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2 **State of Washington**
3 **GROWTH MANAGEMENT HEARINGS BOARD**
4 **FOR EASTERN WASHINGTON**

5 CONCERNED FRIENDS OF FERRY COUNTY
6 and DAVID ROBINSON

Petitioner,

7 v.

8 FERRY COUNTY,

9 Respondent.

Case No. 97-1-0018

**FIFTH ORDER ON
COMPLIANCE**

10 **I. PROCEDURAL HISTORY**

11 On December 7, 1998, Ferry County adopted an Amendment to Ferry County
12 Ordinance 95-06 in response to the Board's Final Decision and Order (FDO) of July 31,
13 1998. That FDO found Ferry County out of compliance with the Growth Management Act in
14 several matters, including failure to consider and include best available science in the
15 designation of priority species and habitat areas, and in the policies for designation of
16 frequently flooded areas and aquifer recharge areas. The Board later set a compliance
17 hearing for February 4, 1999.

18 On January 13, 1999, the Board ordered a stay of proceedings pursuant to a
19 stipulation from the parties that negotiations for a settlement were being conducted. A
20 compliance hearing was held on August 13, 1999, resulting in an Order of Non-Compliance,
21 issued September 30, 1999. The Board found Ferry County in non-compliance with the
22 Growth Management Act and directed the County "to consider and include best available
23 science in the designation of priority species and habitat areas, and in the policies for
24 designation of frequently flooded areas and aquifer recharge areas.

25 On March 27, 2000, the Board held another compliance hearing to consider Ferry
26 County's actions in response to our Order. A Second Order on Non-Compliance was issued

1 on May 23, 2000, finding Ferry County in non-compliance on the above-cited issues. Ferry
2 county appealed the Board's Order to Thurston County Superior Court, and requested a
3 "stay". The Superior Court did not issue a stay of proceedings.

4 On September 7, 2000, Ferry County notified the Board they were "working hard on
5 species issues and have met with Kevin Robinette twice" (Department of Fish and Wildlife
6 specialist).

7 Ferry County also proceeded with work on designating and protecting aquifer
8 recharge areas and frequently flooded areas, in consultation with state agencies.

9 On January 26, 2001, the Board issued its Third Order on Compliance, again finding
10 Ferry County non-compliant regarding frequently flooded areas and aquifer recharge areas.
11 Ferry County did not argue they had complied with our Order regarding species and habitat,
12 and our Order of January 26, 2001, did not address those issues.

13 Ferry County pursued state assistance in complying with our Order regarding aquifer
14 recharge areas and frequently flooded areas, resulting in our Fourth Order on Compliance
15 dated June 21, 2002. That Order found Ferry County in compliance regarding both aquifer
16 recharge areas and frequently flooded areas. This Order did not address the issues of
17 species and habitat.

18 On August 22, 2002, in Cause No. 00-2-01129-3, Thurston County affirmed the
19 Board's Second Order on Compliance, directing Ferry County to "schedule proceedings
20 before the Board to demonstrate compliance with the Board's Second Order on Compliance
21 within 120 days of the date of this Order or such other time as the Board deems
22 appropriate".

23 The Board conducted a compliance hearing on December 19, 2002, to address the
24 remaining issues, species designation and wildlife habitat. Ferry County made no argument
25 that action had been taken to comply with our Order. Ferry County continues to be in non-
26 compliance on these matters.

1 Ferry County indicated their intention to appeal the ruling from Thurston County
2 Superior Court. Should they choose to proceed with an appeal, Petitioners agreed to a
3 continuance of the matter pending a ruling from the Court of Appeals. The Board concurs.

4 **II. Order**

5 The Board orders a continuance in this matter pending an Order from the Court of
6 Appeals.

7 **SO ORDERED** this 23rd day of December 2002.

8 EASTERN WASHINGTON GROWTH
9 MANAGEMENT HEARINGS BOARD

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11 _____
12 D.E. "Skip" Chilberg, Board Member

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14 _____
15 Dennis Dellwo, Board Member

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17 _____
18 Judy Wall, Board Member