



Skagit County Board of Commissioners

Ron Wesen, First District

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June 24, 2025

Mayor Matt Miller
Chair, Board of Directors
Skagit Council of Governments
15 South 3rd Street, Suite 100
Mount Vernon, WA 98273

RE: Salmon Recovery In The Skagit Watershed, The Need To Center Skagit Local and Tribal Government In Strategic Project Plans, and Proposed Lead Entity Oversight

Chair Miller and Board,

This letter is intended to provide the reader with an understanding of the ongoing challenges related to habitat restoration and Skagit salmon recovery, arising from issues with the Skagit Watershed Council ("SWC") nonprofit and its governance structure.

Skagit County's overarching objective is to center Skagit tribal and local governments in strategic, coordinated decisions about habitat restoration projects, particularly major projects involving local government infrastructure intended to advance Endangered Species Act goals, which, in most cases, significantly involve other challenges such as sea level rise.

The current arrangement is not delivering appropriate results, because the SWC/lead entity governance structure is failing to bring the Skagit Valley together around strategic plans and projects.

Skagit local and tribal governments have been unable make progress on necessary change to the current structure for over four years. At various levels, Skagit County, Skagit dike/drainage districts, the Upper Skagit Indian Tribe and the Samish Indian Nation have withdrawn consent to lead entity designation, stepped away from the board, and/or pulled funding from the SWC entity. The status quo is not a viable option.

The proposed action we bring before the SCOG board is a limited one. We propose a SCOG board resolution amending SCOG's 1998 designation of SWC as the Skagit's lead entity, requiring that Skagit local and tribal governments negotiate an interlocal governance agreement as a condition of SWC's continued lead entity status. If interested tribal and local governments have not reached agreement by October 31, 2025, we will return to the SCOG board for further discussion about next steps.

While the action presented to the SCOG board is limited in nature, SCOG board members have sought deeper discussion of (i) the concerns and issues giving rise to this request; and (ii) the plan going forward that Skagit County proposes should the SCOG board adopt the requested resolution. This letter discusses these issues.

However, SCOG board members should take note that the proposed SCOG resolution simply requires interested tribal and local governments to *engage in negotiation of an interlocal agreement*, not to reach agreement in any particular form. We remain interested in discussing other ideas with tribal and local government that can collaboratively accomplish Skagit tribal and local government goals.

This requires mutual commitment to good faith engagement, which the proposed resolution before the SCOG board will help create.

We provide an executive summary, followed by an in-depth discussion of the issues for readers that seek deeper analysis and primary source citation.

I. EXECUTIVE SUMMARY

In 1998, the Skagit Council of Governments (“SCOG”) board authorized the Skagit Watershed Council (“SWC”), a private nonprofit, to serve as the lead funding entity pursuant to the Samon Recovery Act (RCW 77.85). Consistent with the Act, SWC assumed responsibility to prioritize state salmon recovery funding in the Skagit watershed.

In this role, SWC is expected to bring the community together around strategically-planned habitat restoration projects that measurably advance Endangered Species Act (“ESA”) recovery - in particular, recovery goals established by the 2005 Skagit Chinook Recovery Plan. SWC has visibly failed to achieve this goal.

In an effort to help address this shortcoming, Skagit County has identified three significant concerns:

- SWC’s Board has failed to create (i) an appropriate mission statement reflective of its obligations as lead entity; (ii) strategic plans that can be realistically carried out; or (iii) community buy-in for strategic projects to address the recovery of Endangered Species Act-listed species in the Skagit (Chinook salmon in particular) as well as climate change/sea level rise considerations.
- The SWC board and the committees it appoints, including the Lead Entity Citizens Committee (“LECC”), involve significant conflicts of interest.
- SWC’s board has failed to effectively incorporate Skagit dike and drainage districts in strategic planning and decision-making, and fails to adequately represent the community in general.

We provide a synopsis of each concern.

a. SWC Failure to Develop Appropriate Missions Statement, Strategic Plans or Community Buy-In for Strategic Projects.

SWC has failed to develop a mission statement or strategic plans in a manner consistent with its duties as lead entity. Furthermore, despite several years of requests by Skagit tribal and local governments, SWC is unable to (i) articulate progress toward habitat restoration goals identified in the 2005 Skagit Chinook Recovery Plan ("2005 SCR"); (ii) articulate the extent to which the lead entity program has contributed to Skagit Chinook recovery; or (iii) effectively coordinate with state and federal agencies on a coherent message regarding the status and trends of Skagit Chinook.

These failures have resulted in tremendous regulatory pressure on Skagit dike and drainage districts, Skagit County, and the agricultural community. The problems discussed in this letter are the principal source of environmental conflict in the Skagit watershed.

b. The SWC Board and the Committees it Appoints, including the Lead Entity Citizens Committee (LECC), Involve Conflicts of Interest

SWC's board and the LECC it appoints are centrally comprised of organizations that rely on significant levels of salmon habitat grant funding to support their operations, overhead and payroll, or have other conflicts of interest. The SWC board and the LECC are implicitly charged with the duty to:

- (i) Adequately represent the community;
- (ii) Vet projects to ensure that they align with the Recovery Plan, and vet *project proponents* to ensure they have the requisite technical competency, legal authority, administrative capacity, and financial solvency to execute the proposed project; and
- (iii) Avoids conflicts of interest that would undermine program effectiveness.

The SWC board appears structured to afford permanent effective board control to Seattle's power utility and several organizations that significantly rely on SWC-approved funding. Among other things, the SWC board appoints committees that largely consist of its own member organizations, systemically furthering their own interests and prioritizing their own projects for funding, despite clear limitations on their actual capacity to acquire land and successfully carry out the projects they envision.

As discussed further below, this has produced problematic outcomes at the programmatic and project-specific level, which has in turn severely degraded community willingness to participate in SWC-approved recovery projects.

c. Failure to Include Skagit Dike and Drainage Districts As Indispensable Partners

SWC has failed to adequately coordinate or engage with Skagit dike and drainage districts ("Districts"). The Districts are responsible for the operation and maintenance of the extensive system of dikes and drainage infrastructure in the Skagit Delta, and are indispensable to the implementation of estuary habitat recovery projects envisioned by the 2005 SCR.

SWC is the only private nonprofit in the State serving as lead entity without tribal and local government oversight. The Hood Canal Coordinating Council ("HCCC") is the only *other* private nonprofit charged with the lead entity role. In contrast to SWC, the HCCC organization has been highly successful at bringing tribal and local government together around demonstrably successful plans and action.

This is because HCCC created an integrated governance structure in which tribal and key local governments form an overarching board that sets broad policy direction and ensures holistic consistency with local/tribal governmental objectives in the program’s plans and actions. This has allowed Hood Canal tribal and local governments to bring their community together around major infrastructure-involved ESA recovery projects, delivering significant success for the Hood Canal fisheries resource and the Hood Canal community.¹

We hope to replicate Hood Canal’s success. With broad support from other key local and tribal governments, Skagit County has proposed an interlocal agreement modelled on the successful HCCC interlocal agreement. The purpose is to ensure that SWC (i) adopts a mission statement, strategic plans and achieves community buy-in for strategic projects aligned with the Act and the 2005 SCRPs; (ii) appoints a funding prioritization committee (i.e., LECC) that represents the community; and (iii) operates without conflicts of interest.

The change we seek is a matter within local discretion, and will have no negative effect on the state funding allocated to the Skagit. To the contrary, the change we seek will most likely result in an increase in state, federal and other funding opportunities as community buy-in for projects improves.

We firmly believe that this is the answer to resolving the long-running conflict in the Skagit surrounding these issues, and we ask that the SCOG board support reasoned policy dialogue and good faith negotiation by adopting the proposed resolution.

II. DISCUSSION AND ANALYSIS

1. SCOG’s 1998 Designation of Skagit Watershed Council as Skagit Lead Entity.

The watershed-specific lead entity program was authorized by the Washington State Legislature specifically to advance the recovery of Endangered Species Act (“ESA”)-listed fisheries on behalf of local and federally-recognized tribal governments within each watershed, providing a coordinated framework for project selection and deployment of state funds by delegating local and tribal authority to a coordinated lead entity:

The legislature finds that repeated attempts to improve salmonid fish runs throughout the state of Washington have failed to avert listings of salmon and steelhead runs as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). These listings threaten the sport, commercial, and tribal fishing industries as well as the economic well-being and vitality of vast areas of the state....

....

The legislature further finds that it is important to monitor the overall health of the salmon resource to determine if recovery efforts are providing expected returns. It is important to monitor salmon habitat projects and salmon recovery activities to determine their effectiveness in order to secure federal acceptance of the state's approach to salmon recovery.

....

The legislature therefore finds that a coordinated framework for responding to the salmon crisis is needed immediately. To that end... the appropriate local or tribal government should provide local leadership in identifying and sequencing habitat projects to be funded by state agencies.

...

Counties, cities, and tribal governments must jointly designate...the lead entity...²

¹ See, <https://nwtreatytribes.org/salmon-recovery-is-working-but-we-cant-stop-here/> (last visited June 24, 2025).

² See also RCW 77.85.010(12)(“Tribe” or “tribes” means federally recognized Indian tribes.”)

In 1998, the SCOG board, acting on behalf of the Skagit’s “count[y], cities and tribal governments,” designated the Skagit Watershed Council nonprofit (“SWC”) as the Skagit’s lead entity.

SCOG’s designation of the SWC nonprofit did *not* include or require the negotiation of an interlocal agreement or any other governance/oversight structure. Thus, SCOG’s designation of the SWC nonprofit involved no conditions, limitations, specific direction, or any form of required governance.

2. Problem Statement – Why Is Change Needed?

Skagit County has three significant concerns regarding the SWC and its board:

- SWC’s Board has failed to develop an appropriate mission statement, strategic plans, and community buy-in for strategic projects to appropriately address the recovery of Endangered Species Act-listed species in the Skagit, chinook in particular.
- The SWC board and the committees it appoints have significant conflicts of interest.
- SWC’s board has failed to effectively incorporate Skagit dike and drainage districts in strategic planning and decision making, and fails to adequately represent the community.

Taken together, these problems have precluded community support for projects necessary to achieve identified ESA recovery goals, creating tremendous regulatory burden on the County, Districts and agricultural community. **Each concern is addressed in order.**

a. SWC Board Has Failed To Develop Mission Statement And Strategic Plan To Address Recovery Of ESA-Listed Species.

The primary role of a nonprofit board is to define the organization’s mission statement and set strategic goals that ensure the organization can be held accountable for actions that meaningfully contribute to the successful achievement of the mission.

The SWC board has failed to establish an appropriate mission statement or strategic plans reflecting SWC’s role as lead entity for the Skagit watershed. Nor has the SWC board delivered community buy-in around strategic projects to achieve the ESA recovery goals that underpin SWC’s lead entity designation. The conflict we are experiencing as a community is directly related to this failure.

The 2005 Skagit Chinook Recovery Plan (“2005 SCRP”) is the recovery plan for the Skagit, adopted by state and federal agencies. The 2022 Skagit Watershed Council Strategic Plan adopted by the SWC board discusses the 2005 SCRP; discusses the need to carry out major projects on the Skagit Delta; and acknowledges that the principal challenge is achieving community buy-in for specific projects on the Skagit Delta, which is mostly private farmland:

Rationale for target: The Chinook Recovery Plan identifies loss of rearing habitat in the delta as the primary habitat factor limiting recovery of Skagit River Chinook populations. In the past 150 years, 73% of tidal delta and 98% of non-tidal delta habitats have been lost, and the limited remaining habitats are insufficient to support juvenile Chinook salmon from the six populations (Skagit Chinook Recovery Plan 2005). Therefore, the Skagit delta is included in the highest priority Tier 1 target area.

...

Priority objectives: The primary restoration objectives in this target area are to restore habitat capacity and connectivity in the Skagit delta.

....
A major challenge in this target area will be achieving the community support necessary to realize significant habitat gains on or near privately owned lands (most of which has been heavily invested in agricultural production for many years). A second major challenge is incorporating potential effects of climate change...

The SWC Board clearly recognizes and understands the “major challenges” involved, but ultimately refuses to accept SWC’s responsibility for “achieving community support” to address it.

The Skagit River Systems Cooperative (“SRSC”) is an organization principally supported by public grant funds, and is central to this discussion.³ SRSC was the co-author and principal driver behind the 2005 SCRCP.⁴ One of the individual authors of the 2005 SCRCP and a former SRSC employee, Audrea McBride, is the current SWC Executive Director.⁵

In addition, the Puget Sound Partnership, the state agency whose mission is to “accelerate and advance the collective effort to recover Puget Sound”, has maintained a representative on the SWC board, John Stein, since 2017.⁶ For the last several years, Stein has been the SWC board chair. Mr. Stein was a fisheries scientist prior to his retirement from the National Marine Fisheries Service, working on Endangered Species Act issues, including issues relevant to the Skagit.

Taking these facts into consideration, it is reasonable to operate on the belief that SWC’s current leadership adequately understand the 2005 SCRCP and its limitations identified by the National Marine Fisheries Service – in particular, the need to develop a strategic plan, building community consensus around specific projects necessary to achieve the 2005 SCRCP’s objectives.

The National Marine Fisheries Service (“NMFS”) is responsible under federal law for ESA enforcement and related recovery plans. In 2006, NMFS provisionally adopted the 2005 SCRCP as the Skagit component of the Puget Sound Chinook recovery plan (for lack of a better option), with the understanding that the 2005 SCRCP required significant additional work to obtain community buy-in around site-specific actions and projects.

In its Puget Sound Recovery Plan, NMFS expressed its understanding that the SWC nonprofit would be the centerpiece of “local [ESA recovery] plan implementation and collaboration building” in the Skagit:

Based on the absence of a science-based, locally supported alternative to the Skagit watershed plan, NMFS accepts the 2005 Skagit Chinook Recovery Plan as the local recovery plan for the area. NMFS expects the Skagit plan will be appropriately modified over time...as new information becomes available and Plan implementation and adaptive management proceed. NMFS recognizes the important role of the Skagit Watershed Council is playing in bringing diverse interests in the basin together to find common ground and to advance salmon recovery. NMFS strongly encourages stakeholder involvement in the development of site-specific action, and strongly supports the

³ See, <https://skagitcoop.org/> (last visited June 18, 2025). SRSC provides scientific and various other fishery resource-related services to the two tribes. SRSC’s Director of Habitat Restoration sits on the SWC board.

⁴ See, <https://www.skagitwatershed.org/about-us/board-of-directors-staff/> (last visited June 18, 2025); see also <https://skagitcoop.org/contact/staff-directory/> (last visited June 18, 2025).

⁵ See, <https://skagitcoop.org/wp-content/uploads/Appendix-D-Estuary1.pdf>

⁶ Mr. Stein recently changed his affiliation on the SWC website from the Puget Sound Partnership to RiverSong Farm, as further discussed below at page 9.

continued involvement of the [Skagit Watershed] Council in local plan implementation and collaboration building.⁷

To summarize: in adopting the 2005 Skagit Chinook Recovery Plan as the plan for the Skagit, NMFS - the federal agency responsible for ESA enforcement and recovery - explicitly relied on the Skagit Watershed Council to bring the Skagit Valley together and build community support for specific projects necessary to achieve the Skagit's ESA recovery plan.

This is clearly not occurring.

To understand why, one must start with SWC's mission statement. SWC's mission statement does not mention the concept of ESA recovery, nor does it include the expectation that SWC will build consensus around local ESA recovery plan implementation by building community buy-in for specific projects.

Following is the SWC mission statement, seemingly in place since at least 2014, which fails to so much as reference the centrally-relevant concept of ESA recovery goals, and the need to build community buy-in for specific projects to achieve those goals:

The mission of the Skagit Watershed Council (SWC) is to understand, protect and restore the productivity of healthy ecosystems to support sustainable fisheries. The SWC provides technical assistance, public outreach and education, and a collaborative process within the Skagit and Samish Watersheds to better understand, protect and restore the production and productivity of healthy ecosystems for the purpose of supporting sustainable fisheries. The SWC facilitates voluntary restoration and protection of salmon habitat and restoration of the landscape processes that formed and continue to sustain those habitats.⁸

This "vanilla shell" mission statement does not acknowledge SWC's basic duties and obligations related to ESA recovery goals and climate change as lead entity, or the community buy-in necessary to achieve it.

It is clear from the record that SWC leadership understands the true function of the SWC, which includes *monitoring and adaptive management of ESA recovery goals* (i.e., the 2005 SCRP). SWC leadership has frequently expressed the organization's central role in tracking, understanding and responding to ESA/Chinook recovery goals in other circumstances, if not the present one.

For example, former SWC Executive Director Richard Brocksmith's description of the SWC entity (in his successful 2020 application for appointment to Seattle's Skagit environmental commission) reads as follows:

*Programs overseen by the [Skagit Watershed] Council's four staff members include technical assessment and planning, grant program implementation, **[and] monitoring and adaptive management of the Skagit Chinook Salmon Recovery Plan...**⁹*

⁷ NMFS, 2006, Puget Sound Recovery Plan, p. 29.

⁸ Skagit Watershed Council Bylaws, Section 1.1 (Mission and Purposes), <https://www.skagitwatershed.org/member-area/by-laws/> (last visited June 18, 2025).

⁹ Email from Richard Brocksmith to Lynn Best, Seattle City Light Chief Environmental Officer, January 17, 2020 1:52 PM. (bolding added).

Over \$135 million has been directed by SWC toward Skagit salmon recovery since it was designated by SCOG as the Skagit’s lead entity. Despite significant past, current, and planned future expenditure of public funds, the SWC Board is unable to provide transparent public accounting as to how this significant investment of public funds aligns with 2005 SCRP habitat restoration goals.¹⁰

The federal government’s Chinook/ESA recovery plans explicitly rely on SWC to develop a realistic action plan by which identified Chinook recovery/estuary habitat restoration projects can be prioritized, acquired, designed, executed and managed with the necessary level of community buy-in.

It is clear that SWC has failed to accomplish these core tasks, which has resulted in an immense level of conflict in the Skagit. Largely due to ESA-related restrictions, since 2021, Skagit dike and drainage districts have been unable to secure federal authorization for the maintenance, repair, or replacement of critical diking and drainage infrastructure putting this infrastructure at risk of failing.

These shortcomings have also resulted in regulatory conflict over Skagit County’s Shoreline Master Program, Comprehensive Plan, and in the context of the Skagit Hydroelectric Project federal relicensing. It has also resulted in a multi-year effort aimed at mandatory riparian buffer regulation, with SWC board member entities testifying in legislative and other venues to the effect that voluntary programs purportedly don’t work.

Voluntary programs can and will work, so long as Skagit tribal and local governments exercise an appropriate level of strategic policy oversight and coordination necessary to achieve community buy-in. The section that follows discusses some of the problems that have arisen from inadequate oversight and strategic policy direction.

b. The SWC Board and the committees it appoints, including the LECC, have significant financial conflicts of interest

The SWC board currently consists of representatives of Seattle City Light (Andrew Bearlin), the Puget Sound Partnership (John Stein), Skagit River Systems Cooperative (Devin Smith), Skagit Land Trust (Michael Kirschenbaum), and Skagit Fisheries Enhancement Group (Allison Studley). This group forms a control bloc on the SWC board, unified in their opposition to the changes we seek. (This grouping will hereinafter be referred to herein as the “**SWC Board Control Bloc.**”)

While their names are associated with their representative organizations on the SWC website¹¹, each of these board members asserts on the record that they are serving on the SWC board in their individual capacity, not in their representative capacity.¹²

The SWC board also includes a representative of (i) the Washington Department of Fish and Wildlife (“WDFW”) and (ii) Skagit Conservation District (“Conservation District”). WDFW’s representative acknowledges that the question of local-tribal oversight is a matter within local discretion. Neither WDFW nor the Conservation District have taken a public position on the changes we seek. Furthermore, WDFW and the Conservation District representatives on the SWC board have made clear *their* understanding and belief that they are serving on the SWC board in a purely representative capacity, not an individual capacity.¹³

¹⁰ County and District officials have repeatedly sought a transparent accounting of SWC’s past, present and planned future spending. In general, we have been told to research state records.

¹¹ <https://www.skagitwatershed.org/about-us/board-of-directors-staff/> (last visited June 23, 2025). As previously noted, Mr. Stein recently changed his affiliation to RiverSong Farm, a vegetable business operated by his wife.

¹² See, Video of Meeting of Skagit Watershed Council Board, October 13, 2023 (transcription available upon request).

¹³ *Id.*

This difference of understanding among current SWC Board members requires discussion and analysis.

SWC board members appoint themselves (or another representative of their organization) to the LECC and the Technical Work Group (“TWG”). SWC’s board and the SWC board-appointed LECC and TWG are heavily comprised of organizations that receive and rely on management fees from SWC-approved grant funding. Furthermore, the SWC Board controls the creation and dissolution of the committees themselves.¹⁴ The SWC Board controls the hiring and firing of the SWC Executive Director; decides who should be nominated for Board seats; controls the admission of new members to the SWC nonprofit; and sets strategic policies, criteria, plans and goals, and “manages the affairs” of SWC.

On the LECC and TWG, project proponents recuse themselves from voting in support of their own projects, arguing that their organization’s presence on the SWC board and appointment of their organization’s representatives to the TWG and LECC are not representative acts.

In short, the LECC clearly does not meaningfully function as a body independent of the SWC board, which a diligent review of SWC meeting minutes over the last decade fully reflects.

The SWC Board Control Bloc appears to maintain this byzantine arrangement in part as a mechanism by which to conceal the conflicts of interest involved. But in the context of publicly funded contracts, it is not enough that representatives of the SWC Board Control Bloc member entities recuse themselves in voting for their own projects in the subsidiary committees that they themselves appoint. Because the SWC board asserts statutory authority to prioritize and distribute state funding in the stead of local government officers, it is apparent that the SWC organization and its individual board members are "exercising or undertaking to exercise...the powers or functions of a municipal officer." RCW 43.23.020(2). Such individuals may not be

beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

RCW 42.23.030. Furthermore, RCW 42.23.040(1) makes clear that this prohibition applies to contracts with nonprofits where salaried officers of the nonprofit corporations are involved, as is the case with multiple SWC board members.

These conflicts of interest, spread across multiple organizations, have resulted in many situations where SWC board members and their associated organizations are responsible for technical review and vetting of projects, project list development, and LECC final recommendations, repeatedly prioritizing projects that were (i) advanced over objections of members of the LECC, (ii) without support or clear understanding of the benefits from the broader community; and/or (iii) advanced by project proponents that lacked the requisite technical competency, legal authority, administrative capacity, or financial solvency to execute appropriately and resolve post-project contingencies.

This has created a significant level of community unwillingness to participate in the major projects that SWC approves for funding, precluding SWC from effectively carrying out the “local [ESA recovery] plan implementation and collaboration building” that NMFS recognizes is necessary.¹⁵

¹⁴ SWC Bylaws Section 8.1.

¹⁵ See, fn 7, *supra*.

The current SWC arrangement has also repeatedly produced situations that are visibly inconsistent with the level of open and transparent conduct required where significant public funds involved, with SWC board members concealing the true nature of the SWC structure, their interests, and their involvement.

For example, John Stein served as the Puget Sound Partnership organization's representative on the SWC board from his appointment in July 2017, serving as the SWC board chair for the last several years. At some point in the last several months, for unknown reasons, Mr. Stein's organizational affiliation abruptly changed to "RiverSong Farm," a small private vegetable-growing business operated by Mr. Stein's wife at their home. It is unclear what motivated this sudden change, but, under SWC's long-standing bylaws, individual farms do not have standing to become a SWC member, let alone serve as the SWC board chair.

Seattle City Light's seemingly permanent SWC board seat poses its own conflict of interest, given the close connection between the SWC entity and the ongoing federal relicensing of Seattle's Skagit Hydropower Project. It is unclear why Seattle's power utility should have a permanent seat on the SWC board, a right that our own power utility, Puget Sound Energy, neither receives nor insists upon.

SWC's funding priorities have a marginal level of state oversight in the sense that the state ultimately approves individual watersheds' projects lists. As an initial matter, the SRF board provides a relatively cursory level of review. The SRF board *assumes* that the lead entity has recommended projects that have been vetted through a process devoid of conflicts of interest; have obtained the necessary level of local buy-in; and are consistent with established ESA recovery goals. The state SRF board simply does not provide oversight as to issues raised by this letter.

In fact, the SRF board's own description of its relationship to SWC and other watershed-specific lead entities discusses that watershed lead entities are principally responsible for the implementation of federally-approved ESA recovery plans:

The [SRF] board also plays a key role in supporting the [local] organizations [such as SWC] that implement the federally approved recovery plans and in managing the state funding, which is critical to securing federal grants.¹⁶

In the discussion that follows, we provide a number of specific examples of SWC-approved projects that were (i) advanced over objections of members of the LECC, (ii) without support or clear understanding of the benefits from the broader community; and/or (iii) advanced by project proponents that lack requisite technical competency, legal authority, administrative capacity, or financial solvency to successfully carry out the projects they propose.

Smokehouse

The Smokehouse Project, located on the Swinomish Channel to the north of the McGlenn Island Jetty, provides an example of a project recommended by SWC over the objections of LECC participants. The Smokehouse Project is proposed by SRSC, a SWC board member. In 2018, Western Washington Agricultural Association, a LECC member, wrote as follows regarding the Smokehouse Project:

For each of the past three years, Western Washington Agricultural Association (WWAA) participated in the Skagit Watershed Council Lead Entity Citizens Committee (LECC). Serving in this role, WWAA reviewed Skagit River Systems Cooperative (SRSC) funding applications for the Smokehouse Dike Setback Project (Project) in both 2016 and 2018.

...

WWAA questions large investments of public funds to facilitate a project that requires significant flood protection infrastructure, when the Tribe's long-term planning documents

¹⁶ Washington State Recreation and Conservation Office, Salmon Recovery Funding Board, Fact Sheet, Page | 10

make it clear that their intent and expectation is to restore the protected area to estuarine and tidal processes. WWAA seeks clarity over allocations and expenditures, designated for recovery projects supported by the entire community, on such an insular and unclear pursuit by the Tribe and SRSC. Finally, WWAA questions such large investments in short-term projects, with little predicted gains toward recovery goals.¹⁷

Furthermore, the fisheries resource benefits of this project were initially mischaracterized by the project proponent. When the record was corrected, the fisheries benefits were low relative to the project cost in large part because the issues surrounding the McGlinn Jetty fish barrier remain unresolved.¹⁸

Nevertheless, SWC has consistently ranked Smokehouse as a high priority, with many hundreds of thousands of dollars awarded to SRSC to study a potential project with relatively low fisheries resource value.¹⁹

Wiley Slough

Wiley Slough provides an example of a SWC board member-sponsored project that SWC recommended without ensuring that the project proponent possessed the requisite technical competency, legal authority, administrative capacity, and financial solvency to successfully execute the project.

The Wiley Slough project is at the mouth of the Skagit River's South Fork, was initially constructed in 2009, and was designed, managed and led by SRSC. The Project involved the set-back of a dike that protects Fir Island farmland. SRSC failed to abide by generally accepted engineering and project management practices in the execution of the Wiley project, and declined to listen to advice and input from District representatives. As a result, nearly every aspect of the Wiley Slough project's infrastructure failed.

This was discussed in a 2020 letter from NMFS to WDFW:

[T]he Wiley Slough Estuarine Restoration project...is a large estuary restoration project completed in 2009. While natural process and salmon habitat benefits have been realized since 2009, flood and drainage deficiencies still need to be addressed. The tidegate, which failed immediately, was replaced and a pump station was added to partially address flooding issues. To complete the project, the setback levee needs to be raised. Setback levee deficiencies have caused flooding and damages, and could potentially result in dike failure, which would flood hundreds of acres of farmland, roads, and homes. Repairs are required for the local flood entity to take ownership of the setback levee.²⁰

¹⁷ August 15, 2018 Letter to David Trout, Salmon Recovery Funding Board. RE: Skagit Watershed Council (Washington State Lead Entity) 2018 Salmon Recovery Funding Board-Skagit River System Cooperative's Smokehouse Tidal Marsh Restoration Proposal (bolding added)(copy available upon request).

¹⁸ The McGlinn Island Jetty forms an effective barrier to Skagit salmon, meaning that unless the McGlinn Island Jetty is removed and the Skagit River allowed to flow to the north, projects along the Swinomish Channel and Padilla Bay have relatively low fisheries resource value. There appears to be little support among tribal governments to remove the McGlinn Island Jetty, given its impacts on navigation and maritime commerce.

¹⁹ It is also worth noting that SRSC apparently plans to convert only a small portion of the Smokehouse property to habitat, presumably because doing more would hamper Swinomish commercial/marina plans on the Smokehouse property.

²⁰ Letter from Megan Callahan, NOAA Northwest Restoration Center, to Jenny Baker, WDFW, July 22, 2020 (available upon request).

In addition to poor infrastructure outcomes, the Wiley Slough project also provides an example of how SWC failed to prioritize funding for the adaptive management of this project because doing so could reduce new grant funding for SWC board members' projects and organizations.

The Districts and WDFW pursued efforts to fund repairs to the issues at Wiley Slough. SRSC actively hampered the effort to secure funding, arguing that public funds should be directed to new habitat projects instead, presumably ones that involved new grant opportunities for SRSC.²¹ As a result, SWC declined to support repair (adaptive management) funding for Wiley Slough, which was eventually obtained through a direct legislative appropriation. Some 14 years after the original project was complete, in 2024, WDFW and the Districts finished the needed repairs to the Wiley Project.

The Districts have made clear their unwillingness to allow a similar situation to occur again, citing reservations about District participation in projects involving District infrastructure to the extent those projects are led and managed by grant-dependent organizations. District representative have expressed willingness to oversee high value recovery project to the extent led by the Districts and County.

North Dunlap Fill Removal Site

SRSC's 3.8 acre project at the North Dunlap Fill Removal site along the Swinomish Channel provides another example of SWC's apparent pattern of prioritizing SWC Board Control Bloc members-sponsored projects rather than highest priority projects for the fishery resource and ESA recovery goals.

When applying for grant funding, SRSC insisted that North Dunlap would carry **10,079 chinook smolt** annually. The project was highly ranked by SWC, approved by state, and received a significant project funding grant.²² Here again, SRSC's chinook smolt estimate assumed that the McGlinn Island Jetty would be removed in the future, notwithstanding the apparent lack of tribal or other support for removal of the Jetty.²³

Later, after receiving the grant award and hearing criticism about its estimate, SRSC downgraded their projection to **73 chinook smolt**, *a decrease in projected fisheries resource benefit of over two orders of magnitude.*²⁴

After this occurred, SWC made no effort to re-allocate these funds to a project with higher fisheries resource value.

It is worth noting that the state SRF board clearly failed to provide a level of oversight sufficient to put a stop to the North Dunlap Fill Removal project grant, despite the grant award being based on a smolt estimate over two orders of magnitude in error. This does not suggest an appropriate level of oversight.

Hansen Creek

The Hansen Creek Reach 5 project is an example of a project that was recommended by SWC without ensuring the project proponent possessed the requisite technical competency, legal authority, administrative capacity, or financial solvency to execute the project.

²¹ See, Memorandum from Devin Smith (SRSC) dated June 18, 2020, at 1 (copy available upon request). Eventually, despite SRSC's opposition to funding to repair SRSC's mistakes, WDFW and Districts were able to secure funding to repair Wiley Slough, the repairs to which were completed in late 2024.

²² See, SRSC Memorandum dated December 19, 2022, at 1 (copy available upon request).

²³ *Id.* at 2 (2005 Skagit Chinook Recovery Plan goals cannot be achieved "without completion of a project that improves connectivity between the North Fork Skagit delta and the south end of the [Swinomish Channel].")

²⁴ *Id.* at 1 ("The mistake erroneously characterized annual juvenile Chinook Salmon carrying capacity for the Dunlap Fill Removal site as 10,051 smolts/yr when the number was actually 73 smolts/yr.")

SWC approved funding for the Hansen Creek Reach 5 project, a restoration project involving relocation of Hansen Creek east of Sedro-Woolley between SR 20 and Minkler Road.

SRSC was the primary project sponsor, leading and managing the project. SRSC failed to obtain required County special use permitting, did not develop an as-built for the project, and in general failed to conduct the necessary studies to adequately evaluate potential offsite impacts. Following construction, this project created offsite flooding and community complaints.

SRSC was largely unresponsive, asserting sovereign immunity. This required the County to direct its concerns to Puget Sound Energy, who owned part of the project property.

Day Creek

The Day Creek project provides another example of a project that was recommended by SWC without ensuring the project proponent had the requisite technical competency, legal authority, administrative capacity, or financial solvency to successfully execute this project.

The Day Creek Project was led by the Skagit Fisheries Enhancement Group, a SWC board member organization. The project involved modification to Day Creek, a significant salmon-bearing Skagit River tributary.

SFEG failed to appropriately design and engineer the project, leading to flooding and damage to surrounding properties.²⁵ Neighboring landowners brought a class action suit against SFEG, which was settled on confidential terms by SFEG's insurer.²⁶

Best Available Science and Salmon Recovery

Perhaps the most troubling aspect of the current SWC arrangement has been the co-mingling of science and economic self-interest. Best available science is essential to the development of a community-supported strategic plan for fisheries recovery. Although scientists cannot unilaterally define best available science, it is universally recognized that scientists have ethical duties and professional obligations when participating in dialogue over how science is defined and applied to environmental policy (Sullivan 2006).

The current SWC structure involves scientists responsible for establishing best available science underpinning ESA recovery, who are both financially reliant on and control the public funding meant to address the issue their science has identified. It inevitably produces outcome-oriented science, attributable to the conflict of interest this memorandum discusses. The problem has been exacerbated by the failure of SWC (and SRSC) to track, manage and clearly articulate the status of Skagit Chinook recovery.

In summary, the SWC/lead entity structure is riven with conflicts of interest that are resulting in poorly planned and executed projects; projects that are not aligned with the goals of the 2005 SCRP; and projects that are not supported by the community. It is unlikely that SWC and lead entity program as currently structured can or will bring the community together to achieve established ESA recovery goals.

c. SWC Board's Exclusion Of Skagit Dike & Drainage Districts

As previously discussed, consistent with the state Salmon Recovery Act, Skagit local and tribal governments delegated to SWC the responsibility to prioritize public investments in salmon recovery funding

²⁵ See, https://www.goskagit.com/news/environment/day-creek-landowners-in-midst-of-legal-fight-with-skagit-fisheries-enhancement-group/article_5d957bee-d9d1-56aa-ab70-1260303a9174.html (last visited June 23, 2025).

²⁶ See, https://www.goskagit.com/news/environment/day-creek-landowners-settle-with-skagit-fisheries-r2-resource-consultants/article_9979aa96-d807-5471-86f1-3bfd6d7168dd.html (last visited June 23, 2025).

in the Skagit watershed. In this role, SWC is expected to bring the community together around habitat restoration projects that measurably advance Endangered Species Act ("ESA") recovery, Chinook salmon in particular, and ensure progress toward the habitat restoration goals (in the 2005 SCRP) are being made. The 2005 SCRP identified estuary habitat as the key limiting factor in recovery, and identified several potential projects.

Implementation of these projects inherently requires relocation of critical diking and drainage infrastructure. As such, the cooperation, willing participation and regulatory approval of the diking and drainage districts is an absolute requirement for success. In other words, SWC cannot plausibly achieve ESA recovery that responds to climate change and sea level rise *without the buy-in and the willing participation of the Districts*.

A rational response would be for the SWC board to make every conceivable effort to include the Districts in the selection, funding, planning and execution of major projects that are intended to achieve ESA recovery goals. The SWC board has done precisely the opposite, marginalizing and excluding the Districts instead.

The Skagit Valley's dike and drainage districts are junior taxing districts, public entities represented by elected commissioners. Most commissioners are farmers and bring intergenerational knowledge to the task of maintaining and operating the Skagit's dikes, drainage, tidegates, pump stations and the like.

The Districts are responsible for diking and drainage infrastructure that makes approximately 60,000 acres this farmland viable. In addition, this infrastructure also protects rural communities, the cities of Mount Vernon, Burlington, and LaConner, and a network of critical transportation and water, oil and gas utility corridors including I-5, rail and road access to a major west coast oil refinery complex, and the water supply to Naval Air Station Whidbey.

The Districts form an interwoven jurisdictional tapestry. To consolidate their interests and create efficiencies, the Districts formed two public entities to represent basin-wide District interests, each with professional staffing and the resources necessary to address the complex regulatory and management challenges the Districts face.

The Skagit Dike Partnership, a public entity, represents the five dike districts that own, operate and maintain the riverine levees along the mainstem of the Skagit River. Some of these districts own and operate marine dikes as well, on Fir Island and Padilla Bay. The Dike Partnership is principally focused on flood risk reduction. Along with the County, the Dike Partnership has established and successfully pursued a flood risk reduction strategy in the Skagit that involves (i) limitation of new growth on the Skagit floodplain; (ii) improvement of existing levees; and (iii) safe and appropriate flood storage drawdown ahead of the fall flood season at the Skagit River system's five hydroelectric dams.

The Dike Partnership participated in the Farm, Fish, and Flood Initiative ("3FI") for over ten years and invested heavily in the Skagit Estuary Restoration Strategic Assessment ("ERSA") in an effort to overcome the above-discussed problems with the SWC and inform a strategic plan to achieve 2005 SCRP habitat restoration goals.

The Skagit Drainage & Irrigation Consortium ("Drainage Consortium"), also a public entity, represents twelve Districts' interest in drainage and irrigation in the Lower Skagit Valley, and is significantly involved in environmental, permitting, and regulatory matters impacting the Districts and Skagit agriculture. The Drainage Consortium has made clear its position that it is willing to help lead well-considered multi-benefit projects that provide significant improvement to the fisheries resource, critical infrastructure, and minimize loss of productive farmland.

Willing District participation, regulatory consent and buy-in is indispensable to any significant restoration plans on the Skagit Delta. In practical terms, this means engagement with the Dike Partnership and Drainage Consortium.

The SWC Board Control Bloc has systematically excluded the Districts from participation on the SWC Board, refusing to provide the Dike Partnership or Drainage Consortium a seat on the SWC board. In general, the SWC board has attempted to exclude and marginalize the Districts from this discussion. This fact alone functionally precludes any meaningful progress toward 2005 SCRCP recovery and climate change goals.

3. The Solution – An Oversight Structure That Centers Tribal and Local Government Around A Strategic and Transparent Approach to Recovery

The Skagit requires a coordinated, rational and strategic approach to habitat restoration project development, ensuring that projects concurrently address climate change, sea level rise, infrastructure resilience, and farmland preservation goals, while actually achieving established ESA recovery objectives in a prioritized and disciplined manner. The current SWC arrangement is structurally incapable of delivering this outcome.

Skagit tribal and local governments have broad authorities, responsibilities and capabilities, which extend into the foreseeable long-range future. The center of this effort is to bring Skagit local and tribal government together around long-term plans and actions.

In Hood Canal, the lead funding entity is also nonprofit organization, the members of which are local and tribal governments responsible for infrastructure, land use and Treaty rights.²⁷ The board of governments then appoints the members of the Hood Canal LECC, providing for broad representation in prioritization of SRF board funds.

The Hood Canal structure has allowed incorporation of the RCW 77.85 lead entity into a coherent and holistic approach to major projects that impact local government infrastructure, which most significant projects inherently involve. **In contrast to the conflict and acrimony we are currently experiencing in the Skagit, the Hood Canal structure has demonstrably brought the Hood Canal community together around major projects and delivered tremendously positive results in terms of ESA recovery.**²⁸

For the last four years, Skagit County and others have proposed a reorganization that would change the Skagit's governance structure to mirror that of Hood Canal. The modification to the status quo is relatively minor and minimally disruptive. It will require (1) an interlocal agreement between the relevant governments (Treaty Tribes, County, Districts) and (2) modification to the SWC nonprofit's articles and bylaws to acknowledge and adopt the new governance structure.

This will ensure that the LECC is appointed in such a way that community stakeholders and local interests, as opposed to that of potential grant recipients, are centered in SRF board project funding recommendations. It will also ensure that SWC is void of conflicts of interest. The SWC Board Control Bloc has articulated no substantive downside to the plan we propose.

²⁷ Port Gamble S'Klallam Tribe; Skokomish Tribe; Mason County; Jefferson County; Kitsap County. See, [HCCC Interlocal Agreement Amended 20 April 2011.pdf](#) (last visited June 20, 2025).

²⁸ See, [Salmon Recovery is working, but we can't stop here - Northwest Treaty Tribes](#) (last visited June 20, 2025).

4. Action Before SCOG Board - Amendment to 1998 SCOG Resolution.

Skagit County has drafted and proposed an interlocal agreement to the Tribes and Districts and that largely mirrors the Hood Canal structure.

Because we have been unable to make meaningful progress in our negotiations over the last four years, the Board of Commissioners proposes that SCOG adopt a resolution amending the 1998 resolution, making the SWC's lead entity designation contingent on the negotiation of an interlocal agreement establishing governance and oversight.

Skagit County is prepared to negotiate a solution in good faith, considering and incorporating all legitimate substantive concerns. We ask for the SCOG board's support, in the form of a resolution requiring that good faith negotiations take place. If the County, Districts and Tribes are unable to make progress by October 31, 2025, the resolution provides that they will report back to the SCOG board for further discussion and potential action.

Sincerely,

BOARD OF SKAGIT COUNTY COMMISSIONERS

 _____ Lisa Janicki, Chair	 _____ Ron Wesen, Commissioner	 _____ Peter Browning, Commissioner
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