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Appeals Board Rules-- Clark County Development Standards Illegal
Taxpayer subsidy & fish-killing loopholes scrapped

Tumwater, WA.-In a major decision with statewide impacts, a state appeals board today ruled that Clark County's controversial development standards violate state and federal laws to protect clean water.

The ruling, by the state Pollution Control Hearings Board (PCHB), means the county is out of compliance with federal clean water laws. It signals an end to the county's on-going failure to protect rivers, streams and salmon threatened with extinction.

"Clean water is our future. Clark County has the potential to be a leader in low impact development, parks and green space. These are real growth sectors in our economy and will put people back to work," said Dvija Michael Bertish of the Rosemere Neighborhood Association.

Rosemere Neighborhood Association, Columbia Riverkeeper, and the Northwest Environmental Defense Center, represented by Earthjustice, challenged Clark County's adoption of development standards that were too weak to prevent significant harm to the County's already-stressed rivers and streams.

Under a deal reached early this year, embodied in an "Agreed Order", the state Department of Ecology agreed to allow Clark County to retain inadequate stormwater standards for new development in exchange for a promise to implement taxpayer-funded mitigation projects. The controversial approach shifted the burden of protecting clean water from developers to local taxpayers.

In a precedent-setting decision that reversed the Agreed Order, the PCHB held the program to be illegal in several important respects.

Specifically, the Board found that the Clark County program:

- Is not based on any science and failed to protect water quality and salmon.
- Unlawfully exempts development projects that "vested" prior to April of 2010.
- Unlawfully allows Clark County to shift resources from its existing retrofit program to mitigate for new development.
- Unlawfully fails to require "low impact development" at new development and mitigation sites.
"Clark County's refusal to comply with state stormwater requirements is unfair to other cities and counties, not to mention industries, that are working hard to clean up our polluted waterways," said Jan Hasselman from Earthjustice, who is representing the groups. "When it comes to clean water, everyone needs to do their share."

The Board held: "The Board finds that the agreed order rests on no science as to the comparability of its mitigation metric in relation to the Phase I Permit's flow control approach. . . . The majority of the Board finds that the terms of the Agreed Order are insufficient to protect beneficial uses."

"Clark County's approach to stormwater was a bad deal for clean water and species like salmon because developers will continue to use outdated and inadequate building standards," said Brett VandenHuevel, executive director of Columbia Riverkeeper. "It's time for the County to keep its promise to the public to protect clean water as well as taxpayers who have been subsidizing the development industry."

Copies of the Pollution Control Board Appeal Documents are available here:

Findings of Fact, Conclusions of Law, and Order:
RNA-CR-NEDCvClarkCty-Ecology2026 findings-conclusions-order 1-5-11

Concurrence and Dissent:
RNA-CR-NEDCvClarkCty-Ecology2026 concurrence and dissent 1-5-11

About the Pollution Control Hearings Board

The Pollution Control Hearings Board acts like a court for appeals of state environmental regulations. The three board members hear appeals from orders and decisions made by the Department of Ecology and other agencies as provided by law. The Board's function is to provide litigants a full and complete administrative hearing, as promptly as possible, followed by a fair and impartial written decision based on the facts and law. The Board is not affiliated with the Department of Ecology or any other state agency. The Board consists of three members, who are appointed by the governor and confirmed by the State Senate for staggered six-year terms.