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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

SKAGIT COUNTY,
Petitioner,
v.
WASHINGTON STATE DEPARTMENT OF
ECOLOGY,
Respondent.

NO. 03-2-00668-5

STIPULATION AND
SETTLEMENT AGREEMENT AND
AGREED ORDER OF DISMISSAL

Petitioner Skagit County and Respondent Washington State Department of Ecology ("Ecology") agree to compromise and settle the above-captioned appeal on the basis of this Stipulation and Settlement Agreement and Agreed Order of Dismissal ("Settlement Agreement").

SETTLEMENT AGREEMENT

SECTION I - INSTREAM FLOW RULE AMENDMENT

1.1 Adoption of Amended Rule. Ecology agrees to adopt a final rule amending Chapter 173-503 WAC, the Skagit River Instream Flow Rule ("Skagit

SETTLEMENT AGREEMENT AND
AGREED ORDER OF DISMISSAL

Mentor Law Group, PLLC
1100 Market Place Tower
2025 First Avenue
Seattle, Washington 98121
TEL 206.493.2300 FAX 206.493.2310

Exh. 24

1 Instream Flow Rule"), as attached to this Settlement Agreement as Exhibit A and hereby
2 incorporated by reference.

3
4 **SECTION II - GROUNDWATER STUDY**

5 **2.1 Cost Sharing.** Ecology will provide at least \$35,000 to support study costs
6 for Fiscal Year 2007 and request the Governor and Legislature to fund 50 percent of the
7 non-federal matching portion of the USGS groundwater study for fiscal years 2008 and
8 2009. Skagit County will provide funding for the other 50 percent of the non-federal
9 matching portion. In the event either Ecology or Skagit County provide funding in
10 excess of its 50 percent share, the other party shall provide reimbursement within a
11 reasonable time.
12

13 **2.2 Groundwater Study Objectives.** The USGS Groundwater Study will have
14 three main objectives:

15
16 (a) Identify areas that are outside the physical boundaries of the Skagit River
17 Basin that should be excluded from application of the Skagit Instream Flow Rule;

18
19 (b) Identify areas and aquifer zones, primarily in the Skagit River delta and
20 lower Skagit Basin tributaries, where groundwater withdrawals would not
21 adversely affect mainstem and/or tributary flows; and

22
23 (c) Identify areas in lower Skagit tributary basins where, based on the timing or
24 degree of hydraulic continuity, groundwater can be extracted with less than full
25 hydraulic effect on tributary streams, and subsequently where groundwater use
26

1 should result in a lower debit against tributary water budgets established under
2 the instream flow rule amendment.

3
4 **SECTION III - SKAGIT COUNTY OBLIGATIONS**

5 **3.1 Instream Flow Rule Implementation.** Skagit County will make a good-faith
6 effort to implement the amended Instream Flow Rule. Skagit County will adopt
7 appropriate ordinances, including provisions relating to public notice of subdivision
8 and building permit applications, consistent with the Skagit Instream Flow Rule as
9 amended, no later than December 31, 2006.

10
11 **3.2 Groundwater Study.** Skagit County will initiate and manage the USGS
12 Groundwater Study contract.

13
14 **3.3 Public Water System Metering.** Skagit County will require installation of
15 water meters for all new or expanding public water systems, and initiate appropriate
16 enforcement actions for non-compliance with county ordinances.

17
18 **3.4 Annual Reporting of Water Use.** In basins designated by Skagit County as
19 Flow-Sensitive Tributary Basins, Skagit County will require annual reporting of
20 monthly water use from those for whom a water meter is required. For individual
21 wells, Skagit County will estimate water use based on 350 gallons per day. The County
22 shall initiate appropriate enforcement actions for non-compliance with county
23 ordinances.
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1 **3.5 Mainstem Advisory Committee.** Skagit County will establish an Advisory
2 Committee on the use of water under the Skagit River lower, middle, and upper
3 reservations. Ecology will seek input from the Advisory Committee on the allocation
4 of water from these reservations.
5

6 **SECTION IV - INSTREAM FLOW RULE IMPLEMENTATION**

7 **4.1 Interlocal Agreement.** Ecology and Skagit County will enter into an
8 agreement under the Interlocal Cooperation Act, Chapter 39.34 RCW ("Interlocal
9 Agreement"), within 180 days of the effective date of the Skagit Instream Flow Rule.
10 The Interlocal Agreement will include provisions relating to implementation of the rule,
11 including tracking and reporting by Skagit County of permit decisions relating to water
12 availability under the Skagit Instream Flow Rule, and guidelines to develop mitigation
13 plans for Ecology approval under WAC 173-503-060 and -150.
14
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16 **4.2 Reimbursement for One-Time Costs.** Ecology will seek funding from the
17 Governor and Legislature for funding for state fiscal year 2008, to be used to provide
18 Skagit County with up to \$150,000 to reimburse Skagit County for necessary one-time
19 costs incurred to implement the Skagit Instream Flow Rule. Items eligible for cost-
20 reimbursement include but are not limited to permit system and GIS upgrades made for
21 the purpose of enabling Skagit County to make water availability determinations based
22 on the Skagit Instream Flow Rule, employee education and training, preparation of
23 educational and technical assistance materials, and staff time relating to developing
24 procedures to implement the instream flow rule and related agreements.
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1 **5.3 Dispute Resolution.** Ecology and Skagit County agree that, prior to filing
2 any appeal or other action seeking judicial review of the instream flow rule or any of
3 the agreements or county ordinances to implement the instream flow rule, the County
4 or Ecology would submit the matter to dispute resolution as provided in this
5 subsection. This provision applies to all claims arising under or related to the rule, the
6 rule amendment, County implementing ordinances, the interagency agreement and the
7 settlement agreement. Dispute resolution under this Agreement includes –
8

9
10 (a) 60-day notice to the other party of intent to seek judicial review;

11 (b) two-party negotiation, with a mutually-agreeable facilitator at the
12 request of either party; and

13 (c) non-binding arbitration.

14 **5.4 Skagit County Intervention.** Unless Skagit County is otherwise entitled to
15 appeal under paragraph (2), Skagit County will seek to intervene in support of the
16 Skagit Instream Flow Rule, as amended, in the event the rule or rule amendment is
17 appealed or otherwise challenged by another person or entity.
18

19 **5.5 Ecology Intervention.** Ecology will seek to intervene in support of Skagit
20 County's implementing ordinances in the event the ordinances are appealed or
21 otherwise challenged by another person or entity.
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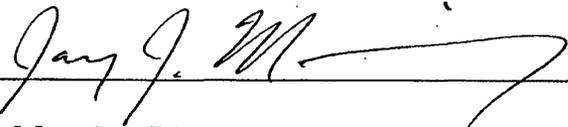
SECTION VI - SETTLEMENT

6.1 Entire Agreement. This Settlement Agreement constitutes the entire agreement between and among the parties with respect to the subject matter of this Settlement Agreement and supersedes any and all prior agreements among the parties with respect hereto. No amendment, modification or waiver of any of the provisions of this Settlement Agreement, or subsequent agreements which the parties have agreed or negotiated concerning this Settlement Agreement, shall be valid or binding unless set forth in written instrument signed hereinafter by the parties to be bound thereby.

6.2 Effective Date. This Settlement Agreement shall go into effect upon execution by Petitioner Skagit County and Respondent Ecology.

6.3 Order of Dismissal. The parties consent to entry by the Court of the following order of dismissal.

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

3 

4 Jay Manning, Director
5 Dated: 5/15/06

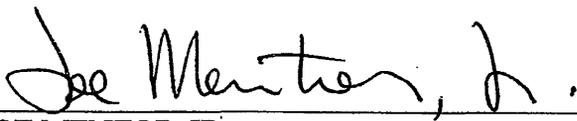
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8 ALAN REICHMAN
9 WSBA No. 23874
10 Attorney for State of Washington
11 Department of Ecology
12 Dated: 5/15/06

13 

14 SKAGIT COUNTY
15
16 GARY ROWE, COUNTY ADMINISTRATOR
17 Dated:

18 MENTOR LAW GROUP, PLLC

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21 JOE MENTOR, JR.
22 WSBA No. 13053
23 Attorneys for Skagit County
24 Dated:

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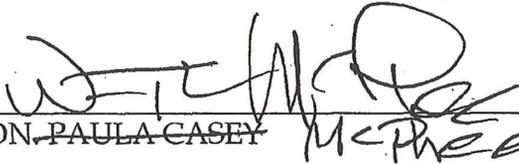
ORDER

This matter having come before the Thurston County Superior Court and the Court, having reviewed this Settlement Agreement, it is hereby ordered that the foregoing Settlement Agreement is approved as an Order of the Court and the parties are ordered to comply with the Settlement Agreement.

Skagit County's AMENDED PETITION FOR DECLARTORY AND INJUNCTIVE RELIEF is hereby dismissed with prejudice as to its procedural claims limited by RCW 34.05.375, subject to the terms of this Settlement Agreement without costs or attorney's fees to any party. This Order incorporates by reference the attached Stipulation and Settlement Agreement and Agreed Order of Dismissal, and WAC Chapter 173-503, adopted by Ecology as a final rule on May 15, 2006 and attached as Exhibit A.

DATED this 19 day of May 2006

THURSTON COUNTY SUPERIOR COURT


HON. PAULA CASEY

Wm. THOMAS MCPHEE