, under RCW 19.27.097, a building permit applicant has the opportunity to show that their source of water would not cause impairment in their specific application scenario, which is exactly what occurred in this case.

2. There is no conflict with this Court's decision in *Hillis*

The Foxes also assert that the Court of Appeals' decision conflicts with *Hillis v. Department of Ecology*, 131 Wn.2d 373, 932 P.2d 139 (1997), because the County or Ecology allegedly instituted a "new requirement of general applicability" which required rulemaking by the County or Ecology under the Administrative Procedure Act. Petition at 6–7. They argue that before the County can find water legally unavailable under RCW 19.27.097, Ecology must undertake at least one of three different types of rulemaking: (1) "temporarily withdrawing groundwater to new permit-exempt water uses," (2) "amend[ing] the provisions of the Skagit Rule to establish that new permit-exempt wells in certain areas would impair the adopted instream flows," or (3) "implement[ing] the building permit application requirements of RCW 19.27.097." *Id.* at 12. This argument fails for two reasons. First, this argument was not raised below and cannot be raised here. RAP 2.5(a), RAP 10.3(a)(4), RAP 12(1)(a). Second, the Court of Appeals' decision is in perfect accord with *Hillis* because the County did not institute or apply any "new rule" when it evaluated the Foxes' building permit application. The Court of Appeals simply applied this Court's precedents in *Kittitas* and *Swinomish*, and properly construed the Skagit Rule and RCW 19.27.097 to require building permit applicants who want to rely on a permit-exempt well for

their water supply to demonstrate that such supply will not conflict with preexisting senior rights.

a. The argument about "illegal stealth rulemaking" cannot be raised before this Court because it was not raised below

Because the Foxes did not argue to the superior court that *Hillis* required more explicit rulemaking in order to clear the way for particular findings of water unavailability under RCW 19.27.097, they cannot raise the issue for the first time on appeal. RAP 2.5(a). And even if they had adequately raised the issue in superior court, the Foxes abandoned this argument on appeal because they did not press it in the Court of Appeals. "The scope of a given appeal is determined by the notice of appeal, the assignments of error, and the substantive argumentation of the parties." *Clark Cty. v. W. Wash. Growth Mgmt. Hearings Review Bd.*, 177 Wn.2d 136, 144, 298 P.3d 704 (2013) (citing RAP 5.3, RAP 10.3, RAP 12.1). The Rules of Appellate Procedure do not contemplate additional assignments of error being raised in petitions for review or in supplemental briefing in this Court. This Court *reviews* Court of Appeals' decisions terminating review, RAP 13.4; it does not provide a forum for litigants to raise new issues they did not initially present before the Court of Appeals. The Foxes did not assign error or raise an issue relating to whether Ecology needed to promulgate additional rules in order to

effectuate RCW 19.27.097's requirement that there be a legally available source of water for a new building and the issue is not properly before this Court.

b. There was no new requirement of general applicability that required the County to enact a new ordinance or Ecology to conduct rulemaking

The Court of Appeals' decision does not conflict with *Hillis*, which held that Ecology was required to engage in rulemaking in order to establish procedures and standards for prioritizing the processing of water right applications. *Hillis*, 131 Wn.2d at 398–400. The County did not create any "new requirement of general applicability" by requiring the Foxes to support their building permit application with evidence of an adequate water supply. *See* Petition at 12. The only requirement that has been applied to the Foxes' building permit application is the one imposed directly by RCW 19.27.097: that a building permit applicant must demonstrate a legally available supply of water to serve the proposed building. Here, the County acted faithfully to meet its obligation to apply RCW 19.27.097 in a manner consistent with this Court's decisions in *Kittitas* and *Swinomish*.

The Foxes claim that the County or Ecology was required to adopt a new rule before the County could apply RCW 19.27.097 when a building permit applicant proposes to supply water to their proposed house

through a permit-exempt withdrawal that would unlawfully conflict with minimum instream flow rights. This argument conflicts with this Court's decision in *Kittitas*. In *Kittitas*, land use project proponents wanted to rely on permit-exempt groundwater use to demonstrate adequate water supply for their developments. The Court held that, under RCW 58.17.110 and RCW 19.27.097, counties must determine that sufficient water is legally, and not just physically, available before subdivision and building permit applications can be approved. *Kittitas*, 172 Wn.2d at 179–181.

Under *Kittitas*, the fact that a proposed water use would be permit-exempt is not sufficient to demonstrate evidence of adequate water supply. *Id.* at 180.[2] Thus, the Foxes are wrong in contending that a new County ordinance or Ecology rule had to be adopted before the County could require building permit applicants who want to rely on permit-exempt groundwater to demonstrate evidence of an adequate water supply through an approved mitigation proposal or other means.

Further, as explained above, under the Skagit Rule, the instream flows are expressly applicable to groundwater in hydraulic continuity with the Skagit River, including under the permit exemption. WAC 173-503-

[2] "To interpret the County's role under RCW 58.17.110 to only require the County to assure water is physically underground effectively allows the County to condone the evasion of our state's water permitting laws. This could come at a great cost to the existing water rights of nearby property owners, even those in adjoining counties, if subdivisions and developments overuse the well permit exemption, contrary to the law."

040(5). And direction on interpretation and application of the Skagit Rule was provided by this Court in its *Swinomish* decision.

In *Swinomish*, the Tribe challenged Ecology's adoption of an amendment to the Skagit Rule that established reservations allowing water use that would impair the Rule's instream flows. *Swinomish*, 178 Wn.2d at 583.[3] The Court held that Ecology exceeded its authority in establishing reservations of water allowing use of permit-exempt groundwater that would impair the Rule's instream flows. *Id.* at 602. The Court recognized that the reservations would allow the use of permit-exempt groundwater when such use would conflict with the instream flows. *Id.* at 598 (the water code does not include "any provision permitting a 'jump to the head of the line' in priority [by permit-exempt groundwater users] as a result of Ecology's reservations of water and use of the overriding-considerations exception"). And the Court held that new water uses that would interfere with the instream flows are impermissible.

If the County had granted the building permit, the County action would have violated *Kittitas, Swinomish*, and RCW 19.27.097. Thus, no new County ordinance or Ecology rule had to be adopted before the County could determine that the Foxes' building permit application was

[3] "There is no question that the 27 reservations in the Amended Rule impair the existing minimum flow rights because the uses for which the water is reserved are noninterruptible year-round uses and water will be withdrawn that will further reduce stream flows already at or below minimum flows."

incomplete because it did not verify an adequate water supply.

3. The Court of Appeals correctly applied this Court's precedents on the relation back doctrine to the Foxes' proposed permit-exempt withdrawal

Faulting the County and the courts below for making "broad assumptions without factual investigation," the Foxes claim that the County and the courts "failed to consider factual issues whether: (1) Fox's subdivision of their property in 2000 . . . was sufficient evidence of an intent to put groundwater to use on the property; and (2) whether [sic] Fox's actions to develop a well and apply for a building permit during the subsequent fourteen-year period was reasonable under the circumstances." Petition at 16. The circumstances the Foxes say should have been considered are the "legislatively-recognized 'Great Recession' of 2008 and the County's unfettered practice of issuing building permits throughout the Skagit basin [sic] based on exempt wells." *Id.*

The Foxes' claim does not withstand scrutiny because the Court of Appeals correctly found that the Foxes' "mere subdivision" of their property "is not sufficient to prove an appropriative water right" with a priority date that relates back to the date of the subdivision, and that the Foxes' lack of diligence in perfecting their water right precluded application of the relation back doctrine to give their water right a 2000 priority date. Neither the "Great Recession" nor the County's permitting

practices demonstrated that the Foxes diligently pursued their appropriation following the subdivision of their property in 2000.

Similarly, neither the trial court nor the Court of Appeals made assumptions about whether the Foxes' proposed permit-exempt withdrawal would be junior to the Skagit instream flows. Petition at 16. Rather, they considered the facts laid out by the Foxes in their building permit application, and all the additional evidence offered in support of their motion requesting the writ of mandamus in court, and concluded that the Foxes did not establish the legally required level of diligence to justify a 2000 priority date for the Foxes' permit-exempt withdrawal. Crucially, the Foxes do not now assert that they took any steps that the Court of Appeals ignored during the period from 2000 to 2011.[4]

The Court of Appeals' conclusion was entirely consistent with this Court's precedents on the relation back doctrine. The relation back doctrine only grants a priority date that relates back to when the work on an appropriation was begun "when the work has been pursued with reasonable diligence." *Hunter Land Co. v. Laugenour*, 140 Wash. 558, 565, 250 P. 41 (1926). The test is not whether an appropriator acted

[4] Following the facts laid out in Richard Fox's declaration, CP 288-91, the Court of Appeals reasoned: "Between 2000 and 2014 [the Foxes] rented the land to neighbors, who used it as a horse pasture. The Foxes began construction of their well in 2011. The record fails to show the necessary diligence to support an appropriative right in 2000." *Fox*, slip op. at 20.

"reasonab[ly] under the circumstances," as suggested by the Foxes. Petition at 16. To see how these two concepts differ, consider an appropriator who is too poor, sick, or otherwise occupied to diligently complete the project. In such cases, it would certainly be "reasonable under the circumstances" for the appropriator to wait for better health or financial conditions before proceeding to complete the project. Nevertheless, Washington cases are clear that a would-be appropriator in such a situation would not get the benefit of the relation back doctrine, because "pecuniary inability, sickness, and the like, are not circumstances excusing great delay in the construction of the works necessary to actual diversion and use of the water." *Grant Realty Co. v. Ham, Yearsley & Ryrie*, 96 Wash. 616, 624, 165 P. 495 (1917). Thus, even if the Foxes' construction efforts were delayed because of the Great Recession or their beliefs about the County's permitting practices, those delays are not of the kind excused by the relation back doctrine.

Despite the lack of any contested material facts in this case, the Foxes request a remand for a trial on whether they proceeded with diligence after subdividing their property. But a trial on a petition for a writ of mandamus is only necessary "[i]f an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the

supposed truth of the allegation of which the application for the writ is based." RCW 7.16.210. And here the trial court specifically found that "there are no issues of material fact that preclude this decision on the merits of the issues raised by the Mandamus Motion." CP 631. That finding has not been challenged by the Foxes until now, which also makes it outside the scope of appellate review. RAP 2.5(a).

Remand for a new trial would further be inappropriate because, as a party seeking a writ of mandamus, the Foxes "[bore] the 'demanding' burden of proving all three elements justifying mandamus." *Eugster v. City of Spokane*, 118 Wn. App. 383, 403, 76 P.3d 741 (2003). RCW 7.16.170 requires the party seeking the writ to provide affidavits establishing its entitlement to the writ. The Foxes' prior failure to bring forward all of the evidence they now believe relevant to their mandamus petition does not entitle them to a do-over, and it does not create an issue that warrants this Court's review under RAP 13.4(b).

B. The Court of Appeals Decision Does Not Create Any New Precedent of Statewide Public Interest

The Court of Appeals made a straightforward decision that squarely applied existing law to the specific circumstances of this case. Nothing in the decision could be called an extension—much less a contradiction—of *Postema*, *Kittitas*, *Swinomish*, or any other existing

legal precedent, that has created an issue of statewide public importance under RAP 13.4(b)(4).

The Foxes, however, attempt to cobble together an unresolved issue over "[w]ho . . . is responsible for investigating and making findings regarding the effects of exempt well withdrawals on closed streams or impairment of instream flows when there is no requirement for a water right permit . . . ." Petition at 18. In fact, the answer to that question can already be found in RCW 19.27.097 and *Kittitas*. RCW 19.27.097 plainly states that building permit applicants must provide evidence that they have an adequate water supply. Moreover, *Kittitas* held that, under their land use regulatory authority, counties are required to determine whether building permit applicants have demonstrated that sufficient water is legally available to supply their proposals under permit exemptions, while Ecology has a role in providing assistance to counties to aid them in making such decisions. *Kittitas*, 172 Wn.2d at 180.

The Foxes also erroneously argue that "[t]he Court of Appeals' broad conclusion that permit-exempt wells are subject to prior appropriation and thus subject to senior minimum flow water rights as a matter of law has the potential to be misread and misapplied to all twenty-nine basins with minimum instream flow rules . . . ." Petition at 18. The Court of Appeals' decision relates to the interpretation and application of

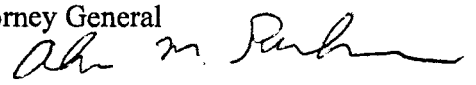
the Skagit Rule based on this Court's earlier analysis of that rule in *Swinomish*, and does not interpret water management rules for other basins which are not at issue in this case. And the proposition that permit-exempt groundwater use is not exempt from the prior appropriation doctrine and its water rights priority system has already been established by this Court in several decisions, including *Swinomish* and *Department of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002).

V. CONCLUSION

The Foxes' request for review fails to meet the criteria of RAP 13.4(b). Accordingly, their Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 10th day of June 2016.

ROBERT W. FERGUSON
Attorney General



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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on June 10, 2016, I caused to be served a copy of State of Washington, Department of Ecology's Answer to Petition for Review in the above-captioned matter upon the parties herein as indicated below:

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DATED this 10th day of June 2016 in Olympia, Washington.

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Dear Clerk and Counselors,
Attached hereto for filing in the above matter is the State of Washington, Department of Ecology's Answer to Petition for Review with attached Certificate of Service.

If you have any questions, please do not hesitate to contact this office.

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