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**BEFORE THE HEARING EXAMINER  
FOR SKAGIT COUNTY**

THE CITY OF SEDRO-WOOLLEY, a  
Washington municipal corporation

Appellant

vs.

DIKE, DRAINAGE & IRRIGATION  
DISTRICT #12, a special purpose district

Respondent

Nº PL12-0191  
PL13-0265

RESPONSE BY CITY OF SEDRO-  
WOOLLEY TO THE CITY OF  
BURLINGTON'S MOTION IN LIMINE

COMES NOW THE CITY OF SEDRO-WOOLLEY, by and through its attorney, and  
submits the following Response to the City of Burlington's First Motion in Limine and Motion to  
Strike.

***I. Motion to Strike***

Sedro-Woolley has no position with respect to the Motion to Strike filed by the City of  
Burlington (and, for that matter has no position concerning Dike District 12's similar motion, or  
the merits of Mr. Kuntzler's various requests).

***II. Motion in Limine***

Burlington is asking the Hearing Examiner to rule that what it terms "superseded

1 hydrology” may not be considered as part of the remand. Sedro-Woolley has no objection to this,  
2 as the City’s position is that the most current hydrology should be the basis for the decisions in  
3 this matter, which presumably was the intention of the Board of County Commissioners when it  
4 issued its February 11<sup>th</sup>, 2014 clarification order.

5 However, Burlington also argues (for the first time), that based on the “vested rights  
6 doctrine”, only the Corps hydrology which was in effect at the time that the District’s permit  
7 application was filed may be utilized. Interestingly, the District makes the opposite argument, i.e.  
8 that the old data (i.e. the data that had been generated prior to the current NHC modeling), should  
9 not be used. *District’s Motion in Limine*, pg. 13.

10 The vested rights doctrine “is not a blanket rule requiring all cities and towns to process  
11 permit applications according to the rules in place at the outset of the permit review. Instead, the  
12 doctrine places limits on municipal discretion and permits land owners or developers ‘ to plan  
13 their conduct with reasonable certainty of the legal consequences’ “. *Erickson & Associates v.*  
14 *McLerran*, 123 Wash.2d 864, 873 (1994), *quoting West Main Associates, Inc. v. City of Bellevue*,  
15 106 Wash.2d 47, 51 (1986).

16 Here, the Commissioners have remanded the project for reconsideration in light of the  
17 updated Corps of Engineers hydrology. Corps hydrology was very much a part of the FEIS, as  
18 well as the instant substantial development permit. It is not unreasonable or unforeseeable for the  
19 hydrology to change based on new information.

20 Burlington correctly points out that the Skagit Shoreline Master Program requires that any  
21 permitted work must be designed and constructed to meet the standards of the Corps of  
22 Engineers. The vested rights doctrine is based on the governing law at the time of permit  
23 application; data sets and computer modeling are not governing law, and thus cannot be the basis  
24 for a vested right. The governing law has not changed, thus Burlington’s vested rights argument  
25 is something of a red herring. In addition, Sedro-Woolley would submit that this argument  
26 should have been raised as part of the appeal, and is thus untimely.

1 **III. Conclusion**

2 The remand hearing should be conducted in accordance with the remand order issued by  
3 the Commissioners, including the clarification letter. So, the most current Corps hydrology is  
4 what should form the basis for the modeling. To hold otherwise would be to completely  
5 disregard the point of the remand.  
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9 DATED: 4/2/14

Respectfully submitted:

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11 CRAIG SJOSTROM WSB #21149  
12 Attorney for the City of Sedro-Woolley  
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