No. 97682-1

SUPREME COURT OF THE STATE OF WASHINGTON

NORTHWEST ALLOYS, INC., and MILLENNIUM BULK TERMINALS-LONGVIEW, LLC,

Petitioners,

v.

STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES, and THE HONORABLE HILARY S. FRANZ, and COLUMBIA RIVERKEEPER, WASHINGTON ENVIRONMENTAL COUNCIL, and SIERRA CLUB,

Respondents.

STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES' AND THE HONORABLE HILARY S. FRANZ'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

A commercial tenant does not get to ignore the unambiguous language of its lease requiring it to submit financial and other business information to its landlord regarding a proposed subtenant. But this is exactly what Petitioners Northwest Alloys, Inc. (NWA) and Millennium Bulk Terminals-Longview (Millennium) are seeking by asking this Court to accept review.

The Washington State Department of Natural Resources and Commissioner of Public Lands Hilary S. Franz[1] (DNR) acted prudently on behalf of the State when requesting audited financial records and other business information from NWA and Millennium. The Court of Appeals correctly reversed an order of the Cowlitz County Superior Court and reinstated a DNR decision to deny approval of a sublease for a coal export facility on state-owned aquatic lands managed by DNR.

The Court of Appeals did not break any new legal ground in this case; it merely applied established Washington precedent and reversed an erroneous trial court decision that, although DNR had legitimate financial concerns regarding the viability of Millennium as a proposed subtenant, it nevertheless acted arbitrarily by requesting financial and other business

[1] Commissioner of Public Lands Hilary S. Franz was elected in 2016 and sworn in after the events leading to this case arose. Commissioner Franz was substituted in this matter in place of former Commissioner Peter Goldmark.

information about Millennium. Despite the assertions of NWA and Millennium to the contrary, this case is not about ensuring the public's reliance on contracts with the State; it is about not letting one commercial tenant of the State ignore unambiguous contractual language that exists to protect the State's aquatic lands.

Under the explicit terms of the lease, DNR was entitled to request the information that it did, and the Court of Appeals, in applying well-settled Washington precedent, correctly reversed the trial court. There is no conflict justifying review under RAP 13.4(b)(1) and RAP 13.4(b)(2), and the unique facts of this case do not present a matter of substantial public interest under RAP 13.4(b)(4). The Court should therefore deny review.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the Court of Appeals correctly determine that DNR's denial of a proposed sublease was not arbitrary and capricious because DNR had valid reasons to question the proposed sublessee's ability to perform under the lease and, because of these concerns, requested financial and other business information regarding the proposed sublessee?

2. Did the Court of Appeals correctly apply an "arbitrary and capricious" standard of review under RCW 79.02.030 in evaluating DNR's denial of a proposed request for consent to a sublease?

3. Did the Court of Appeals correctly evaluate the terms of the lease at issue in the context of the statutes and constitutional provisions under which DNR operates? If not, then can an agency ignore its statutory and constitutional mandates by entering into a contract?

III. COUNTERSTATEMENT OF THE CASE

A. Factual Background.

NWA has a 30-year lease with the State for a marine terminal on the Columbia River near Longview. CP 1873; AR 001517.[2] NWA does not operate under the lease, but instead relies on contractors and subtenants to conduct its business. A previous subtenant of NWA, Chinook Ventures, conducted unauthorized activities that caused extensive environmental damage to the Columbia River. CP 1862; CP 2170-74; AR 001823-27; CP 6057; AR 005656; CP 2610; AR 002227; CP 2047; AR 001700. Chinook's actions also put NWA in default of its lease with DNR. CP 160; AR 000025.

NWA requested DNR's consent to sublease to Millennium. CP 240; AR 000098. Millennium proposes to significantly expand the site's use under NWA's lease to include exporting coal, CP 131; AR 000171; CP 6166; AR 005754, and the new docks proposed by Millennium would

[2] Citations to the Clerk's Papers are designated "CP" and corresponding designations to the Administrative Record are designated "AR."

make this site the largest coal export facility on the west coast. CP 533; AR 000429.

DNR requested financial and other business information under Section 9.1 of the lease relating to Millennium's solvency and ability to perform. CP 1539; AR 001240. Neither NWA nor Millennium provided the requested information. CP 1597, 1598, 15555-56; AR 001290-91.

At the time of DNR's requests, historically poor conditions in the coal markets had driven many of the nation's largest coal producers, including a parent company of Millennium, Arch Coal, Inc. (Arch Coal), into bankruptcy. CP 14242, 14202; AR 013795, 013758; CP 1564; AR 001260. The announcement by NWA's parent company, Alcoa, Inc. (Alcoa), that it would shutter its Wenatchee Works, which imported alumina and provided the primary work under the lease, added to DNR's concerns over Millennium's financial condition and business plans. CP 7613-14, 1559; AR 007185-86, 001256; CP 1539; AR 001240. Amid this uncertainty, Millennium was proposing to build a large new export coal facility, including two large industrial docks on the leased property. CP 8933, 9046, 9052; AR 008504, 008617, 008623.

Millennium's plans would have a significant impact on the lease. The docks Millennium planned were far larger than anything contemplated under the lease, and the new operation would greatly intensify the use of the

property. CP 1860 (Exhibit A), 1877 (Lease § 1.2(a)); AR 001517, 001532; CP 6175; AR 005763; CP 6124, 6132; AR 005714, 005722. Moreover, Millennium was a new company that had intentionally concealed the extent of its plans for a coal export facility as part of its permitting strategy. CP 494-95, 498-99; AR 000395-96, 000398-99. Despite these concerns, NWA refused to provide the requested financial and business information. CP 1597, 1598, 15555-56; AR 001290-91.

The subsequent bankruptcy sale of Arch Coal's interest in Millennium heightened concerns over Millennium's financial condition and its business plans. CP 1741; AR 001418. Bankruptcy filings related to the sale showed Millennium had extensive capital needs for its plans on the leased property. CP 14157; AR 013715; CP 14210-11; AR 013765-66. The sale left Millennium with a single parent, a coal company facing difficult economic conditions. CP 14211, 14057; AR 013766, 013619.

As a result, DNR reiterated its request for financial and business information concerning Millennium. CP 1741; AR 001418. When NWA continued to refuse to provide this information, CP 15559, DNR denied its request for a sublease on January 5, 2017. CP 1850-52; AR 001509-11.

B. Proceedings Below.

NWA and Millennium timely appealed DNR's January 5, 2017, denial of their request for consent to sublease to the Cowlitz County

Superior Court under RCW 79.02.030. CP 1. Several environmental groups intervened in support of DNR. After a hearing, the trial court issued an Order on the Merits dated November 29, 2017, reversing DNR's denial. CP 17687. In its Order, the trial court found that DNR had legitimate concerns about Millennium's financial ability to perform under the lease, but that DNR did not ask the right question. CP 17691-92. Instead of requesting audited financial information, the trial court found that DNR should have asked, "[h]ow are you going to make this pencil out, subtenant?" CP 17692. The trial court therefore concluded that DNR's request was arbitrary and capricious, CP 17693, and in a subsequent Order entered on January 31, 2018, directed DNR to reconsider its denial of the consent to sublease. CP 17815. The parties appealed both trial court orders to the Court of Appeals.

Division II of the Court of Appeals reversed the trial court and reinstated DNR's denial. The Court of Appeals concluded that DNR had legitimate reasons to deny the requested sublease, that DNR's denial was not arbitrary and capricious, and that the denial was commercially reasonable. *Northwest Alloys, et al. v. DNR, et al.,* No. 51677-2-II, slip op. at 17-19 (Aug. 20, 2019). NWA and Millennium have petitioned the Court for review of this decision.

IV. REASONS WHY REVIEW SHOULD BE DENIED

NWA and Millennium argue that the Court of Appeals' decision conflicts with precedent, and involves a matter of substantial public interest supporting review under RAP 13.4(b)(1), 13.4(b)(2), and 13.4(b)(4). As explained below, the decision does neither. The Court of Appeals applied long-standing Washington precedent in determining the appropriate standard of review under RCW 79.02.030, and in subsequently evaluating DNR's decision to deny NWA's and Millennium's request for consent to a sublease under that standard. DNR, in considering Millennium as a proposed subtenant, requested financial and other business documents. DNR's actions under the lease were administrative, not quasi-judicial, and thus the Court of Appeals correctly applied an arbitrary and capricious standard under RCW 79.02.030. Moreover, the Court of Appeals correctly evaluated the reasonableness language of Section 9.1 of the lease under *Ernst Home Center v. Sato*, 80 Wn. App. 473, 486, 910 P.2d 486 (1996). In doing so, it did not create separate standards for the state and private parties; rather, the Court merely evaluated the lease as it was required to: from the standpoint of a similarly situated landlord to DNR. Finally, the unique facts of this case, which involve a tenant that repeatedly refused to provide financial and other business information regarding its proposed subtenant,

despite unambiguous lease terms requiring it to do so, do not rise to the level of a substantial public interest warranting review.

A. The Court of Appeals' Decision Does Not Conflict with Precedent and Therefore Does Not Warrant Review Under RAP 13.4(b)(1) and 13.4(b)(2).

The Court of Appeals' decision does not conflict with either the precedent of this Court or other appellate precedent. At the heart of this case is the unambiguous language of Section 9.1 of the lease, which provides that, in evaluating a proposed sublessee, DNR "may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, . . . and such other factors as may reasonably bear upon the suitability of the transferee . . . ." CP 1891-92; AR 001546-47. While DNR's consent shall not be "unreasonably conditioned or withheld," it is the obligation of the tenant (NWA) to provide the requested information. *Id.* ("[t]enant *shall submit* information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.") (emphasis added).

NWA and Millennium appealed DNR's decision to deny Millennium's sublease under RCW 79.02.030. That statute provides for "de novo" review of DNR's leasing decisions based on the agency's record, and, as such, the Court of Appeals correctly evaluated Section 9.1 of the lease under the standard of review of RCW 79.02.030. As discussed below,

the Court of Appeals correctly applied the law and created no conflict warranting this Court's review.

1. The Court of Appeals Applied Long-Standing Precedent In Evaluating DNR's Sublease Denial and Did Not Create Differing Standards.

In evaluating the terms of Section 9.1 of the lease, the Court of Appeals correctly applied precedent and concluded that DNR's denial of the sublease request was reasonable, and therefore not arbitrary and capricious. Slip op. at 18. Contrary to the assertions of NWA and Millennium, the Court did not establish separate standards or a "new doctrine" for DNR. Pet. at 7. As the Court stated, a lease term in Washington that prohibits a landlord from "unreasonably" withholding consent requires a reviewing court to determine "whether a reasonably prudent person *in the position of the landlord* would have refused consent." Slip op. at 19, n.1 citing *Ernst*, 80 Wn. App. at 486 (emphasis added). This is the correct standard. *See also 224 Westlake LLC v. Engstrom Props., LLC,* 169 Wn. App. 700, 721, 281 P.3d 693 (2012).

Under *Ernst*, the Court of Appeals was required to view the reasonableness of DNR's decision from the perspective of one in DNR's position. Thus, the Court necessarily had to evaluate the reasonableness of DNR's denial in the context of the statutes and constitutional provisions under which DNR operates. This includes RCW 79.02.030, as well as

DNR's public trust obligations, and other provisions of the aquatic lands statutes such as RCW 79.105.030 and RCW 79.105.210(3)-(4). Moreover, the lease itself incorporates the public trust doctrine under Section 1.1(b), which states "[t]his Lease is subject to all . . . rights of the public under the Public Trust Doctrine." CP 1876; AR 001531.

As the manager of the State's aquatic lands, "DNR executes its leasing authority with a view toward the State's duty to protect the public trust." *Pope Res. v. Dep't of Nat. Res.*, 190 Wn.2d 744, 754, 418 P.3d 90 (2018). The public trust doctrine is rooted in the constitution under art. XVII, § 1, and "protects public ownership interests in certain uses of navigable waters and underlying lands, including navigation, commerce, fisheries, recreation, and environmental quality." *Id.* Because DNR has legal responsibilities to consider environmental values in its leasing decisions, the Court of Appeals correctly looked at those responsibilities in determining whether DNR acted properly under the lease. *See* slip op. at 16-17.

Metropolitan Park[3] and similar cases cited by NWA and Millennium are distinguishable because none of those cases involved DNR carrying out its management discretion in denying a sublease on

[3] *Metro. Park Dist. of Tacoma v. DNR*, 85 Wn.2d 821, 539 P.2d 854 (1975).

state-owned aquatic lands. Pet. at 11. *See Metro. Park*, 85 Wn.2d at 825-27 (State transfer of use deed was not ultra vires, and equitable estoppel could apply to prevent cancellation of deed); *State ex rel. Gillette,*[4] 44 Wn. at 438-43 (Mandamus action against state official to compel issuance of a warrant for payment); and *State ex rel. Wash. Paving Co.,*[5] 90 Wn. at 451 (Mandamus action for payment of highway construction costs).

DNR, in administering Section 9.1 of the lease, denied the sublease request for NWA's and Millennium's repeated refusals to provide requested financial and other business information. CP 1850-52; AR 001509-11. These facts are different from the facts of the cases cited by NWA and Millennium, and do not create any conflict that would support review under RAP 13.4(b)(1) or 13.4(b)(2).

2. Arbitrary and Capricious Is the Correct Standard of Review Under RCW 79.02.030. The Court of Appeals Correctly Determined That DNR's Actions Were Not Quasi-Judicial.

While NWA and Millennium argue that substantial evidence is the correct standard of review for the trial court's order under the "de novo" language of RCW 79.02.030, the Court of Appeals correctly rejected these arguments and applied an arbitrary and capricious standard directly to

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[4] *State ex rel. Gillette v. Clausen*, 44 Wn. 437, 87 P. 498 (1906).

[5] *State ex rel. Wash. Paving Co. v. Clausen*, 90 Wn. 450, 156 P. 554 (1916).

DNR's record. The appropriate standard of review under RCW 79.02.030 depends upon whether or not the agency is acting in an administrative or a quasi-judicial capacity. *See Floyd v. Dep't of Labor & Indus.*, 44 Wn.2d 560, 570-71, 269 P.2d 563 (1954). If the agency is acting in an administrative capacity, then the standard of review is arbitrary and capricious. *See Francisco v. Bd. of Dirs.*, 85 Wn.2d 575, 578, 537 P.2d 789 (1975).

Although RCW 79.02.030 provides for "de novo" review on the agency record, when courts have examined similar statutes, they have construed such "de novo" review language to mean "arbitrary, capricious, or contrary to law." *Household Fin. Corp. v. State*, 40 Wn.2d 451, 454-58, 244 P.2d 260 (1952) (statute granting court de novo trial on denial of license). Based on constitutional principles of separation of powers, courts will not substitute their own judgment for that of an administrative agency exercising legislative or executive functions, and the Legislature cannot impose non-judicial functions on the court. *Id.* at 455-57 (holding unconstitutional a statute granting the court de novo trial and review over banking supervisor's denial of a business license).

Exercising the discretion the Legislature vested in DNR to determine whether, and under what conditions, the use of state-owned aquatic lands should be authorized is an administrative function, and not a

quasi-judicial function. *See Hood Canal Sand & Gravel, LLC v. Goldmark*, 195 Wn. App. 284, 307-08, 381 P.3d 95 (2016) (DNR's issuance of easement was not quasi-judicial for purposes of statutory writ of review).[6] The Court of Appeals was correct to apply an "arbitrary and capricious" standard under RCW 79.02.030, and this standard was entirely consistent with precedent. *See, e.g., Malmo v. Case,* 28 Wn.2d 828, 835, 184 P.2d 40 (1947) ("under the contracts, the Commissioner . . . had the power to grant, or refuse to grant, extensions. His refusal to do so was in entire good faith. He did not act arbitrarily or capriciously").[7]

NWA and Millennium erroneously rely upon *Yaw v. Walla Walla School District No. 140*, 106 Wn.2d 408, 413-14, 722 P.2d 803 (1986), for the proposition that administering a contract is a judicial, and not an administrative function. Pet. at 16-17. The holding of *Yaw* is not as broad as Millennium and NWA assert; *Yaw* did not hold that all agency decisions involving a contract are necessarily judicial action. *Yaw* specifically dealt

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[6] The Court has recognized this fact for well over a century. *See State v. Bd. of State Land Comm'rs*, 23 Wash. 700, 705-06, 63 P. 532, 533-34 (1901) ("For the reason that in leasing the [harbor area] in question the board acts only in an administrative or executive capacity, we think the writ in this case was improperly issued, and must be set aside").

[7] *See also Francisco*, 85 Wn.2d at 579 (four factors a court looks at to determine if an agency's action was administrative or quasi-judicial are whether: (1) the court could have been charged in the first instance with the responsibility of making the decision; (2) the function of the agency is one that the courts have historically performed; (3) the agency performs functions on inquiry, investigation, declaration and enforcement of liabilities as they stand on present or past facts under existing laws; and (4) the agency's action is comparable to the ordinary business of courts).

with a school board's hiring decision in light of a collective bargaining agreement, recognizing that "[t]he courts in Washington have long enforced contractual rights in employment relationships." *Yaw*, 106 Wn.2d at 416. Unlike the facts of *Yaw*, Courts have not historically managed the State's aquatic lands. *See* slip op. at 16.

NWA and Millennium agree that, if a statute requires "de novo" review, then review is under an arbitrary, capricious, or unlawful standard if the agency was acting in an administrative capacity. Pet. at 16. This is exactly the capacity in which DNR was acting when it denied the sublease to Millennium. The "de novo" review requirements of RCW 79.02.030 are therefore clear, and do not warrant additional review by the Court.

3. The Court of Appeals Correctly Declined to Apply the Substantial Evidence Standard.

Despite NWA's and Millennium's assertions to the contrary, "the appellate court stands in the same position as the trial court where the record consists only of affidavits, memoranda of law, and other documentary evidence." *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). *See also Dolan v. King Cty.*, 172 Wn.2d 299, 310-11, 258 P.3d 20 (2011). The Court of Appeals properly reviewed DNR's record directly, and because the trial court did not weigh evidence or resolve issues of witness credibility, the Court of Appeals was correct

that the substantial evidence standard does not apply. *See Dolan*, 172 Wn.2d at 310-11.

Millennium and NWA rely on inapposite case law to support their argument that the Court of Appeals should have applied the substantial evidence standard. Pet. at 13-14. For example, *Hendrickson v. Department of Labor and Industries,* 2 Wn. App. 2d 343, 409 P.3d 1162 (2018), involved L&I statutes and determinations of the Board of Industrial Insurance Appeals (BIIA). The BIIA acts in a judicial capacity under RCW Title 51 when it determines whether claimants are entitled to compensation. *See Floyd*, 44 Wn.2d at 578. Courts willingly accept a less deferential standard of review for quasi-judicial agency decisions because this would not violate any constitutional separation of powers. *Id.* (trial court authorized to conduct trial de novo of workers' compensation award). These decisions under Title 51 simply do not apply to the administrative functions DNR carries out in managing leases on state-owned aquatic lands, and do not require the Court to grant review.

B. This Case Does Not Present a Matter of Substantial Public Interest Under RAP 13.4(b)(4).

NWA and Millennium conceded at the Court of Appeals that Millennium does not have sufficient financial assets on its own to meet the requirements of the lease. *See* Response to Appellants' Opening Briefs

at 31. They do not dispute that they never provided the financial and other business documents DNR requested, despite a clear contractual requirement that NWA do so. Moreover, they assigned no error to the trial court's conclusion that DNR's denial of their sublease request was based on "legitimate dollar concerns on the part of DNR." CP 17691. These facts on their own are sufficient for the Court to deny review under RAP 13.4(b)(4).

What this case presents is a tenant in NWA, with a history of lax oversight of a past subtenant that caused extensive environmental damage to the State's aquatic lands, seeking to construct the largest coal terminal on the west coast, using a proposed subtenant in Millennium with a history of deceit to avoid environmental review for this very project. As the Court of Appeals correctly stated:

> DNR was also acutely aware of the damage a negligent subtenant could inflict on the sensitive aquatic lands, given its recent negative experience with NWA's prior subtenant, Chinook. Millennium had intentionally misrepresented the scope of its plans for the property in 2011. Millennium sought to build, operate, and maintain the largest coal export terminal on the west coast. Such a project posed significant financial demands and high environmental risks if Millennium followed in the previous subtenant's footsteps with lax oversight from NWA. Accordingly, DNR had significant, well founded reasons for carefully considering the financial condition and business reputation of Millennium before consenting to sublease.

Slip op. at 18-19.

1. The Facts of This Case Are Unique. Northwest Alloys Repeatedly Refused to Comply with the Explicit Terms of Its Lease.

The unique facts of this case do not make it a matter of substantial public interest for purposes of review under RAP 13.4(b)(4). Though NWA and Millennium argue that the Court of Appeals' decision undermines society's reliance interest in the performance of promises, Pet. at 7, the reality is that NWA does not want to be bound by the unambiguous lease terms to which it agreed.

Under Section 9.1 of the lease, DNR is given discretion to request reasonable financial and business information on a proposed subtenant, and NWA is required to provide this information. CP 1891-92; AR 001546-47. Indeed, "DNR's requests for information from Millennium were not so narrow as to preclude Millennium from providing financial information it believed would be helpful to DNR in understanding Millennium's financial condition." Slip op. at 21. Based on DNR's repeated requests for this information, "Millennium knew what DNR's concerns were; Millennium could have provided its parent company's information if it believed it would be helpful in answering DNR's inquiry. Instead, *NWA refused to respond at all*." *Id.* (emphasis added).

Simply put, this case is not about ensuring the public's reliance on contracts with the State; it is about not letting one commercial tenant of the

State ignore unambiguous contractual language that is there to protect the State's aquatic lands. *See Pope,* 190 Wn.2d at 755 (DNR "executes its leasing authority with a view towards the State's duty to protect the public trust."). NWA's and Millennium's repeated refusals to comply with DNR's reasonable requests under the terms of the lease are therefore not of such broad-reaching public concern to necessitate the Court's review under RAP 13.4(b)(4).

2. The Court of Appeals Was Correct That an Agency Cannot Contract Itself Out of Its Constitutional and Statutory Duties.

NWA and Millennium argue that the Court of Appeals' decision improperly applies DNR's statutes and the public trust doctrine in interpreting the lease, which somehow changes the covenants to which NWA agreed. Pet. at 6-7. NWA and Millennium go so far as to assert that the Court of Appeals' decision effectively rewrites DNR's aquatic lands leases. *Id.* at 8. These assertions ignore one simple fact: the lease itself is explicitly subject to the public trust doctrine under Sec. 1.1(b). *See* CP 1876; AR 001531 ("[t]his Lease is subject to all . . . rights of the public under the Public Trust Doctrine.").

The Court of Appeals was correct that DNR cannot contract itself out of its statutory and constitutional duties, and, in fact, DNR did not do so under the lease. As the Court of Appeals recognized, "[n]othing in the lease

purports to extinguish DNR's statutory authority to exercise its discretion to approve a sublease, so long as it does not unreasonably withhold consent." Slip op. at 16. NWA agreed to these terms when it signed the lease, and now does not want to be bound by them. Implicit in NWA's and Millennium's arguments is that, if the Court applies the law that DNR is subject to, then NWA and Millennium will lose. This is not an adequate reason for the Court to grant review.

NWA and Millennium also urge the Court to accept review to clarify what the remedy should have been if the Court of Appeals had not reversed the trial court. Pet. at 14. Because the Court of Appeals reversed the trial court, it did not reach the issue of the appropriate remedy. *See* slip op. at 2, n.1. Therefore, this issue is not a reason for the Court to accept review. However, if DNR had improperly withheld consent, then the trial court was correct that remand would have been the proper remedy.[8] CP 17689. Despite the arguments of NWA and Millennium to the contrary, an interpretation of RCW 79.02.030 that would allow the Court to substitute its judgment on whether DNR should issue a sublease would render the statute unconstitutional on separation of powers principles. *See, e.g.,*

[8] Ordering DNR to grant the sublease would also be particularly untenable because of the unchallenged trial court determination that DNR had legitimate financial concerns regarding Millennium's ability to perform as a subtenant under NWA's lease, CP 17691, and Millennium's concession that it does not have sufficient finances on its own to perform under the lease. *See* Response to Appellants' Opening Briefs at 31.

Household Fin. Corp., 40 Wn.2d at 456-57. This is a straightforward application of existing law, and therefore the Court should decline review.

V. CONCLUSION

The decision of the Court of Appeals does not conflict with precedent or involve a matter of substantial public interest warranting review under RAP 13.4(b)(1), 13.4(b)(2), or 13.4(b)(4). Accordingly, DNR and Commissioner Franz respectfully request this Court deny the Petition.

RESPECTFULLY SUBMITTED this 16th day of October, 2019.

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on all parties or their counsel of record on October 16, 2019, through the Washington State Appellate Courts' eFiling Portal.

I certify under penalty of perjury, under the laws of the state of Washington, that the foregoing is true and correct.

DATED this 16th day of October, 2019, at Olympia, Washington.

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ATTORNEY GENERAL'S OFFICE - NATURAL RESOURCES DIVISION

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