



FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

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Linda Myhre Enlow
Thurston County Clerk

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Date:
Time:
Judge: James Dixon

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

CENTER FOR ENVIRONMENTAL
LAW & POLICY, AMERICAN
WHITEWATER, and SIERRA CLUB,

Petitioners,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
JAY INSLEE,

Respondents.

NO. 16-2-02161-34

~~PROPOSED~~ ORDER ON PETITION
FOR DECLARATORY JUDGMENT
REGARDING THE VALIDITY OF
AN AGENCY RULE, AND PETITION
FOR JUDICIAL REVIEW OF
AGENCY ACTION DENYING
PETITION TO AMEND AGENCY
RULE

EX PARTE

THIS MATTER came before the Court on (1) the Petitioners' May 26, 2016, Petition seeking Judicial Review and a Declaratory Judgment Regarding the Validity of that portion of WAC 173-557-050 that sets summer instream flow levels in the lower Spokane River at Spokane at 850 cubic feet per second (cfs); and (2) the Petitioners' May 26, 2016, Petition for Judicial Review seeking judicial review of the Department of Ecology's (Ecology) April 27, 2016, decision denying Petitioners' February 29, 2016, Petition to amend WAC 173-556-050. Petitioners brought both claims pursuant to the Administrative Procedure Act (APA), RCW 34.05.570.

The Court having considered the administrative record and the pleadings filed herein, and on June 9, 2017, having heard oral arguments of Dan J. Von Seggern, counsel for the

1 Petitioners, and Stephen H. North, Assistant Attorney General, counsel for Respondent
2 Ecology, the Court enters the following findings and conclusions:

3 **I. FINDINGS**

4 **A. Petitioners' Challenge to WAC 173-557-050**

5 1. Petitioners have not met their burden of demonstrating under
6 RCW 34.05.570(2) that WAC 173-557-050 exceeds the statutory authority of Ecology.

7 2. Petitioners have not met their burden of demonstrating under
8 RCW 34.05.570(2) that WAC 173-557-050 is arbitrary and capricious.

9 **B. Petitioners' Challenge to Ecology's Denial of Petitioners' Petition to Amend
10 WAC 173-557-050**

11 1. Petitioners have not met their burden under RCW 34.05.570(4) of
12 demonstrating that Ecology's denial of Petitioners' Petition to Amend WAC 173-557-050 was
13 outside of Ecology's statutory authority.

14 2. Petitioners have not met their burden under RCW 34.05.570(4) of
15 demonstrating that Ecology's denial of Petitioners' Petition to Amend WAC 173-557-050 was
16 arbitrary and capricious.

17 **II. CONCLUSIONS**

18 1. The Court concludes that WAC 173-557-050 does not exceed Ecology's
19 statutory authority and that the rule is not arbitrary and capricious.

20 2. The Court concludes that Ecology's denial of Petitioners' petition to amend
21 WAC 173-557-050 was not outside of the agency's authority and was not arbitrary and
22 capricious.

23 Based upon the Court's Findings and Conclusions it is now, therefore, **ORDERED:**

24 Petitioners' challenge to the validity of WAC 173-557-050 is denied and the matter is
25 dismissed, with prejudice, each party to bear its own costs and fees.

1 It is further **ORDERED**: Petitioners' challenge to Ecology's April 27, 2016, decision
2 denying Petitioners' February 29, 2016, Petition to amend WAC 173-556-050, is denied and
3 the matter is dismissed, with prejudice, each party to bear its own costs and fees.


4 DATED this 30 day of June 2017.



6 _____
7 HONORABLE JAMES DIXON

8 Presented by:

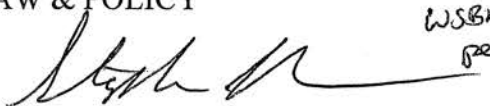
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10 Attorney General



11 _____
12 STEPHEN H. NORTH, WSBA #31545
13 Assistant Attorney General
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15 (360) 586-3509

16 Approved as to Form,
17 Notice of Presentation Waived:

18 CENTER FOR ENVIRONMENTAL
19 LAW & POLICY



20 _____
21 DAN J. VON SEGGERN, WSBA No. 39239
22 Attorney for Petitioners
23 *WSBA 31545*
per email authorization
on 6/27
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