

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/8/2018 3:17 PM  
BY SUSAN L. CARLSON  
CLERK

No. 95029-6

---

IN THE SUPREME COURT  
FOR THE STATE OF WASHINGTON

---

SPOKANE COUNTY, a political subdivision of  
the State of Washington; et al.,

Appellants,

v.

STATE OF WASHINGTON DEPARTMENT OF  
FISH AND WILDLIFE,

Respondent.

---

APPELLANTS' REPLY BRIEF

---

K&L GATES LLP  
John C. Bjorkman, WSBA #13426  
James M. Lynch, WSBA #29492  
Gabrielle E. Thompson, WSBA #47275  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98104-1158  
Telephone: +1 206 623 7580

*Attorneys for Appellants*

**Table of Contents**

	<b>Page</b>
I. INTRODUCTION .....	1
II. ARGUMENT .....	3
A. DFW misstates the issue in this case. The Counties agree that all in-water work requires a permit, even if part of a mixed project. ....	3
B. The Court can give no deference to DFW’s interpretation of its authorizing statute. ....	4
C. The Legislature’s definition of “hydraulic project” does not extend DFW’s jurisdiction to projects with no in-water work. ....	5
D. The Counties’ interpretation does not render any aspect of the HPA application requirements superfluous. ....	7
E. DFW cannot overcome the Legislature’s use of “will” in defining a “hydraulic project.” ....	8
F. DFW’s “gap filling” argument is also unpersuasive.....	10
G. The Legislature did not give DFW unlimited authority to protect fish life.....	10
H. The Attorney General Opinion is not entitled to “great weight,” because it involves the interpretation of a statute. ....	11
I. DFW’s reliance on <i>dicta</i> in <i>Northwest Steelhead</i> is unpersuasive.....	12
J. The Counties have not waived the right to discuss the vagueness issues presented by DFW’s interpretation of the authorizing statute.....	12
K. Invalidating DFW’s rules is an appropriate remedy in this case. ....	13

III. CONCLUSION.....	14
----------------------	----

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Campbell v. Dep't of Soc. &amp; Health Servs.</i> , 150 Wn.2d 881, 83 P.3d 999 (2004).....	4
<i>Dean v. McFarland</i> , 81 Wn.2d 215, 500 P.2d 1244 (1972).....	6
<i>Edelman v. State ex rel. Pub. Disclosure Comm'n</i> , 152 Wn.2d 584, 99 P.3d 386 (2004).....	10
<i>In re Elec. Lightwave, Inc.</i> , 123 Wn.2d 530, 869 P.2d 1045 (1994).....	4, 10
<i>Franklin Cty. Sheriff's Office v. Sellers</i> , 97 Wn.2d 317, 646 P.2d 113 (1982).....	4
<i>Northwest Steelhead and Salmon Council of Trout Unlimited v. Department of Fisheries</i> , 78 Wn. App. 778, 896 P.2d 1292 (1995).....	12
<i>Rios v. Dep't of Labor &amp; Indus.</i> , 145 Wn.2d 483 508, 39 P.3d 961 (2002).....	13
<i>US West Commc'ns, Inc. v. Wash. Utils. &amp; Transp. Comm'n</i> , 134 Wn.2d 48, 949 P.2d 1321 (1997).....	4
<i>Wash. Indep. Tel. Ass'n v. Telecomm. Ratepayers Ass'n for Cost-Based &amp; Equitable Rates</i> , 75 Wn. App. 356, 880 P.2d 50 (1994).....	2, 11
<i>Wash. Pub. Ports Ass'n v. Dep't of Revenue</i> , 148 Wn.2d 637, 62 P.3d 462 (2003).....	10
<i>Whatcom Cty. v. Hirst</i> , 186 Wn.2d 648, 381 P.3d 1 (2016).....	11

**Statutes**

RCW 34.05.574 .....13  
RCW 34.05.574(1).....14  
Chapter 77.55 RCW .....1, 3  
RCW 77.55.011(1).....5  
RCW 77.55.011(11).....2, 3, 5, 9  
RCW 77.55.011(16).....5  
RCW 77.55.011(25).....5  
RCW 77.55.021(1).....5  
RCW 77.55.021(2)(b) .....1, 3

**Other Authorities**

Chapter 220-660 WAC .....3, 14  
WAC 220-660-130(3)(a) .....13  
WAC 220-660-190.....2, 6

## I. INTRODUCTION

The Washington Department of Fish and Wildlife (DFW) dismisses the Counties' examination of the relevant statutory language as "overly literal." Resp. Br. at 22. The Counties readily admit that they propose a "literal" interpretation of Chapter 77.55 RCW because they ask this Court to give all of the statute's words their plain and ordinary meaning. DFW, on the other hand, ignores the words and phrases that are inconsistent with its rule. For example, DFW cannot reconcile RCW 77.55.021(2)(b) (the permit application *must* contain complete plans and specifications for the in-water work) with its regulation of projects with no in-water work. Instead, it declares without authority that such projects are "extremely unusual" and therefore in those few cases we can just ignore the statute's words:

For the extremely unusual project that is entirely above the water line, but affects the bed or flow of water, a complete application will not include any plans for work within the water line.

Resp. Br. at 24.

Projects with no in-water work, however, are actually quite common (later in its brief, DFW itself proffers several examples of strictly upland work that has only indirect impacts on the bed and fish that it contends would nevertheless require a permit. Resp. Br. at 31-32). Almost one third of the HPAs that DFW requires are for bridge work. AR 491. Most bridge projects are not new construction, but maintenance activities that do not involve in-water work. The court record below

contains several examples. *See* CP 44-48, 50-54.<sup>1</sup> Recognizing this fact and in order to ensure it captures this class of exclusively upland projects, DFW expressly requires permits for all bridge work “regardless of the location of the proposed work relative to the OHWL [ordinary high water line] of state waters.” WAC 220-660-190. This is not some “hypothetical” problem as DFW suggests. Resp. Br. at 2, 23, 28. DFW claims the power to regulate this work because these projects have the “potential” to affect state waters, WAC 220-660-190, even though the definition of “hydraulic project” is work that “will” impact state waters, not a project that merely might do so. RCW 77.55.011(11).

DFW has no plausible explanation for any of this. It suggests that its rule fits within the “spirit” of the law, so the Court should gloss over the law’s inconvenient words. The Counties agree that the Legislature enacted the Hydraulic Code with the important goal in mind of protecting fish life. But this statutory purpose does not then entitle DFW to do every desirable thing to protect fish. The Legislature’s grant constrains the agency’s power. *Wash. Indep. Tel. Ass’n. v. Telecomm. Ratepayers Ass’n for Cost-Based & Equitable Rates*, 75 Wn. App. 356, 363, 880 P.2d 50 (1994) (“If an enabling statute does not authorize either expressly or by necessary implication a particular regulation, that regulation must be declared invalid despite its practical necessity or appropriateness.”).

Perhaps the Legislature could have done a better job writing this

---

<sup>1</sup> DFW’s point in attempting to dismiss these exemplar HPAs because they were issued under the former rule is unclear, since it is here today arguing for the right to continue permitting projects with no associated in-water work. Resp. Br. at 26 & n.10.

statute, but that is likely true of every statutory interpretation issue that comes before this Court. Setting aside that unremarkable criticism, these facts remain: The Counties' interpretation of this statute both applies a standard meaning to every word and phrase, including RCW 77.55.011(11) ("*will*" use, divert, obstruct, or change the natural flow or bed) and RCW 77.55.021(2)(b) (a permit application "*must*" contain plans for the in-water work), and also complies with standard rules of statutory interpretation. DFW's position, on the other hand, does neither. Rather, it ignores all inconvenient inconsistencies, such as not applying RCW 77.55.021(2)(b) for up to a third of HPAs involving bridge maintenance projects that have no associated in-water work.

For the reasons set out below and in Appellants' opening brief and the record in this case, the Court should invalidate Chapter 220-660 WAC insofar as it purports to require an HPA permit for upland work as beyond the limited power of DFW granted by Chapter 77.55 RCW.

## II. ARGUMENT

### A. **DFW misstates the issue in this case. The Counties agree that all in-water work requires a permit, even if part of a mixed project.**

The Counties do not argue that DFW's jurisdiction is limited to "construction projects located entirely below the ordinary high water line" or that DFW lacks authority to regulate construction projects where they involve both in-water and upland components, such as the construction of a "residential dock or ferry terminal." Resp. Br. at 12, 14, 19. Mixed projects do require permits for the portion of the work below the ordinary

high water line. For example, new construction of a residential dock or ferry terminal that includes putting in pilings in the bed requires a permit for the pile placement. Maintenance of an existing dock, such as re-decking the over-water portion of the structure, however, does not.

DFW's practice of requiring HPA permits for upland work exceeds its delegated authority. As noted above, DFW's bridge rule, which specifically requires permits for maintenance work that does not touch state waters, is emblematic of the agency's overreach.

**B. The Court can give no deference to DFW's interpretation of its authorizing statute.**

As the Counties explained in their Opening Brief (at 8), because this case involves a question about the scope of DFW's authority to regulate under the Hydraulic Code, this Court does not defer to DFW's interpretation of the scope of its own authority. *Campbell v. Dep't of Soc. & Health Servs.*, 150 Wn.2d 881, 894 n.4, 83 P.3d 999 (2004) (“[T]he court does not defer to an agency the power to determine the scope of its own authority.” (internal quotation marks omitted)). DFW's statement indicating that this Court owes deference to its interpretation (Resp. Br. at 7) is inconsistent with the law. See *US West Commc'ns, Inc. v. Wash. Utils. & Transp. Comm'n*, 134 Wn.2d 48, 56, 949 P.2d 1321 (1997); *In re Elec. Lightwave, Inc.*, 123 Wn.2d 530, 540, 869 P.2d 1045 (1994); see also *Franklin Cty. Sheriff's Office v. Sellers*, 97 Wn.2d 317, 326, 646 P.2d 113 (1982) (“[I]t is emphatically the province and duty of the judiciary

branch to say what the law is.” (internal quotation marks omitted)). DFW is not entitled to any deference in this case.

**C. The Legislature’s definition of “hydraulic project” does not extend DFW’s jurisdiction to projects with no in-water work.**

DFW argues that the Legislature defined a “hydraulic project” only by its “*effect* (work that will use, divert, obstruct, or change waters) and not *location*[.]” Resp. Br. at 17. A more plausible reading, and one that is actually consistent with all other parts of the statute, is that a “hydraulic project” is construction work that has *both* an effect on *and* a location in state waters. The Legislature limited DFW’s regulatory power to “hydraulic projects,”<sup>2</sup> RCW 77.55.021(1), which are defined as the “construction or performance of work that will use, divert, obstruct, or change the natural flow or *bed* of any of the *salt or freshwaters of the state*.” RCW 77.55.011(11) (emphasis added). The Legislature further defined “bed” and “salt or freshwaters of the state” by reference to the “ordinary high water line,” and all three terms are specific to in-water locations. RCW 77.55.011(1), (16), (25).

Even the verbs used by the Legislature suggest actions in a location below the ordinary high water line. The terms “use,” “divert” and “obstruct” are precise and direct. It is hard to imagine a use of water, a diversion of water, or obstruction of water that does not occur in water and therefore below the ordinary high water line. While one could read

---

<sup>2</sup> The word “hydraulic” itself (“operated, moved, or effected by means of water”) does not easily suggest repainting a bridge or paving a road that is merely near a stream. *Webster’s Third New Int’l Dictionary* 1107 (1986).

“change” to incorporate indirect results that upland work could indirectly cause, rules of statutory interpretation require that general words following a sequence of specific terms be modified or restricted by the more specific terms. *Dean v. McFarland*, 81 Wn.2d 215, 221, 500 P.2d 1244 (1972). Accordingly, the Court should read the word in context with the other three verbs as limited to changes resulting from some action below the ordinary high water line. Opening Br. at 9-10.

Only the Counties’ interpretation above is consistent with the statutory language. Regarding the Legislature’s use of the mandatory term “will” in defining a hydraulic project, work actually located in a river or stream will always change the natural flow or bed of state waters (location *and* effect). There is no need to guess about the cause and effect when you look at a set of plans to build a dock in a lake with pilings placed in the lake bed. As DFW notes in its rule, plans for a maintenance project such as painting a bridge arguably describe work that has the “potential” to affect the natural flow or bed, WAC 220-660-190, but the Legislature wrote “will” not “potential.”

The Counties’ interpretation is also consistent with the other statutory language that DFW necessarily ignores, specifically, the requirement that the project proponent include plans and specifications for its in-water work in the permit application. The Counties propose an interpretive solution that harmonizes all of these sections, definitions, and words.

Finally, DFW’s contention that the Legislature’s definitional

scheme lacks clarity is unpersuasive as a reason to affirm the trial court. Resp. Br. at 13 (“The Counties failed to identify a single statutory provision that clearly limits HPA authority to the ordinary high water line.”). DFW cites no authority persuasively supporting its own interpretation. The Court must do the best it can with the words the Legislature wrote. The Counties propose an internally consistent reading that gives a dictionary definition to all of the statute’s words. DFW, on the other hand, asks the Court to turn the mandatory words “will” and “must” into contingent options, or simply to ignore them.

**D. The Counties’ interpretation does not render any aspect of the HPA application requirements superfluous.**

DFW’s argument that the Counties’ interpretation of the statute would render superfluous the requirement that an HPA application include “general plans for the entire project” if its jurisdiction “was limited to construction projects entirely below the ordinary high water line” is off point. Resp. Br. at 11. As explained above, the Counties do not contend that DFW’s jurisdiction is limited to permitting projects that occur “entirely below” the ordinary high water line. To the contrary, the Counties agree that a project, such as the construction of a ferry terminal, which involves both in-water and out-of-water work, would be within DFW’s jurisdiction and would require a permit for the in-water work.

It is difficult to imagine a project “entirely below” the ordinary high water line that nevertheless has no other larger context or plan worthy of explanation. Even a project to place a single dolphin pier (no out-of-

water work) would presumably be part of some larger project such as extending an existing ship berth or installing a navigation aid. The requirement to provide “general plans” is not superfluous under the Counties’ interpretation.

As explained in the Counties’ Opening Brief, it is DFW’s interpretation that renders portions of the permit application requirements superfluous. *See* Opening Br. at 20-23 (if DFW has authority to regulate projects with no in-water work, requirement that application “must” include “complete plans and specifications of the proposed construction or work within . . . the ordinary high water line,” would be superfluous). In an attempt to diminish the significance of this issue, DFW incorrectly argues that “[v]ery few hydraulic projects take place entirely above the ordinary high water line. . .” Resp. Br. at 23. As discussed in its Opening Brief (at 5) and again in the Introduction above, the record demonstrates that about a third of HPAs issued between 2008 and 2013 were bridge projects, AR 491, and bridge maintenance projects routinely do not involve in-water work, *see, e.g.*, CP 44-48, 50-54. The Counties’ interpretation of this statute gives effect to all of its words and applies their ordinary meaning in every context; DFW cannot say the same.

**E. DFW cannot overcome the Legislature’s use of “will” in defining a “hydraulic project.”**

As noted above, the Counties do not dispute that the Legislature defined a “hydraulic project” in part by its effect on state waters. What DFW cannot ignore, however, is that the law requires that the resulting

effect on the natural flow or bed of state waters be more than a mere possibility. RCW 77.55.011(11) defines a regulated project as one that “will” affect the natural flow or bed, not one that “might” or “could” create contingent or indirect changes.

To avoid this interpretive problem, DFW resorts to straw man arguments and “practical realities,” such as residential docks and ferry terminals are “constructed above the water, not under the water, but [their] construction and operation will affect the bed of state waters beneath it.” Resp. Br. at 19. As explained above, the Counties agree that DFW can regulate both projects that are constructed exclusively in state waters and the in-water portion of a mixed project partially located below the water line. What DFW cannot reconcile with the law is its regulation of projects at the opposite end of the spectrum, *i.e.*, projects with *no* in-water component. A project with no in-water work “may” affect the bed or natural flow of state waters, but that work does not meet the definition of “hydraulic project.”

Nor does the legislature’s use of “will” create an “impossible regulatory standard” as DFW contends. Resp. Br. at 24. The construction of a new residential dock or ferry terminal that places pilings in the water “will” necessarily affect the natural flow or bed of state waters. Repairs or improvements to the existing dock or terminal that do not involve in-water work, such as replacing the decking, is work that merely has a “potential” to affect the bed or natural flow of the stream. DFW wrongly requires HPA permits for the latter types of projects.

**F. DFW’s “gap filling” argument is also unpersuasive.**

DFW’s ability to promulgate rules to fill gaps in an existing statute is inapplicable here. Resp. Br. at 20. An agency may only “gap-fill” if such rules are “necessary to . . . effectuat[e] . . . a general statutory scheme.” *Wash. Pub. Ports Ass’n v. Dep’t of Revenue*, 148 Wn.2d 637, 646, 62 P.3d 462 (2003) (internal quotation marks omitted). This power does not allow an agency to adopt rules or policies that are beyond its statutorily delegated functions. See, e.g., *In re Elec. Lightwave, Inc.*, 123 Wn.2d at 537 (holding that a statute did not impliedly grant a power to an agency because the agency could perform its statutory functions without the power at issue). Nor can an agency use regulations to add new requirements to statutes. See *Edelman v. State ex rel. Pub. Disclosure Comm’n*, 152 Wn.2d 584, 591-92, 99 P.3d 386 (2004) (invalidating Public Disclosure Commission rule on campaign contribution limits by organizational affiliates because the rule impermissibly added a requirement to the statute). Here, DFW’s rules require an HPA permit for a project that, under the terms of the Hydraulic Code, would not require a permit. This is not gap filling. It is an unlawful extension of DFW’s permitting authority.

**G. The Legislature did not give DFW unlimited authority to protect fish life.**

DFW argues that the Counties’ interpretation of its permitting authority would “seriously limit [DFW’s] ability to protect fish life for projects both above and below the ordinary high water line.” Resp. Br. at

22. The statutory purpose, however, does not somehow trump the balance of the statutory language. The Legislature works against a backdrop of extensive Federal and State environmental laws and regulations protecting fish and fish habitat. Opening Br. at App. A. It can choose to provide broad authority to fix a problem or tailor a law to solve a particular part of a problem, but it is under no obligation to do (or allow) everything possible simply because it has stated a goal. Permitting projects that involve in-water work does a lot to protect fish and fish habitat; the agency on its own has no power to do more. *Wash. Indep. Tel. Ass'n*, 75 Wn. App. at 363 (“If an enabling statute does not authorize either expressly or by necessary implication a particular regulation, that regulation must be declared invalid despite its practical necessity or appropriateness.”).

**H. The Attorney General Opinion is not entitled to “great weight,” because it involves the interpretation of a statute.**

Contrary to DFW’s contention (Resp. Br. at 32), this Court does not give “great weight” to Attorney General Opinions in cases that involve statutory interpretation. *See Whatcom Cty. v. Hirst*, 186 Wn.2d 648, 679 n.10, 381 P.3d 1 (2016) (explaining that Attorney General opinions are not controlling and are given even “less deference . . . when they involve issues of statutory interpretation”). This Court decides what the law is, not the Attorney General.

**I. DFW's reliance on *dicta* in *Northwest Steelhead* is unpersuasive.**

The court in *Northwest Steelhead and Salmon Council of Trout Unlimited v. Department of Fisheries*, 78 Wn. App. 778, 896 P.2d 1292 (1995), held that DFW properly deferred regulation of a home construction project affecting a wetland near a creek to the City of Seattle. The court's reference to the meaning of a prior version of the statute is *dicta*; there is no indication that any party challenged DFW's jurisdiction or presented any argument on the question of whether DFW had the statutory authority to regulate above the ordinary high water line (indeed, there was no incentive for the homeowner to do so as he was always subject to the City's jurisdiction). Because there was no litigated decision on DFW's jurisdiction, the case should not determine this Court's interpretation of the law.

**J. The Counties have not waived the right to discuss the vagueness issues presented by DFW's interpretation of the authorizing statute.**

The Counties did not waive the right to make vagueness arguments related to DFW's authorizing statute because they decided not to appeal the trial court's determination regarding the vagueness of the engineering report rule. The challenge the Counties raised below, but did not renew on appeal, did not relate to DFW's authorizing statute; it was a challenge to a specific provision of DFW's hydraulic rules related only to WAC 220-660-130(3)(a) (requirement for an engineering report for certain projects).

In this appeal, the Counties argue in their Opening Brief that for the Court to adopt DFW's interpretation of the Hydraulic Code would present a vagueness problem, because it leaves DFW with unrestricted discretion to determine whether a project sufficiently affects the natural flow or bed of state waters so as to require a permit without explaining any standard against which it would judge an application and make its decision. These arguments are separate and distinct from the Counties' challenge to WAC 220-660-130(3)(a), and therefore, were not waived when the Counties' did not appeal the trial court's determination regarding WAC 220-660-130(3)(a).

**K. Invalidating DFW's rules is an appropriate remedy in this case.**

The Court is not limited to the three remedies DFW lists. Resp. Br. at 39. *See Rios v. Dep't of Labor & Indus.*, 145 Wn.2d 483, 508, 39 P.3d 961 (2002) ("Under RCW 34.05.574, a court reviewing agency action has an array of options," including setting aside agency action or entering a declaratory judgment order).

DFW argues, without citation, that invalidation of its Hydraulic Code rules is an exceptional remedy, because doing so would prevent DFW from protecting fish life from construction projects that affect state waters. Resp. Br. at 40. The affect of this Court's ruling on DFW's ability to protect fish life is inapposite to the remedy in this case. If this Court agrees with the Counties that DFW lacks authority to regulate upland work and in particular projects with no in-water work at all, the

proper (and authorized) remedy is to invalidate the rules DFW enacted that allow it to regulate beyond its authority. *See* RCW 34.05.574(1) (in addition to court may “set aside agency action” or “enter a declaratory judgment order”).

### III. CONCLUSION

For the reasons set out above and in the Counties’ Opening Brief, the Court should hold that DFW’s authority under the Hydraulic Code does not extend to projects that take place exclusively above the ordinary high water line and involve no in-water work. The Court should therefore hold that DFW exceeded its statutory authority when it enacted rules in Chapter 220-660 WAC that require a Hydraulic Project Approval (HPA) permit for projects regardless of their scope and location.

DATED this 8th day of March, 2018.

Respectfully submitted,

K&L GATES LLP

By

  
\_\_\_\_\_  
John C. Bjorkman, WSBA #13426  
James M. Lynch, WSBA #29492  
Gabrielle E. Thompson WSBA #47275  
Attorneys for Appellants

## DECLARATION OF SERVICE

Peggy Mitchell declares as follows:

1. I am over the age of 18 and am competent to testify herein.
2. I am a Senior Practice Assistant at the law firm of K&L GATES LLP.
3. On March 8, 2018, I caused the foregoing document to be filed with the court and also to be sent by United States mail, postage prepaid, and by email to the following attorneys of record:

Robert W. Ferguson  
Attorney General  
Martha F. Wehling  
Assistant Attorney General  
1125 Washington Street SE  
Olympia, WA 98504-0100  
MarthaW@atg.wa.gov  
*Attorneys for Respondent*

M. Patrice Kent  
Shona Voelckers  
Yakama Nation Office of Legal Counsel  
PO Box 150/401 Fort Road  
Toppenish, WA 98949  
patrice@yakamanation-olc.org  
shonavoelckers@yakamanation-olc.org  
*Attorneys for Amicus Yakama Nation*

Emily Haley, WSBA # 38284  
Office of the Tribal Attorney  
11404 Moorage Way  
La Conner, WA 98257  
ehaley@swinomish.nsn.us  
*Attorney for Amicus Swinomish Indian  
Tribal Community*

Sharon I. Haensly, WSBA #18158  
Kevin Lyon, WSBA #15076  
3711 SE Old Olympic Hwy  
Shelton, WA 98584  
shaensly@squaxin.us  
klyon@squaxin.us  
*Attorneys for Amicus Squaxin Island Tribe*

Maryanne E. Mohan, WSBA #47346  
4820 She-Nah-Num Dr. S.E.  
Olympia, WA 98513  
mohan.maryanne@nisqually-nsn.gov  
*Attorney for Amicus Nisqually Indian Tribe*

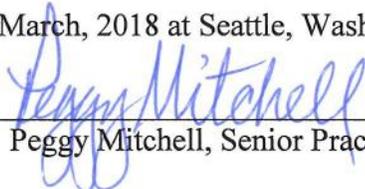
Scott Mannakee, WSBA #19454  
3322 236th Street NE  
Arlington, WA 98223  
smannakee@stillaguamish.com  
*Attorney for Amicus Stillaguamish Tribe of  
Indians*

Jack W. Fiander, WSBA #13116  
5808 Summitview Ave #97  
Yakima, WA 98908-3095  
towtnuklaw@msn.com  
*Attorney for Amicus Sauk-Suiattle Indian  
Tribe*

Earle David Lees, III, WSBA #30017  
Skokomish Legal Department  
N. 80 Tribal Center Road  
Skokomish Nation, WA 98584  
elees@skokomish.org  
*Attorney for Amicus Skokomish Indian Tribe*

I declare under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.

Dated this 8th day of March, 2018 at Seattle, Washington.

  
\_\_\_\_\_  
Peggy Mitchell, Senior Practice Assistant

**K & L GATES LLP**

**March 08, 2018 - 3:17 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95029-6  
**Appellate Court Case Title:** Spokane County, et al v. State of Washington Department of Fish and Wildlife  
**Superior Court Case Number:** 16-2-04334-5

**The following documents have been uploaded:**

- 950296\_Other\_20180308150920SC208573\_1912.pdf  
This File Contains:  
Other - Appellants' Reply Brief  
*The Original File Name was Spokane Co. v. WDFW - Appellants Reply Brief.pdf*

**A copy of the uploaded files will be sent to:**

- ethan.morss@klgates.com
- fwdef@atg.wa.gov
- gabrielle.thompson@klgates.com
- jim.lynch@klgates.com
- josephs@atg.wa.gov
- marthaw@atg.wa.gov

**Comments:**

---

Sender Name: John Bjorkman - Email: john.bjorkman@klgates.com  
Address:  
925 4TH AVE STE 2900  
SEATTLE, WA, 98104-1158  
Phone: 206-623-7580

**Note: The Filing Id is 20180308150920SC208573**