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**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
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 PL13-0265

APPELLANT'S REPLY MEMORANDUM

COMES NOW APPELLANT, by and through its attorney, and submits the following  
Reply Memorandum.

***I. Appellant Clearly Has Standing***

Dike District 12 argues that the City of Sedro-Woolley does not have standing to bring  
this appeal, allegedly because it cannot show that it is aggrieved or that it has not demonstrated  
any harm. These assertions are simply incorrect. The City presented testimony and documentary  
evidence at the hearing, stating that the proposed project could cause upstream flooding to the  
City's wastewater plant and also to United General Hospital. This is sufficient to meet the  
standard set forth in *Trepanier v. City of Everett*, 64 Wash.App. 380, 382 (1992). *S.A.V.E. v.*

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1 *Bothell*, 89 Wn.2d 862 (1978), cited by the District, is inapposite; that case dealt with whether a  
2 nonprofit corporation had standing to assert the interests of its members, rather than whether a  
3 municipal corporation (such as the City of Sedro-Woolley) has standing to assert its own  
4 interests. In SEPA appeals, at least, the test is (1) whether the interest that the party is seeking to  
5 protect is “arguably within the zone of interests to be protected or regulated” ; and (2) the party  
6 must allege an “injury in fact,” i.e., that he or she will be “specifically and perceptibly harmed”  
7 by the proposed action. *Anderson v. Pierce County*, 86 Wn.App. 290. Contrary to the District’s  
8 arguments, standing involves *allegations* of injury, not the *showing* of injury. The concept of  
9 standing is similar to that of a gatekeeper; in other words, can the party appealing get through the  
10 courthouse door to present its case, or not? The bottom line is, that standing does not require one  
11 to prove one’s case before being allowed the opportunity to prove one’s case.

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13 **II. *The City has Demonstrated Possible Ill-Effects that***  
14 ***Were Not Adequately Considered***

15 The City contends that the proposed project may cause ill effects upstream, which have  
16 not been adequately looked at. The modeling used by the District (i.e. the P.I.E. hydrology) is  
17 admittedly not the modeling that most likely will ultimately be used; that would be the Corps  
18 hydrology. **Hearing Transcript, at page 21.**

19 Clearly, the District has the right and the duty to protect its constituents. Nobody is  
20 arguing with that. But, in spite of the platitudes set forth in the FEIS and quoted by the District  
21 (see **Response Memorandum, page 6**), and despite the undoubted fact that the District is not  
22 seeking to intentionally flood Sedro-Woolley, still it is contended that there has been much less  
23 attention paid to protecting upstream citizens from flooding than there has to prevent flooding to  
24 Burlington’s retail core. Again, while obviously the retail core provides a significant economic  
25 benefit to the County as a whole, still it is not the only consideration.

26 The District argues that the project will still allow flood waters to escape at Sterling  
27 (Responsive Memorandum, pages 6-7). That may be true, however, there is no indication as to  
28 how much additional water will flow via that route, over and above what would have been the  
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1 case in the absence of the subject project.

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3 **III. The District Should Not "Go it Alone"**

4 Contrary to the District's argument, Sedro-Woolley is not seeking to stop all flood work.  
5 That would be, in a word, crazy. What the City is seeking is for the flood work that is done be  
6 done as part of a collaborative effort rather than as a patchwork. Despite the District's attempt to  
7 paint the City is some sort of miscreant which refuses to cooperate, the plain fact is that the City  
8 has participated in all of the County-wide flood management efforts, and will continue to do so.  
9 Stating that Sedro-Woolley is the problem, and seeking to isolate the City while the same time  
10 steaming ahead on a project which has not adequately addressed the legitimate concerns that the  
11 City has raised, is not constructive.

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13 **IV. Conclusion**

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15 In sum, then, several things need to be kept in mind. First and foremost, the City is not  
16 opposed to flood protection. It is opposed to flood protection that is not part of a County-wide  
17 effort, and which merely benefits one area at the expense of another. The City does not oppose  
18 the District doing its job; the problem is, that the District can only do so much and is constrained  
19 to work for the benefit of its constituents, where a broader approach is more appropriate. The  
20 County Commissioners should deny the permit pending completion of the GI study, or in the  
21 alternative remand the permit application back to the Hearing Examiner, to require additional  
22 evidence of the effects of the project on upriver areas.

23  
24 DATED: 8/30/13

Respectfully submitted:

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