



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

June 29 2006

Patti Goldman
Shaun Goho
Earth Justice
705 Second Avenue, Suite 203
Seattle, WA 98104-1711

Dear Ms. Goldman and Mr. Goho:

This is in response to your letter of June 9, 2006, on behalf of certain named individuals and organizations, asking this office to commence an action on behalf of taxpayers, to challenge the constitutionality of certain provisions of Chapter 5, Laws of 2003, relating to municipal water rights. Your correspondence refers to a similar request submitted to this office on behalf of several Tribes. Your letter discusses water law principles and sets forth at some length legal theories very similar to those offered in the Tribes' request, to support claims that certain provisions of Chapter 5, Laws of 2003, violate due process and separation of powers principles.

I have reviewed your correspondence, the authorities discussed and the legal theories presented. I write to respectfully advise you that this office declines to commence litigation to challenge this law.

When this office is asked to commence an action on the part of taxpayers, our inquiry is a focused one, considering whether the action we are being asked to challenge is clearly contrary to law, and whether such litigation ultimately would serve the interests of taxpayers. It is the purpose of this letter to advise you that after reviewing your correspondence, I conclude that the circumstances do not satisfy each of these standards. In this respect, I note that the action that you ask this office to challenge is an enactment by the Legislature. Such enactments are presumed constitutional, and a party challenging them bears the high burden of demonstrating their invalidity beyond a reasonable doubt. Your correspondence does not appear to address how litigation challenging this law would serve the interests of taxpayers, and the basis for such a contention is not otherwise evident.

For these reasons, this office respectfully declines to commence the litigation that you request. Your letter suggests that your request was submitted to satisfy conditions for taxpayer standing. This letter does not address whether the requirements for such standing would be met.

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Finally, your letter indicates that you would welcome the opportunity to discuss the issues raised by your letter. Please contact me so that I may better understand what you may have in mind in that respect, and address your request appropriately.

Sincerely,

MAUREEN A. HART

Maureen A. Hart
Solicitor General
(360) 753-2536

by WFL

MAH:rs