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NO. 92805-3

SUPREME COURT OF THE STATE OF WASHINGTON

SNOHOMISH COUNTY, KING COUNTY, and BUILDING
INDUSTRY ASSOCIATION OF CLARK COUNTY,

Respondents,

v.

WASHINGTON STATE DEPARTMENT OF ECOLOGY; and
PUGET SOUNDKEEPER ALLIANCE, WASHINGTON
ENVIRONMENTAL COUNCIL, and ROSEMERE NEIGHBORHOOD
ASSOCIATION,

Petitioners,

and

POLLUTION CONTROL HEARINGS BOARD,

Respondent Below.

**SUPPLEMENTAL BRIEF OF PETITIONER
STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY**

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I. INTRODUCTION

Stormwater pollution is the leading contributor to water quality pollution in Washington's urban waterways, and is considered to be the state's fastest growing water quality problem. Poorly managed stormwater endangers human health and drinking water, degrades salmon habitat, and presents an economic threat to Washington's shellfish industry. The state of Washington regulates the adverse impacts of municipal stormwater with discharge permits issued under the federal Clean Water Act and state Water Pollution Control Act. At issue in this appeal is the regulation of stormwater pollution from development sites that discharge stormwater to a municipal stormwater system. The 2013 Phase I Municipal Stormwater Permit (2013 Permit) directs municipal permittees to adopt an enforceable program with stormwater pollution controls for new development, redevelopment, and construction sites that will discharge stormwater to the municipal stormwater system. The 2013 Permit directs permittees to adopt the enforceable pollution controls by June 30, 2015, and to apply the pollution controls to development projects that submitted applications prior to June 30, 2015, if the project has not started construction by June 30, 2020.

The Building Industry Association of Clark County (BIA), King and Snohomish Counties (Counties), appealed the 2013 Permit to the

Pollution Control Hearings Board (Board) and argued that the stormwater pollution controls in the 2013 Permit are land use control ordinances under Washington's vesting statutes. According to them, development projects that submitted applications prior to June 30, 2015, are therefore exempt from the required pollution controls.

The Board refused to expand the vesting statutes to pollution controls the state of Washington directs municipalities to implement under state and federal water pollution laws. The Board concluded that the pollution controls are not land use control ordinances under Washington's vesting statutes. A divided Court of Appeals reversed and concluded the stormwater pollution controls are land use control ordinances and are therefore subject to the vesting statutes. The result is that some project developers will be permitted to use outdated pollution controls that fail to address the significant adverse impacts to human health and the environment caused by poorly managed stormwater.

The State of Washington, Department of Ecology (Ecology) requests that the Court reverse the Court of Appeals majority and conclude that stormwater pollution controls in the 2013 Permit are not land use control ordinances subject to the vesting statutes.

II. ISSUES PRESENTED

1. Are stormwater pollution controls that the state directs local governments to implement under state and federal water pollution laws land use control ordinances that are subject to vesting statutes?

2. If these stormwater pollution controls are subject to vesting statutes, is vesting properly extinguished by the use of police powers to protect the public from the adverse impacts of poorly managed municipal stormwater?

3. If stormwater pollution controls are subject to Washington's vesting statutes, are the vesting statutes preempted by the federal Clean Water Act?

III. STATEMENT OF THE CASE

Ecology incorporates its Statement of the Case from its Court of Appeals Response Brief and provides the following summary.

Under the federal Water Pollution Control Act (Clean Water Act) it is unlawful to discharge pollutants into waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit. 33 U.S.C. §§ 1311(a), 1342(a). The Clean Water Act requires that pollutants in municipal stormwater be reduced to the maximum extent practicable. *Id.* § 1342(p)(3)(B)(iii). Ecology is designated to issue

NPDES permits in Washington, and has been granted “[c]omplete authority” to implement the NPDES program. RCW 90.48.260(1)(a).

Under Washington’s Water Pollution Control Act, it is the “public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof” RCW 90.48.010. Any discharge of waste material into state waters must be authorized by a state waste discharge permit, and Ecology must require the use of all known, available, and reasonable methods to prevent and control the pollution of state waters. RCW 90.48.162, 90.48.010.

Stormwater is recognized as one of the most significant sources of water pollution in the nation. *Envtl. Defense Ctr. v. U.S. E.P.A.*, 344 F.3d 832, 840–41 (9th Cir. 2003). Stormwater is the leading contributor to water pollution in Washington’s urban waterways.¹ The typical impact of stormwater in Washington’s waters includes dangers to human health and drinking water, degradation of salmon habitat, and economic threats to Washington’s shellfish industry.²

¹ *Puget Soundkeeper Alliance v. Dep’t of Ecology*, PCHB Phase I Nos. 07-021, -026 through -030, and -037, and Phase II Nos. 07-022, -023, at 25 (FF 30), Findings of Fact, Conclusions of Law and Order, Condition S4 (Aug. 7, 2008).

² *Pierce Cty. v. Dep’t of Ecology*, PCHB Nos. 12-093c and -097c, Order on Summary Judgment (Oct. 2, 2013). AR at 3978. Citations to the Administrative Record (AR) are to the bates numbered record certified by the Board.

The stormwater pollution controls at issue in this case address these significant threats to public health and the environment. The Board concluded that the pollution controls constitute the removal of pollutants to the maximum extent practicable as required by the Clean Water Act, and also constitute all known, available, and reasonable methods to prevent and control pollution as required by the state Water Pollution Control Act. *Id.*; AR at 4095 (CL 10). No party appealed this conclusion.

Condition S5.C.5.a.iii of the 2013 Permit requires the municipal permittees to adopt an enforceable program to prevent and control the impacts of stormwater pollution discharged into a municipality's stormwater system from new development, redevelopment, and construction sites. AR at 4998. The 2013 Permit specifies the required elements of the local pollution control program and requires Ecology's review and approval of the program. *Id.* Municipal permittees were required to make the pollution control program effective by June 30, 2015, and apply the program "to all applications submitted after July 1, 2015," and "to projects approved prior [to] July 1, 2015, which have not started construction by June 30, 2020." *Id.* BIA and the Counties argue that the requirement to apply the pollution controls to projects that submitted applications prior to July 1, 2015, violates Washington's vesting statutes, and that developers who applied prior to July 1, 2015, must be allowed to

use outdated stormwater pollution controls regardless of when they start construction.

In its Order on Summary Judgment, the Board concluded that the stormwater pollution controls in the Phase I and II Permits are not subject to Washington's vesting statutes because the pollution controls are not land use control ordinances.³ AR at 4001. The Board concluded that applying the vesting statutes to the stormwater pollution controls "would allow developments to violate the state and federal water quality laws." *Id.* at 4002. The Board was unwilling to do so because the "Legislature has never defined the broad array of environmental regulations administered by Ecology, either directly or through a federally delegated program such as the NPDES program, as 'land use controls' within the purview of vested rights." *Id.* The Board cited direction the 2012 Legislature gave Ecology regarding the implementation of pollution control requirements in the 2013 municipal stormwater permits as support for the Board's conclusion that the Legislature did not intend the pollution controls to be

³ The 2013 Phase I Permit regulates municipal stormwater discharges from large and medium municipal separate storm sewer systems. AR at 4987. The primary permittees are Tacoma, Seattle, and Clark, King, Pierce, and Snohomish Counties. *Id.* The Western Washington 2013 Phase II Permit regulates stormwater discharges from small municipal separate storm sewer systems in Western Washington. AR at 5221. The Board consolidated the appeals of these two permits, but only the Phase I Permit is at issue in this appeal.

subject to vesting. *Id.* at 4003 (quoting Ch. 1, Sec. 313, Laws of 2012 (2012 1st Spec. Sess.)), codified in RCW 90.48.260(3)(b)(i)).

A divided Court of Appeals disagreed with the Board and concluded the stormwater pollution controls “constitute local land use ordinances,” and are therefore subject to vesting statutes. *Snohomish Cty. v. Pollution Control Hearings Bd.*, 192 Wn. App. 316, 338, 368 P.3d 194 (2016). The Court of Appeals majority also concluded that Washington’s vesting statutes are not preempted by the Clean Water Act. *Id.* at 345. The majority refused to consider Ecology’s argument that any vested right to pollute waters of the state would be extinguished by an exercise of police power to protect the public health, safety, and welfare because the court erroneously concluded Ecology did not raise this issue below. *Id.* at 337. In fact, Ecology did raise this argument before the Board. AR at 2603–04. The Court of Appeals majority held Condition S5.C.5.a.iii of the 2013 Permit is invalid and remanded to the Board to direct Ecology to revise the condition so that only those development projects that submitted complete applications after July 1, 2015, are required to use the updated stormwater pollution controls. *Snohomish Cty.*, 192 Wn. App. at 339–40.

In a dissenting opinion, Judge Bjorgen acknowledged that no party had appealed the Board’s conclusion that the low impact development techniques in the 2013 Permit constitute the reduction of pollutants to the

maximum extent practicable, as required by the Clean Water Act. *Id.* at 348. Applying the vesting statutes to the 2013 Permit would allow projects that do not start construction by 2020 to avoid complying with the maximum extent practicable requirement, thereby frustrating the accomplishment of federal purposes. *Id.* at 349. Accordingly, Judge Bjorgen would have found the vesting statutes preempted by the Clean Water Act. *Id.* at 350. In addition, Judge Bjorgen found the vesting statutes and the state Water Pollution Control Act to be in conflict, and he would have resolved the conflict by finding that the vesting statutes must yield to the Water Pollution Control Act because the vesting statutes are general rules covering all developments, while the Water Pollution Control Act is aimed at protecting a specific resource, waters of the state, from a specific threat, pollution. *Id.* at 352.

IV. ARGUMENT

A. Standard of Review

This Court reviews Board orders under the Washington Administrative Procedure Act. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 587, 90 P.3d 659 (2004). The burden of demonstrating the invalidity of the Board's Order is on the party asserting invalidity, here BIA and the Counties. RCW 34.05.570(1)(a).

B. The Stormwater Pollution Controls in the 2013 Permit Are Not Zoning or Other Land Use Controls and Are Therefore Not Subject to Washington's Vesting Statutes

Washington's vested rights doctrine originated in common law but is now statutory. *Town of Woodway v. Snohomish Cty.*, 180 Wn.2d 165, 173, 322 P.3d 1219 (2014). The vested rights doctrine strikes a balance between development interests and the public interest, recognizing that "[a] proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest embodied in those laws." *Erickson & Assocs. v. McLerran*, 123 Wn.2d 864, 873-74, 872 P.2d 1090 (1994). For that reason, this Court has refused to expand the doctrine beyond its intended purpose, because "[i]f a vested right is too easily granted, the public interest is subverted." *Id.* at 874; *see also Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 218 P.3d 180 (2009). The vested rights doctrine "places limits on municipal discretion and permits land owners or developers 'to plan their conduct with reasonable certainty of the legal consequences.'" *Erickson & Assocs.*, 123 Wn.2d at 873 (quoting *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d 782 (1986)). Building permits and subdivision applications vest under the "zoning or other land use control ordinances" in effect at the time a fully completed application is submitted. RCW 19.27.095(1), 58.17.033(1). The question in this appeal is whether

the pollution control requirements in the 2013 Permit are “zoning or other land use control ordinances.”

In interpreting a statute, the Court’s “fundamental objective is to ascertain and carry out the Legislature’s intent” *Dep’t of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The Court discerns the plain meaning of statutory terms based on “all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Id.* at 11. The Court’s analysis is not limited to the words in a statute alone, but considers “all the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, the general object to be accomplished and consequences that would result from construing the particular statute in one way or another.” *Burns v. City of Seattle*, 161 Wn.2d 129, 146, 164 P.3d 475 (2007) (citing *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994) (quoting *State v. Huntzinger*, 92 Wn.2d 128, 133, 594 P.2d 917 (1979))).

Under the plain language of RCW 19.27.095(1) and 58.17.033(1), the vested rights doctrine only applies to “zoning or other land use control ordinances.” These terms are not defined in either statute. However, Black’s Law Dictionary defines “zoning” in relevant part as:

The division of a city or town by legislative regulation into districts and the prescription and application in each district of regulations having to do with structural and architectural

designs of buildings and of regulations prescribing use to which buildings within designated districts may be put.

Zoning, *Black's Law Dictionary* (6th ed. 1991).

“Other land use control ordinances” is a general term used in conjunction with the specific term “zoning.” Accordingly, “other land use control ordinances” should be interpreted to include things that are similar to zoning. *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 151, 3 P.3d 741 (2000) (a general term when used in conjunction with a specific term, should be deemed to only incorporate those things similar to the specific term). *See also Newcastle Inv. v. City of LaCenter*, 98 Wn. App. 224, 232, 989 P.2d 569 (1999) (vested rights generally limited to laws which can loosely be considered zoning laws).

These terms do not encompass stormwater pollution controls which do not govern the type of development (residential, commercial, or industrial) that occurs on property. The pollution controls only require that, however land is used, stormwater pollution be reduced to the maximum extent practicable before the stormwater enters waters of the state. The stormwater pollution controls are not zoning or other land use control ordinances and therefore do not fall within the plain language of Washington's vesting statutes.

The Court of Appeals majority relied on *Westside Bus. Park, LLC v. Pierce Cty.*, 100 Wn. App. 599, 5 P.3d 713 (2000), and *Phillips v. King Cty.*, 136 Wn.2d 946, 968 P.2d 871 (1998) to support its conclusion that the stormwater pollution controls are land use control ordinances and therefore subject to vesting statutes. *Snohomish Cty.*, 192 Wn. App. at 332. However, the local ordinances at issue in *Westside* and *Phillips* involved the exercise of municipal discretion, making them similar to zoning and therefore subject to vesting.

In *Westside*, the court held vesting applied to “storm drainage requirements” the County adopted “in part as a response to the federal Clean Water Act.” *Westside*, 100 Wn. App. at 601. However, there is no indication that the County’s discharge permit required the storm drainage requirements, and the County’s Clean Water Act argument appears to have been an afterthought since the County did not raise it before the hearing examiner and it was not reviewed by the court. *Id.* at 609. *Phillips* involved an inverse condemnation claim against developers and King County for damages caused by surface waters that allegedly inundated neighboring property. *Phillips*, 136 Wn.2d at 950. While the Court concluded the vested rights rules required the County to evaluate the developer’s project under the “surface water drainage code” in effect at the time the developer submitted its application, there is no indication that

the drainage code was required by the state to control stormwater pollution under state and federal water pollution statutes, as is the case here. *Id.* at 963. The local drainage ordinances in *Westside* and *Phillips* involved the exercise of municipal discretion that the vested rights doctrine “places limits on.” *Erickson & Assocs.*, 123 Wn.2d at 873. By contrast, the pollution controls in the 2013 Permit do not involve the exercise of municipal discretion because the state has determined what pollution controls are necessary, and the state must review and approve a municipality’s enforceable program to implement the pollution controls. AR at 4998. *See, e.g., 1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 174, 149 P.3d 616 (2006) (when local government implements state policy, the power and duty is vested in the state, not the municipality). The Court of Appeals erred in extending vesting statutes to pollution controls the state directs local governments to implement under state and federal water pollution statutes.

The 2012 Legislature gave specific direction to Ecology regarding the implementation of the pollution control requirements in the Phase II Western Washington Municipal Stormwater Permit. The Legislature did not direct Ecology to implement the pollution controls pursuant to vesting statutes. Instead, the Legislature directed Ecology to “simultaneously” implement the pollution controls with Ecology’s review of the local

program to implement the pollution controls, and further directed that the pollution controls “may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is later.” RCW 90.48.260(3)(b)(i).

The Legislature’s direction that the pollution controls in the Phase II Permit could go into effect “no earlier than December 31, 2016,” demonstrates that the Legislature did not intend the implementation of the pollution controls in the municipal stormwater permits to be governed by the vesting statutes. This makes sense because the pollution controls in the stormwater permits are not “zoning or other land use control ordinances.”

There is no good policy reason to extend the vested rights doctrine to the water pollution controls in the 2013 Permit. The vested rights doctrine allows developers to “plan their conduct with reasonable certainty of the legal consequences.” *Erickson & Assocs.*, 123 Wn.2d at 873 (quoting *West Main Assocs.*, 106 Wn.2d at 51). The 2013 Permit satisfies this objective because developers that submitted applications prior to July 1, 2015, have known they will need to comply with the updated pollution controls if they don’t start construction by June 30, 2020.

Although extending the vested rights doctrine to the stormwater pollution controls would not advance the purpose of the vested rights doctrine, doing so would very much undermine state and federal water

pollution laws. That's because the consequence of extending the vesting statutes would be to allow development projects to pollute waters of the state in violation of federal and state water pollution laws with adverse consequences to public health and the environment. The Court of Appeals erred in concluding that the stormwater pollution controls in the 2013 Permit are subject to vesting statutes.

C. If the Pollution Control Requirements in the 2013 Permit Are Subject to Vesting, Any Vested Right to Use Outdated Pollution Controls is Properly Extinguished Through the Use of Police Powers

As this Court has recognized, municipalities can “extinguish vested rights by exercising the police power reasonably and in furtherance of a legitimate public goal.” *West Main Assocs.*, 106 Wn.2d at 53 (citing *Hass v. City of Kirkland*, 78 Wn.2d 929, 481 P.2d 9 (1971)). This holding has its origins in *City of Seattle v. Hinckley*, 40 Wash. 468, 471, 82 P. 747 (1905), where the Court recognized “[t]here is no such thing as an inherent or vested right to imperil the health or impair the safety of the community.” This Court has recognized that protecting the public from the adverse impacts of pollution is an appropriate use of police powers. *Rhod-A-Zalea & 35th v. Snohomish Cty.*, 136 Wn.2d 1, 15, 959 P.2d 1024 (1998) (noting that Rhod-A-Zalea’s argument would mean a non-conforming factory would be exempt from later enacted pollution

regulations and holding such a result “would not be in the public interest and is contrary to law.”).

Poorly managed stormwater damages human health and drinking water, degrades salmon habitat, and is an economic threat to the state’s shellfish industry. AR at 3978. A developer proposing to discharge stormwater into waters of the state does not have a vested right to imperil the health, safety, and livelihood of Washington’s citizens. Accordingly, any vested right to use outdated and ineffective stormwater pollution controls is extinguished through the use of police powers.

The Court of Appeals majority refused to consider this argument because the majority incorrectly concluded that Ecology “did not argue below that the stormwater regulations may be enacted pursuant to a municipality’s police powers. And the Board did not address this issue.” *Snohomish Cty.*, 192 Wn. App. at 337. However, Ecology did make its police power argument in its Reply in Support of Puget Soundkeeper Alliance’s Motion for Summary Judgment on certain Phase I appeal issues. AR at 2603–04. *See also* AR at 4015 (Order on Summary Judgment, App. A) (identifying Ecology’s Reply in Support of Puget Soundkeeper Alliance as part of the Board’s record regarding the Order on Summary Judgment). The Board did not need to reach the police power argument because the Board concluded the stormwater pollution controls

are not zoning or other land use control ordinances, and are therefore not subject to the vesting statutes. In any event, this Court may affirm the Board's Order on Summary Judgment on any theory established in the pleadings and supported by proof, even where the Board did not rely on the theory. *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 78, 196 P.3d 691 (2008). The police power argument was established in the summary judgment pleadings and was supported by Ecology's argument that the reduction of pollutants in municipal stormwater is a legitimate public goal, and that requiring developers to implement low impact development techniques on projects that have not timely started construction is a reasonable way to further this goal. AR at 2604. If the Court concludes that the stormwater pollution controls in the 2013 Permit are subject to vesting, the Court should conclude that the vested right is extinguished by a valid exercise of police powers to protect the public health and welfare from the significant adverse impacts of poorly managed stormwater.

D. If Washington's Vesting Statutes Apply to the Stormwater Pollution Controls in the 2013 Permit, Washington's Vesting Statutes Are Preempted by the Federal Clean Water Act

State law is preempted where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hillman v. Maretta*, ____ U.S. ____, 133 S. Ct. 1943, 1949–50, 186 L. Ed. 2d 43 (2013) (quoting *Hines v. Davidowitz*, 312 U.S. 52,

67, 61 S. Ct. 399, 85 L. Ed. 581 (1941)). Congress has directed that municipal stormwater pollution must be limited to the maximum extent practicable. 33 U.S.C. § 1342(p)(3)(B)(iii). The Board concluded that the pollution controls in the 2013 Permit constitute the reduction of stormwater pollution to the maximum extent practicable. AR at 4095. No party appealed this conclusion. As Judge Bjorgen recognized in his dissent, applying Washington's vesting statutes to the 2013 Permit will exempt an unidentified number of development projects from implementing the Permit's mandatory pollution controls. *Snohomish Cty.*, 192 Wn. App. at 349. Since the Board concluded the pollution controls in the 2013 Permit constitute the reduction of stormwater pollution to the maximum extent practicable, application of Washington's vesting statutes to the pollution controls "stands as an obstacle to" accomplishing Congress's objective to reduce municipal stormwater pollution to the maximum extent practicable. Accordingly, Washington's vesting statutes would be preempted as applied to this set of circumstances.

The Court of Appeals majority concluded that the Clean Water Act does not preempt Washington's vesting statutes because "[a]lthough the application of Washington's vested rights doctrine may delay the application of Ecology's current permit requirements for a limited number of developments, the doctrine itself does not prevent the accomplishment

of Congress's broad purposes and objectives." *Id.* at 344. There are at least two problems with this conclusion. First, the test for obstacle preemption is whether state law stands as an obstacle to accomplishing Congress's full objective, not whether state law "prevents" the accomplishment of Congress's objective. Second, and more importantly, applying Washington's vesting statutes to the pollution controls in the 2013 Permit doesn't just delay the application of the pollution controls. Projects that "vest" to outdated and ineffective stormwater pollution controls will be entirely exempt from implementing the updated controls. An unidentified number of development projects will be allowed to discharge poorly managed stormwater, with its attendant adverse impacts on public health and welfare, without having to reduce stormwater pollutants to the maximum extent practicable. Accordingly, application of the vesting statutes will both stand as an obstacle to and prevent Congress's objective that municipal stormwater pollution be reduced to the maximum extent practicable.

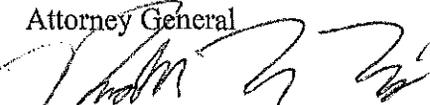
If the Court concludes Washington's vesting statutes apply to the stormwater pollution controls in the 2013 Permit, and concludes that the vested rights are not extinguished by the exercise of police powers, the Court should conclude that application of Washington's vesting statutes is preempted by the Clean Water Act.

V. CONCLUSION

The State of Washington, Department of Ecology respectfully requests that the Court reverse the Court of Appeals majority and conclude that the stormwater pollution controls in the 2013 Permit are not “zoning or other land use control ordinances” and are therefore not subject to Washington’s vesting statutes. If the Court concludes the pollution controls are subject to the vesting statutes, Ecology respectfully requests that the Court find that any vested right to use outdated stormwater pollution controls is extinguished by the exercise of police powers. If the Court concludes a vested right to use outdated stormwater pollution controls is not extinguished by the exercise of police powers, Ecology respectfully requests that the Court conclude Washington’s vesting statutes are preempted by the Clean Water Act.

RESPECTFULLY SUBMITTED this 1ST day of August, 2016.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on August 1, 2016, I caused to be served the Department of Ecology's Supplemental Brief in the above-captioned matter upon the parties herein as indicated below:

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Subject: Supreme Court Case No. 92805-3; Snohomish Cty., et al. v. Dept. of Ecology, et al.
Attachments: 2016-08-01EcySuppBrief.pdf

Attached for filing in Case No. 92805-3, *Snohomish County, et al. v. Dept. of Ecology, et al.*, is the Supplemental Brief of Petitioner State of Washington, Department of Ecology, together with an attached Certificate of Service. Thank you for your attention to this matter.

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