NO. 93381-2

COURT OF APPEALS NO. 33196-2-III

SUPREME COURT OF THE STATE OF WASHINGTON

CHELAN BASIN CONSERVANCY,

Petitioner,

vs.

GBI HOLDING CO., STATE OF WASHINGTON, and CITY OF CHELAN

Respondents,

AMICUS CURIAE BRIEF OF

CENTER FOR ENVIRONMENTAL LAW & POLICY

Rachael Paschal Osborn
WSBA No. 21618
P.O. Box 9743
Spokane, WA 99209
Telephone (509) 954-5641
Email: rdpaschal@earthlink.net

Attorney for Center for Environmental Law & Policy

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Washington Constitution

Washington Statutes

Other Authorities

I. Introduction.

The Center for Environmental Law & Policy asks the Court to reverse the Court of Appeals decision in this matter and restore the ancient yet thoroughly modern Public Trust Doctrine as a legal principle in Washington jurisprudence. The Court of Appeals erred in ruling that the Shoreline Management Act has supplanted the Public Trust Doctrine with respect to Washington's shorelines, and that the Doctrine no longer applies either prospectively or with respect to fills and structures pre-dating enactment of the Act.

II. Identity and Interests of the Amicus.

The Center for Environmental Law & Policy (Center) is a Washington non-profit corporation with the mission to protect and restore the streams, rivers and aquifers of Washington. CELP has a long-standing interest in the use and application of the Public Trust Doctrine, based in part on the work of our founder, University of Washington Law Professor Ralph W. Johnson, who was a great scholar and advocate for the protection of public interests in Washington's waters. The Public Trust Doctrine is an important legal tool to ensure the public's continuing ability to access and utilize Washington's waters as well as provide for protection of the ecological integrity and resilience of such waters. CELP submits

this brief with the goal of ensuring the continuing viability and vitality of the Public Trust Doctrine as a part of Washington's natural resource jurisprudence.

III. Statement of the Case.

CELP adopts the statement of the case set forth in the Court of Appeals Response Brief of Chelan Basin Conservancy (Aug. 12, 2015) at 4-10.

IV. Argument.

A. Summary of Argument.

The Public Trust Doctrine has always protected public access to and use of trust resources in Washington State, and continues to do so. The Doctrine is expansive in its protection of navigation, fisheries, recreation and environmental interests. As with all constitutional matters, the courts are the final arbiters of the scope and content of the Doctrine, and review public trust matters with heightened scrutiny. In this matter, the relevant provisions of the Shoreline Management Act can and should be harmonized with the Public Trust Doctrine.

The Court of Appeals erred in finding the Public Trust Doctrine no longer applies to lands and waters regulated by the Shoreline Management

Act. This Court should find that the Public Trust Doctrine continues to apply to Washington's shorelines and further, that the analysis of the relationship between the Shoreline Act's savings clause and the Public Trust Doctrine should be done on an as-applied, fact specific basis.

B. Relevant Background on Washington's Public Trust Doctrine.

1. Development of Washington's Public Trust Doctrine.

The Public Trust Doctrine is an ancient law, first codified in the 6th century C.E., and provides that the sea, tidelands, shorelands, air, and running water are commonly held resources available to everyone's use. *Caminiti v. Boyle*, 107 Wn.2d 662, 668-69 (1987) (recognizing that the Public Trust Doctrine dates to the Code of Justinian and English Common law); *Rettkowski v. Dep't of Ecology*, 122 Wn.2d 219, 240 (1993) (Guy, J., dissenting) ("The Institutes of Justinian, a compilation and restatement of the Roman law first published in 533 A.D., states: '[T]he following things are by natural law common to all – the air, running water, the sea and consequently the sea-shore.'"). The law was adopted into the common law of England and became the law of the thirteen colonies and eventually, each of the United States. *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 283-87 (1997) (explaining origins of public ownership of navigable waters); *Orion Corp. v. State*, 109 Wn.2d 621, 639 (1987).

The essence of the Public Trust Doctrine is that the state, acting through the legislature or the executive and its agencies, cannot abdicate control over or substantially impair public rights to public resources (traditionally referred to as the *jus publicum*). These public rights pre-existed the time of statehood, and are "partially encapsulated" in Article XVII, Section 1 of the Washington Constitution, which asserts public ownership over all navigable waters of the state, including harbors, rivers and lakes. *Rettkowski*, 122 Wn.2d at 232; Utter, R.F. & H. D. Spitzer, THE WASHINGTON STATE CONSTITUTION: A REFERENCE GUIDE, at 212-17 (Greenwood Press 2002).

The constitutionally-reserved and recognized public rights protected by the Public Trust Doctrine are an attribute of the essential sovereignty of the people of the state of Washington. *See Illinois Central R.R. v. Illinois*, 146 U.S. 387, 455, 459-60 (1892) (the navigable waters of the Chicago harbor and the underlying lands are "a subject of concern to the whole people of the state" and must be held "in trust for their common use and of common right, as an incident of their sovereignty."). The Washington Supreme Court protects this sovereignty through its oversight, development, enforcement and application of the Public Trust Doctrine, thereby ensuring that public resources are protected in perpetuity for public use. Sax, J.L., "The Public Trust Doctrine in Natural Resource

Law: Effective Judicial Intervention," 68 Mich. L. Rev. 471, 557-65 (1970) ('The Role of the Courts in Developing Public Trust Law').

The value and significance of the lands, air, and waters protected by the Public Trust Doctrine has ensured the doctrine's continuing vitality from antiquity to its modern day use by the courts of Washington, along with most other states in the United States. Slade, D.C., THE PUBLIC TRUST DOCTRINE IN MOTION (PTDIM 2008). The Public Trust Doctrine was pivotal in the resolution of *Wilbour v. Gallagher*, 77 Wn.2d 306 (1969), *cert. denied*, 400 U.S. 878, 91 S.Ct. 119, 27 L.Ed.2d 115 (1970).[1] In 1987, the Washington Supreme Court formally acknowledged that the Public Trust Doctrine has always been a part of Washington law in a case involving the Aquatic Lands Act, Ch. 79.105 RCW, stating that "[a]lthough not always clearly labeled or articulated as such, our review of Washington law establishes that the doctrine has always existed in the State of Washington." *Caminiti*, 107 Wn.2d at 670. Shortly thereafter, the Court discussed and applied the Public Trust Doctrine in a controversy involving the Shoreline Management Act, Ch. 90.58 RCW, finding that "[b]ecause title in and sovereignty over Washington's tidelands and shorelands vested in the state upon admission into the Union, the public

[1] *Wilbour* did not utilize the term "Public Trust Doctrine," which only came into common usage after publication of Joseph Sax's seminal article, *supra*.

trust doctrine applies to Orion's Padilla Bay tidelands." *Orion Corp.*, 109 Wn.2d at 639.

2. The scope of the Public Trust Doctrine continues to develop.

The Public Trust Doctrine is a dynamic and flexible law and courts continue to expand the contours of the doctrine to address changing public interests in trust resources. One of the first modern cases applying an expanded scope of the Public Trust involved proposed development in the fjord-like Tomales Bay, north of San Francisco. The California Supreme Court explained the rationale for an expanded definition of trust uses to include environmental needs:

> The public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another. There is a growing public recognition that one of the most important public uses of the tidelands—a use encompassed within the tidelands trust—is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area. It is not necessary to here define precisely all the public uses which encumber tidelands.

Marks v. Whitney, 491 P.2d 374, 379 (CA 1971); *see also In re: Water Use Permit Applications*, 9 P.3d 409, 448 (HI 2000) ("the 'purposes' or 'uses' of the public trust have evolved with changing public values and

needs."); *Matthews v. Bay Head Imp. Ass'n*, 471 A.2d 355, 365 (N.J. 1984) ("we perceive the public trust doctrine not to be 'fixed or static,' but one to 'be molded and extended to meet changing conditions and needs of the public it was created to benefit.'").

Washington courts have likewise expanded the scope of the Public Trust Doctrine to adapt to public needs. *Wilbour* expanded its scope beyond historic public interests in navigation, commerce and fishing, to include corollary recreational uses of Washington's waters. 77 Wn.2d at 316. Washington decisions have incorporated environmental protection within the ambit of the Public Trust Doctrine, referencing recreational and wildlife uses that require a high degree of environmental quality. *See Esplanade Properties v. Seattle*, 307 F.3d 978, 980 (9th Cir. 2002) ("because Esplanade's tideland property is navigable for the purpose of public recreation (used for fishing and general recreation, including by Tribes), and located just 700 feet from Discovery Park, the development would have interfered with those uses, and thus would have been inconsistent with the Public Trust Doctrine"); *Weden v. San Juan County*, 135 Wn.2d 678, 698, 700 (1998) ("it would be an odd use of the Public Trust Doctrine to sanction an activity that actually harms and damages the waters and wildlife of this state"); *Orion Corp.*, 109 Wn.2d at 626 (Padilla Bay ". . . is the most diverse, least disturbed, and most biologically

productive of all major estuaries on Puget Sound. The Bay sustains a diverse and densely populated ecology, intensely important to a variety of life forms, including endangered species and a wide variety of commercially harvested species, such as juvenile salmon and Dungeness crab" and "[t]he public trust doctrine resembles 'a covenant running with the land (or lake or marsh or shore) for the benefit of the public and the land's dependent wildlife.'); *Wash. Geoduck Harvest Ass'n v. Dep't of Natural Res.*, 124 Wn. App. 441, 449 (2004) ("shellfish embedded on public property are resources that invoke a public right under the public trust doctrine.").

Most recently, courts have invoked the Doctrine as a means to protect essential natural resources, including navigable waters, from impairment due to climate change. *Juliana v. United States*, Dkt. No. 6:15-cv-01517-TC, Opinion and Order at 36-51 (U.S.D.C. OR 2016); *Foster et al v. Dept. of Ecology*, King Cty. Supr. Ct. No. 14-2-25295-1 SEA, Order Affirming Denial of Petition for Rulemaking at 7-8 (11-19-15); *see* Wood, M.C. and Woodward IV, C.W., "Atmospheric Trust Litigation and a Constitutional Right to a Healthy Climate System: Judicial Recognition at Last," 6 Wash. J. Env'l L. & Pol. 633 (2016).

It is important to recognize the value and flexibility of the doctrine in Washington state law. It may be that public trust protections for

Washington's waterways will expand in response to future needs. As noted in *Orion Corp.*, "[r]esolution of this case does not require [the Court] to decide the total scope of the doctrine," 109 Wn.2d at 641, but its existence and flexibility should be protected.

3. Public Trust Doctrine claims do not lapse simply due to the passage of time.

The Court of Appeals suggested that Chelan Basin Conservancy "waited over 40 years to bring suit," and that "[g]iven the passage of time" it is unclear whether Petitioners could ever show that the public trust protects any shoreline in the state. *Chelan Basin Cons. v. GBI Holding Co.*, 194 Wn. App. 478, 495 (2016). These statements misconceive the nature of the Doctrine.

The Public Trust Doctrine requires state government, acting as trustee, to manage public trust resources as a steward for the benefit of present and future generations. Public trust benefits, such as public rights of navigation, access to fisheries, and environmental protections, do not expire. All citizens at all times benefit from the Public Trust Doctrine's protections of trust resources. Indeed, future citizens of Washington will benefit from the public trust in part because of actions taken to recognize and enforce the trust today. The public easement on trust resources created by the Public Trust Doctrine does not disappear because of the

lapse of time. Nor has the passage of time endowed GBI with "squatter's rights" to the *jus publicum*, because the rights never existed to begin with. *Orion Corp., supra*.

Many courts have applied the Public Trust Doctrine to resolve longstanding issues. *See, e.g., Glass v. Goeckel*, 703 N.W.2d 58 (MI 2005) (Public Trust Doctrine applied to resolve a longstanding dispute over public right to walk the shores of Lake Huron); *Nat'l Audubon Soc'y v. Superior Court*, 658 P.2d 709 (CA 1983) (Public Trust Doctrine limited use of Los Angeles' 40-year old water rights in a manner that destroyed the trust resources of Mono Lake). This is not to suggest that every shoreline fill or structure created since statehood is at risk of challenge as a violation of the Public Trust Doctrine. However, the passage of time alone does not obviate public rights and claims under the Doctrine.

4. Standards for Review.

Judicial review of the impact of legislation on public trust resources should employ heightened scrutiny. The Center concurs in the arguments set forth in the Supplemental Brief of Petitioner Chelan Basin Conservancy at 7-14.

Further, in evaluating this matter, the Shoreline Management Act should be construed in a manner consistent with the Doctrine. An Iowa

case provides an apt example, in which a quiet title action against the state regarding the bed of the Missouri River was construed in the context of Iowa's public trust ownership and duties. The court held:

> These general principles of public trust, we believe, bear on the ultimate question in this case: Whether our legislature intended that section 614.17 [the quiet title statute of limitations] would bar the State's claim to public trust property. . . . In view of the stringent limitations on the state's power to alienate such property, even by design, we cannot ascribe to the legislature an intention that it be permitted to be lost by default. We hold that section 614.17 does not apply to bar claims of the state to public trust property.

State v. Sorensen, 436 N.W.2d 358, 362 (IA 1989).

C. The Court of Appeals' interpretation of the Shoreline Management Act savings clause is grossly overbroad.

1. Introduction.

Chelan Basin Conservancy argued to the superior court that the Public Trust Doctrine continues to apply to and protect public rights in Lake Chelan, including those parts of the lake over which the Three Fingers fill intrudes. Chelan superior court found that the Three Fingers fill constituted a public nuisance prior to enactment of the Shoreline Act, and was therefore not entitled to the protections afforded by the savings clause, RCW 90.58.270(1). Absent the protection of the savings clause, the superior court found that Three Fingers fill violated the Public Trust Doctrine. Respondents then argued to the Court of Appeals that the

superior court decision was an attack on the validity of the savings clause that could be cured only by finding that the Shoreline Management Act completely supplants the Public Trust Doctrine.

As discussed below, Amicus urges that resolution of this case does not require finding whether RCW 90.58.270(1) conflicts with the Public Trust Doctrine. Rather, this case is appropriate for case-specific analysis and resolution.

2. The decision below conflicts with post-Shoreline Act precedent.

The Court of Appeals found that the Public Trust Doctrine as it relates to both pre-existing structures and fills, and prospective shoreline development was effectively eliminated by operation of the statutory provisions of the Shoreline Management Act. 194 Wn. App. at 487, 491, n.5 ("compliance with the [Shoreline Management Act] forecloses any claim that a land use action violates the Public Trust Doctrine"). This statement fails completely to consider post-Shoreline Act precedent and the general constitutional nature of the Public Trust Doctrine as a constraint on the exercise of legislative authority. It also was not necessary for the court to make this holding in order to decide the case.

As an initial matter, the Court of Appeals' reliance on *Caminiti* is misplaced, because the language in that decision regarding the Shoreline

Management Act was dicta. *Caminiti* involved a challenge to a newly enacted residential dock fee statute, a proviso of the Aquatic Lands Act, which is administered by the Washington Department of Natural Resources.[2] While *Caminiti* did discuss the policies underlying the Shoreline Management Act, the Court in that case was neither presented with nor decided any question regarding the Act, including its relationship with the Public Trust Doctrine. As dicta, the *Caminiti* statement about the Shoreline Management Act is not controlling. *Bennett v. Smith Bundy Berman Britton*, 176 Wn.2d 303, 318 (2013) (Madsen, J., concurring).

The Court of Appeals ruling here is also dicta. This case is not about prospective development under the Shoreline Management Act, and the court below did not need to make a ruling about the relationship between the Doctrine and the statute. This ruling should be reversed.

Moreover, the Court of Appeals was wrong. *Caminiti* agreed that public trust rights of public access and navigation continue to exist under Washington law. *Caminiti's* statement that "[p]rivate docks cannot, of course, block public access to public tidelands and shorelands, and the public must be able to get around, under or over them" demonstrates that public trust interests can co-exist with statute-based regulation of the shoreline.

[2] The statute at issue was RCW 79.90.105, now codified at RCW 79.105.430.

Ten months after *Caminiti* the Washington Supreme Court expressly held that a proposed tideland development in Skagit County continued to be subject to the Public Trust Doctrine, notwithstanding application of the Shoreline Management Act. *Orion Corp., supra*. Specifically, the Court found that the Public Trust Doctrine limited Orion's use of its property long before the Shoreline Management Act was enacted. "Orion had no right to make any use of its property that would substantially impair the public rights of navigation and fishing, as well as incidental rights and purposes recognized previously by this court." 109 Wn.2d at 641.

Similarly, in *Esplanade Properties v. Seattle*, the Ninth Circuit Court of Appeals observed that the Public Trust Doctrine continues to function as a public easement on Washington's tidelands and shorelands. 307 F.3d 978, 985-87 (2002). As such, and as suggested in *Orion Corp.*, regulatory takings claims based on the Shoreline Management Act were rejected. The property owner never had the right to develop the property in question because of the Public Trust's *jus publicum* limitations.

Finally, the Legislature cannot abrogate the Public Trust Doctrine through legislative enactments, as the public trust is an attribute of sovereignty. The Public Trust Doctrine is partially encapsulated in the Washington Constitution, through which "[t]he State of Washington

asserts its ownership to the beds and shores of all navigable waters in the state up to and including . . . the line of ordinary high water within the banks of all navigable rivers and lakes . . . ." Wash. Const. Art. XVII, § 1. The Legislature may not enact a statute that purports to eliminate constitutionally based protections for public water resources. Even where the state has transferred title to these publicly owned lands, "[t]he Legislature has never had the authority ... to sell or otherwise abdicate state sovereignty or dominion over such tidelands and shorelands." *Orion Corp.*, 109 Wn.2d at 639, *citing Caminiti*, 107 Wn.2d at 666; *Illinois Central*, 146 U.S. at 453-54 ("The State can no more abdicate its trust over property in which the whole people are interested . . . than it can abdicate its police powers in the administration of government and the preservation of the peace."); *Lake Mich. Fed'n v. U.S. Army Corps of Eng'rs*, 742 F. Supp. 441, 446 (D. Ill. 1990) ("The very purpose of the public trust doctrine is to police the legislature's disposition of public lands.").

The Shoreline Management Act's policies do enunciate and reflect public trust principles, as do other Washington laws. S*ee, e.g.,* Wash. Const. Art. XV, § 1 (Harbor Line system); Ch. 43.21C RCW (State Environmental Policy Act); Ch. 43.143 RCW (Ocean Resources Management Act); Ch. 79.105 RCW (Aquatic Lands). The statute and the Doctrine augment each other, but neither replaces the other. The Court of

Appeals was incorrect, and went far further than necessary, to hold that the Public Trust Doctrine has been supplanted by the Shoreline Management Act. Because its holding is dicta, and because its reasoning conflicts with post-Shoreline Act precedent, it should be reversed.

3. The Court of Appeals erred in analyzing the general validity of the Shoreline Act's savings clause, rather than as a site-specific matter.

This case addresses a specific problem, the Three Fingers fill, in a specific location, Lake Chelan. It was not framed as a challenge to the validity of the Shoreline Management Act. The case was commenced as a local land use challenge and converted to a form of mandamus action. Accordingly, Chelan superior court analyzed the issue as an "as applied" violation of the Public Trust Doctrine, concluding that "the legislative grant in RCW 90.58.270(1) as applied under this set of circumstances violates the Public Trust Doctrine," and that "the relief sought by plaintiff herein – and the court's resultant ruling – is limited to the Three Fingers fill and the statute's application to that specific and unique area." CP 456-61 at 5, 6; CP 1613-22 at 4. The Court of Appeals, however, altered the analysis to an assessment of the overall validity of the savings clause rather than case-specific impacts. This was error.

The superior court's analysis deftly addresses the problem presented here. RCW 90.58.270 was clearly intended to address the

concern that *Wilbour*-type challenges could be brought against other shoreline fills and structures throughout the state. But was the statute really intended to protect derelict and vacant fills that had no useful purpose related to navigation or otherwise? This seems improbable. Chelan superior court threaded its way through this conundrum by applying the *Caminiti* analysis with specificity, making findings that

> there is no evidence whatsoever that the surrender of the *jus publicum* to a private party vis-à-vis the Three Fingers fill in any way promotes the public interest. As persuasively noted by plaintiff, this fill area does not preserve the natural character of shoreline, does not protect the resources or ecology of the shoreline and does not enhance or increase public access to the shoreline or the navigable waters of Lake Chelan.

CP 456-61 at 5. "Defendants have presented, at best, a mere scintilla of evidence regarding any public benefit provided by the fill. . ." CP 1566-70 at 5.

In contrast, the Court of Appeals misunderstood and improperly applied *Caminiti*'s analysis, converting the question presented into an inquiry on a statewide scale, and altering the evaluation. The Court reasoned that, because *Caminiti* evaluated the statute at issue in that case based on statewide impact, the same was required here. 194 Wn. App. at 493-95. In so doing, the Court failed to recognize that *Caminiti* was, procedurally, a very different case. It involved a deliberate, facial

challenge brought in an unusual procedural posture, i.e., a writ of mandamus directed to the Commissioner of Public Lands, filed directly in the Supreme Court, based on an agreed set of facts, for the express purpose of challenging a newly enacted statute. *Caminiti* at 664-65.

The *Caminiti* two-prong test was derived from a case involving application of a statute to a specific development. The U.S. Supreme Court decision that serves as the source of the *Caminiti* test did involve a challenge to legislation, but was directed toward a singular action, i.e., the grant of a large part of the Chicago waterfront to a railroad corporation. *Illinois Central, supra.* Since *Illinois Central,* many courts have applied the Public Trust Doctrine to assess individual projects. *See, e.g., San Francisco Baykeeper v. State Lands Comm.,* 242 Cal. App. 4th 202, 231-43 (2015) (sand mining in San Francisco Bay and mineral extraction leases); *Esplanade Properties, supra* (proposed shoreline development on Elliot Bay and Shoreline Management Act); *Just v. Marinette County*, 201 N.W.2d 761 (WI 1972) (wetlands fill and shorelands zoning ordinance). The Court of Appeals appears to have not understood that the *Caminiti* test could be applied to a specific parcel and problem.

Further, the Court of Appeals did not properly apply the *Caminiti* test. In ignoring the first prong, the Court failed to analyze how the Three Fingers fill interferes with *jus publicum* interests in Lake Chelan. In

finding irrelevant *Caminiti*'s second prong, the public interest test, the Court of Appeals failed to analyze the benefits and detriments of the Three Fingers fill with respect to Lake Chelan and public trust interests such as recreation and environmental protection. The Court of Appeals missed the point of an as-applied challenge, and should be reversed.

V. Conclusion.

Amicus curiae Center for Environmental Law & Policy respectfully requests that the Court reverse the Court of Appeals, and find that the Public Trust Doctrine applies to the Three Fingers fill.

Respectfully submitted,

Rachael Paschal Osborn
WSBA No. 21618
Attorney for Center for
Environmental Law & Policy

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I caused the foregoing Amicus Curiae Brief of Center for Environmental Law & Policy to be served on the following individuals in the manner listed below:

Alexander W. Mackie
Attorney at Law
P.O. Box 607
Winthrop, WA 98862-0607
amackie6404@gmail.com
[x] By Electronic Mail
[x] By U.S. Mail

J. Kirk Bromiley
Bromiley Law, PLLC
227 Ohme Garden Road
Wenatchee, WA 98801
kirk@bromileylaw.com
[x] By Electronic Mail
[x] By U.S. Mail

Terence Pruit & Jay Geck
Attorney General's Office
P.O. Box 40100
Olympia, WA 98504-0100
terryp@atg.wa.gov
jayg@atg.wa.gov
[x] By Electronic Mail
[x] By U.S. Mail

Allan Galbraith
Allan Galbraith, PLLC
949 Wheeler Hill Road
Wenatchee, WA 98801-9705
allan@hillatty.com
[x] By Electronic Mail
[x] By U.S. Mail

Kenneth W. Harper
Menke Jackson Beyer Ehlis
& Harper, LLP
807 N. 39th Ave.
Yakima, WA 98902
kharper@mjbe.com
[x] By Electronic Mail
[x] By U.S. Mail

David S. Steele
Katherin Gustafson Galipeau
Perkins Coie LLP
1201 3rd Ave. Ste 4900
Seattle, WA 98101-3099
dsteele@perkinscoie.com
kgalipeau@perkinscoie.com
[x] By Electronic Mail
[x] By U.S. Mail

Nicholas J. Lofing
Davis, Arneil Law Firm, LLP
P.O. Box 2136
Wenatchee, WA 98801
nick@dadkp.com
[x] By Electronic Mail
[x] By U.S. Mail

Erik K. Wahlquist
Chelan County PUD
P.O. Box 1231
Wenatchee, WA 98807-1231
eric.wahlquist@chelanpud.org
[x] By Electronic Mail
[x] By U.S. Mail

Markham Allen Quehrn
Perkins Coie LLP
The PSE Building
10885 NE 4th St. Suite 700
Bellevue, WA 98004-5579
mquerhn@perkinscoie.com
[x] By Electronic Mail
[x] By U.S. Mail

John M. Groen
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
jmg@pacificlegal.org
[x] By Electronic Mail
[x] By U.S. Mail

Brendan W. Donckers
Daniel F. Johnson
Roger M. Townsend
Breskin Johnson &
Townsend, PLLC
1000 Second Ave.,
Ste. 3670
Seattle, WA 98104
bdonckers@bjtlegal.com
[x] By Electronic Mail

Michael W. Gendler
Gendler Law PLLC
5006 Greenwood North
Seattle, WA 98103
gendler@mickeygendler.com
[x] By Electronic Mail

Russel J. Speidel
David J. Bentsen
Speidel Bentsen LLP
7 N. Wenatchee Ave.,
Ste. 600
Wenatchee, WA 98807
david@speidelbentsen.com
russ@speidelbentsen.com
[x] By Electronic Mail

DATED this 13th day of January 2017, at Spokane, Washington.

Rachael P Osborn

Rachael Paschal Osborn