



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

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June 29, 2006

Vivian Lee, Chairperson
Hoh Tribe

Harry L. Johnson, Attorney at Law
Counsel for the Lummi Nation

Mason Morisset, Attorney at Law
Kimberly Ordon, Attorney at Law
Counsel for the Tulalip Tribes

Mark Bubenik, Attorney at Law
Counsel for the Suquamish Tribe

Jeff Schuster, Attorney at Law
Counsel for the Jamestown S'Klallam Tribe
and Yakama Indian Nation

Ann Tweedy, Attorney at Law
Counsel for the Swinomish Tribe

Kevin Lyon, Attorney at Law
Counsel for the Squaxin Island Tribe

Karen Allston, Attorney at Law
Joseph Caldwell, Attorney at Law
Office of the Reservation Attorney
Quinault Indian Nation

c/o John B. Arum, Attorney at Law
Counsel for the Makah Indian Tribe
2101 Fourth Avenue, Suite 1230
Seattle, WA 98121-2331

Re: *Request for Taxpayer Action Challenging Chapter 5, Laws of 2003*

Dear Chairperson Lee and Counsel:

This is in response to your letter of May 22, 2006, on behalf of the Hoh Tribe, Jamestown S'Klallam Tribe, Lummi Nation, Makah Indian Nation, Squaxin Island Tribe, Suquamish Tribe, Swinomish Tribe, Tulalip Tribes, Quinault Indian Nation and Yakama Indian Nation, 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 sets forth at some length legal theories that you offer to support claims that certain provisions of this law violate due process and separation of powers principles.

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I have reviewed your correspondence, the authorities that it cites and the legal theories that it presents. 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.

Sincerely,

MAUREEN A HART

Maureen A. Hart
Solicitor General

by W-FC

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