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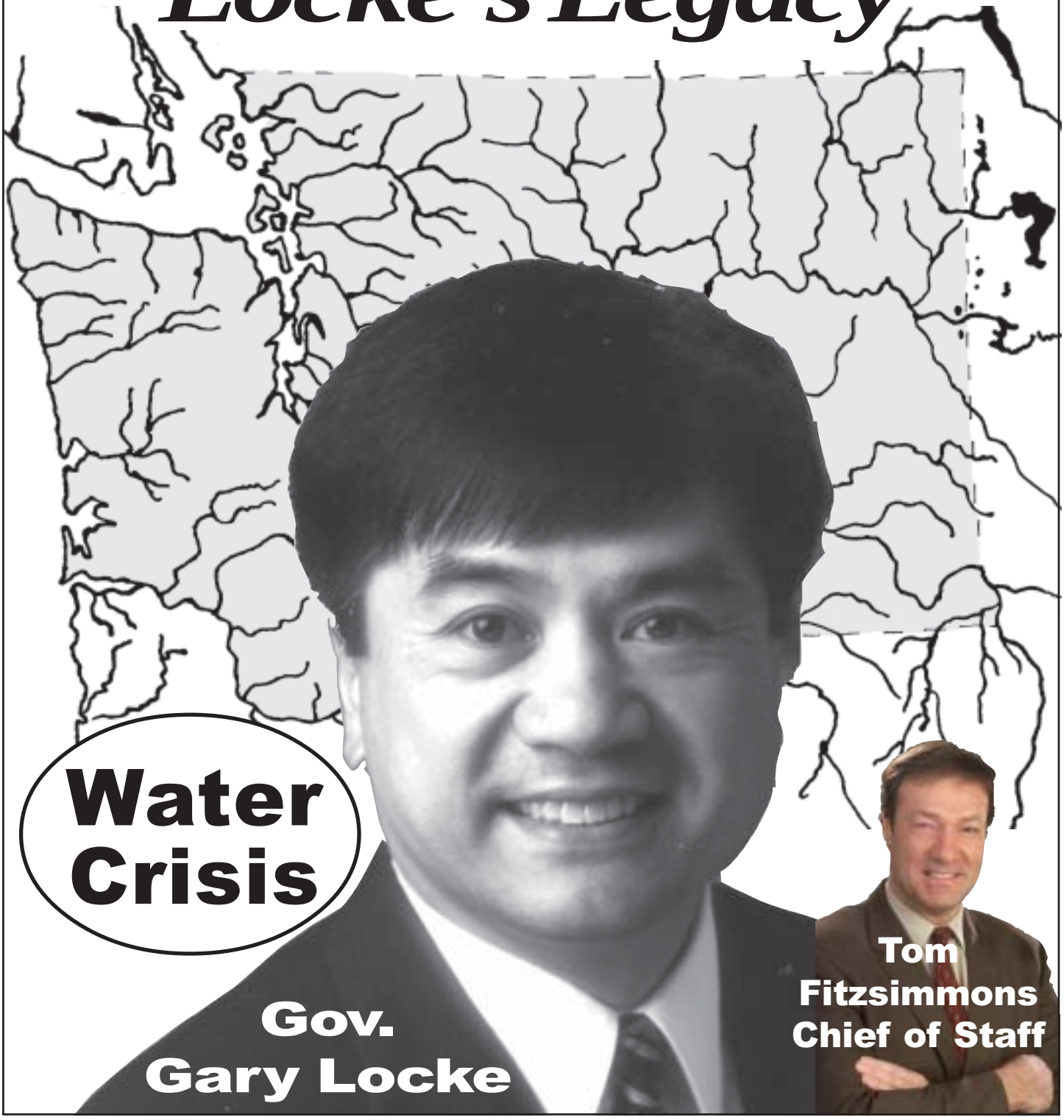
Special Report

Our Water & Health

Locke's Legacy



Water Crisis

Gov. Gary Locke

Tom Fitzsimmons Chief of Staff

Locke's Legacy - Water Crisis

By John Osborn, MD and Rachael Paschal Osborn

Earth, the "water planet," is approaching the end of the water "frontier" as billions of people struggle daily for safe drinking water. Here in Washington State and the greater region, our rivers, aquifers, and fisheries are in peril:

- Our rivers are over-allocated: there is not enough water to meet all the demands and keep water in the rivers to support fish and wildlife.
- Hanford – among the world's most polluted spots – spreads a plume of radioactive waste into the Columbia River.
- Daily, toxic mine wastes flow into Washington's rivers from polluters upstream in Idaho and British Columbia.
- Decisions about water are shifting from professional staff at the Department of Ecology to the governor's office, damaging the agency's professional integrity and politicizing water decisions.

In this water crisis, Washington needs political leadership to:

- Clean up radioactive and other toxic pollution in Washington's rivers.
- Promote water conservation as the preferred option for thirsty, growing cities instead of giving away new water rights.
- Set and meet instream flows to protect rivers, restore fisheries, and honor tribal fishing rights.
- Clamp down on "paper" water rights to prevent continued depletion of rivers and aquifers.
- Stop the "water grab" now underway in Washington State.

This special Sierra Club report examines the record of Governor Gary Locke and his political appointees, especially Tom Fitzsimmons. Locke's legacy to Washington is a water crisis. While the governor did not wholly create this crisis, nonetheless his decisions have greatly aggravated it. This report looks at the following seven topics:

(1) Walk the Talk?

Gov. Locke promotes environmental accomplishments that, under scrutiny, often lack substance.

(2) Corporate Welfare

Battle Mountain Gold (BMG) proposed to turn Buckhorn Mountain in north-central Washington into an open-pit cyanide-leach gold mine. BMG sought support from Governor Locke and then-Senator Slade Gorton.

Locke's Ecology Director Tom Fitzsimmons removed personnel who stood in the way of issuing permits. BMG was granted water rights even though the Buckhorn Mountain streams were over-allocated.

Conservationists challenged Ecology's decision and eventually won. But the project is back. Crown Resources Corp. and Kinross Corp. have revived the project and Locke, through the new customer-friendly "Office of Regulatory Assistance," is ready and willing to assist.

Contents

(3) SeaTac's Third Runway

The Port of Seattle proposes to build a third runway at SeaTac so two planes can land simultaneously in bad weather. Costs for the project exceed $1 billion, more than double the original estimate. To build the runway, SeaTac must extend the western bluff by constructing one of the largest retaining walls on earth: the "Great Wall of SeaTac." Twenty million cubic yards of fill will be dumped onto a canyon supporting fish-bearing streams and wetlands – and in an area prone to earthquakes.

As the environmental impacts of the project became a stumbling block, the Port turned to Locke for help. Ecology Director Fitzsimmons removed personnel who were trying to enforce state environmental laws. He disregarded the advice of staff and the Attorney General's office in refusing to require a water right for the project. In August 2002 the Pollution Control Hearings Board (PCHB) found that Ecology's permit was not protective enough, and imposed 16 new conditions to safeguard the environment.

One of the PCHB conditions requires the Port to use clean dirt to construct the Great Wall. But clean dirt is expensive, so the Port turned to Locke and the Legislature to side-step the courts. The result was SB 5787, the "Toxic Fill Bill" allowing contaminated fill to be dumped into waterways not just at SeaTac, but *statewide*. Locke signed the Toxic Fill Bill into law. The question of the validity of the PCHB conditions and SB 5787 is now pending before the Washington Supreme Court. (Oral argument will be broadcast on TVW on November 18, 2003: see www.tvw.org .)

(4) Columbia River

Responding to Washington's salmon extinction crisis, Locke created a salmon plan, which in turn was used by federal agencies in their refusal to bypass the four dams on the Lower Snake River. Meanwhile, the Department of Ecology has continued issuing water rights from the Columbia River, subsidizing irrigators at the expense of fish. During the 2001 drought, when salmon were most vulnerable, Ecology Director Fitzsimmons suspended instream flow requirements to allow irrigators with "junior" water rights to continue to pump.

An independent scientific team assessed Locke's salmon plan as seriously flawed. So did a federal judge who ruled that the harm to salmon caused by Columbia-Snake River dams cannot be mitigated based on Washington's promises to protect salmon.

Locke has so bungled state water policy that bypassing the four dams has become the only viable option to save Columbia River salmon runs spawning in the Snake River.

(5) Hanford and Spokane River: Toxic deals

The Hanford Nuclear Reservation is the repository of much of America's nuclear wastes. Unlined trenches and shell tanks leak radioactive substances into groundwater, which flows from beneath Hanford to pollute the Columbia River. Workers are exposed to poisonous vapors that exceed human health standards. Nonetheless, the Locke Administration negotiated a secret deal with Hanford's owner, the Department of Energy, to allow cleanup deadlines to slip by and accept nuclear waste from other regions of the country. The Hanford National Monument, the only free-flowing stretch of the Columbia River, may become the only national monument too contaminated to allow for public use.

Upstream in Idaho, mining companies have dumped more than 60 million tons of toxic wastes directly into the Coeur d'Alene watershed since 1884. The downstream outlet for these pollutants is the Spokane River, making Washington dependent on cleanup decisions in Idaho. Despite broad support in Spokane for a comprehensive Superfund cleanup administered by the U.S. Environmental Protection Agency, Locke and Fitzsimmons secretly negotiated a deal with Idaho politicians, effectively transferring cleanup authority to Idaho despite Idaho's vigorous opposition to Superfund designation and cleanup.

(6) Looting Water in Olympia

Locke has repeatedly steamrolled state Democrats to enact environmentally destructive water laws. In 2003 the Governor successfully lobbied HB 1338, a massive give-away of water rights to municipalities and utilities, and SB 5028, exempting irrigators from state clean water laws. Both laws are of dubious legal pedigree.

(7) Watchdog or Lap Dog?

The professional integrity of our public servants is essential in protecting state waters and public health. Locke and Fitzsimmons have pursued strategies that have severely compromised the professional integrity of the Department of Ecology.

Locke rewarded Tom Fitzsimmons by promoting him to Chief of Staff.

In conclusion, history will record Locke's role in Washington's water crisis. Candidates for elective office should also take note, because they will be forced to respond to Locke's legacy. Water issues must be front and center in all political campaigns: the public demands to know how our elected officials intend to solve Washington's water problems.

Rachael Paschal Osborn is a public interest water lawyer and a founder of the Center for Environmental Law and Policy and the Washington Water Trust. She volunteers with the Sierra Club's Aquifers and Rivers Committee.

John Osborn is a Spokane physician and a founder of The Lands Council and the Regional Ethics Network of Eastern Washington and North Idaho. Since 1985 he has served as conservation chair for the Sierra Club's Northern Rockies Chapter.

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With more than 700,000 members, the Sierra Club is the largest and most effective conservation organization in the United States. We are one organization: our effectiveness comes from speaking with one voice, whether the issue is state, national or local. We are a grassroots organization – our power comes from thousands of creative, energetic volunteers who donate their time and talents to help protect our environment that sustains life on earth.

Locke's Legacy: Water Crisis is published by the Sierra Club.

In Washington State the Sierra Club has 27,000 members in two chapters:

- The Cascade Chapter of the Sierra Club organizes and supports grassroots conservation efforts within western and central Washington State.
- The Upper Columbia River Group and the Palouse Group of the Northern Rockies Chapter organize and support grassroots conservation efforts in eastern Washington and North Idaho.

Our Mission:

- Explore, enjoy, and protect the wild places of the earth;
- Practice and promote the responsible use of the earth's ecosystems and resources;
- Educate and enlist humanity to protect and restore the quality of the natural and human environment; and
- Use all lawful means to carry out these objectives.

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To find out more about us and the Sierra Club in Washington State, visit us on the web at www.sierraclub.org/wa/

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www.waterplanet.ws/watercrisis

Message from the Governor

September 24, 2003

I am very pleased to announce that Tom Fitzsimmons has agreed to serve as my new Chief of Staff.

Tom is the right person to lead us through the demanding months ahead. Tom has been director of the Department of Ecology since I became governor in 1997. His tenure is the second-longest in that agency's 33-year history.

But Tom is second to none when it comes to his outstanding achievements in Ecology. His leadership has made Washington's Department of Ecology one of the most effective, progressive agencies in this or any other state.

Tom has spearheaded reforms to our water-management laws. He has guided our state to better shoreline-management, water-quality and toxic-cleanup regulations. Tom has helped us streamline permit and grant processes without lowering environmental standards. Under his exceptional leadership, the department has earned national recognition for the wealth of information, resources and access available through its Web site.

Gary Locke, Governor, State of Washington and Tom Fitzsimmons, Chief of Staff with map of rivers in Washington.

Tom [Fitzsimmons] has spear-headed reforms to our water-management laws.
— Gary Locke, Governor

We thank and congratulate Tom for his exceptional record as the head of Ecology. And we welcome him to his new position as Chief of Staff.
— Gary Locke, Governor

We thank and congratulate Tom for his exceptional record as the head of Ecology. And we welcome him to his new position as Chief of Staff.

I chose Tom for this job because he is a great leader, a great team player, and a great person. Tom's leadership will be essential as we head into an extremely busy stretch. We want to get as much accomplished as possible in the coming 15 months. We have great opportunities to leave a lasting legacy of which we can all be proud.

I believe in our state employees. I am convinced that our state has the best employees in the nation. I appreciate your work, and I value the significant contributions you make to state government. Together we have accomplished great things. With Tom Fitzsimmons serving as our Chief of Staff, I am confident that we can accomplish greater things still.

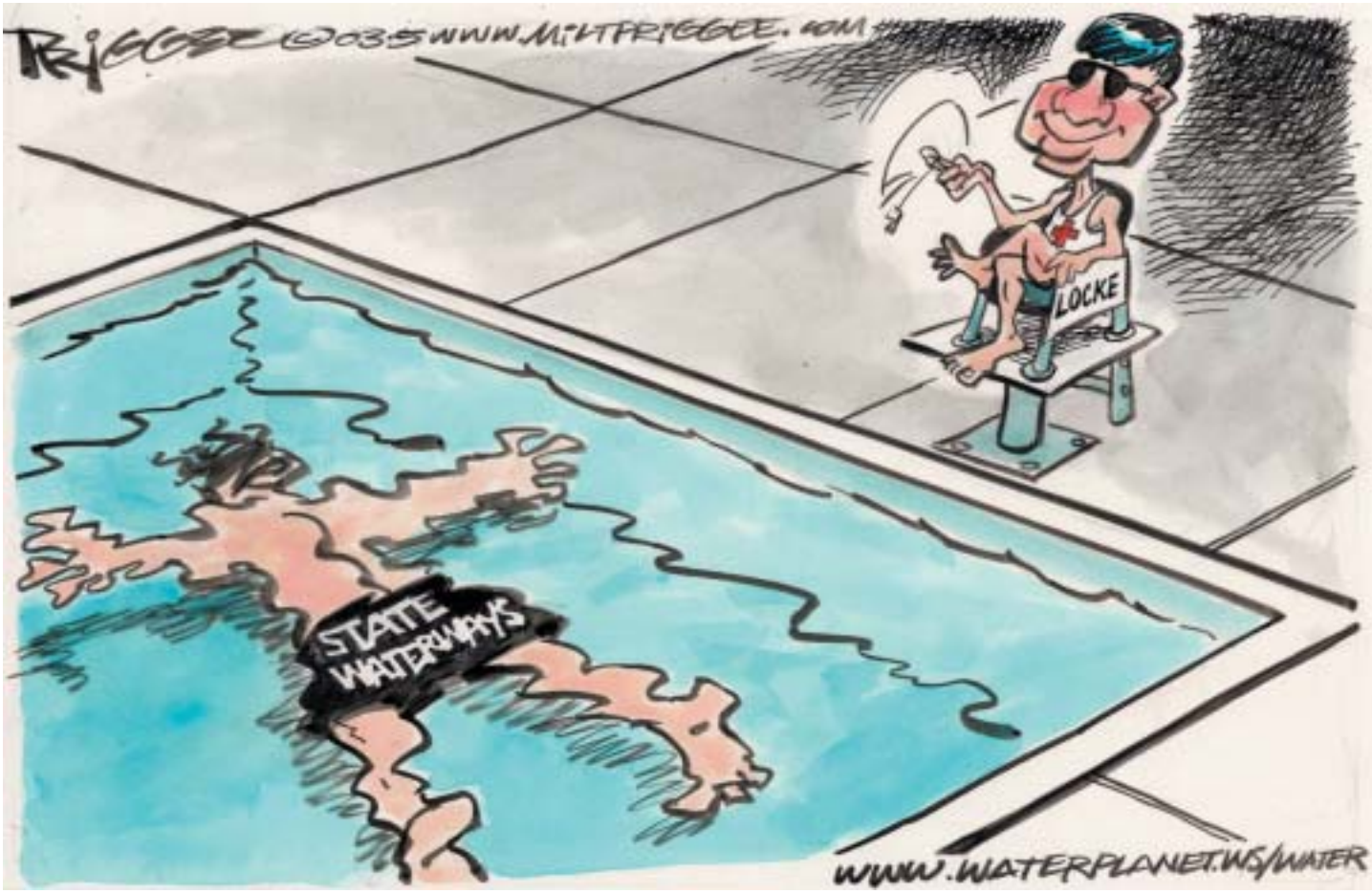
To all state employees, thank you for your ongoing dedication and hard work. I ask that you give Tom your full support and commitment as we make the rest of our term here one people will remember for a long, long time.

Sincerely,

Gary Locke, Governor

For More Information

- **"The Rusted Shield: government's failure to enforce or obey our system of environmental law threatens the recover of Puget Sound's wild salmon"** Daniel Jack Chasan March 2000 commissioned by the Bullitt Foundation: www.washingtontrout.org/Rusted%20Sheild%20FINAL.pdf
- **"Dereliction of Duty: Washington's Failure to Protect Our Shared Waters"** a report by the Center for Environmental Law & Policy and the Washington Environmental Council, March 2002. www.celp.org/derelictionofduty.pdf
- **The Washington State 303(d) List for the state's 600+ impaired streams and threatened water bodies:** www.ecy.wa.gov/programs/wq/303d/



Locke leads effort to weaken water laws

By Craig Engleking
Legislative Coordinator, Sierra Club's Cascade Chapter

2003 was a rough legislative session for our state's water. Following Governor Gary Locke's lead, the state legislature passed a series of harmful water bills.

One bill, SB 5028, strips the Department of Ecology (DOE) of the ability to limit withdrawals from rivers and streams when those withdrawals cause the remaining water to violate water quality standards. Low stream flows increase concentrations of pollutants. Low flows also reduce the ability of rivers and streams to support fish, recreation, and other public uses.

Now, because the Legislature passed SB 5028, the Department of Ecology no longer has the authority to protect the rivers.

In some cases, water withdrawals completely dry up rivers. In the case that prompted the legislation, the Methow Valley Irrigation District (MVID) withdrew so much water from the Methow and Twisp Rivers, that stretches of both rivers ran dry. State, federal and tribal agencies have tried, without success, for over a decade to get MVID to improve its efficiency. All efforts at voluntary compliance failed. Agencies even offered millions of dollars in subsidies to MVID to upgrade its equipment. But that failed too. Ultimately, in order to protect the rivers, the Department of Ecology issued an order limiting the amount of water MVID could withdraw. Now, because the Legislature passed SB 5028, DOE no longer has the authority to protect the rivers.

This legislation is particularly troubling because it comes at a crucial time for waters across the state. There are several hundred rivers and streams in Washington that don't meet water quality standards because they don't have enough water in them. Without a powerful enforcement tool, we'll have a much more difficult time protecting these rivers and streams.

SB 5028 passed the Republican controlled Senate 26-22. House Speaker Frank Chopp, a Democrat from Seattle, promised to not move the bill through the Democrat-controlled House if a majority of his caucus opposed the bill. We needed to get at least 27 House Democrats to oppose SB 5028. We did. In fact, we got 29. However, Speaker Chopp ran the bill anyway, over a majority of his caucus, and it ultimately passed the House, 61-31.

Governor Locke pushed SB 5028 through the House as part of a political deal to get the Republican controlled Senate to pass another harmful water bill, HB 1338. This bill allows utilities across the state to take untold amounts of water from the river and streams regardless of how much water is available or how much needs to remain instream. It's like writing a blank check without even knowing how much money you have in the bank.

Another bill that passed the Legislature, SB 5787, also threatens the clean waters of our state. This bill originated as a SeaTac

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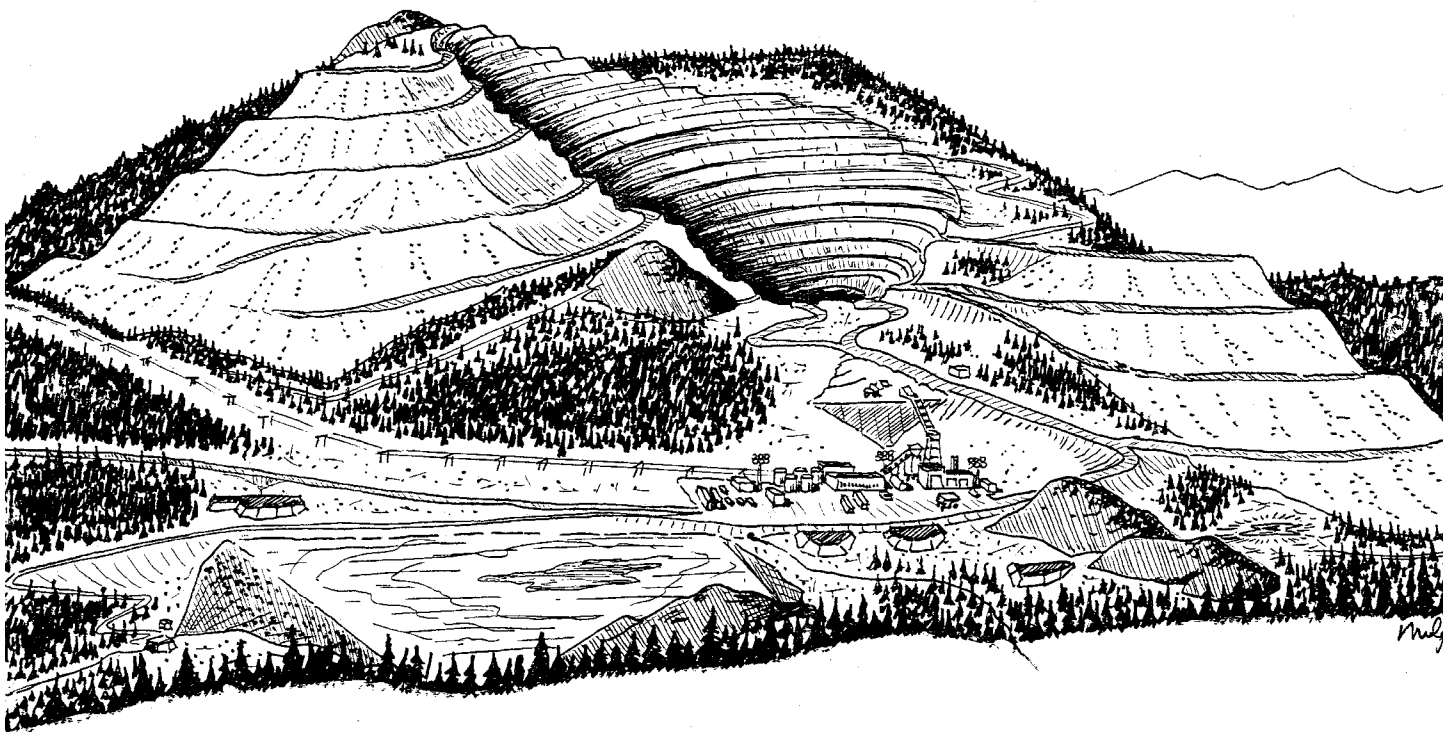
(2) Corporate Giveaways

Okanogan Highlands Alliance (OHA)

Buckhorn Mountain with Open Pit Mine



Gold mine gets water-permit OK

By Jim Simon, *Seattle Times* staff reporter

The state Department of Ecology has approved a water-rights permit for a controversial proposed gold mine in northern Okanogan County.

Opponents had considered denial of water-rights permits as one of their best shots at blocking the proposed Crown Jewel mine, which would be the first open-pit, cyanide-leach gold mine in the state.

But the ecology department accepted the Texas-based Battle Mountain Gold's plans to treat the vast quantity of water used during mining processes, then recycle it throughout the water basin via underground pipes.

"The state and the public have given this project more intensive scrutiny than any mining project ever proposed by the state," said DOE Director Tom Fitzsimmons in a news release. ". . . But every environmental issue we have raised so far has been addressed with a solution that is considered viable and reasonable under the law."

". . . But every environmental issue we have raised so far has been addressed with a solution that is considered viable and reasonable under the law."

— Tom Fitzsimmons, Director Washington's Dept. of Ecology

"All the documentation shows this mine would clearly have an impact on water quantity and quality."

— David Kliegman, Okanogan Highlands Alliance

David Kliegman of the Okanogan Highlands Alliance says his organization will appeal the water-rights permit. They believe that toxic materials from the open-pit operation endanger ground water used by farmers.

"The state has approved a very experimental process," he said. "All the documentation shows this mine would clearly have an impact on water quantity and quality."

Kliegman also said that the Colville Indian Nation today plans to join a federal lawsuit by environmental groups challenging the mine.

The Crown Jewel mine, as proposed, will require blasting nearly 97 million tons of rock from Buckhorn Mountain. The gold will be leached from the ore with a cyanide solution.

The mine site is on 300 acres of Okanogan National Forest land. If the mine goes forward, Battle Mountain Gold will be allowed to take title to the mineral rights for a token fee under the federal 1872 Mining Act.

The company projects the mine will yield 1.4 million ounces of gold.

Gold mine rejected by state board

Ruling may sink project backed by Gorton and Department of Ecology

By Robert McClure, *Seattle Post-Intelligencer* reporter

Comparing plans for a gold mine in north-central Washington to "entering a busy interstate highway on an exit ramp against traffic," the state Pollution Control Hearings Board yesterday shot down the controversial project.

"They had a lot of momentum behind it and a lot of money behind it."

— Stephen Suagee, Colville Tribe attorney

The decision represents a big victory for Washington environmentalists and the Colville Indian Tribes. It is a major setback for Houston-based Battle Mountain Gold and the state Department of Ecology, which had approved the project and argued for it before the hearings board.

The company's plan for the mine at Buckhorn Mountain in Okanogan County, which the company called the Crown Jewel Mine, had previously seemed unstoppable. It had garnered approval from several agencies, including Ecology, whose director called it one of the most-studied environmental permits in state history.

The company even received help in Washington, D.C., when Sen. Slade Gorton, R-Wash., last spring rushed a provision into an unrelated emergency funding bill to aid refugees in Kosovo. Gorton's work relieved Battle Mountain from restrictions on the use of federal land for the proposed mine.

The state's quasi-judicial pollution board, though, ruled yesterday that Battle Mountain's plans to protect the environment "suffer from serious omissions and flaws." The board, appointed by the governor, termed the plan "too speculative and error-ridden."

Battle Mountain would have to fork over millions of dollars to the state to cover cleanup costs, but that bond does not relieve the Department of Ecology of its responsibility to

Sen. Slade Gorton

Ecology Dir. Tom Fitzsimmons

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Anatomy of a Water Right: Say Yes, Say No

By Rachael Paschal

Ever wonder how the Department of Ecology decides to issue a water right? Presumably, it involves the "four tests" set out in the water code:

- Water must be physically available.
- The proposed use must be beneficial.
- The right may not impair senior rights.
- The right may not harm the public interest.

But when Ecology issued twelve new water rights to Battle Mountain Gold for its cyanide-leach gold mine, parties began to wonder. After all, the state had just turned down every other applicant in the basin, including requests for as little as nine gallons per minute. The documents you see on this page were dug out of Ecology's files as a part of the water rights appeals process. They were prepared by the permit writer, who granted 12,000 gallons per minute in instantaneous flow to the mining corporation. These documents reveal an extraordinary candor about how water rights decisions are *really* made these days.

Ecology has no mitigation rules or standards.

One of the most disturbing aspects of BMG's water rights is the utter lack of public process associated with the mitigation plan. As the YES/NO documents suggest, that plan was very much on the mind of the permit writer. And well it should be. The plan involves capture of stream flows in a reservoir sitting on the Canadian border, pumping the water four miles uphill and into the mine pit lake, then distributing it via half-mile long underground pipes, to the headwaters of pristine mountain streams.

Ecology refused to allow public input on BMG's plan.

There has never been a proposal like this in the history of the state. Indeed, so far as we can tell, there has never been a proposal like this in the history of the mining industry.

Fact: these water rights are some of the most unorthodox decisions ever made by Ecology. And as demonstrated by the YES and NO decision trees, reprinted here, Ecology knew it.

One might believe that such a unique and controversial plan would benefit from public input. There was none.

Ecology has no mitigation rules or standards. There are no guidelines.

Ecology refused to allow public input on BMG's plan. The mitigation proposal was not included as a part of BMG's original applications, thus depriving the public of the opportunity to comment during the brief "protest period" set aside for water rights applications.

When Ecology finally figured out that the discharge of mine pit water to pristine mountain streams might warrant environmental evaluation, the agency created an addendum to the impact statement. But the agency refused to circulate the addendum for public review.

If Okanogan Highlands-Alliance, Washington Environmental Council, and CELP had not appealed these water rights, the mitigation plan would have received no public input whatsoever.

Instead, based on the testimony of our experts, BMG and Ecology altered the mitigation plan two weeks before trial and again, two days before trial. The plan may well change again, but lacking public process, the public will never know. The sheer illegality of this mode of decision-making is being challenged in another lawsuit pending in Thurston County Superior Court.

Fact: these water rights are some of the most unorthodox decisions ever made by Ecology. And as demonstrated by the YES and NO decision trees, reprinted here, Ecology knew it.

From Department of Ecology files:

SAY YES

BASIS: Mitigation proposal adequately addresses impacts as senior rights and instream flows necessary to protect fishery interests.

PROS: Company will be happy as their needs will be met.

Ecology will look reasonable to water right applicants.

Ecology can craft the decision so as to minimize the precedent value (we get to frame the issues).

Would have the companies legal and technical horsepower on our side in any appeals.

No loss of jobs or tax revenues due to water right decision.

CONS: Would be saying "yes" to the big project that can afford to mitigate and "no" to the little requests that can not afford to mitigate.

Will probably be appealed by the Tribe and Environmental community because this stretches the mitigation envelope beyond what they believe is in the public interest and does not appear to be consistent with recent decisions.

Mitigation is not a proven system. Therefore, it could fail. The impact is not tied to a water withdrawal that could be terminated to stop the impact like other mitigation plans. Only recourse is thru a financial surety system.

Will require a long term commitment of agency monitoring and enforcement resources to be sure system functions properly

As long as Ecology is thinking up new tests for issuing water rights, we'd like to suggest a few.

Worried about the depressed economy in Okanogan County? Why not consider the "boom and bust" cycle associated with mining communities around the West? Who will pick up the pieces when BMG leaves town?

It's time for Ecology to just say YES to resource protection and just say NO to the corporate welfare that the BMG decisions represent.

Worried about pushing the envelope on mitigation? Why not offer small-scale water storage opportunities to the numerous local residents who were denied water for domestic use, gardens, and small ranching operations?

Worried about the drain on state resources? Why not stop assigning teams of staff to work round the clock processing BMG permits under timelines established by the company itself?

From Department of Ecology files:

SAY NO

BASIS: Mitigation proposal pushes the envelope beyond what is in the public interest.

PROS: No disconnect with the 8 senior applicants that will be denied because no mitigation is feasible for the small users.

The Tribe and Environmentalists will be supportive. Will be seen as consistent with recent decisions.

No need for regulatory activities and the risk of failure of the mitigation system.

CONS: Potential damage claim from the company because extra work was required on the mitigation plan but not used when basis for decision is policy based and not technical.

Company will not be happy and will probably appeal the decision. The agency would lose control over the framing of mitigation boundaries if the court overturns the decision.

Ecology will be viewed as environmental zealot that is not willing to honestly evaluate proposal.

Jobs and tax revenues will be lost to a depressed County.

Worried about controlling the "mitigation" agenda? Why not engage in some public rulemaking and give everyone the opportunity to comment on how our public waters will be allocated in the future?

Public confidence in Ecology's ability to responsibly allocate state waters is waning. It's time for the agency to just say YES to resource protection and just say NO to the corporate welfare that the BMG decisions represent.

Center for Environmental. Law & Policy News Issue No. 6, Spring 1998

It's Back!

Crown Resources/Kinross Corp. coming back for the Gold — and the Governor's Office is helping

Although the legal fight against the Battle Mountain Gold project was hard won, it seems that Buckhorn Mountain – and the water in nearby streams – may never be safe. After the bankruptcies and corporate mergers settled out, Crown Resources Corp. (a minor partner in the original project) wound up owning the claims to the Buckhorn gold reserves. And in the usual sleight-of-hand of corporate mergers, Crown Resources has just been acquired by Kinross Corporation, announcing yet a new set of plans for Buckhorn Mountain.

Yes, the mining corporations are back and they want the gold. This time, they propose to take it out via an underground mine, transporting the mined rock off the mountain for processing near Chesaw. More cyanide, more use of public waters, another large tailings pile. A Plan of Operations has been issued and water permits are pending at the Department of Ecology.

This time around, the state has more sophisticated methods for helping the project developer. In 2000, the state created a "cost reimbursement" program that effectively privatized the environmental permitting process. A developer can now pay for expedited processing of its applications for water rights, water quality permits, air quality permits, wetland permits, etc.

In 2002, the state established the Office of Regulatory Assistance (ORA). In the ORA, state staff who *report to the Governor* are the "main point of contact" for the developer, coordinating applications to "assure that timely permit decisions are made."

One obvious result of this process is that professional staff at Ecology are under increasing pressure from political offices to make decisions that fit with the Governor's pro-economic development agenda.

Crown Resources took full advantage of the services offered by the ORA. In October, 2003, Kinross Gold Corporation, one of the largest gold producers in the world, announced its intent to acquire Crown Resources and move forward to mine the claims.

***Gold Mine Rejected**, continued from page 7*

carefully review the project, the board ruled.

Relying on the bond money to fix environmental problems "is tantamount to entering a busy interstate highway on an exit ramp against the traffic. The availability of insurance in that circumstance is no more comforting than the proposed bonding here," the board's ruling said.

Rachael Paschal, a Spokane public-interest water lawyer representing the Washington Environmental Council and a citizens group called the Okanogan Highlands Association, praised the board for persevering in an incredibly complicated case.

"There were some technically complex issues involved, and they understood exactly what we were arguing," she said.

The case turned on two key issues. The first was how Battle Mountain would assure that enough water would remain in the already overcommitted creeks in the area. The state proposed to grant the firm almost 500 million gallons annually in new water rights.

Battle Mountain's plan to make up for this, Paschal said, was a "speculative, Rube Goldberg" arrangement. It involved the construction of a reservoir, pumping water up the mountain and then returning some of it through quarter-mile-long holes drilled in the mountain. The water would have to be treated to remove pollution — forever, which the pollution board found problematic.

Just prior to the hearing before the pollution board, the company changed its plan for replacing the water, demonstrating "substantial uncertainty" about whether the plan would work, the pollution board ruled.

"At the 11th hour, they admitted: 'We got it wrong,'" said Stephen Suagee, attorney for the Colville tribes. "Then they changed it and said, 'This time we got it right. Trust us.'"

The other key issue was water pollution.

After the company dug a pit 800 feet deep — 350 feet below the water table — the pit would fill up with water containing an undetermined level of acids and metals leached from the soil.

Battle Mountain did simulated tests on the water's pollution levels, but the tests lasted only 15 weeks, when in fact the pit would be there forever, the board pointed out.

Also, the huge piles of rock dug out of the pit — some 92 million tons covering nearly half a square mile — would surely pollute underground water, which would eventually flow into nearby wetlands, the board found.

Battle Mountain Gold was "surprised and disappointed and outraged," said firm spokesman Les Van Dyke, "given the amount of work that's been done not only by Battle Mountain, but also by all the agencies that have been involved."

"We have generated massive amounts of paperwork, literally filling rooms, studying every possible aspect of this and finding it to meet the criteria," Van Dyke said.

He said the company's board of directors would decide whether to appeal.

Tom Mulgrew

"I can't speak for the board, but certainly we have a history of appealing (similar decisions) and we have been successful."

Jay Manning, an attorney who represented the Department of Ecology in arguing that the mine should be allowed, said, "I'd be amazed if they didn't appeal."

However, Manning said he practiced before the pollution board and a sister panel for 15 years before leaving to go into private practice last year, and when it comes to appeals, the boards are "overturned quite infrequently."

A major reason for that, he said, is the complexity of the cases.

"The cases tend to be complicated, with sets of difficult facts, and those boards over time have come to have a fairly high level of expertise in the relatively arcane areas they practice in," he said.

If the case were appealed, it would go before a Superior Court judge. But that judge would review only the board's legal conclusions. He or she would not, except in extraordinary circumstances, delve into the factual issues that formed the meat of the decision yesterday.

Joan Marchioro, an assistant attorney general representing Ecology, said she had not had time to read the decision carefully. "We need to take a look at how they got to their conclusion and consider whether to appeal," she said.

Suagee, the Colville tribes' attorney, called the ruling "unexpected good news." The tribes had opposed the project partly because they have hunting and fishing rights on the mountain.

"They had a lot of momentum behind it and a lot of money behind it," Suagee said.

"Here we finally got some important issues in front of a body with some technical expertise and essentially out of the line of political fire . . . and they found this plan wanting."

P-I reporter Robert McClure can be reached at 206-448-8092 or robertmcclure@seattle-pi.com

After the company dug a pit 800 feet deep – 350 feet below the water table – the pit would fill up with water containing an undetermined level of acids and metals leached from the soil.

Relying on the bond money to fix environmental problems "is tantamount to entering a busy interstate highway on an exit ramp against the traffic. The availability of insurance in that circumstance is no more comforting than the proposed bonding here."

— ruling against open-pit cyanide-leach gold mine at Buckhorn Mountain.

Opinion

Pollution board's ruling is golden

Seattle PI Editorial Board

The State Pollution Control Hearing Board's refusal to permit a gold mine in Okanogan County is an embarrassment for the Department of Ecology, which had approved the mine. Unlike Ecology, in adjudicating a challenge from opponents of Battle Mountain Gold's Crown Jewel mine near Chesaw, the hearings board acted responsibly to protect the state's water resources.

After extensive technical and legal review of the company's unique proposal, the board found many faults. These are faults citizens pay Ecology officials to discover.

For starters, Ecology declared that water in several of the surrounding streams is fully appropriated. But agency officials approved 16 water rights — about 500 million gallons a year — for the company, anyway.

The company proposed to remove the top of Buckhorn Mountain and blast out a 900-foot-deep pit that would be used to hold contaminated water from mining operations. Ecology officials acknowledged that the water leaching from the pit lake would not meet water-quality standards, but approved the plan, anyway.

They accepted the company's assurances that a complex water-pumping and-treatment system would mitigate any pollution. The company proposed that clean water would be pumped from a reservoir, fed by pristine streams, for nearly four miles to the top of the mountain. It would be flushed through the pit and then back into the streams through pipes.

The company proposed to remove the top of Buckhorn Mountain and blast out a 900-foot-deep pit that would be used to hold contaminated water from mining operations. Ecology officials acknowledged that the water leaching from the pit lake would not meet water-quality standards, but approved the plan, anyway.

Because the pollution would last forever, the water pumping and treatment system also would have to last forever. So the company offered to post a bond to cover the costs of perpetual pumping and treatment.

Although Ecology officials concluded that this preposterous scheme offered reasonable environmental protection, the board rightly found it technically and legally insupportable.

"The focus of our environmental laws must be on preventing pollution and habitat degradation." — Pollution Control Hearings Board

Because the pollution would last forever, the water pumping and treatment system also would have to last forever. So the company offered to post a bond to cover the costs of perpetual pumping and treatment.

Although Ecology officials concluded that this preposterous scheme offered reasonable environmental protection, the board rightly found it technically and legally insupportable. The board said the company's mitigation plans contained too many errors and were based on poor research. The board also said that Ecology must consider the cumulative effects of such projects on the future water needs of local communities.

Approving a project that would contaminate water forever by relying on bonding to mitigate the damage "is tantamount to entering a busy interstate highway on an exit ramp against the traffic," the board wrote, adding:

"The focus of our environmental laws must be on preventing pollution and habitat degradation. It is not legally sufficient to proceed with the proposed mine without much more specific knowledge of the potential impact. . . . The long-term engineered solutions proposed in this case are legally insufficient."

That's a clear sighted, emphatic reminder of state officials' solemn obligation to protect water resources.

For More Information

In one of the most stunning and memorable victories of the 1990s in Washington State, science and the law won out over money and politics. Stopping Battle Mountain Gold's proposed large-scale, open-pit, cyanide-leach gold mine in North Central Washington is the story of grassroots perseverance.

The work continues. Crown Resources has submitted a new proposal for a large cyanide leach gold mine in the heart of Buckhorn Mountain.

What you can do:

- Write a letter on the proposed mine. For help, go to www.OkanoganHighlandsAlliance.org and see the scoping fact sheet and sample letter.
- Or, contact Dave Kliegman with the Okanogan Highlands Alliance (509) 486-0816, kliegoha@televar.com
- or visit the Okanogan Highlands Alliance for more updates: www.OkanoganHighlandsAlliance.org

- The **Plan of Operation** is available online at: http://www.fs.fed.us/r6/oka/buckhorn_mountain/

(3) SeaTac's Third Runway

For More Information

- **Airport Communities Coalition (ACC)**, www.ci.des-moines.wa.us/acc.html
- **Great Wall of SeaTac, Earthquakes**, www.geocities.com/bzdiving/GreatWallofSeaTac.html
- **Miller Creek History**, www.geocities.com/bzdiving/index.html
- **Port issues another incomplete cost estimate: Now $1.1 billion "officially", unofficially a whole lot more** www.rcaanews.org/Webletter_2003_June/TIA_june_2003.htm
- **Regional Commission on Airport Affairs (RCAA)**, www.rcaanews.org
- **The Toxic Fill Bill (SSB 5787)**, cascade.sierraclub.org/southkingcounty/Alert-ToxicFillBill.htm
- **PCHB ruling on SeaTac's 3rd Runway proposal:** go to the following website, then to PCHB 01-160 and click on "final": www.eho.wa.gov/FinalOrders.asp?Year=2002
- **Toxic Fill Bill (SB 5787), law signed by Gov. Locke:** click on the web address, scroll down to and click on "Session Law": www.leg.wa.gov/wsladm/billinfo/dspBillSummary.cfm?billnumber=5787

Coalition appeals permit for 3rd runway

Water-certification requirement not met, opponents say

By Larry Lange, staff reporter, *Seattle Post-Intelligencer*

State officials approved a key environmental permit for a proposed new Sea-Tac Airport runway without meeting a disputed but potentially important requirement as suggested by their own attorney, an agency document shows.

A sheet of notes, dated in April and obtained by runway opponents under the state Public Disclosure Act, says a state attorney advised the Department of Ecology to require a water right to secure adequate summer flow for nearby creeks.

The discussion is in a copy of notes inadvertently released to the Airport Communities Coalition by the department, which approved a critical water-quality certification for the proposed third runway in August.

The coalition, a longtime foe of the new runway, has appealed the permit.

An Ecology manager's notes showed the water-right advice came in April from assistant attorney general Joan Marchioro, counsel for the agency. She was "currently advising (that) we require the water right" for the project, the notes said, though they quoted her as saying she and her office "will support any policy position we choose to adopt."

Obtaining the water right likely would have delayed the project for some time, due to the backlog of applications for rights statewide.

The agency later decided the right wasn't needed. But opponents say it again shows the runway project is being pushed by political motivations. The notes, they say, raise ethical questions.

The controversial third runway is scheduled for completion in 2006, assuming all permits are obtained.

The statement about the water right "is the same thing as saying 'if you choose to break the law I'll be there for you,'" said coalition director Kimberly Lockard. "That should be of great alarm that these things are happening, and that they're happening without batting an eye."

The state disputes that interpretation.

Marchioro referred questions to her supervisor, David Mears in the Attorney General's Office. Mears said that "we don't think it's clear" that a water right is required and the office provided Ecology "some options" about how to proceed, all of them legally defensible.

This makes Marchioro's willingness to defend the agency appropriate, he said. The notes, taken by the department's northwest regional manager, Ray Hellwig, don't mention the options but "capture just a segment" of the discussions between the two, Mears said.

The coalition obtained the document as part of its standing request for records relating to runway decisions. The department later said the part of the notes reflecting the discussion should have been blacked out because it is covered by the attorney-client privilege.

The department has asked for the coalition to return the document. The Pollution Control Hearings Board, which is considering the appeal, has agreed and ordered it to be sent back and not considered during the appeal.

The coalition released the document publicly last week to counter the state and the port's descriptions of the water-right proposal as "creative" and "radical," Lockard said.

The coalition has made the water right a major part of its drive to stop the new runway.

In its appeal of the water certification to the hearings board, it said that without a water right "there can be no assurance that stream flows in Des Moines, Miller and Walker creeks will be protected for the life of the third runway."

The port has agreed, as part of the runway project, to build a basin to retain stormwater runoff during rainy months and release it during dry weather to keep water in the creeks. But the port and Ecology agree that a water right isn't needed because the port is only retaining and rereleasing the water into the streams, not making use of it for the terminal or for runway operations.

Jay Manning, a port attorney, said a water-right process would seriously delay the runway and storm-water system because of the backlog in applications. Requiring the right "is tantamount to saying you can't do it," he said.

State officials approved a key environmental permit for a proposed new Sea-Tac Airport runway without meeting a disputed but potentially important requirement as suggested by their own attorney, an agency document shows.

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— Kimberly Lockard
Airport Communities Coalition

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November 5, 2001 Seattle Post-Intelligencer

Beware - The Great Wall of SeaTac

By Bob Sheckler (Airport Communities Coalition Chair and City of Des Moines Mayor Pro Tem)

Your editorial "Don't dither on viaduct" was right on target in saying that the Washington State Department of Transportation should move quickly to replace that aging and dangerous highway structure. You correctly pointed out that the viaduct sits on fill, which is expected to liquefy in a 7.5 or higher earthquake, an event this region is certain to experience at some time.

The Port of Seattle is moving forward . . . with its plans to construct an equally dangerous 15-story high, 1450-foot long retaining wall to support the third runway at SeaTac Airport.

However, I find it ironic that while you admonish WSDOT to quickly address the serious earthquake hazard posed by the Alaska Way Viaduct, the Port of Seattle is moving forward unchallenged with its plans to construct an equally dangerous 15-story high, 1450-foot long retaining wall to support the third runway at SeaTac Airport. If built, this "Great Wall of SeaTac" will be a potential disaster waiting to happen.

Just as in the case of the viaduct, this massive retaining wall is proposed to be built in a zone of weak peat and loose, liquefiable sands. We all saw what happened to the SeaTac Control Tower in the earthquake of last month. Imagine a seismic event of equal or greater magnitude with this massive wall in place, which holds back 22 million cubic yards of fill material. Not only could the third runway be destroyed, but the critical wetlands and salmon-bearing stream at the base of this wall would be wiped out.

Recently, the Airport Communities Coalition retained two internationally known geo-technical scientists to review the plans for the Great Wall of SeaTac. They frankly state that the wall is not being proposed for an appropriate site with appropriate soils. Their report provides compelling evidence of the dangers associated with the proposed wall, saying in part ". . . the resulting deficiencies (in the wall design) could lead to a design of the embankment and walls that could ultimately result in damage or failure of the wall, particularly under the influence of a strong seismic event in the Seattle area."

"a ticking time bomb"

We all saw what happened to the SeaTac Control Tower in the earthquake of last month. Imagine a seismic event of equal or greater magnitude with this massive wall in place, which holds back 22 million cubic yards of fill material.

You quote a member of the State Transportation Commission calling the Alaskan Way Viaduct "a ticking time bomb". I couldn't agree more. However, while we urge the Department of Transportation to defuse that bomb, let us not stand by while the Port of Seattle creates another explosive and dangerous situation with their ill-considered Great Wall of SeaTac.

Special to The Seattle Post-Intelligencer, March 14, 2001, The Seattle Post-Intelligencer. Used with permission.

SeaTac International Airport, aerial view. The 3rd runway would be constructed parallel to the two existing runways. (See large white area superimposed on this aerial photo, far left.) At a cost of over $1 billion, the runway would serve the sole purpose of allowing two planes to land simultaneously in bad weather. It would be built on top of an existing canyon filled with 20 million cubic yards of dirt and gravel and held back by one of the world's largest retaining walls: the "Great Wall of SeaTac." The fill would be dumped on salmon streams, in an area prone to earthquakes.

Opinion

Just out of Port, Locke sails into environmental tempest

By O. Casey Corr, *Seattle Times* columnist

NORMANDY PARK - Just west of Sea-Tac Airport, down a leafy valley patrolled by eagles, Miller Creek teems with ducks, trout, salmon and potential trouble for Gov. Gary Locke.

The creek is a showcase for why Locke can't rely on support from environmentalists in his re-election campaign.

Salmon lovers, who didn't like his opposition to removal of dams in eastern Washington, are now upset over his recent involvement in the airport expansion.

Sea-Tac has been called a creek polluter since its dedication in 1949. The $773 million third-runway project has been delayed by state and environmental reviews.

Eager to get the project moving, the Port has told county, state and federal regulators that it would build new wetlands, move portions of the creek, remove old septic tanks and manage stormwater so fish eggs aren't knocked from the creek bed. Salmon habitat in Miller and nearby Des Moines creeks will be no worse, and perhaps even better, says the Port.

Regulators aren't satisfied. The regional office of the Environmental Protection Agency has asked the Army Corps of Engineers to deny a permit for the project until the Port does more for fish. King County officials recently rejected the Port's stormwater-management plan. And there's continuing difficulty with one of Locke's agencies, the Department of Ecology.

With a state permit decision due by September, the Port has complained to Locke's office of duplicative paperwork and slow processing by understaffed regulators. DOE points back, saying the Port's submittals have been late or inadequate.

"Our regulatory review needs to be comprehensive in order to accommodate our various environmental objectives, but also in order to satisfy a very interested public," Ray Hellwig, regional DOE director, wrote in a memo to Locke's office. He described DOE's relationship with the Port as "open and positive" but "continually under stress."

Impatient with the pace of review, Port officials approached Locke through Martha Choe, former City Council member and now head of the state's trade and economic development. What followed were detailed e-mails and memos obtained by lawyers working to oppose the runway.

After an exchange of messages with DOE staff, Choe set up a May 16 meeting for Locke and his chief of staff, Joe Dear, to meet privately with the Port's executive director, Mic Dinsmore. Representatives of business and labor groups who back airport expansion also were invited.

[The head of the state's trade and economic development set up a] meeting for Locke and his chief of staff, Joe Dear, to meet privately with the Port's executive director.

"We are still wondering what the result was of that meeting behind closed doors."
— Sen. Julia Patterson, D-SeaTac

The governor's office confirms that Ecology was told to make weekly reports on the airport, and Dinsmore of the Port and Tom Fitzsimmons, head of DOE, were told to call Dear if necessary paperwork was slow to come from the other side.

Helping business groups understand the permitting processes or arranging meetings with the governor is routine in her job, says Choe. But environmentalists and critics of the project saw it differently when word spread of the scheduled meeting.

Larry Corvari, chair of the Sierra Club's south county chapter, picketed the meeting in downtown Seattle with about a dozen activists. He doesn't know specifically what the governor did, but he regards the meeting as suspicious. "The governor should not bail out the Port of Seattle when they haven't done the work to get the permits," says Corvari.

Bob Parker, airport spokesman, says no attempt was made to pressure regulators. "We wanted to update the governor on the third runway and explain how important it was that the project move ahead and that the timetables be met," says Parker.

Sen. Julia Patterson, D-SeaTac and a runway opponent, wrote to Ecology urging them to resist pressure. "We are still wondering what the result was of that meeting behind closed doors," she said in an interview.

The governor's office confirms that Ecology was told to make weekly reports on the airport, and Dinsmore of the Port and Tom Fitzsimmons, head of DOE, were told to call Dear if necessary paperwork was slow to come from the other side.

None of that represents pressure on Ecology, says Dear. To do so would only hand runway opponents a weapon they can use in a lawsuit, he says.

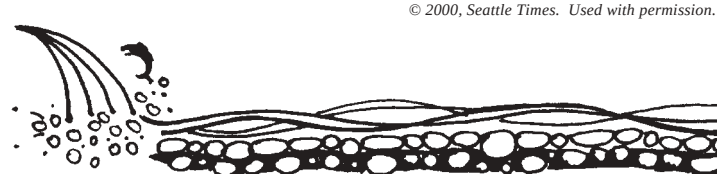
But that's precisely how Peter Eglick, a lawyer for the opponents, sees it. "Talk about putting the heat on: How many other applicants get to have the governor monitor their progress through the Clean Water Act requirements?" asks Eglick.

About two miles from the airport, Chris Gower lives in a house facing Miller Creek. It's the base of his campaign to stop the runway. Last year, he asked Locke to oppose the permits. The governor wrote back, saying, "As governor, I have no cause to intercede in the matter."

Gower says the governor appears to have contradicted himself by meeting with runway supporters. "When you meet with someone, you're intervening, wouldn't you say?"

It sure looks that way.

May 31, 2000 Seattle Times



Sea-Tac runway opponents cry foul after key overseer is transferred

Charges of political collusion fly

By Jack Hopkins, *Seattle P-I*

Opponents of a third runway at Seattle-Tacoma International Airport have accused the state Ecology Department of bowing to political pressure by reassigning a top staffer who has been monitoring the project for the past three years.

The Airport Communities Coalition accused the state of abruptly removing Tom Luster from his longtime assignment as head of the runway review team because of pressure generated by the Port of Seattle.

The coalition fears the move could clear the way for the environmentally sensitive project to be approved.

But officials from the port and the Ecology Department bristled at the suggestion that the two agencies were working together to push the project forward.

Ecology Department spokesman Curt Hart said Luster was reassigned because he was needed on other policy matters — not because of political pressure. Hart pointed out that Luster will be replaced by Ann Kenny, a 10-year veteran of the department trained by Luster.

"We're a little concerned that there is the attitude out there that only certain individuals in our agency are interested in fulfilling our mandate," Hart said. "We all want to do that. And faces shouldn't matter."

In a letter faxed Wednesday to Ecology Department Director Tom Fitzsimmons, the coalition said Luster's transfer "reinforces the widely held perception that inappropriate pressure is being exerted to push this project through the regulatory process."

Luster's transfer "reinforces the widely held perception that inappropriate pressure is being exerted to push this project through the regulatory process."

— Airport Communities Coalition, representing the cities of Burien, Tukwila, Des Moines, Federal Way, Normandy Park and the Highline School District

The port withdrew its wetlands permit application last month after state officials said they weren't satisfied with plans for handling storm water runoff at the airport.

The state said it also was concerned about several other aspects of the proposal, including its effect on stream flow in nearby Miller, Walker and Des Moines creeks.

The port filed a replacement application last week and hopes to win permit approval by mid-December.

The coalition, which represents the cities of Burien, Tukwila, Des Moines, Federal Way, Normandy Park and the Highline School District, sent copies of its letter to Gov. Gary Locke, U.S. Rep. Adam Smith and several state legislators.

Hart said although the port appears to be on the right track to resolve environmental concerns about the runway, there's no guarantee the agency will receive the wetlands permit needed to complete the $773 million project.

Airport Communities Coalition Chairman Bob Sheckler, however, told Fitzsimmons his group is upset because it believes Luster had handled the ongoing environmental review "in a professional and even-handed manner."

But Hart said Kenny's appointment "won't cause an abrupt change" in the way the department is handling the port's wetlands permit request.

"We made a business decision to shift folks where they were needed most," Hart said. "Luster's main job has been statewide policy and looking into what kind of things Ecology needs to work on. We need him back on some of the projects we have not been able to get to in the last few years."

Sheckler, however, complained that Luster's reassignment followed a port-inspired "public relations campaign" designed to pressure the department to approve the project.

That campaign has included private meetings of port officials with the governor and other top state officials to talk about the third runway, he said.

A Locke spokesman said the governor's office played no role in the decision to reassign Luster.

Port officials also denied playing any role in the reassignment.

Luster declined comment yesterday, saying he doesn't want to become the focus of a public dispute over his reassignment. Kenny couldn't be reached for comment.

Port officials have been struggling for several years to win approval of the third runway to ease air traffic congestion.

Previous attempts to obtain a wetlands permit from the Ecology Department have failed, forcing delays in the project, now expected to be completed in late 2006.

The port withdrew its wetlands permit application last month after state officials said they weren't satisfied with plans for handling storm water runoff at the airport.

The state said it also was concerned about several other aspects of the proposal, including its effect on stream flow in nearby Miller, Walker and Des Moines creeks.

The port filed a replacement application last week and hopes to win permit approval by mid-December. But Hart said it isn't likely to happen that fast.

October 16, 2000 Seattle P-I

More seek to stop runway

Environmental groups want to join suit over fill

By Larry Lange, *Seattle P-I*

A battle over the fill used to build the third runway at Sea-Tac Airport has long been the source of local debate.

But now environmental groups from across the state want to take part, worried that what will be allowed at Sea-Tac may also be allowed in their back yards.

Yesterday 14 environmental groups joined an effort to overturn a law designed to aid construction of the runway. They fear the measure, which sanctions a controversial leaching test for fill at the runway, could have statewide implications.

The legislation is designed "to gut the Clean Water Act," said Greg DeBruler of Columbia Riverkeeper in White Salmon.

Backers don't agree. Legislators, pressed by the Port of Seattle during this year's session, adopted a law accepting the disputed leaching test for new runway fill. Most lawmakers accepted the word of the port and the Department of Ecology that the test would be enough to prevent contaminated runoff from the runway.

"This (law) will allow anybody to use dirty fill anywhere somebody wanted to use it."
— Greg Wingard, executive director of the Waste Action Project

But almost a month ago the chief runway opposition group, the Airport Communities Coalition, asked the Washington State Supreme Court to block enforcement of the measure, saying it interferes with the judicial process and with enforcement of the federal Clean Water Act and amounts to unconstitutional, special-interest legislation.

Opponents have said the test, called a "synthetic precipitation leaching procedure," won't detect small enough concentrations of contaminants to predict whether they'll leach out over long periods of time. The coalition asked the high court to stop the state Department of Ecology from allowing the testing.

Although the battle started with the proposed runway, environmentalists now joining the coalition's effort said the new law has ominous implications elsewhere in the state.

Although the battle started with the proposed runway, environmentalists now joining the coalition's effort said the new law has ominous implications elsewhere in the state.

DeBruler said the measure could lead to depositing of contaminated fill on shorelines such as those along the river. He said this concerns the 3,000 members of his group as the Army Corps of Engineers contemplates dredging the Columbia to deepen its channel.

"This (law) will allow anybody to use dirty fill anywhere somebody wanted to use it," he said. Greg Wingard, executive director of the Waste Action Project, said the leaching test yields inconsistent results because particles in sampled soil vary in size. He said the test doesn't use a strong enough chemical agent to flush out all contaminants where they can be analyzed. "It's not going to detect (pollutants) in a uniform manner," he said. He and others said the Legislature should not have acted before the high court ruled separately on the fill issue. A state board would not allow the contamination test to be used, so the Ecology Department and port appealed to the Supreme Court.

"The separation of powers should stand, and any other powerful entity (like the port) should not be allowed to manipulate the Legislature, to use legislation as litigation." Wingard said.

Director Mike Petersen of the Spokane-based group The Lands Council said his group is concerned that contaminants could end up in landfills and leach out in nearby rivers when businesses haul polluted material from their sites.

"If it looks like an easy way out for industry ... what we find is a certain percentage of the industry will go along with that," said Petersen, whose organization has worked to clean up mining contamination in the Coeur d'Alene basin and the Spokane River.

The 14 groups, including those headed by DeBruler, Wingard and Petersen, filed a friend-of-the-court action yesterday asking, the high court to add their names to the coalition's in bringing the action.

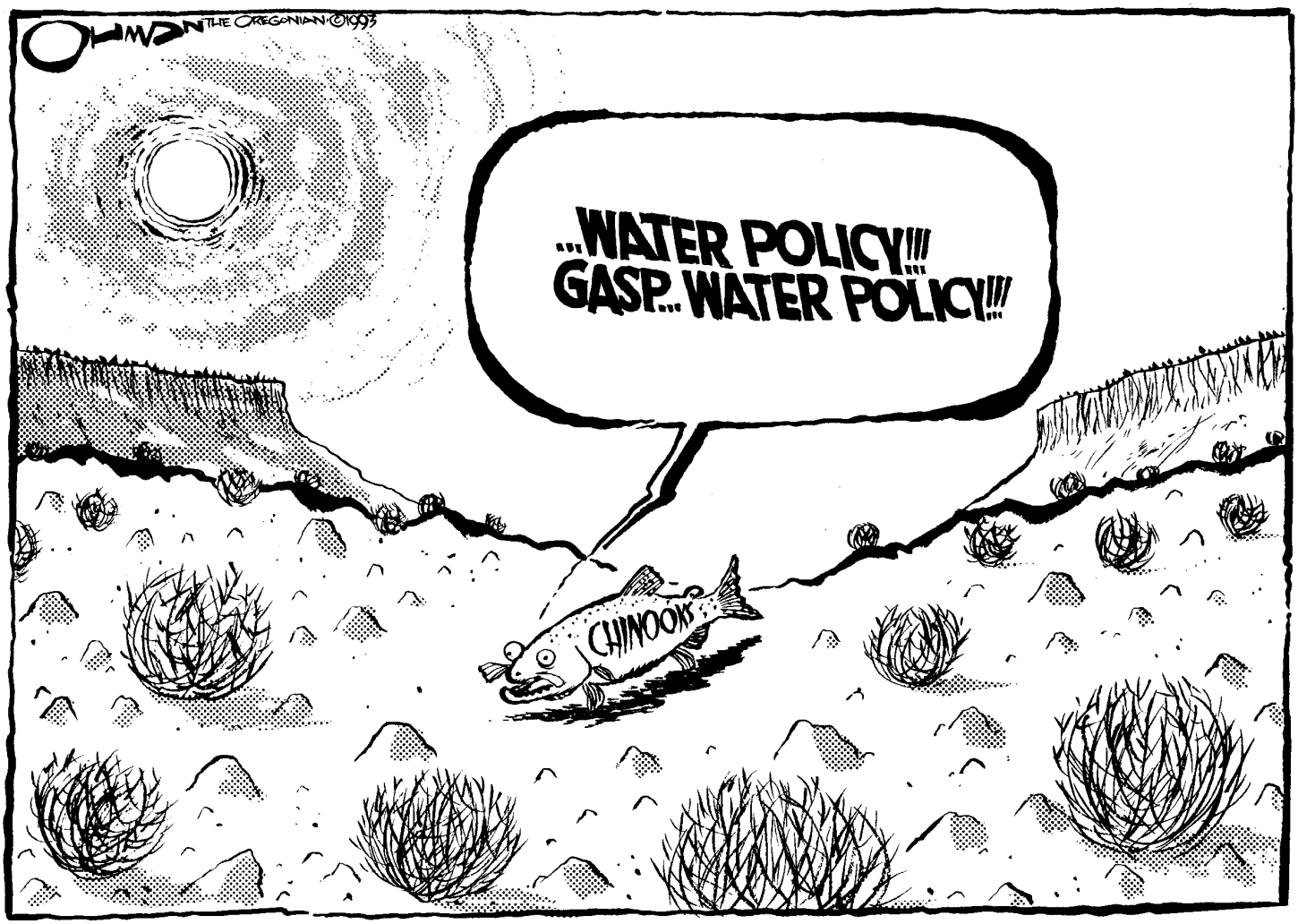
It's not clear yet whether the court will allow the environmentalists to become part of the original action – or even hear the suit brought by the coalition, which names the Ecology Department and the port as respondents. A court commissioner will hear arguments from both sides on July 10 before the court decides whether to take the case.

Neither the Ecology Department nor the port have been willing to comment on the legal arguments raised by runway opponents and the environmentalists. But Ann Kenny, the Ecology Department's senior regional planner in Bellevue, disputed statements environmentalists made about the test. She said the fill will be brought from uncontaminated sites but also will be checked with the test to make sure it is clean enough and must meet legal limits even after testing.

Rep. Kelli Linville, D-Bellingham, who headed the committee that approved the measure in the state House, denied that the Legislature acted improperly. She said the original bill was broadened to make it applicable statewide, not just for the runway. She said the Legislature has passed other measures expressing its intent on legal matters being considered by the court. She said the measure won't violate the Clean Water Act because of the precautions to be taken to screen the runway fill.

Airport spokesman Bob Parker said the port, which operates the airport, went to the Legislature on the fill issue because it didn't want any more delay in the runway.

P-I reporter Larry Lange can be reached at 206-448-8313 or larrylange@seattlepi.com



Gov. Locke and Salmon Extinction

By Rachael Paschal Osborn

Shortly after Governor Locke came into office he was confronted with the stubborn issue of salmon extinction: 13 species of salmon that return to Washington rivers have been designated as endangered or threatened under the Endangered Species Act. Locke established the Office of Salmon Recovery and issued an "action" report in 1999, titled ***Extinction is not an Option*** ("just the preferred alternative," as one quick-witted environmental lobbyist has pointed out).

In May 2003, Portland federal Judge J. Redden rejected Washington's salmon recovery plan, finding it was not a sound basis for salmon recovery. The judge threw out the "biological opinion" or "Bi-Op" governing salmon recovery efforts on the Columbia River hydropower system. The Bi-Op, which was issued by the National Marine Fisheries Service (NMFS), relied heavily on ***Extinction is not an Option*** (along with recovery plans in Oregon, Idaho and Montana) as a basis to allow the Columbia-Snake hydropower system to continue operating. The Court ruled that the measures set forth in Washington's recovery plan were not reasonably certain to occur due in part to the lack of "any binding commitments by the States . . . to fund or implement the responsibilities" contained in the plan. (National Wildlife Federation v. NMFS, 254 F.Supp. 1196 (Ore. 2003)).

In May 2003, Portland federal Judge J. Redden rejected Washington's salmon recovery plan, finding it was not a sound basis for salmon recovery.

Judge Redden is not alone in his concerns about the Washington salmon plan. According to the Independent Science Panel (ISP), established by the Washington legislature to review the scientific merit of state salmon efforts, the Extinction Report misses the mark. In general, the ISP found that Locke's salmon recovery strategy "does not form an integrated, scientific approach to effectively address the acknowledged causes of decline and achieve the stated goal to restore salmon, steelhead and trout populations to healthy and harvestable levels and improve habitats on which fish rely.' The current approach appears to be a loose collection of tactics rather than a strategy." The ISP continued,

"The proposed set of minor changes to existing programs and reliance on historically ineffective voluntary measures leaves an impression that tinkering with failures of the past will restore glories of the past. This approach is likely to result in false expectations and is not based in science. . . . In the opinion of the ISP, the present Strategy is not likely to reverse the ongoing declines in salmonid abundance." ISP Review of ***Extinction is Not an Option*** (May 2000).

Governor Locke's response to the Independent Science Panel's critique was to stay the course and implement the action plan as written.

"In the opinion of the Independent Science Panel, the present Strategy is not likely to reverse the ongoing declines in salmonid abundance." — ISP Review of *Extinction is Not an Option*

Extinction is not an Option devotes a chapter to "ensuring adequate water in streams for fish." The instream flow strategy largely involves handing over responsibility for flow protection to local watershed planning units, establishing flow targets, metering diversions and withdrawals, and enforcement against exempt wells and wasteful use.

The ISP criticized this approach. It found that the Governor's strategy "does not develop scientifically based instream flow allocations. Instead, the Strategy seeks to set such requirements with local stakeholders – who presumably have additional interests other than protection of fish. . . . If the decision making process is one of negotiation among competing priorities, then one cannot have a high degree of confidence that the outcome of the process will result in conservative measures to protect the resource." Similarly the ISP notes that many rivers in Washington are already over-appropriated, that is, water rights have been issued in excess of the amount of water available in the stream. The Governor's strategy, to simply set theoretical flow targets without action to ensure that water is actually maintained instream, is useless.

In sum, Governor Locke has failed in his efforts to restore salmon to the Columbia ecosystem, and has also distorted the record. Unfortunately, wild salmon will tell the tale that the publicists will not. And they will tell it by simply never coming home. That's not an alternative that Washington's public is willing to accept.

In late 2002, the Governor issued a Scorecard on Salmon Recovery claiming success in achieving the state's instream goals. The scorecard, however, is both deficient and deceiving. No progress has been made on many of the strategies. And in the area of instream flows, the Governor claims victories that are not entirely true.

The Columbia River is a case in point. 2001 was a drought year of staggering proportion (the second hottest year on record worldwide, according to the UN's World Meteorological Organization). Instream flows for northwest rivers hit drastic lows. Under the state's "minimum flow" program, it was clear the Columbia River would not meet the target flows set out in state regulations (which themselves are scientifically inadequate for salmon recovery). This meant that any irrigator issued a water right since 1980 would have to stop using water during the low flow period.

The Salmon Scorecard claims that the state purchased more than 33,000 acre feet (more than 10 billion gallons of water) to offset the impacts of the drought in the Columbia River. In reality, however, Ecology Director Tom Fitzsimmons personally issued an order suspending the Columbia's minimum flow program to allow farmers with interruptible water rights to continue to pump from the river. (See ***State reduces minimum flow requirements on Columbia***, page 23.) Much of the water that was purchased to maintain flows was actually diverted by downstream irrigators. While the Salmon Scorecard touts the purchase of instream water rights as an accomplishment, it fails to mention the suspension of the minimum flow program.

Similarly, while the Extinction Report places heavy emphasis on the need to install meters on water wells and pumps, it took a lawsuit from several environmental organizations to force the state to undertake a program of ordering water users to meter their water use. (See ***Meter rural water too***, page 25.) Enforcement against illegal use is virtually unheard of.

Finally, of course, the state continues to issue new water rights from the Columbia River, notwithstanding the impacts to fish. (See ***Tribes file challenge to Columbia water withdrawals***, page 24.)

Governor Locke recently joined with other Northwest Governors in calling for the continuation of the "aggressive" non-dam removal salmon recovery efforts. But the Governor can't have it both ways. An "aggressive" non-dam removal program to protect and restore salmon habitat will not work if the Governor simultaneously undermines the state's ability to do that job. In Washington, recent activities supported by the Locke Administration, such as weakening state clean water laws, issuing permits for new water rights, and support for dredging the Lower Columbia River, cast doubt on the state's commitment to protecting salmon.

In sum, Governor Locke has failed in his efforts to restore salmon to the Columbia ecosystem, and has also distorted the record. Unfortunately, wild salmon will tell the tale that the publicists will not. And they will tell it by simply never coming home. That's not an alternative that Washington's public is willing to accept.

For More Information

- **Save Our Wild Salmon's *2002 Salmon Plan Report Card:*** *http:*//www.wildsalmon.org/about/ReportCard.cfm
- **Washington's Independent Science Board:** http://www.governor.wa.gov/gsro/science.htm
- **National Marine Fisheries Service endangered salmon page:** http://www.nwr.noaa.gov/

4 Western governors head back to the drawing board for salmon

Breaching not likely to be part of plan they will give White House

By Rocky Barker, *Idaho Statesman*

Two years ago, the Clinton administration adopted a plan to restore 12 runs of endangered salmon and steelhead and take management of the Columbia River basin from a federal judge and return it to state, federal and tribal governments.

Salmon are a physical manifestation of the wild character of the Pacific Northwest.

On May 7, U.S. District Judge James Redden in Portland threw out the plan and gave the Bush administration a year to rewrite it. Once again, the Pacific Northwest had been thrown into a state of uncertainty by the Endangered Species Act, the fate of its rivers and fish to be decided by a judge.

On May 7, U.S. District Judge James Redden in Portland threw out the plan and gave the Bush administration a year to rewrite it.

The governors of Washington, Oregon and Montana will meet today in Boise with Idaho Gov. Dirk Kempthorne to discuss what they can do to help the Bush administration write a new plan that will meet the strict legal requirements of the Endangered Species Act, which has been called the most powerful environmental legislation ever written.

The environmentalists, commercial fishermen, American Indian tribes and sportsmen who brought the lawsuit say they won't stop using the courts to pressure the region's hydroelectric industry, irrigation farmers, barge shippers and others until the four federal dams on the lower Snake River in Washington are removed or the salmon runs are restored.

The plan, technically called a biological opinion, stated that the federal dams jeopardized the survival of salmon. But it also said a series of actions across the Pacific Northwest, such as habitat-improvement projects on tributaries, more natural hatcheries and harvest limits in the Columbia and Pacific Ocean, could be used to offset the losses salmon sustain at the dams.

"We are committed to the tough side of what we have to do to keep this Northwest icon in existence," said Pat Ford of Boise, executive director of Save Our Wild Salmon. "But we also want a solution that works for all of the people and the communities of the Northwest."

Salmon are a physical manifestation of the wild character of the Pacific Northwest. They provide growing economic benefits to fishing communities and spiritual sustenance to the Northwest's American Indian tribes. The four Snake River dams provide enough power to light Seattle when they run at their peak in the spring.

Ford, other salmon advocates and a strong majority of fisheries scientists say that salmon runs can't be restored without removing the dams. The National Marine Fisheries Service, the agency charged with protecting the salmon under the Endangered Species Act, hopes to make relatively minor changes to the plan to persuade Redden that it complies with the law.

"This administration believes that the requirements of the biological opinion and recovery of salmon can be achieved without breaching dams," NMFS spokesman Brian Gorman said.

At issue in court now is what will happen in the next year until a new plan is written.

Lower Granite Dam

Little Goose Dam

The four lower Snake River dams, all in Washington State. When Lewis & Clark first stepped foot into the Columbia River watershed, this was the richest salmon fishery on earth. Sixteen million wild salmon yearly pulsed these wild forests and deserts, returning home to natal streams, spawning, and in their death renewing a cycle of life. Where Lewis & Clark canoed free-flowing

More decisions ahead

In May, Redden declared the plan was inadequate and now is hearing arguments on what he should do next. The salmon advocates have asked the judge to throw out the Clinton salmon plan altogether and force the Bush administration to start all over. In the meantime, their attorneys argue the federal government must do more to help young salmon through the labyrinth of eight dams on the Columbia and Snake rivers.

In May, Redden ruled narrowly that the fisheries service cannot ensure with enough certainty that the recommended actions it ordered will take place.

That would mean buying more water from Idaho farmers to keep it in the river. The increased flows and additional water spilled over the dams would keep fish away from the turbines that generate electricity.

This is where the governors come in. In 2000, they approved a plan that largely mirrored the Clinton plan for salmon restoration. Like that plan, the governors deferred a decision on dam breaching until the alternative plan was given a chance to work.

The National Marine Fisheries Service wants Redden to keep the plan in place while it writes a new plan that says federal agencies' actions comply with the Endangered Species Act. Without keeping the current plan in place, Gorman said, a series of lawsuits could shut down federally approved activities across the region, including irrigation farming, road building, mining, logging, river rafting, hydroelectric dam operation and shipping.

The plan, technically called a biological opinion, stated that the federal dams jeopardized the survival of salmon. But it also said a series of actions across the Pacific Northwest, such as habitat-improvement projects on tributaries, more natural hatcheries and harvest limits in the Columbia and Pacific Ocean, could be used to offset the losses salmon sustain at the dams.

The two holdovers, Republican Kempthorne and Democrat Gary Locke of Washington, oppose breaching.

In May, Redden ruled narrowly that the fisheries service cannot ensure with enough certainty that the recommended actions it ordered will take place. Redden has not yet ruled on the larger question of whether these actions would be sufficient to meet the law.

The fisheries service hopes to satisfy the judge by issuing separate biological opinions to all of the federal agencies, requiring them to carry through on their commitments. Similar conservation agreements that are enforceable can be signed with states. The actions of private landowners can be ensured through formal habitat conservation plans approved by the fisheries service.

But all of these actions will take money. Congress cut salmon funding in 2003, and the Bonneville Power Administration, the federal agency that markets electricity from the dams and pays much of the cost of the salmon-restoration plan, wants to reduce its fish budget by 25 percent.

The governors' role

This is where the governors come in. In 2000, they approved a plan that largely mirrored the Clinton plan for salmon restoration. Like that plan, the governors deferred a decision on dam breaching until the alternative plan was given a chance to work.

The governors' role in this process is largely advisory. In their meeting today, they will discuss the proposed BPA funding cut and repeat or even harden their stand against breaching. But the cast of characters has changed since 2000.

The one governor who supported dam breaching, Oregon's John Kitzhaber, has since retired. His successor, fellow Democrat Ted Kulongoski, has yet to take a stand on the issue. Former Montana Gov. Marc Racicot, a Republican, who opposed breaching but was willing to consider it, has been replaced by Judy Martz, a Republican who opposes breaching. The two holdovers, Republican Kempthorne and Democrat Gary Locke of Washington, oppose breaching.

Vicki Anderson, who co-owns the Salmon River Motel in Riggins, is disappointed that Kempthorne won't even discuss the possibility of dam breaching. For 15 days in May, her motel was

Continued on page 22

Lower Monumental Dam

Ice Harbor Dam

waters on the Snake River, today the river has been stilled by four federal dams. These four lower Snake River dams form a channel of death for the young salmon. The wild salmon that saved Lewis & Clark now face extinction. Decisions made by the United States during the Lewis & Clark Bicentennial will determine the fate of the salmon. *[Army Corps of Engineers photos]*

Rescuing salmon on the mainstem Walla Walla River, June 2000. Fish need water. Water is a limited resource. Washington State is drying up rivers and killing salmon and other wildlife.

Confederated Tribes of the Umatilla Indian Reservation. Used with permission.

Continued from page 21

packed with salmon fishermen who flocked to fish for hatchery fish in the Salmon and Little Salmon rivers. She remembers the 1990s, when salmon disappeared from the river and Riggins was nearly a ghost town in the spring.

"I think if Kempthorne was ever a real angler and liked to catch steelhead and salmon every weekend, he might see things a little differently," she said.

A shift in conditions in the past five years in the part of the Pacific Ocean where Snake River salmon live increased productivity dramatically and kept salmon from going extinct. It also returned hatchery salmon, which for the most part are not protected under the Endangered Species Act, in record numbers. That produced a bonanza for anglers, commercial fishermen and related businesses throughout the region.

For salmon to sustain populations over time, scientists say from 2 percent to 6 percent of the young wild fish that leave the spawning grounds must return to spawn as adults. For most of the 1980s and 1990s, the rate of return in the Snake River was 20 times below the minimum. And for two years in a row, no fish returned to many streams.

A debate over economic effects

In Idaho, the 2001 salmon season alone generated $90 million in economic activity, an Idaho Department of Fish and Game study said.

The Rand Corp., a private think tank that studied removing four dams on the lower Snake River, said the removal might be good for the region's economy – or, at worst, have no net impact. Rand's 2002 report also said that replacing power from the dams would create almost 15,000 new jobs.

But for many residents of Lewiston, which ships grain and other goods on barges to Portland through a series of locks provided at the dams, breaching dams is more than an economic issue.

Rand's 2002 report also said that replacing power from the dams would create almost 15,000 new jobs.

You can almost walk across the Clearwater River on salmon-fishing boats in the spring, said Owen Squires, a director of the Pulp and Paperworkers Resource Council in Lewiston.

"I lived here before the dams were built, and I'll tell you right now there are so many more fish coming back now than there was then," Squires said. "We just need to concentrate on the returns and what's working for fish, families and communities.

"Dam breaching doesn't meet that criteria," he said.

Gorman shudders when he hears people talk about the recent returns in terms of recovery. But he shares Squires view that conditions have improved.

"Ocean conditions are primarily responsible for these returns, and ocean conditions being what they are, they will be less friendly at some point, and returns will not be as friendly," he said.

"But it flies in the face of common sense to say the sacrifices the region has made have not contributed to these good returns."

For salmon to sustain populations over time, scientists say from 2 percent to 6 percent of the young wild fish that leave the spawning grounds must return to spawn as adults. For most of the 1980s and 1990s, the rate of return in the Snake River was 20 times below the minimum. And for two years in a row, no fish returned to many streams.

In the past few years, the returns have rebounded to the minimum level in the Snake. But below the lower four dams in the Columbia, returns have been four times higher, Idaho Department of Fish and Game biologists said.

Redden's decision adds to the extraordinary policy decisions the agency must make in the next year. NMFS already is rewriting its hatchery policies in light of an earlier court decision. And it has embarked on a separate, broader review of the status of nearly all salmon and steelhead stocks on the West Coast to determine whether they need protection under the Endangered Species Act.

"The next six to eight months hold some of the most dramatic changes over how the Endangered Species Act is applied and how it affects the region," Gorman said.

June 5, 2003, The Idaho Statesman
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Columbia River Moratorium Suspension, 1997

By Rachael Paschal

In 1992, at the request of the Northwest Power Planning Council, the Department of Ecology instituted a temporary hold on the issuance of new water rights from the main stem of the Columbia and Snake Rivers. Its purpose was to allow Ecology time to collect information regarding the impacts of potential new water rights on the health of salmon stocks and other instream resources.

Several versions of a bill to lift the moratorium showed up early in the [1997 Washington Legislative] session. Relying upon recent studies, Ecology took the position that it had the information it needed. Despite concern or outright opposition expressed by Idaho, Oregon, several federal agencies, affected Indian tribes, and environmental groups, Ecology supported, the legislature passed, and the governor signed into law a bill that will allow processing of pending applications for water rights out of the Columbia River. The Snake River moratorium remains intact.

Despite concern or outright opposition expressed by Idaho, Oregon, several federal agencies, affected Indian tribes, and environmental groups, Ecology supported, the legislature passed, and the governor signed into law a bill that will allow processing of pending applications for water rights out of the Columbia River.

Currently, about 110 applications are on hold for the Columbia River, most of them for irrigation rights. The governor has indicated that none of these water rights will be issued until instream flows have been revised in cooperation with regional efforts to restore salmon fisheries to the Columbia River. Ecology held five workshops around the state in July, and is proposing to continue to delay processing all pending applications until it amends the Columbia River instream flow rule. In the interim, Ecology will consult with the state Department of Fish and Wildlife about fishery needs.

This bill (ESHB 1110) will continue to generate considerable ill will. Not only are the regional partners in Columbia salmon recovery unhappy, but would-be water users who might reasonably expect Ecology to now process their applications are going to be sorely disappointed. The purpose of the entire exercise remains unclear.

Washington Water Watch, Center for Environmental Law & Policy (CELP), Summer, 1997

State reduces minimum flow requirements on Columbia

The Associated Press, April 6, 2001

OLYMPIA — The director of the state Department of Ecology yesterday signed an order that will allow 300 irrigators to withdraw water from the Columbia River despite drought conditions.

Water levels on the river are half of normal this year, threatening the water supplies for people who obtained interruptible water rights to the river after 1980.

Tom Fitzsimmons' order suspends for six months the 1980 regulation that usually requires two standards be met to use those water rights.

First, the predicted river flow between April and September usually must be 60 million acre feet. It is currently about 53 million acre feet, or about half the amount that would usually flow through the river.

The director of the state Department of Ecology yesterday signed an order that will allow 300 irrigators to withdraw water from the Columbia River despite drought conditions.

Secondly, a minimum flow typically must be maintained at specific areas along the river. At McNary Dam, for example, the threshold for water rights cutoffs is 100,000 cubic feet per second.

Fitzsimmons' order reduces the minimum flow requirement by 23 percent, or to 77,000 cubic feet per second at McNary Dam.

The amount of water needed to cover the 300 irrigators' water rights represents less than 1 percent of the total amount of water flowing through the Columbia.

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The Travesty of Trust Water Rights

By Rachael Paschal Osborn

In the early 1990s, the Washington Legislature created a new kind of water right – water rights for the rivers – called "trust water rights." A person possessing an irrigation water right may transfer the water back to the stream, thus improving instream flows and water quality. The concept is very popular and promoted as a "win-win" solution for helping the environment while paying for water, rather than cracking down on illegal or wasteful use.

Unfortunately, instead of using the program to improve river flows, trust water rights are now used to "mitigate" the harm caused by new water rights for developers and cities. In a nutshell, Ecology purchases existing water rights and puts them into trust, but then gives away new water rights based on trust water rights "replacing" the flow in the river. Millions of tax dollars are being used to subsidize new development.

Recent Columbia River water rights are a case in point. Ecology spent more than $1 million to purchase and retire irrigation water rights in the Walla Walla River and Columbia River. But when the Quad Cities (Pasco, Richland, Kennewick and West Richland) wanted a new water right to serve growth for the next 50 years, Ecology gave the Walla Walla and Columbia trust water rights to the cities to offset their new use.

Likewise, in the extreme drought summer of 2001, Ecology spent more than $800,000 to lease water rights from Columbia Basin farmers for one year, ostensibly to improve flows in the Columbia River. However, this water was not used to restore instream flows. Instead, Ecology authorized Columbia diverters to take "supplemental" water from the River, destroying the benefits of its flow restoration purchases.

This year the trend continued. When new Columbia River water rights were issued to irrigators, Ecology "required" mitigation. But this requirement has the new diverters paying only $10 per acre foot (325,000 gallons) into a trust water right fund, even though Ecology paid $600 per acre foot for the Quad Cities trust water rights. Beyond the absurd economics, it is clear that any environmental benefit received from future trust water rights will be destroyed by new diversions of water from the River.

Governor Locke points to the Trust Water Rights program as one of his crowning environmental achievements. On closer inspection, however, it's just another way to pick the public pocket.

Tribes file challenge to Columbia water withdrawals

By Columbia Basin Bulletin

Three Northwest Indian tribes filed notices today (Feb. 14) with the Pollution Control Hearings Board of Washington that challenge water rights permits issued in January by the Washington Department of Ecology.

Two notices of appeal were filed — one by the Umatilla and Nez Perce tribes, and another by the Yakama Nation. Both outline alleged problems with the permits and the state Department of Ecology's overall management of the Columbia River. The appeals cite violations of environmental protection laws, public policy conflicts and a lack of evidence that the withdrawals will not harm endangered salmon.

River flows regularly fail to meet standards established by federal agencies intended to protect threatened and endangered species in the Columbia River.

"We're appealing the permits because they potentially jeopardize the billions spent by state, federal, tribal and local entities to improve salmon habitat and river flows in the Columbia, and because we believe the state has not considered the cumulative impacts of additional water withdrawals from the river," said John Barkley, a member of the Umatilla's Water Committee.

Nearly 40 percent of the average natural flow of the Columbia is already withdrawn, mostly for irrigation, the Tribes said.

The Department of Ecology on Jan. 9 issued seven permits for withdrawal of water from the Columbia River. The Umatillas are appealing four of the permits, which would withdraw a total of about 140 cubic feet per second or nearly 39,000 acre feet of water. (The specific elements of the Yakama appeal were not available this morning.)

The lion's share of the water would go to the Kennewick Irrigation District — about 82 cfs, which could irrigate an estimated 4,600 residential acres or more than 12,000 acres of grape vineyards. Another large portion — 49 cfs — would go to the Kennewick Public Hospital, which intends to use the water on about 3,000 irrigable acres left to the hospital by the Ayers family. The other two permits, totaling slightly more than 7 cfs, are in the name of the Lower Stemilt Irrigation District.

The Umatillas say that Columbia River flows are likely to continue dropping, even if these permits are not approved, because of hundreds of users not yet taking water allocated to them. State and federal laws requires the Department of Ecology, the tribes said, to ensure that the Columbia River retains flows adequate to support environmental values, not just irrigation interests.

The Umatillas' appeal contends that the Department of Ecology decisions are inconsistent with state and regional salmon recovery policies, including the Statewide Strategy to Recovery Salmon, issued by Gov. Gary Locke's Joint Natural Resource Cabinet. The plan calls for a halt to new Columbia water rights until new minimum stream flows are set for the river.

The Umatillas said issuance of the permits also appears to conflict with the Columbia River Initiative, announced in October by the Department of Ecology. The initiative is a review of science surrounding salmon survival and the impacts of hydropower

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OPINION

Meter rural water too

Six years ago, the Legislature passed a law requiring water users to install meters that show how much public water they're drawing from wells and rivers.

Unfortunately, the Department of Ecology has not enforced the law, which had no deadlines for implementation.

The failure to implement the law rightly invited a lawsuit from a coalition of environmental groups, and Ecology now is seeking to settle the matter out of court.

If there's no way to know how much water is being used, there's no way to know how many more permits can be issued before the supply runs out.

While urban dwellers accept as a matter of course that their use of the public's water will be metered and paid for accordingly, metering is hotly contested in rural areas. Rural residents too commonly assume that they've been granted a personal property right to the public's water in whatever amounts they deem necessary.

Unfortunately, the Department of Ecology has not enforced the law, which had no deadlines for implementation.

And many of them, long accustomed to the inviolable "first in time, first in line" principle of Western water law, have yet to come to grips with the implications of a federal court ruling that the Endangered Species Act trumps existing water rights.

"I fear for the safety of the people in government who would step onto private property to try and meter an individual's water use," State Rep. John Pennington, R-Carrolls, told The Wall Street Journal.

This may explain why Ecology has been reluctant to enforce the law, though Ecology director Tom Fitzsimmons blames the failure on lack of funds.

The agency does not know how many of some 230,000 water permit holders would be required to install meters. Affected would be new water users as well as all those using water in areas that contain depressed fish stocks or who divert more than 450 gallons of water per second.

The state does not know how much water any of these permit holders actually use; that's what the state must ascertain if it is to carry out its responsibilities. Otherwise, there's no hope of rational planning for growth. If there's no way to know how much water is being used, there's no way to know how many more permits can be issued before the supply runs out.

Metering has worked to good effect in Oregon's rural areas and it must be made to work here.

We hope that rather than fomenting resistance, Pennington will be among the responsible lawmakers who take the lead in educating their constituents about the wisdom of metering.

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resources as well as withdrawals for municipal and irrigation purposes. The Initiative will ultimately result in rule-making to establish a new water management program for the Columbia River that will define how the Department of Ecology carries out its dual obligations to allocate water and preserve a healthy environment.

"The Department of Ecology's decision to issue the permits prior to scientific and economic analysis is inconsistent with federal and state standards calling for the use of such studies before issuing water permits," Barkley said.

The Department of Ecology was actually prepared to issue the permits more than a year ago, said Joye Redfield-Wilder, a spokeswoman for the Department of Ecology. However, the approval was postponed by an injunction filed by the Columbia-Snake River Irrigators Association, who said the permits were "worthless" if withdrawals during summers of low-water flows were restricted.

Last fall as litigation began, the Department of Ecology and the Irrigators Association agreed on a method for issuing water permits that would not restrict withdrawals during low flows. Under the plan, permittees would participate in a mitigation plan that requires water users to pay $10 per acre-foot per year into a fund that would be used to purchase water to offset the impacts of summer withdrawals.

All seven applicants chose to pay into the mitigation fund rather than have interruptible rights.

"The mitigation fund is a significant idea for a new way to manage water, a new way to identify the value of water," said Redfield-Wilder.

She said the mitigation plan provides the foundation for a comprehensive water management plan.

The Columbia River Initiative will utilize the services of 13 scientists appointed by the National Academy of Sciences' National Research Council complete the review and report their findings to the Department of Ecology.

The National Research Council is expected to review scientific data related to conditions that impact salmon survival rates, including hydropower, and will assess the risks to salmon at critical stages of their lives under a variety of water use scenarios.

In filing their appeal, the Confederated Tribes of the Umatilla Indian Reservation said fish populations in the Columbia are estimated at less than 10 percent of their historic numbers. River flows regularly fail to meet standards established by federal agencies intended to protect threatened and endangered species in the Columbia River. Nearly 40 percent of the average natural flow of the Columbia is already withdrawn, mostly for irrigation, the Tribes said.

The CTUIR is a federally recognized tribal government based in northeast Oregon near Pendleton. Members of the Cayuse, Umatilla and Walla Walla tribes have fished the Columbia River and its tributaries for thousands of years. The CTUIR retains treaty rights throughout their 6.4 million acre ceded territory in northeastern Oregon and southeastern Washington.

You can reach Bill Crampton, editor, intercom@ucinet.com , phone: 541-312-8862.

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February 14, 2002 Columbia Basin Bulletin

(5) Hanford, Spokane River: Toxic Deals

Burial Trench #1, an active unlined burial ground at Hanford. Barrels of waste are put into these burial trenches. There are no liners to separate the barrels from the surrounding soil.

Credit: Gerry Pollet, Heart of America Northwest

For More Information

Hanford

- Contact Heart of America Northwest or your local group to help with the citizens' initiative campaign, "Halt Nuclear Dumping," to halt the shipping of more radioactive wastes on our rivers and highways to Hanford. http://www.protectwashington.org/
- Spokane: contact Amber Waldref, 509.747-4820 amber@heartofamericanorthwest.org
- Seattle: contact 206.382-1014 liza@heartofamericanorthwest.org

Spokane River

- ***Death of the Spokane River?*** www.waterplanet.ws/documents/030917/
- Contact: The Lands Council, www.landscouncil.org, Neil Beaver 509.838-4912, nbeaver@landscouncil.org
- Sierra Club's Northern Rockies Chapter, www.sierraclub.org, John Osborn, MD, john@waterplanet.ws
- General Background, www.waterplanet.ws/sfcda/

Locke, aide blasted over cleanup plan

By Nicholas K. Geranios, The Associated Press

SPOKANE — The local chapter of the Sierra Club has ripped Washington Gov. Gary Locke and Ecology Director Tom Fitzsimmons for ceding control of the Silver Valley cleanup to the state of Idaho.

The environmental group bestowed its Dead Swan award on the two officials Tuesday, contending Washington should have retained a bigger voice in cleaning up a massive quantity of mining wastes seeping into the state via the Spokane River.

"For Fitzsimmons and Locke, the dead swans have come home to roost," said John Osborn, conservation head of the Upper Columbia River chapter of the Sierra Club.

Jani Gilbert, a spokeswoman for the Ecology Department in Spokane, said the criticism was unfair.

"Under the laws of this country we can't as a state move into another state and demand cleanup actions," Gilbert said. "The way to ensure cleanup in the Spokane River is to cooperate in partnership with Idaho and EPA and that's what we have done."

"The Locke administration places a higher priority on getting along with Idaho than protecting Washington's public health and natural resources. The Spokane River has been treated like an industrial sewer for over 100 years."

— John Osborn, Sierra Club

Washington officials will be in charge of cleanup decisions that occur on this side of the state line, she added.

In August, Fitzsimmons signed Washington state onto a deal with federal, state and local governments that transferred authority for a $359 million plan to clean up Silver Valley mine wastes from the federal government to a seven-member commission. EPA Administrator Christie Whitman presided over the signing of the deal, which

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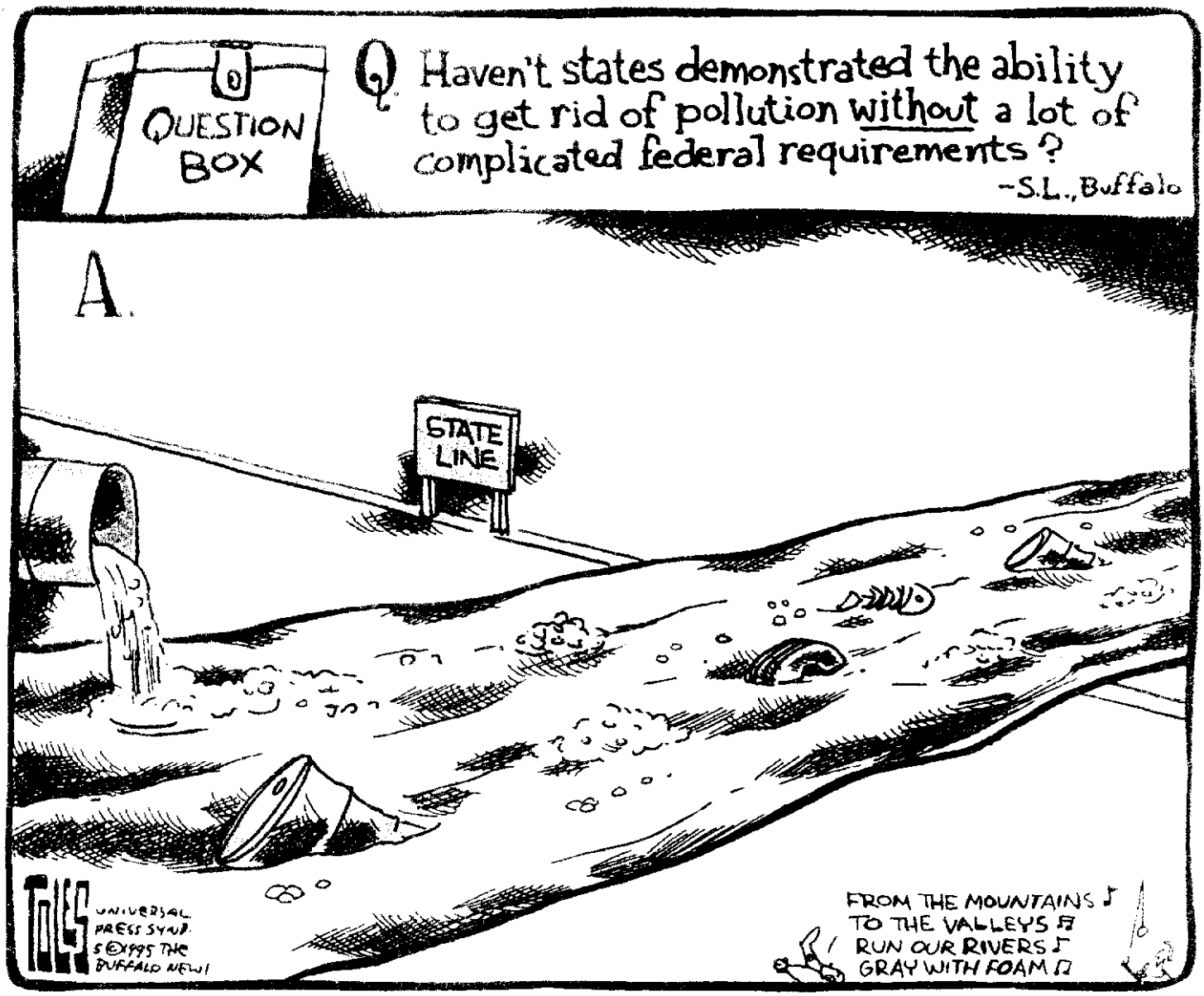

Continued from page 27
was unprecedented in putting local officials in charge of one of the country's largest Superfund cleanups.

The panel includes three Idaho county commissioners, a representative of the state of Idaho, one from the U.S. Environmental Protection Agency, one from the Coeur d'Alene Tribe of Indians in Idaho and one from the state of Washington.

The Dead Swan has been given by the group only once before, in 1999 to former Republican Sen. Slade Gorton for his efforts on behalf of a Texas mining company that wanted to build an open-pit cyanide-leach gold mine in Eastern Washington.

The award is named for the tundra swans that migrate through the Coeur d'Alene River Basin each spring and feed in wetlands poisoned with lead. Lead paralyzes the swans' ability to swallow and they slowly starve to death.

Dead swan poisoned by toxic heavy metal tails washed from upstream mining practices. *Lands Council photo archive.*

Wastes from more than 100 years of silver mining in northern Idaho's Silver Valley have flowed into Lake Coeur d'Alene, the headwaters of the Spokane River. The waste flows down the river into Washington and eventually to the Columbia River.

In August, Fitzsimmons signed Washington state onto a deal with federal, state and local governments that transferred authority for a $359 million plan to clean up Silver Valley mine wastes from the federal government to a seven-member commission. . . . The panel includes three Idaho county commissioners, a representative of the state of Idaho, one from the U.S. Environmental Protection Agency, one from the Coeur d'Alene Tribe of Indians in Idaho and one from the state of Washington.

"The Coeur d'Alene Superfund cleanup is one of the nation's largest, most difficult, most costly, and most contentious," said Jessica Frohman, the Sierra Club's national conservation organizer in Washington, D.C. "The leaders of the state of Washington have made a terrible blunder."

The EPA in the early 1980s began cleaning up a 21-square-mile Superfund site surrounding the Bunker Hill lead smelter near Kellogg, Idaho.

"The leaders of the state of Washington have made a terrible blunder."
— Jessica Frohman, the Sierra Club's national conservation organizer in Washington, D.C.

But recent efforts to dramatically expand the cleanup to the entire 1,500-square-mile river basin have been opposed by Idaho politicians and business leaders, who fear the stigma will damage the region's large tourism industry.

"The Locke administration places a higher priority on getting along with Idaho than protecting Washington's public health and natural resources," Osborn said. "The Spokane River has been treated like an industrial sewer for over 100 years."

January 1, 2003
Reprinted with permission of The Associated Press

Nuclear reactors, pelicans in the Columbia River's Hanford Reach. *The K Reactors are 2 of 9 reactors, now deactivated, along the Columbia River. The K Basins in the K Reactor complex are the site where 2,100 metric tons of spent nuclear fuel rods are stored, just 400 yards away from the Columbia. Leaking of radioactive water from K East Basin has been reported.* *Courtesy of the U.S. Department of Energy*

Hanford: Toxic Deals and the Columbia River

Locke Administration negotiated with U.S. Department of Energy to add waste, and avoid cleanup

By Gerald Pollet, Heart of America Northwest

United States' most contaminated area

The Hanford Nuclear Reservation is the nation's most contaminated area, and widely acknowledged to be the nation's most dangerous industrial facility. The Hanford Nuclear Reservation is 560 square miles, half the size of the State of Rhode Island.

The last free flowing stretch of the Columbia River runs through Hanford for fifty miles, past nine massive Plutonium production reactors used for nuclear weapons production that discharged their highly contaminated cooling water directly into the River or into long trenches alongside the River. The Columbia River also flows along a commercial nuclear reactor, and other test reactors, and scores of highly contaminated processing and nuclear fuel development facilities.

Further inland, in what is called the Central Plateau (or 200 East and 200 West Areas) are massive "canyon" facilities where Plutonium and Uranium were extracted from the High-Level Nuclear Waste fuel rods (after extraction from the reactors) by being dissolved in acid and processed with massive chemical use. The most intensely radioactive High-Level Nuclear liquid wastes from these processes were discharged into 149 Single Shell Tanks and 29 newer Double Shell Tanks.

At least 68 of the Single Shell Tanks have leaked over a million gallons. The impact to groundwater was denied for years until whistleblowers proved that USDOE was covering up the spread of these leaks and their threat to the Columbia River.

Over 200 square miles of groundwater are significantly contaminated. Levels of radioactive Strontium 90 enter the Columbia River shoreline seeps at 1,600 times the federal Drinking Water Standard. The federal standard for Strontium 90 is set at a level at which adults drinking the water would have a one in 10,000 chance of fatal cancer – children are 5 to 8 times more susceptible to cancer from the same radionuclide exposure.

Tri-Party Agreement (TPA)

Cleanup of Hanford is governed by the Hanford Clean-Up Agreement, commonly called the Tri-Party Agreement (TPA). The TPA involves

(1) Washington Ecology,
(2) U.S. Department of Energy (USDOE), and
(3) U.S. Environmental Protection Agency (EPA).

Washington State has full authority to regulate all hazardous wastes and "Mixed" Radioactive and Hazardous Waste, under federal laws passed by Congress.

Washington's Model Toxics Control Act (MTCA pronounced ("mot kah") and the federal Superfund law (CERCLA) govern cleanup, along with the federal and state hazardous waste laws. Under MTCA, cleanup levels are theoretically required to protect future-exposed persons from cancer risks greater than one in 100,000, and require cleanup to allow for "unrestricted" use by the public unless cleanup is entirely impractical to reach this standard.

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Fitzsimmons cuts nuclear deal

It is illegal for an individual to dump their household garbage in unlined soil trenches in Washington State. It is illegal for a municipality to dump its garbage in unlined soil trenches. Since 1992, Washington law forbade developing or expanding new landfills without liners, leachate collection and meeting groundwater and soil column (vadose zone) monitoring.

However, every week USDOE dumps massive amounts of radioactive waste in Hanford's unlined soil ditches. These wastes *include extremely radioactive wastes*. USDOE has illegally disposed of *hazardous and toxic w*astes in the same burial ground trenches. Adding more waste to Hanford's soil adds to the contamination that will reach groundwater and the Columbia River.

At Hanford many of the unlined burial-ground trenches are immense. Washington Department of Ecology repeatedly failed to stop USDOE from illegally expanding trenches. Ecology repeatedly rebuffed public interest groups and the Hanford Advisory Board's advice that the Low-Level Burial Grounds be shutdown and fully investigated for releases to the soil, groundwater and air.

In 1997, for example, USDOE illegally expanded a trench that is **1,160 feet long**.

In 2002, levels of the poison, carcinogen and reproductive toxin Carbon Tetrachloride were measured in the vapor inside one of the trenches at 176 times the OSHA exposure standard for workers, and 176 percent above the lowest fatal concentration in air for humans. Workers privately came to Heart of America Northwest, fearing retaliation if they spoke up on-site about their fears, and concerns were passed to Ecology.

U.S. Department of Energy

USDOE intended to expand the use of these trenches, including to bury imported waste from other nuclear weapons complex sites. Ecology technical staff have noted for several years that groundwater contamination levels were elevated near the same burial grounds. Ecology's Director Tom Fitzsimmons has refused to require a full MTCA investigation of the releases, and said that he committed to USDOE to allow continued use of the trenches.

In 2003, citizen groups requested that Fitzsimmons take the following steps:

(1) close the burial grounds to imported waste that is not from Hanford cleanup (i.e., waste from other USDOE nuclear weapons plants' waste) within 90 days;

(2) order USDOE to install legally adequate groundwater monitoring around the burial grounds within two years; and,

(3) order USDOE to start construction of lined facilities with leachate collection for use within two years.

Fitzsimmons refused each of these requests.

In meetings with the Hanford Public Interest Network groups, Fitzsimmons announced that he had made a "commitment" to USDOE to allow continued use of the unlined burial grounds, and to continue the "current flow" of waste from other nuclear weapons plants to be buried in them.

Secret deals: low-level nuclear wastes

In 2000, Fitzsimmons proposed that Washington State accept the nation's Low-Level and Mixed Waste for burial. (The Low-Level waste would go into illegal and leaking unlined soil trenches.) In return, Fitzsimmons would negotiate with USDOE to fund construction of the vitrification plant, turning the liquid High-Level Nuclear Waste into glass.

The Hanford Clean-Up Agreement already had specific milestones for

- starting construction of the vitrification plant,
- starting operation and hot processing,
- minimum amounts to be processed by 2018, and
- all waste to be retrieved from the tanks and turned to glass by 2028.

So Gov. Locke's Ecology Director, Tom Fitzsimmons, was proposing that Washington become the nation's radioactive waste dump in exchange for USDOE committing to do what USDOE had already signed a binding legal consent order and agreement to do.

Fitzsimmons argued that USDOE needed an incentive to clean up Hanford. Those very milestones had come at an earlier price, negotiated with numerous delays in other projects. The citizen groups vigorously protested this "giveaway" to turn us into a National Radioactive Waste Dump.

Attorney General Christine Gregoire noted that she had all the legal authority necessary to force USDOE to live up to its commitments to build the vitrification plants. Ultimately, Gregoire's position proved correct: she began preparing legal enforcement action for USDOE to start construction. USDOE began construction – without Washington agreeing to take waste to be added to Hanford's contaminated soil (or, so the public was lead to believe).

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Secret deals: highly radioactive Plutonium

In 2002, USDOE announced that it would start shipping highly radioactive Plutonium waste mixed with chemicals to Hanford ("Transuranic" or TRU waste) – without considering:

- the safety risks of transporting the wastes, the environmental impacts from "storing" it at Hanford; and,
- without attempting to comply with federal and state hazardous waste laws for characterization and safe storage.

USDOE sought to "store" the wastes in the unlined soil burial grounds.

Once again, the Locke Administration agreed to take the waste, allowing the Bush Administration to use Hanford as a national radioactive waste dump. In this deal, Washington got incredibly radioactive and hazardous wastes – in exchange for a promise to negotiate something that the state's Department of Ecology had full authority to already require. (The proposed milestones merely filled in the gap between the enforceable start and completion dates for retrieving and processing certain wastes. Hazardous waste laws already give the State authority to require their cleanup.)

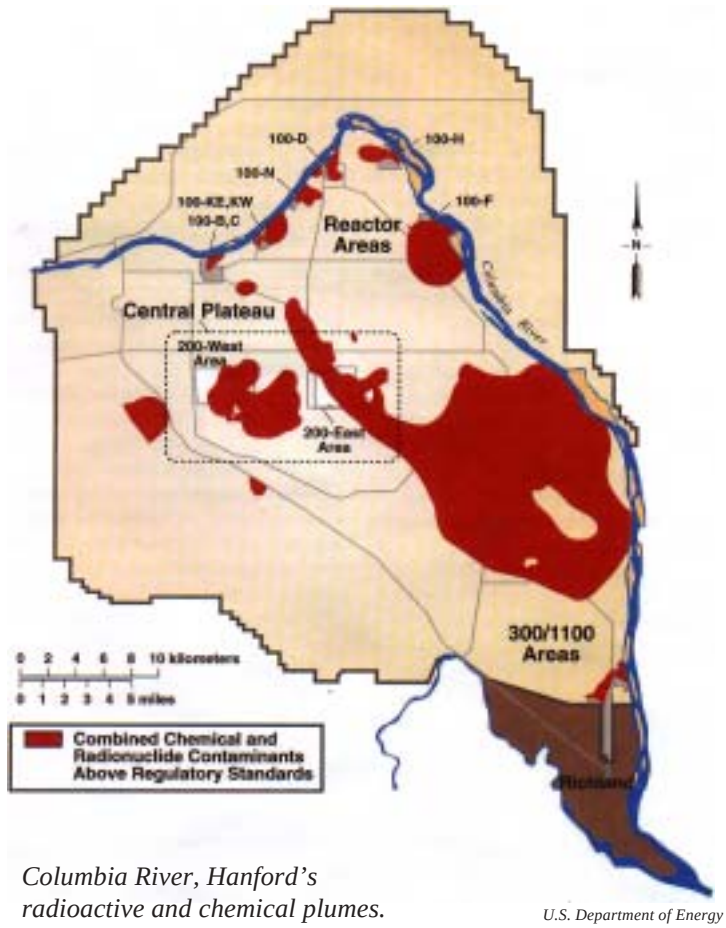
Earlier, Governor Gary Locke and Attorney General Christine Gregoire had publicly announced that they would take court action to stop the shipments. They cited the transportation risks and failure of USDOE to consider the environmental impacts from prolonged "storage" of the wastes at Hanford. The deal between USDOE and Tom Fitzsimmons and Governor Locke was contingent on no other party suing. Therefore, Governor Locke agreed to have discussions with public interest groups aimed at creating an enforceable policy to stop Hanford's use as a national radioactive waste dump.

Yet in January 2003 Fitzsimmons said, *"I'm not expecting to close the Low Level Burial Grounds to further importation."* Discussion of steps to stop the use of the unlined burial grounds, in advance of whenever USDOE decides to get around to this, was "off the table".

"We are not interested in stopping the existing flow," said Fitzsimmons. Hanford Public Interest Network groups were stunned to discover that Fitzsimmons believes that he made a hitherto secret agreement with USDOE in 2000: Washington would continue to accept Low-Level radioactive wastes from sites throughout the nation.

When March 1, 2003 came, USDOE refused to agree to the new schedule that had been under negotiation. Much of the TRU waste had already been shipped to Hanford. Washington State was now stuck with much of the intensely radioactive Plutonium and TRU waste, a large portion of which will be "stored" for 20+ years by burying it in the unlined burial grounds. Washington got nothing in exchange.

Washington State and citizen groups filed suit to stop further shipments.



Columbia River, Hanford's radioactive and chemical plumes. U.S. Department of Energy

Fitzsimmons' deal undercuts Washington State

When the December "deal" to take this waste was announced, Governor Locke asked Hanford Public Interest Groups not to sue USDOE, because USDOE had said that citizen lawsuits would result in no negotiations with Washington State.

Citizen groups said they would forego litigation in exchange for Locke setting a policy to stop Hanford from being used as a national radioactive waste dump. Locke would need to agree to specific implementation steps to be negotiated with the public interest groups. Governor Locke agreed to the discussions. Locke further assured the Hanford Public Interest Groups that he shared their objective that Hanford should not be used as a national radioactive waste dump.

These discussions failed after Tom Fitzsimmons revealed that he believed he had made a commitment to allow the "current flow" of waste to continue being imported and dumped in unlined burial grounds. Further,

• Fitzsimmons stated that he did not believe that Hanford would be a national radioactive waste dump if an EIS was done; and USDOE would eventually line its landfills (on its own schedule);

- Fitzsimmons refused to discuss any timetable for closing the unlined burial grounds;
- Fitzsimmons refused requests to start the legally required MTCA investigation of releases of hazardous waste from the burial grounds; and
- Locke's Ecology Director even refused to take any action to protect worker health from exposure to the potentially lethal levels of Carbon Tetrachloride in the trenches.

A deadly groundwater plume, leaking Hanford tanks

When it took office, the Bush Administration adopted a set of "goals" and "strategies" for lowering the cost of cleanup of America's nuclear weapons facilities, especially Hanford. Chief among these was a goal to "eliminate vitrification of 75 % of the High-Level Wastes" by simply changing definitions:

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- reclassifying waste and calling it Low-Level,
- leaving waste in tanks and calling them "closed", or
- mixing waste in cement and dumping it in the shallow Burial Ground trenches.

Specific criteria must be met in closing Hanford's tanks. The Tri-Party Agreement requires that USDOE retrieve over 99% of all the 53 million gallons of High-Level Nuclear Waste in tanks, and vitrify it by 2028. Hazardous waste laws require cleaning out the tanks, cleaning up all interconnected tank farm piping and equipment (highly contaminated, and the source of many leaks) and cleaning up the contamination under them — before tanks can be called "closed".

In 2002, USDOE simply told its contractor to proceed to "close" 40 tanks by 2006, and adopted a plan to call the tank farms a "landfill" to avoid cleanup requirements. USDOE's plan for "closing" tanks fails to investigate leaks under them before calling them closed.

If the Bush Administration can call tanks "closed" without emptying them all the way and cleaning up the contamination, then it is unlikely that Congress will ever fund the deadly groundwater plume migrating into the Columbia River.

Reducing vitrification, diverting cleanup funds

The Locke Administration did not oppose the Bush Administration and USDOE's efforts to call tanks "closed" without meeting hazardous waste law requirements. Instead Washington's Department of Ecology negotiated to change the Tri-Party Agreement to allow USDOE to proceed with "closure" of six tanks. This would be done without the risk assessment and cleanup required by state hazardous waste rules.

No action has been pursued by Ecology to halt USDOE from spending Hanford Clean-Up funds to "close" 40 tanks without meeting legal requirements.

As part of the "goal" of eliminating vitrification for 75 percent of the wastes, USDOE has adopted a plan to abandon the construction of a second phase vitrification plant (for LAW wastes from the tanks), needed to process the tank waste by 2028. USDOE also dropped one-third of the melter capacity from the LAW plant under construction.

In response, the Locke Administration failed to take any action requiring that the plant be built with the capacity needed. Instead, Fitzsimmons endorsed USDOE's "study" of alternative technologies, and allowed USDOE to proceed spending scarce cleanup dollars on these alternatives (like cement grout, and an unproven technology called "steam reforming"). No formal action has been taken by Ecology for USDOE's violation of the TPA requirements to vitrify all the waste, or for USDOE diverting funds from vitrification capacity to less protective and unproven cement disposal of waste in shallow burial grounds.

Polluting the Columbia River

Washington's Model Toxics Control Act requires that at hazardous-waste contamination sites, both the groundwater and soil be cleaned-up to allow for unrestricted use, if feasible. The only exception is for areas that are traditional industrial zones, expected to continue for industrial use without public access, and where the contamination does not migrate offsite to surface water bodies or to affect the public other than industrial workers.

Under a negotiation process called "C3T" (led by Tom Fitzsimmons, the USDOE Hanford Managers, and Contractor Presidents), the Locke Administration has agreed to a "groundwater strategy" for Hanford that fails to require the cleanup of the contaminated groundwater. Indeed, the Department of Ecology has agreed to allow the contamination in the 300 Area and outside that area along the Columbia River to sit without cleanup. USDOE calls this "natural attenuation".

Ecology has failed to heed repeated public and Tribal outcry over the use of the industrial cleanup standard for the 300 Area, and for the extensive shorelines and habitat areas surrounding the 300 Area that USDOE illegally used to discharge liquid wastes or for landfills.

Ecology has also failed to object to USDOE's plans to leave extensive and extremely hot contamination in the trenches where USDOE dumped the liquid coolant from the N-Reactor alongside the Columbia River. This is the source of high Strontium 90 and other contamination levels in the shoreline seeps and upwelling into the spawning grounds for salmon.

Cleaning up these areas is a commitment the United States has to Yakama, Umatilla and Nez Perce Tribes for their living along the Columbia River and fishing under the Treaties of 1855. Washington State, too, is committed to the clean-up under the Model Toxics Control Act: our state is supposed to guarantee that future exposed members of the public will not have exposure greater than a cancer risk of 1 in 100,000.

Instead of cleaning up these vital areas, Ecology has agreed to let USDOE leave the waste and permanently restrict use of groundwater and the shorelines. The result of Ecology's dereliction of its duties is that the Hanford Reach National Monument and Columbia River shorelines will be too contaminated to allow for public use. Ecological and human health risks will grow. The Hanford Reach National Monument will be the only national monument too contaminated to allow for public use.

At Hanford, both the Locke Administration and the United States have breached their commitments. As a result, and unless the toxic deals are undone, human health and the Columbia River will be in peril for thousands of years.

Save the Columbia River: Initiative 297

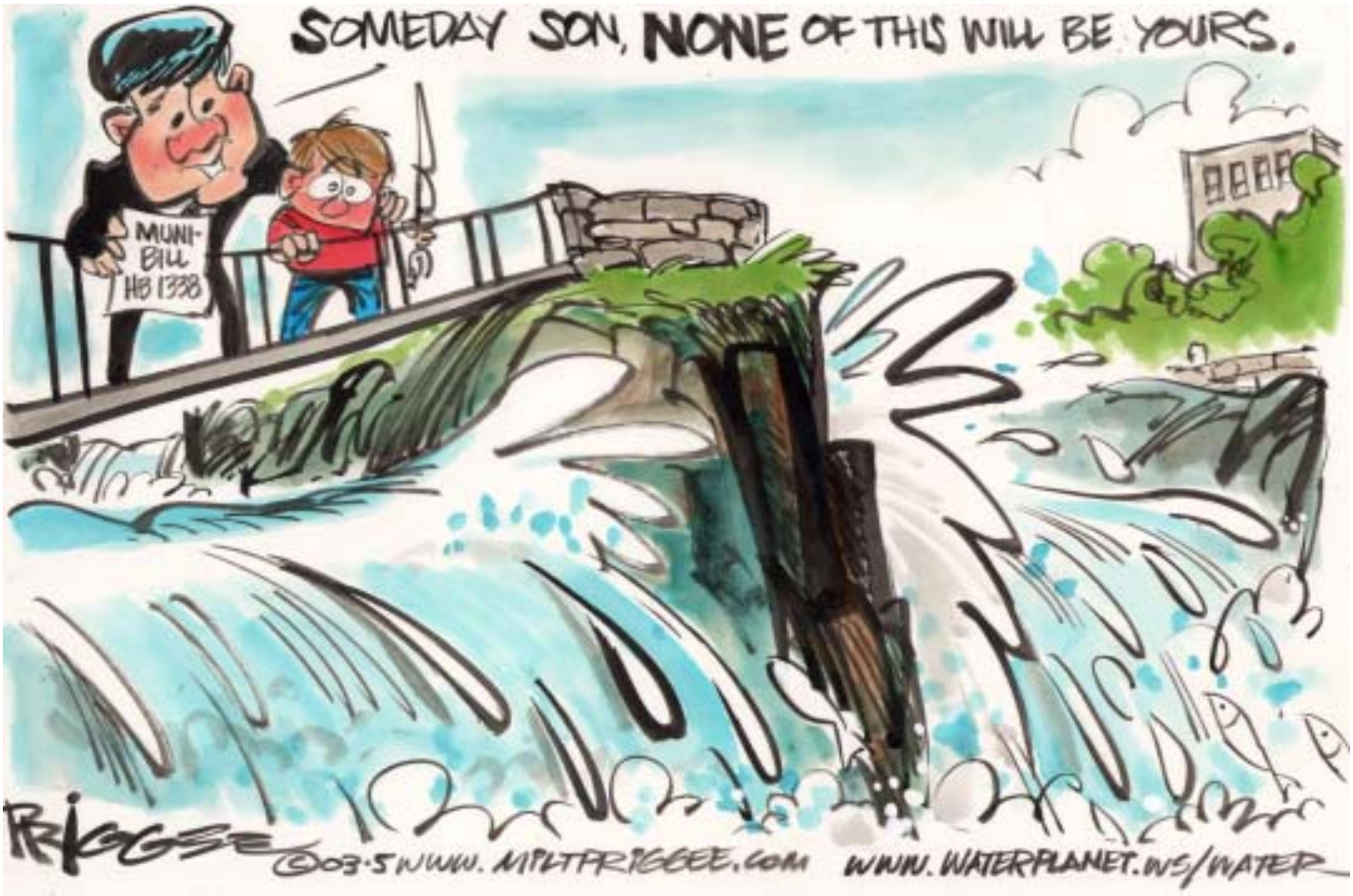
These broken commitments and the failure of Washington's Ecology Department under Tom Fitzsimmons to stop the use of Hanford as a national radioactive waste dump have led the Hanford Public Interest Groups to draft and start gathering signatures on Initiative 297. An initiative is the ultimate citizen sacrifice of time and effort to change state policy and to require that laws be followed, when all other avenues have failed.

Initiative 297 will

- stop Hanford from being a national radioactive waste dump,
- end dumping in unlined soil trenches, and
- require the cleanup of the waste that has leaked from the High-Level Nuclear Waste tanks.

It will make state policy the principle we all learned in kindergarten: *you can't keep adding to your mess until you've cleaned up*. If 250,000 signatures are collected by the end of 2003, Initiative 297 will be on the November, 2004 ballot. Information is available at www.protectwashington.org or www.heartofamericanorthwest.org .

(6) Looting Water in Olympia



There's not enough water to give away

By Billy Frank Jr. and Liz Hamilton, Guest Columnists

Before responsible people write checks, they make sure that they have enough money in their accounts to cover them. The same principle must apply to the allocation of our state's water. We cannot give away water we do not have. But that is precisely what the state will attempt to do if a new proposal, HB1338, becomes law. Enactment of this "Water Giveaway Bill" will jeopardize in-stream resources to meet future growth, the treaty-reserved rights of the tribes, the state's $1 billion sportfishing economy and providing greater certainty for junior water right holders.

People based important life decisions on promises that could not be kept without the government breaking others. This "Water Giveaway Bill" sets up the entire state of Washington in the same manner.

The bill would confirm water rights to cities and towns throughout Washington, regardless of the amount of water available. Overallocation will have disastrous consequences for an already shrinking resource, rivers and aquifers. This could either totally exhaust the flows of certain rivers or so seriously deplete them that they could no longer sustain salmon and other native species. When our rivers can no longer welcome the salmon, we risk our culture, our economy and our own health.

Ultimately, HB1338 would recklessly undermine the state, federal, and private investments made to restore the health of watersheds. Despite lip service to conservation, the bill encourages the overconsumption of water.

Due to recent droughts, our water is already tapped to the limit. We need to plan for the future of this limited resource by measuring the available water, monitoring stream flows and encouraging meaningful conservation.

Throughout the West, states are finding themselves in serious trouble because of shortsighted policies of the past century. For instance, after California, Arizona and five other states divvied up all the Colorado River's flow, the river doesn't reach the ocean and it can't support healthy fish runs. Without enough to go around, politicians, farmers, fishermen, developers and environmentalists continue to wrangle

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News Release

Tribes Continue To Oppose 'Water Grab And Hoarding Bills Of 2003'

OLYMPIA, WA — Passage of three water bills in the waning hours of Special Session Number One of the State Legislature last night sent a clear message to the tribes that the state is being run by people who could care less about salmon, the environment, public trust or Indian treaties.

"The circus being run in Olympia by Governor Locke, certain agency officials, and certain legislative leaders is performing to the music of big business and big water users," said Billy Frank, Jr., chairman of the Northwest Indian Fisheries Commission. "The fact is that people like Governor Locke, Speaker Frank Chopp, State Water 'Czar' Jim Waldo, DOE Director Tom Fitzsimmons and Rep. Kelli Linville are being very short-sighted and irresponsible. They may think they're supporting the economy through the over-exploitation of water in this state. But the fact is that the long-term economy utterly depends on a wiser and more respectful approach. The tribes have worked hard to find cooperative solutions with them, but they slammed the door in our face last night, telling us to sue them. They fired the first salvo, along with every legislator who voted for these bills. That, too, was very irresponsible and short-sighted, and caters to special interests," said Frank. Frank is the natural resources spokesman for treaty Indian tribes throughout western Washington.

"People like Governor Locke, Speaker Frank Chopp, State Water 'Czar' Jim Waldo, DOE Director Tom Fitzsimmons and Rep. Kelli Linville are being very short-sighted and irresponsible. They may think they're supporting the economy through the over-exploitation of water in this state. But the fact is that the long-term economy utterly depends on a wiser and more respectful approach."

— Billy Frank, Jr. Chairman Northwest Indian Fisheries Commission.

One of the bills passed was SB 5028, which passed the House by a vote of 61 to 31 after Speaker Chopp over-rode the majority of his own caucus to bring it to the floor. This bill forbids the Department of Ecology from using water quality law to restrict water quantity takes. DOE was one of its primary proponents, which sends a clear message about the agency's lack of desire to live up to its public trust in protecting the environment. Although this bill increases maximum daily illegal water use penalties from $100 to $5,000, this is a moot point because increased enforcement would be limited to waste, not illegal water use, and DOE's record on collecting fines is dismal. More importantly, the bill will lead to more pollution problems, coming hand-in-hand with reduced stream flows. Washington will now become just one of two states to give up this authority, said Frank. The other state, Colorado, has been slapped by the federal government for its lack of protection of instream flows. (i.e., Two Forks Dam proposal, diverting and shipping water to Denver.)

"This is another example of Washington State throwing its responsibilities to the public away, at the demand of special interests," said Frank, adding that SB 5028 removes a critical enforcement tool. "It makes no sense to eliminate any legal tool available to DOE which is necessary to protect water quality. This bill does that, hand over fist," he said.

Also passed were HB 1336, a somewhat less egregious watershed planning bill, and HB 1338, the Municipal Water Bill, which passed the Senate 33-11—disregarding an impassioned plea by Senator Karen Fraser of Olympia for the state to be more accountable to its natural resource-related responsibilities.

HB 1338 is the worst bill of all, said Frank. "Supporters of the legislation say this bill simply lets municipalities use existing water rights to meet future community growth

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The absence of clean, cold water means death for many of the Northwest's fish species. Just last summer, low flows in Oregon's Klamath River caused a massive die-off of Chinook salmon. Similar problems are occurring in Washington's salmon-bearing rivers.

Gov. Locke

Speaker Frank Chopp

Rep. Kelli Linville

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over water. We don't need to rush over the same cliff: Learn from their mistakes and enact long-term solutions for all the water users in our state.

Local communities already are feeling the effects of water scarcity. Issaquah Creek, which feeds into Lake Sammamish just outside Seattle, runs dry most summers due to the unchecked withdrawal of the groundwater that has traditionally increased its flow. The problem became so bad several years ago that the local water district began pumping water out of a nearby well and into the creek to help endangered salmon. This is a costly and unsustainable tech-NO fix. Unfortunately, it's the kind of situation the "Water Giveaway Bill" requires us to live with.

We will continue to devastate rivers and streams unless we plan for the kind of future Washington citizens deserve, and think before we act. If we make healthy rivers and streams a priority, we can have healthy, vibrant communities and clean, flowing water for our rivers.

The Seattle regional water system illustrates this is possible. Over the past quarter-century the number of people within the system has grown from just under 1 million to well over 1.2 million. Instead of a 20 percent increase in water usage during the same period, total usage is roughly the same today as it was in 1975. That is because people are consuming roughly 11,000 gallons less every year than they did in 1975. At the same time the region's economy has grown significantly. We're fortunate that our public leaders had the foresight to plan for Seattle's growth and put smart investments in place. This is only one example of the enormous potential we have to do things right the first time.

HB 1338 could either totally exhaust the flows of certain rivers or so seriously deplete them that they could no longer sustain salmon and other native species.

Despite lip service to conservation, HB 1338 encourages the over-consumption of water.

Before responsible people write checks, they make sure that they have enough money in their accounts to cover them. The same principle must apply to the allocation of our state's water.

Doing things right the first time is critical because unlike people, fish cannot adapt to using less water. The absence of clean, cold water means death for many of the Northwest's fish species. Just last summer, low flows in Oregon's Klamath River caused a massive die-off of Chinook salmon.

Similar problems are occurring in Washington's salmon-bearing rivers. These unfortunate episodes could have been prevented. The government's initial overallocation of water rights created expectations that required for their fulfillment the severe degradation of a great river. People based important life decisions on promises that could not be kept without the government breaking others. This "Water Giveaway Bill" sets up the entire state of Washington in the same manner.

Fortunately, we have a choice. With foresight and political leadership from Gov. Gary Locke and House Speaker Frank Chopp, we could have a water system that keeps Washington water flowing long into the 21st century. Before we give away vast quantities of water, we should check our account balance.

Because it is only after we determine how much water our rivers and streams contain, how much they need to survive and how much we currently use that we will truly know the real wealth of our state's water accounts.

Billy Frank Jr. is chairman of the Northwest Indian Fisheries Commission; Liz Hamilton is executive director of the Northwest Sportfishing Industry Association. Tina Schulstad, chairwoman of the Sierra Club, Cascade Chapter, also contributed to this article

June 3, 2003, Seattle Post-Intelligencer, Reprinted with permission.

Tax dollars pay to eviscerate Washington's water laws

In January 2001, Locke hired Jim Waldo, Tacoma attorney and Republican candidate for governor in 1996. Waldo's job is to lobby the state legislature on behalf of Locke.

Who pays for Waldo? The public, of course, at the rate of $20,000 per month. Waldo's law firm has received $436,500 in public monies for his lobbying efforts. He is still on the public payroll, working Locke's pro-water user agenda for the 2004 session.

For the Locke/Waldo team to succeed they have had to "roll" state Democrats who are committed to protecting Washington's waters. Examples include:

- In 2002, Locke's anti-environment "Omnibus" water bill cleared the Republican House, only to face Democratic opposition in the Senate. In order to avoid the Senate Committee on Environment & Water Resources, where Senator Karen Fraser was prepared to repair some of the environmental damage, Waldo engineered an unprecedented rules amendment. The Omnibus bill completely bypassed Fraser's Committee and went straight to the floor for vote. Democratic leaders offered multiple amendments, all voted down. Locke signed the bill with a flourish, calling it the most important water legislation since 1971.

- In 2003, the politics got uglier. Locke desperately wanted his anti-environment, municipal water rights bill, HB 1338. But the Republican-controlled Senate would only pass 1338 in exchange for SB 5028, a repulsive bill that exempts water diversions from water quality laws. House Speaker Frank Chopp, despite his promise to kill SB 5028 if a majority of the House Democrats opposed it, brought it to the floor over the objections of his caucus. Both bills were signed by Locke without the usual fanfare – perhaps because the Governor, with Waldo's able assistance, rolled right over his fellow Democrats in order to achieve an unprecedented giveaway of Washington's rivers and aquifers.

(7) Watchdog or lap dog?

Welcome to Working Capitol, the Governor's weekly update.

March 7, 2003
Message from the Governor

In December 2001, the Washington Competitiveness Council made some key recommendations about how we should improve our business climate in Washington. One area of focus was regulatory reform and the need for improvement in agency-business relationships. We've been busy ever since.

Red tape has been cut. Processing times have been dramatically reduced. We've worked hard to save time, money, energy and aggravation by streamlining regulatory processes. And we've worked hard to improve the way state agencies work with businesses.

There is more progress to be made. At a news conference this week, we highlighted several key proposed pieces of legislation that will help us make even more gains in regulatory assistance. I also released a new Executive Order calling for all state agencies to define and implement standards for service delivery. These will include standards for turnaround and response times, accessibility and clarity of information, and professionalism and consistency.

Our state's Department of Ecology has made exceptional gains in modifying its approach to working with businesses and streamlining the permitting process without compromising environmental protection in any way. My hope is that the Executive Order will extend some of Ecology's best practices to other state agencies.

And we've worked hard to improve the way state agencies work with businesses.
— Gary Locke, Governor

Our state's Department of Ecology has made exceptional gains in modifying its approach to working with businesses and streamlining the permitting process without compromising environmental protection in any way.
— Gary Locke, Governor

We also received a vote of confidence from the business community about our latest steps in regulatory reform.
— Gary Locke, Governor

I am encouraged that support for the proposed legislation and my Executive Order comes from both political parties. At the news conference, both Republican and Democratic state legislators joined me to show support for regulatory reform and answer questions about the bills they are sponsoring. This bipartisan effort will help our state as we continue to try to improve our business climate and create more jobs.

We also received a vote of confidence from the business community about our latest steps in regulatory reform. Judith Runstad, co-chair of the Competitiveness Council and President of the Seattle Chamber of Commerce, praised the progress we've made and endorsed the latest steps we are taking to help our state's businesses and economy.

Working together – Democrats and Republicans, government and business – I am confident that we can continue to lay a solid foundation for economic vitality and future prosperity for our state.

Sincerely,

Gary Locke

Gary Locke, Governor

State agency doesn't meet mandate

By Bruce Wishart and Lea Mitchell, Guest Columnists, *Seattle Post-Intelligencer*

When the Washington Legislature created the Department of Ecology in 1970, it directed the agency to "protect and conserve our clean air, our pure and abundant waters and the natural beauty of the state." Dramatic population growth and, at the same time, a growing appreciation of the health, economic and quality of life benefits of environmental protection have made the department's mission more compelling with each passing decade.

The Competitiveness Council should turn its attention to actions that will actually improve our economy, and the DOE needs to get back to work protecting the air we breathe and the water we drink.

Unfortunately, we have a long way to go to achieve clean water, clean air and healthy ecosystems. Hamstrung by declining budgets, special interest lobbying and lawsuits brought by businesses challenging environmental safeguards, the agency has been unable and, in some cases, unwilling to meet its mandate.

When the Washington Legislature created the Department of Ecology in 1970, it directed the agency to "protect and conserve our clean air, our pure and abundant waters and the natural beauty of the state."

More than 650 water bodies in the state, including much of Puget Sound, fail to meet water quality standards. More than 1,400 known toxic waste sites await cleanup and the list is growing. Salmon are listed as threatened under the federal Endangered Species Act and orca whales are on the brink of extinction.

Over the past 10 years, special interest lobbying combined with budget cuts has led to the gradual dismantling of Ecology's enforcement program. A "kinder, gentler" approach has taken hold. Hoping to avoid costly litigation and political backlash, in many instances program managers caution staff against firm directives and the use of penalties against violators.

Hamstrung by declining budgets, special interest lobbying and lawsuits brought by businesses challenging environmental safeguards, Ecology has been unable and, in some cases, unwilling to meet its mandate.

At the same time, federal Clean Water Act requirements have been ignored. The requirement to update clean water standards every three years has resulted in a process that, due to a constant barrage of complaints from business lobbyists, has lasted 10 years. Requirements to update industrial wastewater permits every five years have been impossible for the agency to meet due to limited funding. Many of these permits have not been adequately reviewed in more than a decade.

Soon after formation, Governor Gary Locke's business-dominated Competitiveness Council began demanding that DOE become more "business friendly."

In 2001, alarmed by The Boeing Co.'s decision to move its headquarters to Chicago, the business-dominated Competitiveness Council was formed by Gov. Gary Locke to examine how to boost our economy. Soon after formation, the council began demanding that DOE become more "business friendly." Despite all the evidence to the contrary, the council claimed that the agency is far too heavy-handed when it comes to working with the regulated community. The council seemed to conclude, with little or no data to support its position, that the department bears a significant responsibility for the state's economic woes.

Not only did the council fail to support its claims, it ignored evidence that environmental protection and quality of life are key factors in promoting economic well-being. Surveys of business leaders, for example, have shown that it is our quality of life and our natural environment that draw new businesses to the area. That's how businesses are able to attract a quality work force. The council did not review evidence that shows states with the strongest economies have tended to also be states with the most stringent environmental laws.

Rather than making a factual case for weakening environmental safeguards — a case it cannot make — the council and its supporters are waging a relentless public relations campaign to get us to believe that our business community is the hapless victim of overzealous regulators.

Ecology has now drafted a new "Code of Conduct" for its staff in an effort to avoid the political firestorm headed its way. The code sets forth a new mandate for the agency. No longer is agency staff charged with simply protecting the environment; they must now also promote economic development. What's more, industries and others regulated under state environmental laws are to be treated as "customers," implying a deferential role between Ecology staff and the industries they regulate. After all, the customer is always right.

Where does the public fit in this "customer"-agency relationship? How do the objectives of clean air, clean water, orca whales and open spaces factor in?

No one argues that the department shouldn't explore new ways to become more efficient and effective. Permit applicants should be treated with respect and dealt with fairly. We fully support new approaches to streamline permitting processes to make them more user-friendly while still ensuring clean water and clean air. We believe opportunities exist to achieve these goals and will continue to work to promote them.

Last year, the Legislature passed significant legislation that created the state permit assistance center, which is designed to help both small and large businesses with environmental permits. The business community and environmental groups supported the bill. Work is also well under way in the Transportation Permit Efficiency and Accountability Committee to streamline and better coordinate environmental permitting of transportation projects. Again, environmental groups are working constructively with business leaders to find solutions. Certainly, there is more that we can and should do in this area.

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Opinion

Collect those pollution fines

The state Department of Ecology has issued nearly $7 million in fines to polluters in the past four years, but fewer than half the fines were paid.

Appeals reduced the fines to $5 million. Still, nearly $2 million remains uncollected, according to a Post-Intelligencer computer analysis. Roughly 39 percent of fines issued for water-quality violations across the state typically are not paid, for example. Yet the polluters continue in business, unpaid fines or not.

Issuing fines that the agency appears to have little intention of collecting sends the message to violators that Ecology is a toothless tiger that can be ignored.

Critics rightly say Ecology must pursue the polluters more aggressively if fines remain unpaid.

It's a simple matter of fairness to businesses that do go to the expense of obeying environmental laws.

And it's certainly a question of fairness to the public if taxpayers must assume the burden of repairing ecological damage caused by businesses.

Ecology Director Tom Fitzsimmons downplays the need to pursue fines.

But Ecology Director Tom Fitzsimmons downplays the need to pursue fines. "If the outcome is a compliant industry or individual or business, then why is the money so important?" he asked.

That's a crucial "if"; it requires demonstrable evidence that a polluter has stopped polluting, for starters.

Fitzsimmons is right that compliance is the goal. But the laudable and proper effort to educate potential polluters on how to avoid polluting cannot become a substitute for enforcing the law.

Issuing fines that the agency appears to have little intention of collecting sends the message to violators that Ecology is a toothless tiger that can be ignored.

Ecology is the target of intense political pressure, especially from the rural areas and Eastern Washington, to ease up on regulations that are perceived to interfere with agribusiness and small businesses.

However, politicians who make it a cornerstone of their careers to complain about Ecology need to bear in mind that if they succeed in eviscerating it, they potentially face tougher treatment at the hands of the federal Environmental Protection Agency. The EPA delegates to Ecology its authority to enforce federal environmental law, but that authority can be removed and the EPA can take over if Ecology fails to act.

And the EPA, unlike Ecology, has the power to shut down serious polluters.

Seattle Post-Intelligencer Editorial Board. February 6, 2002

***Locke Weakens Water Laws**, continued from page 5*

Airport third-runway issue. Last year, a state administrative court ruled that the Port of Seattle could not use the Synthetic Precipitation Leaching Procedure (SPLP) to determine if the 20 million cubic yards of fill material needed to build the third runway would leach toxic chemicals. The court correctly found that the SPLP was not a sufficient type of procedure to ensure that the fill material would not violate state water quality standards. Part of the project sits atop Seattle's backup drinking water supply.

In an effort to keep the third runway project moving, the Port of Seattle got the Legislature to overturn the decision of the court. The issue, however, is sure to go back to the courts.

Cascade Crest, July/August 2003

***Tribes Oppose Water Grab & Hoarding Bills**, continued from page 34*

needs, and that it offers some conservation incentives," said Frank. "That is a lie," he said. "It's not that simple."

"The truth is that HB 1338 is probably the worst bill for the environment that the legislature has passed in two decades. These bills contain the same principles that Governor Locke, himself, vetoed in years past in the name of conservation," says Frank. "Which way does he want it?"

"Obviously, water management in this state is on a collision course with the tribes and anyone else who cares about the health of the environment."
— *Billy Frank*

For years, water users have cried loudly that the state was not adequately processing water right transfers, changes, and new applications. As a result, the state invested additional resources and reprioritized existing staff to expedite out-of-stream permitting over that amending or establishing new instream rules, said Frank.

Now, these out-of-stream interests recognize that current law will not provide them with the unfettered and unqualified use of their existing water rights, certificates, or claims. Rather than filing for new permits that would require environmental or other protection, these same interests have gotten the legislature to amend their existing water rights to allow for non-permitted or reviewable transfers and changes. "They want to expand their water rights to avoid constraints from junior water right holders or environmental protection," said Frank.

"In short, this bill bumps junior water right holders—ranging from schools and churches to the agriculture community—so very broadly-defined municipalities can get theirs' for the next 50 years. They're prioritizing the needs of people who haven't moved here yet over those of current users," said Frank. "That's unconstitutional," he said.

"Obviously, water management in this state is on a collision course with the tribes and anyone else who cares about the health of the environment," said Frank. "We're referring to these bills as the water grab and hoarding bills of 2003," he said.

Tribes actually own the water, in conjunction with the state and federal governments. They also hold the most senior water right, according to Western Water Law and numerous court cases, and hold reserved treaty rights that protect instream water resources needed to sustain fish and wildlife populations, said Frank.

CONTACT: Steve Robinson or Tony Meyer, (360) 438-1180
Northwest Indian Fisheries Commission, June 11, 2003

Natural resources advocate speaks frankly

By Christopher Dunagan, The Sun Link

PORT ANGELES — Billy Frank, the renowned Native American leader, has been known to speak his mind — and he quickly endorsed Gov. Gary Locke's decision not to run again.

"The resources couldn't take another four years of this governor," Frank told fish and wildlife officials from 18 western states and Canadian provinces.

As the stifled laughter died down, the 72-year-old chairman of the Northwest Indian Fisheries Commission brought the subject back to salmon — their role in tribal culture, their role in the modern world, their role in nature.

"The salmon sustained us wherever we went," said Frank, clothed in blue jeans and black western shirt with a string tie.

"I think a lot of people have forgotten about that. They like their cars; they like their televisions; they like their money coming in. How do you find a balance?"

Speaking directly to the group Monday, Frank said he appreciates what natural resource professionals are trying to accomplish in the face of population growth across the nation.

His audience: the Western Association of Fish and Wildlife Agencies, which has been holding its annual meeting in Washington state the past week.

Discussions will wrap up this morning, when more than 200 professionals from as far away as Texas head home after touring the Olympic Peninsula and sharing ideas about resource management.

Frank commiserated with the group about elected officials — such as legislators with no sense of the natural world.

"A lot of these guys can't think beyond the next election," he said.

"G— d—, they can't think out. We have a long journey to travel in the natural resource world. We have to find someone who leads."

Frank said he can't understand kowtowing to business at the expense of priceless natural resources.

"Boeing? Let them go. Who gives a damn? If you ever go to Seattle and wait in the traffic for three hours. . . . I can't understand these people.

"Governors move on and legislators move on and directors move on," he said, "but we're still here managing the resources. Someone has to tell the story about natural resources."

Frank, an elder in the Nisqually Tribe in South Puget Sound, has been an outspoken tribal leader for more than 30 years. Among his honors is the Albert Schweitzer Humanitarian Award from the United Nations.

Asked about Locke, Frank said the governor surrounds himself with people who say, "Salmon aren't important because they don't vote."

Legislation involving water rights was especially contentious for Washington tribes this year. Frank blames Locke for signing a bill that guarantees water for "municipal" water systems at the expense of salmon.

Despite Frank's opinion, the governor remains proud of his efforts to save salmon and other natural resources, beginning with his "extinction is not an option" speech in 1998.

Locke canceled his Port Angeles appearance at the last minute to announce his decision not to run.

Jim Waldo, Locke's policy adviser on fish and water, was there, however. Waldo said the state has been able to continue restoring salmon runs and planning for water resources in the face of massive cuts in the state budget.

Waldo's message was that state legislatures will find money for natural resource projects when everyone comes together to explain what needs to be done.

"We're not going to get money just because we're doing the right thing," he said.

Another attendee, state Sen. Bob Oke, R-Port Orchard, said it is easy to lose sight of accomplishments in terms of natural resources.

"Once in a while," he said, "we need to take a look back at how far we have come."

The Sun, Bremerton, WA, July 23, 2003. Used with permission.

"The resources couldn't take another four years of this governor."

— Billy Frank, Chair Northwest Indian Fisheries Commission

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— Billy Frank

***State Agency doesn't meet mandate**, continued from page 37*

The cultural transformation of DOE, however, has gone too far. The new Code of Conduct misinterprets the statutory mandate of the agency and promotes a far too cozy relationship between agency staff and regulated industries.

The Competitiveness Council should turn its attention to actions that will actually improve our economy, and the DOE needs to get back to work protecting the air we breathe and the water we drink.

"Surveys of business leaders . . . have shown that it is our quality of life and our natural environment that draw new businesses to the area. That's how businesses are able to attract a quality work force."

Bruce Wishart is policy director of People for Puget Sound. Lea Mitchell is Washington state director of Public Employees for Environmental Responsibility.

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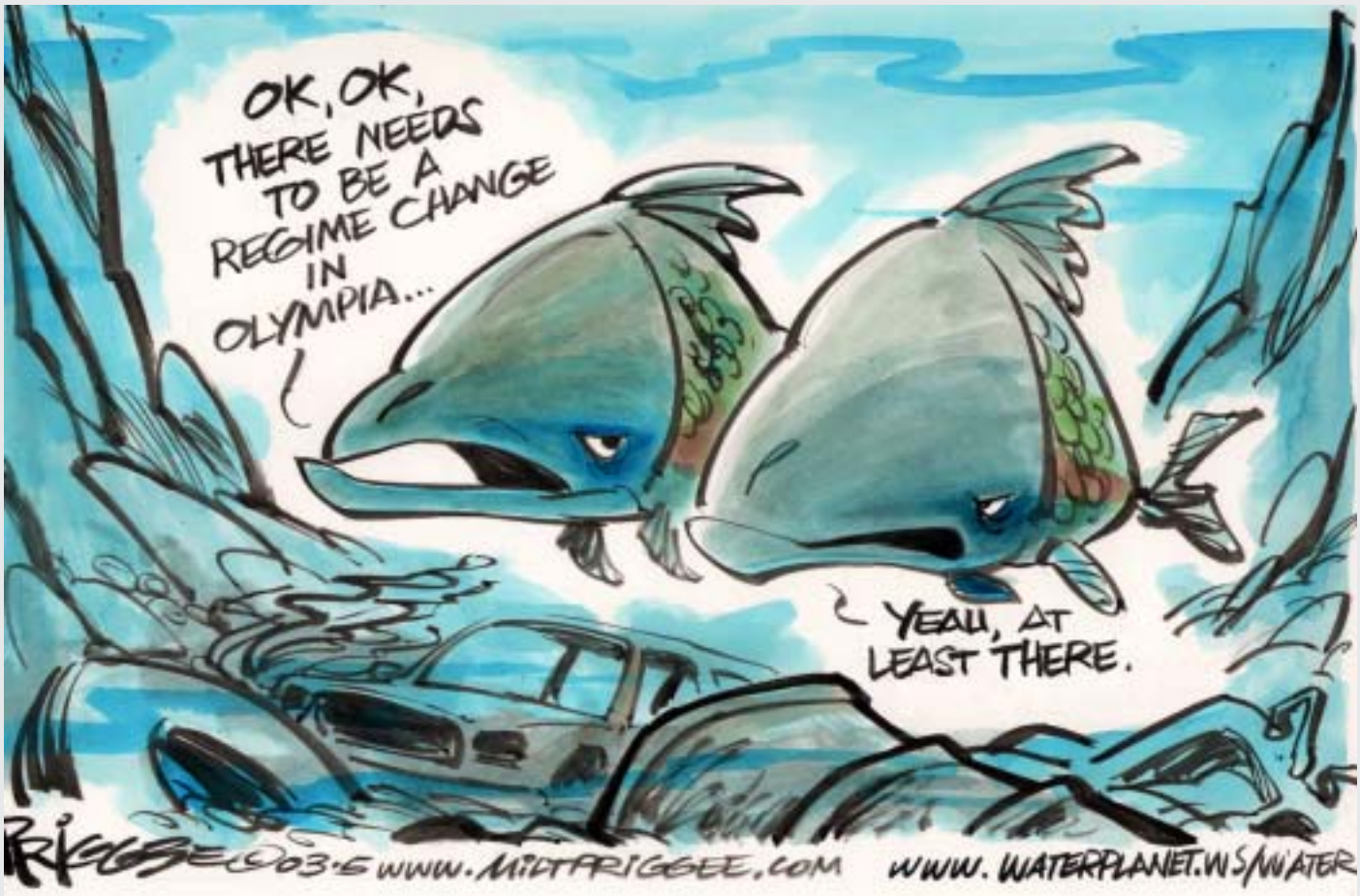

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