STATE OF WASHINGTON FISH AND WILDLIFE COMMISSION

Petition of The City of Forks, et al., for Amendment of Department of Fish and Wildlife Sport Fishing Rules in WAC 232-12-619.	)	Statement by Petitioners Regarding Other Factors to be Considered by Commission

COMES NOW, the Petitioners, and their supporters as identified in the preceding documents, by and through their attorneys, WILLIAM R. FLECK and GREGORY OVERSTREET, and hereby file this statement to highlight other factors worthy of the Commission's consideration in determining whether or not rule-making should be undertaken on the proposed amendments of the Petitioners to those portions of Washington Administrative Code (WAC) 232-12-619 which created a wild steelhead retention moratorium (moratorium).

The Petitioners incorporate by reference as if fully set forth that portion of the Petitioners' accompanying statement regarding the demonstration of substantial difference between the proposed rule and the adopted rule.

Materials provided below are limited to the issues of (1) public's ability to participate in the process; (2) the obligation within *U.S. v. Washington* to co-manage and consult with the co-manager on items that have the potential of affecting stock health; (3) compliance with the federal court order regarding consultation with affected groups when conservation measures are enacted close steelhead harvests to sport anglers; and (4) compliance with the annual steelhead agreement for the 2003-2004 season when the adopted proposal intended the effective date to be 1 April 2004.

1 Under RCW 34.05.330, the Petitioners are encouraged to address various points in seeking an
2 amendment or repeal of a rule. Two points are worth noting, and are concerns addressed herein by the
3 Petitioners:

4 (1) whether the moratorium conflicts with or duplicates other federal, state, or local laws (RCW
5 34.05.330(4)(c); and,

6 (2) whether the moratorium was adopted according to all applicable provisions of law (RCW
7 340.05.330(4)(j).

8 The Petitioners believe that the public process was not fully addressed in the adoption of the
9 moratorium, especially in light of at least one Commissioner's actions. Petitioners argue that such actions
10 could be interpreted in a manner that does not comport with the intent or letter of the applicable
11 provisions of the public involvement process of the WAPA. In addition, the Petitioners argue that the
12 adopted moratorium did not comport will all applicable provisions of law which would include the various
13 applicable federal cases associated with the management of wild steelhead.

14 In filing this statement, as part of the Petitioners' overall petition, the Petitioners' specifically
15 request that the Department and the Commission initiate rule-making proceedings on the Petitioners'
16 proposed amendments to WAC 232-12-619.

17 ***Statement of Petitioners***

18 The Petitioners, and their supporters, believe that the two-year wild steelhead moratorium
19 adopted by the Commission by a 5-3 vote on 6 Feb 2004 arose out of the tacit, if not directed, support
20 and guidance of Commissioner Van Geytenbeek in coordination with the Wild Steelhead Coalition and
21 other colleagues. As a result, the perception of an engaged "public process" appears to have influenced
22 the Commission, but may have been orchestrated by a limited few in the furtherance of their specific
23 objectives. Whether such activities violated the WAPA have yet to be determined by a court, but such a
24 limitation upon who was aware of the nature of the issue that Mr. Van Geytenbeek put before the
25 Commission raises concerns about complying with the intent of the WAPA. In addition, the final adopted
two year wild steelhead moratorium may have created a situation that compromises the State's interests

in the wild steelhead under the *Boldt* progeny and court orders associated with wild steelhead management. Finally, the Petitioners argue that the wild steelhead moratorium enacted on rivers having fish above the escapement goal may be seen as a failing to: (1) consult with the affected co-managers about the moratorium; (2) consult "with affected groups"; and, (3) manage the state's wild steelhead populations on a river by river basis for a season-long tribal and sport fishery.

These concerns are associated with two specific concerns that individuals seeking amendment of a rule are encouraged to address pursuant to RCW 34.05.330(4). In the eyes of the Petitioners, the Commissions failure to adequately comply with the WAPA public process means that the moratorium was not "adopted according to all applicable provisions of law." RCW 34.05.330(4)(j). Further, the moratorium was adopted in "conflict with" or not in accordance with "all applicable provisions of law" arising out of the Commission/Department's failure: (1) to comply with the management agreement for 2003-2004 for steelhead on the Quillayute River System; (2) to comply with the duty of consultation with the co-manager pursuant to *U.S. v. Washington*; and, (3) to comply with the duty to consult with affected groups in closing steelhead fisheries in association with conservation efforts.

The Petitioners believe that initiating rule-making on the Petitioners proposed amendments is a means of properly addressing all of the concerns noted herein, as well as those found within the Petitioners' statement on substantial difference. Therefore, the Petitioners respectfully request that the Department and Commission initiate rule-making proceedings on the Petitioner's attached, and incorporated herein as if fully set forth, proposed amendments to WAC 232-12-619.

Applicable Law and Facts

A. Moratorium's failure to comply with WAPA public process

In adopting the Washington Administrative Procedures Act, Title 34 RCW et al., the Legislature stated that it intended "to provide great public and legislative access to administrative decision making." RCW 34.05.001. However, in this situation there is some level of concern about what part of the public was allowed to know the intentions of at least Commissioner Van Geytenbeek. According to the website for the Wild Steelhead Coalition, Commissioner Van Geytenbeek was the guest speaker at their 5 November 2003 dinner. His topic of discussion was: "a program on the Rule Change process currently

employed by the commission." http://www.wildsteelheadcoalition.com/index.htm - *Adipose Newsletter*, October 2003, Vol. 3, Issue No. 5. It is also interesting to note that some within the organization of the Wild Steelhead Coalition may have had the proposed rules a bit earlier than the public release date. *Declaration of Bob Reid at para. 5.* In a meeting held with the City and the Commission/Department, Van Geytenbeek's support from the Wild Steelhead Coalition for a moratorium was called into question by City staff. Specifically the manner in which Commissioner Van Geytenbeek brought this issue forward for consideration and adoption was labeled "surreptitious" by the Petitioners. *Declaration of Nedra Reed at para 9.* Commissioner Van Geytenbeek quickly asked to be able to respond to that remark in order to dispel any concerns about "little green men and other conspiracies" associated with his actions. *Declaration of Nedra Reed at para. 9.*

Mr. Van Geytenbeek proceeded to explain to those present that he had been asked by a few people about how they could bring forward a statewide catch and release rule. Mr. Van Geytenbeek stated that he then contacted one of the attorneys from the Attorney Generals office and asked if such a proposal could be brought forward. This unnamed attorney informed Mr. Van Geytenbeek that in fact the entire WAC related to sports fishing was open to change by the Commission. Mr. Van Geytenbeek then informed the members of the Wild Steelhead Coalition "and others" about this possibility. As noted in an e-mail from Mr. Van Geytenbeek, said organization was present at the December hearing of the Commission and "provided compelling testimony" on the need for such a moratorium. *Petitioner's Ex. 6, an e-mail dated 17 Feb 2004*. This same document notes that as early as the December 6th meeting, Commissioner Van Geytenbeek had intended to propose the moratorium brought to the table in February and apparently shared this idea with those present.

Whether this is adequate notice within the meaning of the WAPA is a legitimate question. The concept of providing sufficient notice is to ensure that affected parties bring forward issues for consideration by the rule making authority. As one commentator noted:

> "…parties, close to the action as they are, are good sources of information. Also, they tend to have the incentive—being affected by the proposed rule—to come forward with their information. Interested parties can, therefore, usually be counted on to identify gaps in agency information and to supply additional information, so as to at least save the agency the costs of producing that information itself. Therefore, courts now

> routinely assert that the purpose of rulemaking is to "assur[e] that the agency will have before it the facts and information relevant to a particular administrative problem, as well as suggestions for alternative solutions."

Alfred C. Aman, Jr. & William T. Mayton, *Administrative Law* (Hornbook) (1998), 45 (quoting *Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1044 (D.C. Cir. 1987) (citations and internal quotations omitted)).[1]

Here one has to question whether or not all relevant information and facts were before the Commissioners when they took action on the Van Geytenbeck proposal, or modifications thereof, in the course of the meeting on the 6th of February. With a lack of proper notice, there was no ability from those that were to be affected by the Van Geytenbeek proposal to offer alternatives to that motion.

In addition, there is also the question of whether the public should have been given notice of the intended proposal of Commissioner Van Geytenbeck if he in fact shared that idea on the 6th of December at the end of the established public comment period. As noted in the accompanying statement of the Petitioners, the WAPA provides for a means of filing a variance proposal and there appears to have been nearly sixty days between Mr. Van Geytenbeek's "open session" statements of his plans and the date in which he intended to put forward the moratorium. Ample time would have existed to provide notice of such an intention and thereby allowing the involvement of all the interested public to participate in the topic Mr. Van Geytenbeek and others sought to bring forward for consideration by the Commission. Utilizing such an approach would have prevented the Petitioners and others from raising concerns regarding the use of "surreptitious" tactics. Prof. Bonfield, who wrote the leading treatise on state administrative law, warned about the folly of allowing a rule to be promulgated that did not substantially relate to that which was proposed:

> "It would be meaningless, however, if an agency were allowed to adopt a rule that had no substantial relationship to the rule originally proposed in the required published notice. Under those circumstances an agency could circumvent opposition to a proposed rule by intentionally omitting from its text, at the time it was initially published as a proposal, those portions that are likely to be controversial. Then, at the time of its adoption, the agency could rewrite the rule to incorporate the controversial provisions that would have provoked a public outcry had they been known at the time the rule was originally proposed. To avoid evasive tactics of this kind, [a state's APA] should establish

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[1] Washington's APA and the federal APA are similar and therefore federal cases are often considered by Washington courts when construing the WAPA. See RCW 34.05.001 ("The legislature [] intends that the courts should interpret provisions of [the WAPA] consistently with decisions of other courts interpreting similar provisions of … the federal government[.]" Accordingly, this Petition will cite and discuss federal APA cases.

1 some limits on the variance allowed between the text of a published proposed rule and the text of the rule that is actually adopted at the end of the rule-making proceeding."

2 Arthur Earl Bonfield, *State Administrative Rule Making*, § 6.7.1 at 232 (1986 & 1993 Suppl.)

3 However, the information available to the Petitioners calls into question how public Mr. Van
4 Geytenbeek really wanted to be about their proposed permanent moratorium. The indication of Mr. Van
5 Geytenbeek's statement in the press release announcing the adoption of the moratorium indicates that
6 Mr. Van Geytenbeek felt that the Commission's "right path" was the adoption of a permanent moratorium
7 regardless of the various issues and factors associated with such a path. Equally compelling to the
8 Petitioners is the concern that such a manner in adopting rules, if permitted to stand, could undermine
9 some of the basic tenants associated with the promulgation of the WAPA. As noted by one federal court:

10 [M]ost important of all, high-handed agency rulemaking is more than just offensive to our basic notions of democratic government, a failure to seek at least the acquiescence
11 of the governed eliminates a vital ingredient for effective administrative action …. Charting changes in policy direction with the aid of those who will be affected by the
12 shift in course helps dispel suspicions of agency predisposition, unfairness, arrogance, improper influence, and ulterior motive.

13 *Chamber of Commerce of U.S. v. OSHA*, 636 F.2d 464, 470 (D.C. Cir. 1980).

14 Commissioner Van Geytenbeek's statements following the adoption of the moratorium, and the manner in
15 which public participation occurred supporting his objective only strengthen the feeling of the Petitioners
16 that the Van Geytenbeek proposal and its adoption was surreptitious.

17 Also disturbing to the Petitioners is the fact that the Commission may have established a
18 precedent allowing the ability of any well organized group – no matter how large or small – to work with
19 a sympathetic commissioner to bring forward any proposal at any time in the rule making process. While
20 it may seem far fetched, such a precedent for operations could create some very unique rule making
21 adoption hearings in the future. For example, it could result in some organization concerned about the
22 welfare of animals challenging catch and release rules at some future rule adoption hearing as being
23 "cruel" to the hooked fish. While far fetched, such a proposal could be argued using non-Departmental
24 "science" from some prestigious institute by an advocacy group to argue their position. Or, in the
25 alternative, such a group could co-op portions of scientific studies that indicate catch and release result in
a large percentage of scarred and damaged fish, if not stress and other negative responses within the

hooked fish. Another effort, much more realistic and plausible, could be that of turning the wild ***salmon*** sports fishery into catch and release only, similar to that done in various Alaska systems, in order to protect the economic concerns, or in Washington the argument could be couched in efforts to "to ensure health future returns of threatened salmon."

For those that would scoff at such concepts, they might want to consider similar concepts discussed in a recent edition of ***Alaska***. *Petitioners Exhibit No. 7, "From Plate to Plaything: Anglers butt heads over the conservation benefits of catch-and-release fishing", T. Lewis, Alaska Magazine, April 2004 35-39, 75.* Or, even more on point with the "cruelty" hypothetical tossed out above is an article by Jeff Jacoby of the Boston Globe published in the San Francisco Chronicle and available on their website. *Petitioners Exhibit No. 8, "Catch-and-release fishing is inhumane," Jeff Jacoby, 14 May 2003.* If the Van Geytenbeek manner of rule proposal and adoption is permitted to stand, it is not outside the realm of possibility that other well organized, vocal and "well meaning" groups working with a sympathetic and supportive commissioner could bring about rules that address goals that they see as important to Washington's management of wildlife. While the Petitioners have focused their arguments on the manner in which the moratorium was brought forward, it is very important for the Department, the Commission, and others to consider the full range what the Van Geytenbeek approach to rule making could cause in the future.

One saving grace for the Petitioners, and their supporters, against further uses of this tactic, and in effect against that which Commissioner Van Geytenbeek employed in this situation, can be found in a federal case. In a situation similar to this one, a federal court demonstrated that it can—and will—invalidate rules that vary substantially from the proposal given to the public. In *Am. Frozen Food Institute v. Train*, 539 F.2d 107 (D.C. Cir. 1976), an agency's notice of rulemaking listed three pollutants for which it was considering setting emission standards. But during the rulemaking process, the agency slipped in a fourth pollutant and proceeded to set emission standards for the fourth pollutant. The court invalidated that fourth-pollutant portion of the rule and remanded the matter back to the agency with instructions to comply with the APA. *Id.*, at 135. This decision comports itself with the commentary on

the APA that such tactics need to be avoided and can be avoided if the level of variation between the notice of proposed rule and the adopted rule is limited. *State Administrative Rule Making, § 6.7.1 at 232.*

Finally, the Petitioners would like to point out that the action of a majority of the Commission has galvanized a large number of anglers to organize and voice their concerns on this matter. Attached to the Petitioners filings are copies of signed petitions provided to the Petitioners. *Declaration of Nedra Reed at para. 13 and attachments thereto*. This Petition was circulated for a very brief period of time (mid-Feb through late March) and approximately 1,200 anglers signed the document. Its tone echoes that of the Petitioners by calling into question the manner in which the Commission acted on the moratorium and its impacts upon the interests of sports anglers in the State. As a result of the Commissions' action, a larger number of individuals have come forward to register their concerns and interest in retaining wild steelhead than were able to meaningfully participate in the public process that was "created/orchestrated" for the moratorium. The Petitioners feel that this sudden, unsolicited expression of concern about the moratorium further bolsters their request for beginning rule-making on the proposed amendments. Such an approach will ensure that all interested parties can participate in the discussion and debate, if they so choose, about what to do with wild steelhead populations on the rivers of the Olympic Peninsula. The Petitioners are grateful to have had help in identifying individuals that may want to partake in those future proceedings.

B. Moratorium's Failure to Comply with Federal Case Law

In the historic case of *U.S. v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974),* and its various progeny (*Washington v. Fishing Vessel Ass'n, 443 U.S. 658 (1979)),* the concept of co-management of the harvest of fish was established as legal principal for the Commission, the Department, and the appropriate Tribal nation's in their usual and accustomed areas. *443 U.S. 658, at 679-685*. As co-managers there is a need to communicate and agree to approaches associated with various species on a river by river basis. *See U.S. v. Washington, 459 F. Supp. 1020, at 1119-1120*.

Each year in furtherance of the Court's order for the manner in which wild steelhead are to be managed, the applicable Tribal nation and the Department enter into an "annual agreement" covering wild steelhead for a river system. An example of the most recent agreement associated with the

1 Quillayute River System is found at *Petitioner's Ex. No. 2 at its 2*. Please note that one of the agreed
2 upon management objectives of both Co-managers for 2003-2004 was ensuring the ability "to conduct a
3 season-long sport fishery on winter steelhead on this system." *Id. at 1*. Management of both the State
4 and Tribal harvests is then undertaken in accordance with the applicable court order and the annual
5 agreement. The State then circulates its proposed rules after the adoption of the annual river by river
6 agreements with the various treaty tribal nations. However, the Department and Commission are
7 required by Court order to "exchange proposed off-reservation fishing regulations affecting the particular
8 fishery*." 459 F. Supp at 1119*.

9 The *Boldt* decision, and its progeny, divided the opportunity to harvest fish equally between tribal
10 and state interests at the run/river level. As part of the management of the resources, the court
11 required, as a means of addressing the allocation of salmonids, the use of escapement as a means to
12 preserve existing wild salmonids, while still affording the opportunity for harvest. *U.S. V. Washington 459
13 F. Supp. 1020 (D.C. Washington, 1978) at 1109-1110*. The Court ordered both the tribal litigants and the
14 Department to work with an established Fisheries Advisory Board to implement the developed "Joint
15 Steelhead Harvest Management Plan for Washington Department of Game and Treaty Tribes" found at
16 *459 F. Supp. at 1118*. This plan would established a means for management for both the wild (then
17 referred to as native) stocks and also hatchery stocks. *Id*.

18 The harvest allocation for each river's wild steelhead population is based upon the pre-season
19 forecasts and the concepts referred to as MSY/MSHE (Maximum Sustained Yield/Maximum Sustained
20 Harvest Escapement). The formula for harvest allocations is based upon allocating equally the
21 opportunity to harvest the surplus fish, with surplus being those fish in excess of the agreed upon
22 escapement goal (MSHE*). See Declaration of John Kelly at para. 8* and also *Petitioners' Exhibit No. 4,
23 Department Briefing on Fish and Wildlife Commission Request, page "11/18".* For the Quillayute River
24 System, the established escapement goal has remained constant at 5,900 wild steelhead for decades.
25 *Pet. Ex. No. 2 at its No. 1*. To further illustrate this principle, one can then see that in 2003-04 season,
the agreed upon run size projections for the Quillayute River System was 13,927 wild steelhead. The
total opportunity for harvestable wild steelhead for that period were 8,027 wild steelhead; or, the

1 opportunity to harvest up to 4,014 steelhead for each party's allocation. Of the 4,014 wild steelhead
2 allocated for potential harvest by then State's non-tribal anglers, only 1,381 were in fact projected to be
3 harvested (caught and retained). *Pet. Ex. No. 2 at its No. 3*.

4 If one party does not harvest its share of the surplus allocation allotted to it, there is an
5 argument that could be made by either of the Co-managers that a "foregone" opportunity has been
6 created that may be claimed by the other co-manager. As noted by the Department, "in other words, if
7 one side can not catch its share, the other party can harvest it." *Pet. Exhibit No. 9, WDFW 2002-2003*
8 *Sportsfishing Rule Proposals, Oct. 2001, at its 15.* When the state has allocated wild steelhead for sport
9 fishing harvest, the Courts have not agreed to tribal claims of "foregone opportunity." However, the
10 application of a moratorium or established "catch and release" seasons has not been squarely before the
11 courts. *Id*. As noted some four years ago by WDFW staff, "possible tribal response …difficult to predict
12 challenge – but definitely possible" with regard to the enactment of a statewide catch and release rule.
Pet. Exhibit No. 4, Department Briefing on Fish and Wildlife Commission Request, page "15/18".

13 Also, if the State intends to engage in conservation measures for a particular run of steelhead on
14 a particular river, the State is required to consult with its own affected groups. *See 459 F. Supp. at 1119*.
15 Such conservation is to occur when there is a determination that closure of the steelhead harvest is
16 necessary to ensure "escapement to maintain the resource." *Id*.

17 The Quileute Tribal Chairman noted in his letter to Commission Chairman Roehl, attached to the
18 Declaration of Mayor Nedra Reed, that the co-manager had not been consulted by "the Commission or
19 the WDFW" prior to the Commission's moratorium action. The Tribal Chairman specifically reminded the
20 Commission that pursuant to *U.S. v. Washington* "there is an obligation by the State as co-manager to
21 consult with the Quileute Tribe in regards to any actions that could impact the management of wild
22 steelhead on this watershed." *Letter of Quileute Tribal Chairman Russell Woodruff, attached to*
23 *Declaration of Mayor Reed*. As of the filing of this effort by the Petitioners, the Commission and/or
24 Department have been unable to indicate the manner in which "consultation with the co-manager" of the
25 proposed moratorium occurred prior to the Commission's vote on 6 February 2004. Failure to
demonstrate such consultation, and exchange of off-reservation fishing regulations, results in the

Commission and the Department having to concede that they did not comply with *U.S. v. Washington*, its orders regarding steelhead management, and thereby the action did not comply with applicable "federal law." As a result, the Petitioners would argue that the moratorium was not "adopted according to all applicable provisions of law."

The Petitioners also point to the fact that the Commission and the Department are mandated by federal court order to manage the harvest of wild steelhead on a river by river basis. *459 F. Supp. at 1120, and see also Hoh v. Baldridge, 522 F. Supp. 683 (W.D. Wash. 1981) at 686*. Here the moratorium was enacted without consideration as to the impact of such a moratorium on the river-by-river management of wild steelhead populations, nor in consideration of the rights of State anglers in having the opportunity to harvest "surplus" fish. As noted by the Quileute Tribal Chairman, "this method has provided the necessary conservation needed for each individual system and has proven itself." *Letter of Quileute Tribal Chairman Russell Woodruff, attached to Declaration of Mayor Reed.* This position comports itself with a previous assessment of such a moratorium done in Oct. 2000 by staff of the Department. There it was noted that such a rule was not needed to maintain healthy runs. *Pet. Exhibit No. 4, Department Briefing on Fish and Wildlife Commission Request, page "12/18".* As a result, the Petitioners would again argue that the statewide two year moratorium was not done in accordance with applicable federal law requiring a river-by-river management approach.

It is also important to note that the basis for this moratorium was to address a "concern about the decline of our wild steelhead stocks." *Pet. Exhibit No. 3, Commissioner Van Geytenbeek's statement within the WDFW Press Release dated 6 Feb 2004*. However, if the goal was conservation of wild steelhead, the Courts have indicated that the Department is required to consult with "affected groups" prior to any steelhead closure. *459 F. Supp at 1119*. While it is unclear who the "affected groups" would have to be for consultation purposes, one would presume that one group, at a minimum, deserving of such consultation would have been the Department's own steelhead/cutthroat advisory group. However, Mr. Kelly noted in his declaration that he was unaware of any such proposal being brought to the that group. It should be remembered that Mr. Kelly has served on this advisory group for over ten years. *Declaration of John Kelly at paras. 1-5.* If the moratorium was truly a conservation measure, the

1 Commission failed to adopt the moratorium in accordance with applicable federal law when it failed to
2 consult with its own appointed steelhead/cutthroat advisory group.
3 The 2003-2004 annual steelhead management agreement for the Quillayute system notes that
4 the Department intended to manage the wild steelhead fishery in such a manner as to "conduct a
5 season-long sport fishery." The steelhead season runs until the end of April on the Quillayute, however,
6 the original moratorium intended a start date of 1 April 2004. While that has since been modified by the
7 Department, pursuant to a subsequent authorization by the Commission, the Petitioners would argue that
8 the action by the Commission on 6 February 2004 further failed to comport with applicable federal law in
9 that it violated the annual agreement that is entered into by the State with the Quileute Tribe pursuant to
10 U.S. v. Washington. *Pet. Ex. No. 10, 17 March 2004 Press release "Wild Steelhead retention moratorium*
11 *will take effect May 1 statewide."* While this failure may have been corrected by shifting the start date
12 for the moratorium to 1 May 2004, thereby ensuring a complete season as envisioned in the annual
13 agreement, it is used here to illustrate the fact that the majority of the Commission did not consider all of
14 the relevant factors found within applicable law when they made their decision. The Commissioners, and
15 the Department, need to also understand that the Petitioners will want to see what is proposed as the
16 State's management objectives in future agreements regarding the Quillayute River System.
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Conclusion

20 For the reasons stated above, and in the accompanying statement associated with substantial
21 difference, the Petitioners, and their supporters, respectfully request that Department and the
22 Commission initiate rule-making proceedings on the Petitioners' proposed amendments to WAC 232-12-
23 619. The Petitioners further request and require that the Department and the Commission undertake
24 the rulemaking process on the Petitioner's proposed amendments to the adopted rules regarding wild
25 steelhead published on 8 April 2004 by the Department for the 2004-2005 season, as well as those rules
that would be put into effect in 2005-2006 as a result of the 6 Feb 2004 action by the Commission.

Respectfully submitted on behalf of the petitioners this 9th day of April 2004.

William R. Fleck
WSBA No. 23962
City Attorney
500 East Division
Forks, Washington

Gregory Overstreet
WSBA No. 26682
Attorney
Perkins Coie, LLP.
111 Market Street N.E., # 200
Olympia, Washington