IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 93567-0

Court of Appeals No. 331946-III

CONSERVATION NORTHWEST and
METHOW VALLEY CITIZENS COUNCIL,

Appellants,

v.

OKANOGAN COUNTY,

Respondent.

# REPLY OF CONSERVATION NORTHWEST AND METHOW VALLEY CITIZENS COUNCIL TO PETITIONER'S RESPONSE TO MOTION TO STRIKE

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In its response to Conservation Northwest's ("CNW") and Methow Valley Citizens Council's ("MVCC") motion to strike, Okanogan County does not address the only relevant issue raised by respondents' motion: Okanogan County's reply to our response to the petition for discretionary review is not permitted by the Rules of Appellate Procedure because CNW and MVCC are not seeking review of any issues. A reply is allowed only if the responding party seeks review of issues in addition to those identified in the petition for discretionary review. RAP 13.4(d). It is undisputed that the respondents are not seeking review of any issues of their own. The County's reply brief should be stricken and terms awarded.

Okanogan County does not offer any valid justification for its reply brief. It does not suggest that CNW and MVCC petitioned this Court to accept review of new issues. The only attempt that Okanogan County makes at addressing RAP 13.4(d) is the County's incorrect and irrelevant assertion that "none of [the cases cited by Conservation Northwest or the Court of Appeals] address the issue posed to this Court by Okanogan County," and "[f]or this reason, Okanogan County believes the provision for a reply in RAP 13(4)(d) have been met." Resp. Br. at 4. This claim in no way addresses the requirements of RAP 13.4(d) for filing a reply. Regardless of whether or not cases cited by a respondent are on point, a reply is authorized only if the respondent is seeking review of additional

issues. RAP 13.4(d). The County makes no effort to address this requirement.[1]

Compounding the County's abuse of the rules, the County improperly uses its response to this motion (which raises only the narrow issue of whether the County improperly filed a reply brief under RAP 13.4(d)) to continue arguing the merits of its petition for review. The County's ill-disguised efforts to present arguments in favor of review not only in the petition (as allowed by the rules), but in an unauthorized reply and now, again, in its response to this motion, should be sanctioned by the Court.

For the foregoing reasons and the reasons described in CNW and MVCC's motion to strike, this Court should strike the County's reply brief and impose sanctions on the County pursuant to RAP 18.9(a). Okanogan County should be ordered to pay CNW and MVCC for the attorneys' fees and expenses incurred in preparing the motion to strike and this reply.

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[1] Okanogan County has become so confused by its own argument that it contends CNW and MVCC cited four cases (*Lands Council v. Washington State Parks and Recreation Comm'n*, 176 Wn. App. 787, 309 P.3d 734 (2013); *Foster v. King County*, 83 Wn. App. 339, 921 P.2d 552 (1996); *Harris v. Pierce County*, 84 Wn. App. 222, 928 P.2d 1111 (1996); and *Raynes v. Leavenworth*, 118 Wn.2d 237, 821 P.2d 1204 (1992)) in an effort to "change the issue." Resp. Br. at 2. In reality, all four cases were cited by Okanogan County in its petition for discretionary review. *See e.g.*, Pet. for Rev. at 3-7. CNW and MVCC merely responded to the County's discussion of those cases in their response. Okanogan County has apparently lost itself in the shifting sands of its own argument.

Dated this 12th day of December, 2016.

Respectfully submitted,

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By: _____

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