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Dear Commissioner Menser,

Thank you for your August 12 response to our letter regarding the cleanup of Black Lake. We have several concerns you did not address that we would like to clarify to further our common purpose of preserving the integrity of our water resources.

You say the issue for the County Commissioners is whether to allow the Black Lake Special District to increase its fees to finance an alum treatment for the control of toxic algae for recreational purposes. We disagree. There are several troubling aspects to this proposal.

First, the Black Lake Special District (BLSL) does not own Black Lake. The Department of Natural Resources (DNR) does. As is written on the DNR website,

“DNR’s Aquatic Resources Division manages 2.6 million acres of state-owned aquatic lands as a public trust for the people of Washington...As stewards of more than 2.6 million acres of state-owned aquatic lands, we are responsible for ensuring protection of habitat and fostering public access and water-dependent activities for future generations.”

Further, we question the establishment of the BLSL, formed under RCW 85.38.010, which states:

“Special district” means: (a) A diking district; (b) a drainage district; (c) a diking, drainage, and/or sewerage improvement district; (d) an inter county diking and drainage district; (e) a consolidated diking district, drainage district, diking improvement district, and/or drainage improvement district; or (f) a flood control district.

BLSL does not meet any of these criteria. The one sentence from RCW 85.38.010 referencing “activities related to lake restoration, aquatic plant control and water quality enhancement activities” refers to these activities as they relate to flood control, diking and drainage districts, not for recreational purposes, and it is disingenuous to suggest otherwise.

Even if the Resolution is taken on its face, it states these rights were granted to the BLSL under RCW 36.61.020 which establishes lake management districts. In that case, the County does have jurisdiction over the lake and must complete an environmental review. However, as the BLSL was not established under RCW 36.61.020 for lake management districts and did not apply for this designation, it does not have the powers of a lake management district, despite the improper wording of Resolution 14967.

We question the authority of the BLSL to apply herbicides and alum to the lake. As noted above, Black Lake belongs to DNR. Washington Department of Fish and Wildlife (WDFW) operates a year-round boat launch and stocks the lake with Rainbow Trout in addition to the naturally reproducing Coastal Cutthroat Trout, and other species in the lake, all of which could be killed by an alum treatment. (See Attached - Alum Treatment Fallacy)

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The County also operates Kenneydell Park and Guerin Park on the lake. Clearly, Black Lake has many local and state governmental agencies that have jurisdiction over what is done there. Any actions taken at the Lake will affect these jurisdictions. Therefore, DNR, WDFW and the County must be involved in any proposals regarding the lake holding the public interest first and foremost. Further, since the flood control district encompasses a large area that includes portions of Tumwater and Olympia, they also must be included in any actions that are taken.

We question your statement that by approving the BLSD's request to increase its fees the County would not be committing public funds. In fact, the County will be lending its credit by guaranteeing a bond for \$1.4 million. Will the County condemn the property on the lake if the bond is not repaid?

Using public credit is no different than using public funds. The County cannot back a project undertaken without the proper authority. They cannot back this project because it is not a flood control project. Doing so would be a theft of public resources. However, if this was a true lake management district, every parcel would be taxed equally, except for those along the shoreline who might have an increased tax, and every resident and property owner would have a vote on the issue as to whether or not to subject themselves to be taxed to repay this bond.

This is the usual legal process for repayment of the bond. The fact that this bond is only being paid by lakefront parcels is improper and indicative of a lack of democratic process which does not meet the requirements for repayment of such bonds. The result of this is that people in the District that will be affected did not have a say, clearly a matter of lack of equal representation.

We question your assertion that this is a matter of self-governance. As stated previously, the BLSD does not have the authority to poison State waters for recreational use without a complete environmental review. Neither have they the requisite scientific expertise. This must be provided by the State and County.

Further, you make no mention that this area is part of the Urban Growth Area of Tumwater and the city of Olympia and that there are extra-jurisdictional impacts not being considered which also require a full environmental review. In *Save a Valuable Environment vs. Bothell*, the Washington Supreme Court determined

"Where the potential exists that a zoning action will cause a serious environmental effect outside jurisdictional borders, the zoning body must serve the welfare of the entire affected community. If it does not do so it acts in an arbitrary and capricious manner. The precise boundaries of the affected community cannot be determined until the potential environmental effects are understood."

<https://www.leagle.com/decision/197895189wn2d8621856>

Though this is not a zoning action, the principle of extra jurisdictional impacts applies.

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Further, you ignore the fact that this area is part of the groundwater reservation for northern Thurston County established in 1986 by Ecology in chapter 173-591 of the Washington Administrative Code (WAC) under RCW90.54.050. As part of the reservation agreement, the county must coordinate with other jurisdictions in the area

to “protect the quality of the groundwaters of the state ...Local governments with land use authority are urged to exercise their authorities in such manner as to protect the quality of the public groundwaters reserved for future public water supply by this chapter.”

It is established fact that the surface and groundwaters of the area are in hydraulic continuity. Therefore, actions taken at Black Lake do have extra jurisdictional impacts to Tumwater, Olympia, the 16 Critical Aquifer Recharge Areas in the basin, and the groundwater reservation which safeguards our future water supply. Indeed, because Black Lake drains into Capitol Lake via Black Lake Ditch to the north, it flows into tidal waters and is subject to Federal review as well. Yet, there has been no environmental review of this project; there is not even a completed environmental checklist.

Thurston County does not have the discretion to abrogate its authority and choose not to enforce this law whose purpose is to protect the area’s strategic water reserve. Neither can it choose to ignore Federal laws on the books since 1899 which forbid the discharge of sewage into water bodies, nor can it abrogate the State’s property rights in aquatic lands. It must complete an environmental review in coordination with DNR, ECY and WDFW before any further actions are taken.

We question the safety of the alum treatment. Though Environmental Health staff states it is not harmful, there are many studies and outcomes that suggest otherwise. Wapato Lake, Green Lake and Heart Lake all experienced notable fish kills as a result of their alum treatments. (See Attached - Alum Treatment Fallacy) This paper notes that Ecology’s APAM-NPDES general permit provisions governing alum treatments are inadequate to protect aquatic life from their adverse effects.

Also, because phosphorus is more readily released from sediment in alkaline waters, alum, by making the water more alkaline, can over time increase the amount of phosphorus, adding to the problem. Additionally, there are many scientific articles available on PubMed, just 3 cited here, that document long-term alum treatments actually contribute to an increase in toxic algae (<https://pubmed.ncbi.nlm.nih.gov/26865010/>), change the lake’s macroinvertebrate community with unknown consequences (<https://pubmed.ncbi.nlm.nih.gov/23099946/>), and may delay the long-term recovery of lake ecosystems. <https://pubmed.ncbi.nlm.nih.gov/31152945/>

It is clear that alum is at best a temporary fix for one symptom of the existence of a layer of nutrient polluted sediment that was deposited as a result of decades of unmonitored faulty septic, stormwater runoff and agricultural practices. Because Black Lake is a flow through lake which receives continuing septic system effluent and nutrient polluted ground and surface

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water input across the increasingly more developed area surrounding it, an alum treatment is even less likely to be effective for long before yet another treatment is “necessary”. Case in point, the 2016 treatment that cost the BLSLSD \$260K that was projected to last until 2021 or later is already ineffective.

Further, this treatment will do absolutely nothing to restore the health of the ecosystem basin, the quality of surface and groundwaters flowing from the lake, the viability of its habitat, or its beneficial use for recreation as required by provisions of the Federal Clean Water Act, State enacted RCWs and approved WAC (laws). On the contrary, chasing one chemical treatment after another will undoubtedly degrade the life and integrity of the ecosystem and will continue to create a compost pile of nutrient load from the deteriorating vegetation caused by these chemical treatments.

Besides the poisons glyphosate, diquat dibromide, endothall dipotassium salts and others, regularly applied by the BLSLSD to control aquatic weeds which pose their own serious risks, we do not know how much and what other chemicals are entering the lake from leaking septic, agricultural practices and stormwater runoff. Even if we knew, we have no idea how these chemicals interact with each other and how those interactions affect water quality, aquatic life and the threatened Oregon spotted frog that lives on the lake shoreline.

A complete environmental review is legally required to review ALL actions taken together, not in the piecemeal manner we see here. Within this bubble of ignorance, it would be foolhardy to go forward with this short-sighted proposal without a full environmental review.

We question your Staff’s assertion that they believe the alum treatment is a reasonable short-term strategy to buy time while the County addresses the longer-term phosphorus loading issues.

We say enough. We are long past “buying time” as there is none left to deal with this long-standing problem. The County Board failed to pass a \$10 annual fee in 2016 that would have established an on-site septic monitoring system in the County which could have begun to address this situation with a program similar to the one instituted in Henderson Inlet.

Since then, nothing has been done despite continued development and ever more frequent toxic algae blooms. Linda Olsen of the Prosecutor’s Civil Division has stated that no environmental laws have been enforced in the County for the last 6-7 years.

No, we do not accept this as reasonable and we are not unreasonable people. A few notices sent by the BLSLSD to residents to remind them to have their septic system pumped is a laughably inadequate strategy to deal with a very serious problem.

As stated in our last letter, there have been numerous studies showing the problem will persist until decisive action is taken to mitigate the septic systems and runoff that continually pour into the lake. Hundreds of thousands of dollars have already been wasted on short-lived

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“solutions”. Is it rational or fiscally responsible for the County to use its credit to back an assessment bond that throw millions more at a temporary, risky dead-end “treatment” when that money could be spent to help residents upgrade their septics or connect to sewers? Absolutely not! This is 2020. The time to deal with this is NOW.

There is one final issue, one of fairness. The BLS D consists of about 680 parcels and 179 waterfront residences. Do we know who, if anyone, voted for these treatments? Did the County ever exercise its right to vote as parcel owner in any actions taken? Do the Board members have special interests in the lake? We insist that all parties disclose their interests in accordance with the Appearance of Fairness doctrine.

Lastly, is it fair that this small relatively obscure Board is allowed to dump thousands of gallons of poison into our environment while the County looks the other way?

Thank you for your serious consideration. We remain, as always, ready to assist the County in fulfilling its legal obligation to protect our public funds and credit and our water resources. We therefore ask the County to deny this bond request.

Citizens for a Clean Black Lake, Chris Stegman, Chairman Pro-tem

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