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No. 91475-3

NO. 70796-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

WHATCOM COUNTY,

Appellant/Cross Respondent,

v.

ERIC HIRST, LAURA LEIGH BRAKKE, WENDY HARRIS, DAVID STALHEIM, FUTUREWISE, AND WESTERN WASHINGTON GROWTH MANAGMENT HEARINGS BOARD,

Respondents/Cross Appellants.

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

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I. INTRODUCTION

The State of Washington, Department of Ecology (Ecology) offers this amicus curiae brief to address the Western Washington Growth Management Hearings Board's (Board) decision that Whatcom County's Comprehensive Plan, Zoning Code, and future zoning map[1] fail to comply with provisions of the Growth Management Act (GMA) requiring the protection of water resources. In its Final Decision and Order[2] 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.[3] In this brief, Ecology is addressing only the Board's decision as it relates to the management of water use and the maintenance of instream flows, i.e., water "availability" or "quantity."[4]

The interrelationship between land use planning and permitting laws and the laws governing water rights and the management of water

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[1] Whatcom County Ordinance No. 2012-032, hereinafter referred to as the "Comprehensive Plan" or "Plan." In this brief, the term "Comprehensive Plan" refers to the Plan and its related development regulations, generally. This brief will also cite to specific regulations that are related to the Comprehensive Plan through Policy 2DD-2.C, which was adopted as part of Ordinance No. 2012-032.

[2] The Board's Final Decision and Order is at clerk's papers (CP) 1516–1566.

[3] This brief utilizes the same citation system as the Brief of Appellant Whatcom County (Whatcom Cnty. Br.) and refers to the CP numbers assigned by the superior court. *See* Whatcom Cnty. Br. at 5 n.3.

[4] Ecology is not addressing whether the Board erred in concluding that the Comprehensive Plan is noncompliant with the GMA because it does not ensure that water quality will be adequately protected, or in not issuing a declaration of invalidity.

resources in Washington is becoming increasingly important as our state's population has grown and competition for limited water resources has increased. In its recent landmark decision involving this interrelationship, *Kittitas County v. Eastern Washington Growth Management Hearings Board* (*Kittitas*), 172 Wn.2d 144, 256 P.3d 1193 (2011), the Supreme 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. While, with respect to water resources, *Kittitas* essentially involved a scenario which implicated a county's land use *permitting* function, this case involves a county's land use *planning* function under the GMA. As a result, this case will provide precedent on what counties are required to do in their land use planning activities to ensure that water resources are adequately protected.

The Board's 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 (the County) specific Comprehensive Plan fails to adequately protect water availability.

The Plan comports with the GMA because it contains several key provisions: one that serves to prevent unlawful circumvention of the law requiring that only one permit-exempt group domestic groundwater use is allowed for each residential development project,[5] and other provisions requiring that the County will approve a subdivision or a building permit application that relies on a private well for water supply only 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 is unavailable. In finding these provisions inadequate, the Board misread the scope of Ecology's water management rule for the Nooksack River Basin, WAC 173-501 ("Nooksack Rule" or "Rule"). Under its express language, this Rule does not govern permit-exempt groundwater use. Contrary to the Board's decision, the Nooksack Rule does not mandate that permit-exempt groundwater is no longer available for new uses in rural areas of the County in all instances and that land use applications relying on wells for water supply must always be denied.

By including the provision stating that the County will not approve a subdivision or a building permit that relies on a private well for water supply in an area where Ecology's Rule provides that water is unavailable, the Plan is consistent with the Nooksack Rule. The Board

[5] *See Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002).

erred in ruling that, to comply with the GMA, the County must be more restrictive with respect to water use than the Nooksack Rule. 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.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

Ecology is the administrator of water resources in Washington. *See* RCW 43.21A; RCW 90.03; RCW 90.14; RCW 90.44; RCW 90.54. Ecology is authorized to adopt rules for water management in watersheds throughout the state. These water management rules include minimum instream flow requirements, stream closures, and other measures. *See* RCW 90.54.020, .040, .050. Ecology administers Washington's water permitting system through the issuance of decisions on applications for water right permits authorizing surface water diversions and groundwater withdrawals. RCW 90.03.290; RCW 90.44.060. Further, Ecology has the authority to ensure that water resources are used lawfully, including regulating permit-exempt groundwater wells[6] that are used inconsistent

[6] Under the Groundwater Code, certain uses of groundwater for domestic, stock watering, non-commercial lawn and garden irrigation, and industrial purposes are exempt from the requirement to obtain a permit from Ecology to establish a new water right. RCW 90.44.050. However, this is an exemption *only* from the permitting requirement; and other aspects and requirements of water law apply to permit-exempt groundwater uses. *Campbell & Gwinn*, 146 Wn.2d at 9.

with the statutory allowance in the Groundwater Code. *See, e.g.*, RCW 90.03.600, .605.

Ecology has three important interests in this case. First, the issue involving water availability, stated below, has statewide ramifications related to the overlap between Ecology's water resources management authority and counties' GMA and land use regulatory authority when such authority addresses local water resources. Second, Ecology seeks to ensure that the County's specific Comprehensive Plan will include provisions that will enable the proper management and protection of water resources. Third, the meaning of the Nooksack Rule, particularly with respect to its applicability to permit-exempt uses of groundwater, is at the heart of the dispute in this case. As the agency which adopted that Rule and is charged with its implementation, Ecology has an interest in this Court's consideration of the Nooksack Rule.

III. SPECIFIC ISSUE ADDRESSED BY AMICUS CURIAE

Did the Growth Management Hearings Board err in ruling that Whatcom County's Comprehensive Plan fails to comply with the Growth Management Act because it does not ensure that water availability will be adequately protected? (County's Issue No. 1.)

IV. ARGUMENT[7]

C. The Board Correctly Ruled That the Rural Elements of Comprehensive Plans Must Ensure the Protection of Water Resources

Ecology—and, indeed, all parties, including the County—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.[8] Under RCW 36.70A.020(10), the development of comprehensive plans is guided by fourteen goals, one of which is to "[p]rotect the environment and enhance the state's high quality of life, including air and water quality, *and the availability of water*." (Emphasis added.) Within each plan, a county must plan for its rural or non-urban area by including a "rural element." RCW 36.70A.070(5). RCW 36.70A.070(5)(c)(iv) provides that "[t]he rural element shall include

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[7] Ecology concurs with the County's description of the procedural history of this case. *See* Whatcom Cnty. Br. at 5–11. Also, Ecology concurs with the County's discussion of the proper standard of review for this case under the Administrative Procedure Act (APA). *See* Whatcom Cnty. Br. at 11–13.

[8] While Ecology is not addressing the Board's conclusions related to water quality, it is Ecology's position that the Board ruled correctly 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. Local land use plans and regulations must seek to avoid groundwater contamination as well as managing [sic] surface water runoff to prevent pollution of Puget Sound." CP 1537–1538. In order to protect water resources, it is axiomatic that the quality of water must be protected.

measures that apply to rural development and protect the rural character of the area . . . by . . . *[p]rotecting . . . surface water and groundwater resources*." (Emphasis added.)[9]

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.

In *Kittitas*, a county contended that it could not act through its local land use planning and permitting authority in a manner that would affect the management of water resources because it was preempted from doing so by state laws that charge Ecology with the authority to manage water resources. The Supreme Court rejected this argument:

> In fact, several relevant statutes indicate that the County *must* regulate to some extent to assure that land use is not inconsistent with available water resources. The GMA directs that the rural and land use elements of a county's plan include measures that protect groundwater resources. RCW 36.70A.070(1), (5)(c)(iv). Additional GMA provisions, codified at RCW 19.27.097 and 58.17.110, require counties to assure adequate potable water is available when issuing building permits and approving subdivision applications.

Kittitas, 172 Wn.2d at 178–179.

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[9] In addition, RCW 36.70A.030(15)(d) and (g) define the term "rural character" as referring to patterns of land use and development established in the rural element of a comprehensive plan that are compatible with the "use of the land by wildlife and for fish and wildlife habitat" and "consistent with the protection of natural surface water flows . . . ."

In sum, the Board is correct 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, including the maintenance of adequate instream flows to support fish and wildlife habitat and other instream values.

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

Although the Board correctly stated GMA requirements based on *Kittitas*, it erroneously ruled that the County's Comprehensive Plan runs afoul of them. The Plan meets the GMA's requirements for protection of water resources because it includes several important provisions. The first serves to prevent violation of the requirement that each residential development can only qualify for one group domestic exemption from permitting requirements. The other provisions require 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 an Ecology rule.

1. WCC 21.01.040, the provision relating to subdivision applications, serves to ensure 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).[10] This provision addresses the practice that the Supreme 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.[11] *See Kittitas*, 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 the Supreme 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 Board failed to recognize that the Comprehensive Plan is harmonious with Ecology's Nooksack Rule. The County's building

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[10] The Whatcom County Code (WCC) provisions referenced in this brief are attached to the Brief of Appellant Whatcom County as an Appendix.

[11] The Board's Order recognizes that this provision serves to prevent the permit-exempt well "daisy-chaining" problem that was of concern in *Kittitas*. CP 1555.

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*. Whatcom Cnty. Br. at 18–19. 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 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).[12]

The Hirst 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.[13] Ecology agrees with the County that, under *Kittitas*, a county complies with GMA 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

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[12] Ecology has the authority and responsibility to amend instream flow rules when it determines that additional water resource protections are necessary. If the Hirst Petitioners believe that the Nooksack Rule should be amended to make its stream closures and instream flow requirements applicable to permit-exempt groundwater use, they can file a petition with Ecology requesting amendment of the Rule under the APA pursuant to RCW 34.05.330(1). Further, if they believe that the Rule is unlawful they can file a petition in superior court to challenge its validity under RCW 34.05.570(2).

[13] *See* Appellants' Brief & Brief of Respondents Eric Hirst, et al., at 3, 29–30, 32 ("Even if the County were correct that Ecology intended the 1985 Rule to allow exempt wells without any inquiry into their effect on instream flows, this original intent must change with changes in science and the law."), 33.

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

However, under the GMA's requirement to protect water resources, a county *is authorized to take actions that are more restrictive of water use than Ecology's regulations* if the 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 County's Comprehensive 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. The Plan is adequate to meet the GMA's requirements relating to water resources because it provides for

cooperation and 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 Hirst 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. But the Nooksack Rule does not govern permit-exempt groundwater use.

The Supreme 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. (PCHB)*, 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. 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 Nooksack 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 "no further consumptive rights" will be issued. WAC 173-501-030(2). This section also states that "future 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 "when a project . . . is proposed on a steam 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 this Rule to govern permit-exempt groundwater use under RCW 90.44.050. WAC 173-501-030(2) includes language stating that "no 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, with regard to the "closure[s]" and "partial year closure[s]" of surface water bodies established in WAC 173-501-040, that section states that "when a project . . . is proposed on a steam that is closed to further appropriations, the department shall deny the water right application . . . ." WAC 173-501-040(2).

WAC 173-501-060, the section that relates to the Rule's applicability with respect to groundwater, states that "[i]f 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." This language 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 generally allows the use of surface water for "single domestic" purposes. There is no express language in this section stating that exempted domestic use is limited to groundwater. Thus, this provision provides an exemption from the Rule for surface water use, and does not supersede the groundwater exemptions under RCW 90.44.050, which are not affected by the Rule.[14]

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

[14] Even if the Nooksack Rule is interpreted to govern permit-exempt groundwater use, this exception allowing domestic water use for a single home (but not for a subdivision) would be available.

administered by Ecology. As a result, the Nooksack Rule, in its present form, does not govern permit-exempt groundwater use.[15]

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) (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 and its tributaries, including permit-exempt uses, are subject to the rule's instream flow provisions.[16]

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[15] This interpretation is reflected in *Steensma v. Dep't of Ecology*, PCHB No. 11-053 (Order Granting Summary Judgment to Ecology (Sept. 8, 2011)). *Steensma* involved an attempt to challenge a letter from Ecology to Whatcom County wherein Ecology communicated that groundwater was available to serve a proposed subdivision in the Nooksack Basin under the permit exemption for group domestic use provided in RCW 90.44.050.

[16] 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

Ecology concurs with the County's argument that the Board erred in relying on Ecology's letter to Snohomish County relating to the agency's interpretation of a different rule (the Skagit Rule). *See* Whatcom Cnty. Br. at 25–27; CP 616–23.[17] The Board read 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 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.

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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.").

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

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 and cooperative with Ecology's water management regulations.

V. CONCLUSION

For the foregoing reasons, Ecology respectfully requests the Court to reverse 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 29th day of August 2014.

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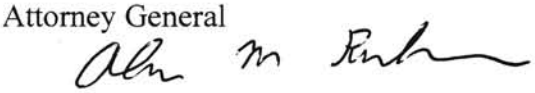

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