

Chairman Will Roehl
Washington State Fish and Wildlife Commission
600 Capital Way North
Olympia, WA 98501-1091

12 Feb 2004

RE: City's position regarding the Commission's adoption of the modified Van Gytenbeek proposal regarding wild steelhead retention.

Dear Chairman Roehl:

It is unfortunate that my first letter to you is one of such significance; however, the recent action by the Commission based upon a modified proposal by Commissioner Van Gytenbeek regarding wild steelhead retention in the State has galvanized our community. I do want to stress our community's thanks to you personally for your continued opposition, as noted in your votes against the Van Gytenbeek proposals, to efforts to create statewide bans on fish retention thereby removing the flexibility of fishery managers.

Based upon the information my staff and I have collected so far, it appears that the Van Gytenbeek proposal that was narrowly adopted by the Commission on the 6th of this month may have:

- violated various aspects of state law (Boldt decision, WAPA, etc.);
- undercut the role of the public in the development of the Commission's rule making process;
- ended a very successful cost-efficient steelhead enhancement program supported by the City; and,
- created a rule that is not supported by the best available science regarding steelhead and salmonid management.

This two year state-wide moratorium on retaining wild steelhead will have a significant economic impact upon our rural community. It will also create further tensions between the various groups interested in the steelhead fishery in our State.

If in the next week, the Commission and/or Department publishes the adopted Van Gytenbeek proposal as a rule in the State's registry, my staff and I will take any needed actions to preserve our community's interest in this matter. I am also going to ask the City Council on the 23rd of February to authorize my staff and I to take what ever means necessary to oppose the adoption of this rule.

This position was not taken lightly or without the knowledge of the work associated with such an effort. However, the framework for reaching this proposal consists of many factors that I believe the Commission and the Department need to understand and consider prior to publishing the order creating an emergency rule, as well as publishing the order creating the two year rule, based upon the Van Gytenbeek proposal.

First, and foremost, under the Boldt decisions and their progeny, the State is required to consult with the other Co-Managers of the fishery. In my limited conversations, it does not appear that the Commission and/or Department undertook any consultation with the Co-Manager regarding the Van Gytenbeek proposal. The impacts associated with failing to properly consult with the Co-Manager could be a basis for challenges by such co-managers.

Second, the manner in which the Van Gytenbeek proposal was put forward significantly differed from the published proposed rules put forward for public consideration by the Department. It is important to understand that the City of Forks has been engaged in this process on this particular issue before. Two years ago, when the Department and Commission proposed a state wide ban on wild steelhead retention/catch and release rule, the City held meetings with the Department, worked with local stakeholders to provide written letters opposing such a policy, and testified against such an effort at that time. When the proposed sport fishing rules were published in October 2003 by the Department, we again

worked with interested parties to review that proposal. The written proposal in October 2003 indicated that five specific streams/rivers would be catch and release for wild steelhead during the entire season, and many other rivers would be catch and release for wild steelhead during the critical spawning period of mid-April until the end of May. Our review with interested individuals lead us to believe that such a proposal would not adversely impact our community's various interests and would also be in the best interest of the species.

However, a reasonable person reading that proposal would not have had any indication that a permanent, or even a two-year, moratorium on wild steelhead retention would be tabled for consideration by the Commission. As such, our community and the various parties having already indicated the impact of such a proposal on their various personal and financial interests could not be expected to believe that such a broad sweeping rule as that adopted by the Commission was even a possibility. I would also suggest that any argument made that the Van Gytenbeek proposal was similar in nature to that found within the October 2003 written proposed rules stretches the holding of *State v. Squally*, 78 Wn. 2d 475 (1972), and does not appear to comport with the State's Administrative Procedures Act.

The role of the steelhead season in our rural, remote community is significant. On the economic side of things - focusing predominately on our tourism sector upon which we have placed greater and greater emphasis - approximately 60-80% of the hotel/motel/B&B revenues generated in November-January are associated with the steelhead fisheries. As you probably can surmise, those are months that are extremely lean times for the hospitality industry as a whole. The Van Gytenbeek proposal, and the subsequent discussion, does not appear to have taken these impacts into consideration.

In addition, the Van Gytenbeek proposal was adopted in such haste that individuals and communities that would be impacted could not testify at the meeting last week. It is intriguing to me that 25 individuals specifically testified that day on an issue that would later be proposed by Mr. Van Gytenbeek. Apparently, those individuals had a remarkable ability to foretell the future actions of the Commission that we do not have here in Forks. The end result has been the adoption of yet another urbanite's dream of what should take place in rural Washington without any consultation, consideration or concern about the ramifications of that proposal on the rural communities having a stake in the proposal.

Third, the proposal as we currently understand it appears to be extremely far reaching and as a result may have inadvertently brought to an end, or curtailed, our locally funded, supported and operated steelhead enhancement project at Snider Creek on the Sol Duc River. This project has been funded by the community, and specifically the City of Forks, for at least 15 years. Utilizing wild steelhead as brood stock, this enhancement program then raises the smolt to the appropriate age and then releases between 50,000-100,000 "hatchery" marked steelhead into the Sol Duc river system. As the rule and proposal currently exists, it does not appear that any exception has been made for the work done at Snider Creek hatchery, and as you are probably aware, once you loose even a year in such a program, rekindling the effort, support, permits and such becomes a significant undertaking. In addition, without such a program the region's game fish opportunities are significantly reduced, as well as the sustenance fishing opportunities enjoyed by others.

Fourth, the proposal does not appear to be supported by the best available science associated with salmon recovery, nor supported by the basic mission of the commission. Currently, in the rivers in and about Forks there is no crisis associated with the wild steelhead stocks. As such, the Commission is mandated by law to "maximize the public recreational game fishing and hunting opportunities of all citizens...." RCW 77.04.012 and 77.04.055. It does not appear that the Department provided any supportive record (scientific or administrative) for the Van Gytenbeek proposal. If there is no science that supports such a position, then two questions arise: (1) is the action of the Commission consistent with the state's wild salmonid policy? And, (2) is the action of the Commission compatible with the mandate of the Commission? If both

of these questions cannot be answered with an assertive yes, I would suggest that the Commission reconsider this action.

At this point, I would like to request the opportunity for my staff and I to meet with you and the Director of the Department regarding this issue and our specific concerns noted above. I would propose a meeting on the 24th of February in Olympia if that would be convenient to you. By that point, we should have additional information on the economic impacts of this proposal, a clear view as to whether or not this proposal was supported by the best available science, and a greater understanding of the other entities, individuals, governments and tribes equally concerned about the Van Gytenbeek proposal. Unless things change, our small community will yet again find itself being asked to spend critical resources and funds to fend off a poorly conceived hastily enacted regulation having tremendous impact to our area.

Again, I am truly sorry that our first written exchange had to be of this type. You have been a vocal advocate for allowing all of the citizens of the state the opportunity to hunt and fish in our great outdoors. Our community greatly appreciated your opposition to the Van Gytenbeek proposals and appreciated your expressed concern that "the average person out on the river didn't know that this was up for discussion."

I look forward to your reply.

Sincerely,

Nedra Reed
Mayor

Cc: Dr. Jeff Koenigs, Director WDFW
Members of the Washington State Fish and Game Commission
Governor Locke
State Senator Jim Hargrove
Rep. Jim Buck
Rep. Lynn Kessler
Russell Woodruff, Chairman Quileute Tribal Council
Clallam County Board of Commissioners