102586-6

Court of Appeal Cause No. No. 84166-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, a Washington Municipal corporation; BARRY CHRISMAN and KERRY CHRISMAN, individually and as husband and wife,

Appellants,

v.

THE STATE OF WASHINGTON; SIERRA PACIFIC INDUSTRIES DBA SIERRA PACIFIC INDUSTRIES, INC., a California corporation; PRECISION FORESTRY, INC., a Washington corporation, and ABC CORPORATIONS 1-10,

Respondents.

PETITION FOR REVIEW

WAKEFIELD & KIRKPATRICK, PLLC
Dan Kirkpatrick, WSBA 38674
Zach Parker, WSBA 53373
Noelle Symanski, WSBA 57022
David Ringold, WSBA 56756
17544 Midvale Ave Suite 307
Shoreline, WA 98133
(206) 629-5489
Attorneys for Respondents Sierra Pacific Industries, Inc

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes & Rules

Other

I. INTRODUCTION AND IDENTITY OF PETITIONER

The petitioner is Sierra Pacific Industries ("SPI"). SPI's attorneys are Dan Kirkpatrick, Noelle Symanski, Zach Parker, and David Ringold of Wakefield & Kirkpatrick PLLC.

This lawsuit is about SPI's liability for damage caused by a Riparian Management Zone ("RMZ") tree that SPI left standing because the State of Washington required SPI to leave it standing. The tree fell and injured appellant Barry Chrisman.

SPI petitions the Washington Supreme Court to review a decision by the Court of Appeals that significantly alters the meaning of Washington's Forest Practices Act ("FPA"). Before the Court of Appeals' decision, the FPA's immunity statute, RCW 76.09.330, had been interpreted (by the same division of the Court of Appeals) to have a "very broad sweep."[1] The statute's "very broad sweep" is obvious from a plain reading:

[1] *Ruiz v. State*, 154 Wn. App. 454, 460 (2010)

The legislature hereby finds and declares that riparian ecosystems on forestlands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. The legislature further finds and declares that leaving riparian areas unharvested and leaving snags and green trees for large woody debris recruitment for streams and rivers provides public benefits including but not limited to benefits for threatened and endangered salmonids, other fish, amphibians, wildlife, and water quality enhancement. The legislature further finds and declares that leaving upland areas unharvested for wildlife and leaving snags and green trees for future snag recruitment provides benefits for wildlife. Forestland owners may be required to leave trees standing in riparian and upland areas to benefit public resources. It is recognized that these trees may blow down or fall into streams and that organic debris may be allowed to remain in streams. This is beneficial to riparian dependent and other wildlife species. ***Further, it is recognized that trees may blow down, fall onto, or otherwise cause damage or injury to public improvements, private property, and persons. Notwithstanding any statutory provision, rule, or common law doctrine to the contrary, the landowner, the department, and the state of Washington shall not be held liable for any injury or damages resulting from these actions, including but not limited to wildfire, erosion, flooding, personal injury, property damage, damage to public improvements, and other injury or damages***

of any kind or character resulting from the trees being left.[2]

Not surprisingly, the *Ruiz* court held that RCW 76.09.330 immunized the State, landowners, and timber harvesters from liability for RMZ trees that they had to leave standing: "It is clear that the State has asserted its immunity and extended that immunity to those required to obey its dictates in the area of forest practices."[3] Under RCW 76.09.330 and the holdings in *Ruiz*, immunity was clear: timber harvesters could fell trees up to the border of an RMZ even though this would cause RMZ trees to fall and cause damage to property and people. The statute even says that RMZ trees may fall and that this is "beneficial to riparian dependent and other wildlife species."[4]

But the Court of Appeals Division I's recent decision makes RCW 76.09.330's grant of immunity meaningless. Timber harvesters (i.e., private entities like SPI and respondent

---

[2] RCW 76.09.330 (emphasis added).
[3] *Ruiz*, 154 Wn. App. at 460.
[4] RCW 76.09.330.

Precision Forestry Inc.) will never be immune from liability because they are not involved in "the decision to leave the RMZ trees standing."[5]

Only the State decides the location and boundaries of RMZs. And now, according to the Court of Appeals' decision, even the State is not immune under RCW 76.09.330 because the Court of Appeals held that appellants may challenge the measurements of an RMZ in a tort lawsuit. The Court of Appeals removed all certainty about logging near RMZs.

This appeal is about an issue of substantial public interest: the management of Washington's public timber lands, which the legislature has carefully considered and balanced "a collision between the important policy of public safety and that of environmental protection . . ."[6] For that reason alone, the Court should accept review. The Court should also accept review

---

[5] *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, No. 84166-1-I, *Id.*, 534 P.3d 1210,1218.

[6] *Ruiz*, 154 Wn. App. at 459.

because the Court of Appeals' decision conflicts with its prior decision in *Ruiz*.

II. CITATION TO COURT OF APPEALS DECISION

SPI petitions the Washington Supreme Court to review the Washington State Court of Appeals Division I opinion entitled *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, No. 84166-1-I (consolidated with No. 84167-0-I) ___ Wn. App. 2d. ___, 534 P.3d 1210, filed September 5, 2023, and the Washington State Court of Appeals Division I's "Order Granting Motions to Join, Granting Motion to Strike in Part, Denying Motion for Sanctions, and Denying Motion for Reconsideration" dated October 25, 2023.

III. ISSUES PRESENTED FOR REVIEW

1) Did the Court of Appeals err by holding that RCW 76.09.330 of the FPA did not immunize SPI from liability for injury caused by a tree left in a Riparian Management Zone ("RMZ"), even though the Department of Natural

Resources ("DNR") required SPI to leave this tree standing?

2) Did the Court of Appeals err by holding that RCW 76.09.330 did not immunize SPI from liability for injury caused by a tree left in RMZ, even though RCW 76.09.330 immunizes "Forestland owners" from liability for "any injury or damages resulting from these actions, including but not limited to . . . personal injury, property damage, damage to public improvements, and other injury or damages of any kind or character resulting from the trees being left"?

3) Did the Court of Appeals err by interpreting RCW 76.09.330 to only immunize "the decision to leave the RMZ trees standing"?

4) Did the Court of Appeals err by holding that SPI was not a "Forestland Owner" under RCW 76.09.020(16) of the FPA?

5) Did the Court of Appeals err by interpreting "forest land" in RCW 76.09.020(16) to mean only the RMZ?

6) Did the Court of Appeals err by holding that appellants could challenge the designation of the RMZ through their civil lawsuit?

7) Did the Court of Appeals err by finding an issue of fact about the accuracy of DNR's measurement and designation of the RMZ?

IV. STATEMENT OF THE CASE

A. The Parties

The six parties are:

1. **Appellant Barry Chrisman**, a former employee of appellate Snohomish County PUD ("PUD"), sued for his injuries sustained when a RMZ tree fell onto the PUD vehicle he was driving for his work.

2. **Appellant Kerry Chrisman**, the wife of Barry Chrisman, sued for loss of consortium.

3. **Appellant PUD** seeks restitution for the expenses it has incurred in paying for and administering Mr. Chrisman's benefits stemming from this accident, and damage to its vehicle.

4. **Respondent SPI**, purchased from DNR the right to "harvest and remove forest products" from the Lugnut Area.

5. **Respondent State of Washington** owns all of the relevant land.

6. **Respondent Precision Forestry Inc ("PFI")** is a logging company that subcontracted with SPI.

B. Overview of Facts

On March 13, 2018, a tree fell on appellant Barry Chrisman's PUD work vehicle and injured Mr. Chrisman. Because this tree grew in an RMZ, DNR, SPI, and PFI left it standing. Washington statutes and regulations require trees to remain standing in RMZs to protect riparian ecosystems.[7]

C. Lugnut Sale History

In February 2017, DNR auctioned timber sales on state-owned land.[8] SPI won the bid on the "Lugnut" area.[9] The Lugnut area is located on approximately 183 acres about five miles north

[7] https://wdfw.wa.gov/publications/00029

[8] CP 1007-1008; CP 1010-1039.

[9] CP 1007-1008; CP 1041.

of Startup, Washington.[10] The areas comprising the Lugnut were divided into three geographic sections, identified as Unit 1, Unit 2, and Unit 3, respectively.[11] The Lugnut also includes an RMZ surrounding Olney Creek.[12]

DNR determined the area where SPI could log. The Bill of Sale between DNR and SPI granted SPI the right to cut and remove forest products in the areas designated in the contract.[13] The "DNR Bill of Sale and Contract for Forest Products" prohibited SPI or its contractors from cutting, removing, or damaging forest products "in a manner inconsistent with the terms of this contract, or State law…" and specifically prohibited SPI from cutting trees within the RMZ.[14]

---

[10] CP 1002, ¶ 4. Technically, the Lugnut area is Sections 12, 13, 14, and 15 in Township 28 North, Range 8 East, and part of Section 7 in Township 28 North, Range 9 East W.M., in Snohomish County.

[11] CP 1011.

[12] CP 1381.

[13] *Id.*

[14] *Id.*

D. SPI Contract with PFI

SPI subcontracted with PFI to cut and remove the timber in Unit 2 of the Lugnut area.[15] SPI did not cut or remove any of the timber in any of the Lugnut areas.[16]

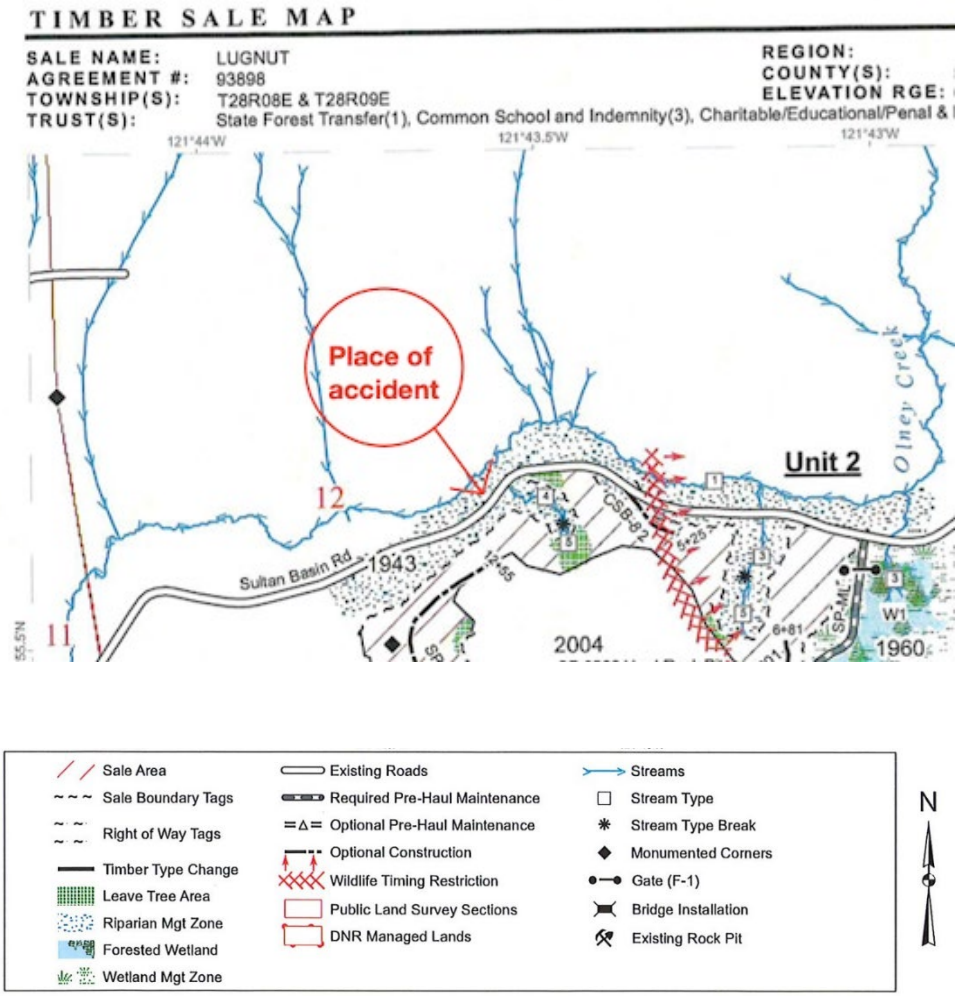
On the "Timber Sale Map" from the Bill of Sale, squiggly lines (~~~) represent the timber sale boundary—SPI could not harvest past this boundary. The dotted area () located on the other side of the timber sale boundary is the RMZ—no cutting was allowed both because it was an RMZ and because it was generally beyond the timber sale boundary. Shown in a blue, arrowed line () is Olney Creek, which is the creek protected by the RMZ. The "place of accident" is not on the original map and it has been superimposed.[17]

---

[15] CP 1047-1065.

[16] CP 1003, ¶ 13.

[17] CP 1043; The "place of accident" is based on a "geotagged" photographed discussed later in this brief.



E. Riparian Management Zones (RMZs)

RMZs are streamside zones determined by DNR. In RMZs, timber harvesting is limited or excluded to protect the habitat of salmon and other riparian flora and fauna.[18] An RMZ

[18] *See* WAC 222-16-010; WAC 222-30-021.

is a protective buffer of trees required to remain on each side of a fish-bearing stream to protect water quality.[19]

When SPI bid on the Lugnut area, DNR had already decided where the Olney Creek RMZ would be and where SPI was allowed to cut.[20] "Timber Sale Boundary" signs like the ones in these photographs made clear the RMZ boundaries:

[19] *See* WAC 222-16-010; WAC 222-30-021; RCW 76.09.040; RCW 76.09.370.
[20] CP 1003 ¶ 8.

[21]

[21] CP 1005, ¶¶ 24 & 29; CP 1001; CP 1100.

DNR attached these signs to every tree bordering the RMZ.[22] SPI's subcontractor, PFI, cut no trees within the RMZ.[23] SPI was *required* to cut all timber in the Timber Sale area, and PFI did so.[24]

F. The Accident

On March 13, 2018, PFI was moving cut timber to the SP-0205 road, where it was being processed into logs.[25] The only trees adjacent to Sultan Basin Road were standing trees within the RMZ and outside the timber sale area.[26] A heavy wind blew standing RMZ trees across the Sultan Basin Road.[27]

Operators from PFI went to Sultan Basin Road.[28] While a log truck was attempting to pull a tree out of the travel path on

---

[22] CP 1003, ¶ 12.

[23] *Id.*

[24] CP 1029, paragraph H-035 ("Tree *shall be felled* into the sale area unless otherwise approved by the Contract Administrator." (emphasis added))

[25] *Id.*

[26] CP 1004, ¶ 22; 1384-85 ¶¶ 9-10.

[27] CP 1004, ¶ 16; CP 1102; CP 1079-1093.

[28] CP 1004 ¶ 18.

the Sultan Basin Road, Mr. Chrisman approached the area in his PUD vehicle.[29] Another wind gust swept through the area, blowing additional RMZ trees onto the Sultan Basin Road and onto Mr. Chrisman's vehicle.[30] Mr. Chrisman was alone inside the vehicle and was injured.[31]

G. Superior Court Procedural History

PUD sued SPI and PFI, alleging negligence, gross negligence, and nuisance.[32] Appellants Barry and Kerry Chrisman sued the DNR, SPI, and PFI alleging negligence, gross negligence, corporate negligence, nuisance, and strict liability.[33] The Superior Court consolidated both cases.[34]

PFI, the DNR, and SPI all moved for summary judgment based on the immunity statute, RCW 76.09.330. Snohomish County Superior Court judge Janice Ellis granted the motions for

---

[29] CP 1004 ¶ 19; CP 1102.
[30] CP 1004 ¶ 20; CP 1077 ¶ 2; CP 1079-1093; CP 1102.
[31] CP 1077 ¶ 3; CP 1079-1093; CP 1097.
[32] CP 1466-1472.
[33] CP 1503-1507.
[34] CP 1405-1409.

summary judgment, which dismissed all of appellants' claims with prejudice. Judge Ellis ruled that appellants' claims were barred by the immunity statute. Judge Ellis next denied appellants' motions for reconsideration.[35] Appellants timely appealed to Division One of the Court of Appeals.

H. Court of Appeals

The Chrismans and PUD appealed the trial court's summary judgment ruling to the Washington State Court of Appeals, Division One. In its September 5, 2023 opinion, the Court of Appeals reversed the trial court's summary judgment ruling and remanded for further proceedings.

The Court of Appeals held that SPI and PFI were not "Forestland Owners" and therefore not protected by the immunity statute. The Court of Appeals reasoned that since "SPI and PFI had no right to harvest or remove forest products from the RMZ and, therefore, are not forestland owners of that area

[35] CP 33-35.

under the statutory definition . . ."[36] The Court ignored that timber harvesters *never* have the right to remove trees from an RMZ. The Court also held that the statute only protects an entity that decides the boundaries of an RMZ:

> Because these entities [that is, SPI and PFI] did not make the decision to leave the injury-causing tree standing, there is no act by them subject to immunity under the statute.[37]

This overlooks the fact that timber harvesters *never* decide the boundaries of RMZs—only DNR does. The Court held that DNR was a forestland owner, but also held that appellants could sue DNR for allegedly measuring the RMZ incorrectly (based on the opinion of appellants' experts), and for creating "forest-edge effects" that increased the likelihood that trees at the edge of the RMZ would fall.

---

[36] *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, 534 P.3d at 1217.

[37] *Id.*, 534 P.3d at 1218.

DNR moved the Court of Appeals to reconsider its decision, and respondents SPI and PFI joined DNR's motion. On October 25, 2023, the Court denied DNR's motion.

V. ARGUMENT

The Court should accept review under RAP 13.4(b) because this petition involves an issue of substantial public interest, and the decision of the Court of Appeals conflicts with a published decision of the Court of Appeals.

A. The Petition Involves an Issue of Public Interest.

"A petition for review will be accepted by the Supreme Court only: . . . (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court."[38] DNR "manage[s] approximately three million acres of forested state-owned lands."[39] DNR manages forest lands to benefit the people of the State of Washington, both by funding

[38] RAP 13.4(b).

[39] *Conservation Nw. v. Comm'r of Pub. Lands*, 199 Wn.2d 813, 817, 514 P.3d 174 (2022). SPI defers to DNR on the total acreage of forest lands that it oversees.

institutions (especially schools) and providing jobs in the timber industry.[40] The Court of Appeals' ruling will have a chilling effect on the forest industry, alter environmental practices, and have negative consequences for the people of Washington.

The Supreme Court views cases involving a substantial public interest as worthy of review even if an appeal is moot. In those "mootness" cases, the Court considers three factors to determine substantial public interest:

> (1) the public or private nature of the question presented
>
> (2) the desirability of an authoritative determination for the future guidance of public officers, and
>
> (3) the likelihood of future recurrence of the question.[41]

Although this is case is *not* moot, these three factors are helpful for explaining this appeal's public interest.

---

[40] *Id.*, 199 Wn.2d at 821.

[41] *State v Beaver*, 184 Wn. 2d. 321, 358 P.3d 385 (2015) (formatting changed from original).

"The public or private nature of the question presented." The FPA's preamble establishes the importance of forest management in Washington, and declares the management of forestland by both private and public entities to be in the public interest.[42] The Legislature declared it to be in the public interest of the state to "recognize both the public and private interest in the profitable growing and harvesting of timber."[43] The Court of Appeals' decision alters the balance that the Legislature struck by immunizing DNR and timber harvesters for leaving trees in RMZ to support riparian environments. Without this immunity, timber harvesters are punished for obeying the State's directions and will be discouraged from harvesting near RMZs. This will in turn negatively affect Washington's many timber industry workers. It also may prevent trees from falling onto rivers and

[42] RCW 76.09.010.

[43] *Id.*

streams, which the legislature declared "beneficial to riparian dependent and other wildlife species."[44]

"The desirability of an authoritative determination for the future guidance of public officers." The Court of Appeals' decision leaves the public officers at DNR with substantial uncertainty about delineating RMZs. Under the Court of Appeals' ruling, a hired expert in a personal injury lawsuit can challenge the measurements of an RMZ, and thereby remove RCW 76.09.330's immunity protection.[45] The Supreme Court has ruled that the DNR has wide discretion in managing forest lands, but now that discretion is gone as to RMZs.[46]

"The likelihood of future recurrence of the question." The DNR's "Alternatives for the Establishment of a Sustainable Harvest Level" report from October 2019 states that,

---

[44] RCW 76.09.330

[45] *See Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, 534 P.3d at 1220–21 (holding that the appellants' experts created a genuine issue of material fact as to the correct dimensions of the RMZ).

[46] *Conservation Nw. v. Comm'r of Pub. Lands*, 199 Wn.2d at 830.

"Approximately one-third of all DNR-managed land in the analysis area is forested riparian habitat. Of this, approximately half is available for commercial thinning . . ."[47] DNR's "Sustainable Harvest Calculation" report for the decade between 2014-2024 that there are 470,000 acres of Riparian and Wetland management zones on Western Washington state trust lands alone, making up thirty-two percent of the total state trust land area.[48] The report states that "Projected harvest for the planning decade was 394 mmbf[49] or 7% of total volume."[50] With RMZs taking up such a massive amount of public trust land, and substantial logging anticipated by DNR, an RMZ tree falling and

[47] https://www.dnr.wa.gov/publications/amp_sepa_nonpro_shc_feis_ch3.pdf?uzo06i (last visited 11/20/2023)

[48] Report to the Board of Natural Resources at Appendix C, p. C-9. https://www.dnr.wa.gov/publications/amp_sepa_nonpro_shc_feis_app_c.pdf?uzo06i (last visited on 11/20/2023)

[49] The acronym "mmbf" means one million board feet.

[50] *Id.*

causing damage is almost a certainty. The Legislature stated that RMZ trees would fall.[51]

Healthy riparian environments require fallen trees. Blown-down trees create pools of water for fish spawning and tadpoles, along with covered vegetative areas for mammals. A major purpose of the RMZ planning is the dependance on trees falling over and creating these important habitats. The Court can expect repeated, future occurrence of this question.

For years the DNR, and the timber industry in this state have understood RCW 76.09.330 to provide immunity from tort actions involving trees in RMZs. If this immunity is revoked, the more than 102,000[52] people working in the timber industry would feel the consequences. Liability for past and future timber harvesting would alter forestry practices, cut into revenue and wages, and ultimately lead to significant losses to the economic

[51] RCW 76.09.330 ("Further, it is recognized that trees may blow down . . .")

[52] https://data.workingforests.org (last visited 11/22/2022)

and environmental benefits the timber industry provides Washington. Current RMZs would have to be re-evaluated, future RMZs would look very different, timber sales would generate less revenue resulting in less money provided to the state and counties for schools and essential services. The negative effects on the people of the State would be significant.

B. The Decision of the Court of Appeals Conflicts with a Published Opinion of the Court of Appeals

The Court of Appeals' opinion conflicts with its prior holdings in *Ruiz* by interpreting RCW 76.09.330 much more narrowly than in *Ruiz*, and by holding that SPI and PFI are not "Forestland Owners" even though it held that their counterparts in *Ruiz* were Forestland Owners.

In *Ruiz*, Mr. Ruiz sustained injuries when part of a tree fell on a vehicle he was driving on a rural mountain highway.[53] The tree was located within an RMZ.[54] Mr. Ruiz sued the State and

[53] *Id.* at 456.

[54] *Id.*

Hancock Natural Resource Group Inc. ("Hancock"), a timber management company similar to SPI.[55]

White River Forests LLC owned the land adjacent to where Ruiz's accident occurred.[56] Hancock—the entity similar to SPI— managed and controlled the property, including the cutting and selling of timber, but did not own the land.[57] Hancock applied to the DNR to harvest timber in the area in 2004.[58] DNR approved the application and Hancock retained a contractor to harvest the timber, just as in the instant lawsuit.[59]

Mr. Ruiz contended that Hancock was not a "forestland owner" under the statute and therefore not immune from liability.[60] Mr. Ruiz also asserted that the State and Hancock were not immune because they knowingly created a dangerous

---

[55] *Id.*
[56] *Ruiz*, 154 Wn. App. at 456.
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.* at 457.

condition that proximately caused the injury.[61] The Court of Appeals held that Hancock was clearly a "forestland owner" as defined in the statute, and that Mr. Ruiz's argument was "without merit."[62]

The Court held that Ruiz's claims were barred by the immunity statute's "very broad sweep" and the legislature's grant of immunity to those required to obey the State's RMZ decisions:

> It is clear that the State has asserted its immunity and extended that immunity to those required to obey its dictates in the area of forest practices.[63]

Narrow interpretation of RCW 76.09.330. The *Ruiz* Court rejected the argument, made both in the instant appeal and in *Ruiz*, that forestland owners may be held liable for creating a dangerous condition by leaving exposed trees at the edge of the

---

[61] *Id.*

[62] *Id.* at 461.

[63] *Ruiz*, 154 Wn. App. at 460 (citing RCW 76.09.330).

RMZ.[64] But the Court of Appeals in the instant case held that creating forest-edge effects is not protected by the statute:

> The choice to permit SPI and Precision to log all trees in Unit 2, and to designate an RMZ without a wind buffer, *rendered the RMZ trees vulnerable to forest-edge effects.* These acts are distinct from the decision to leave the RMZ trees standing, and, under the plain language of the statute, are not immunized. For these reasons, the State is not entitled to immunity under RCW 76.09.330 as a matter of law on these claims.[65]

There is no meaningful difference between "create[ing] a dangerous condition by leaving exposed trees at the edge of a riparian zone" (*Ruiz*[66]) and "render[ing] the RMZ trees vulnerable to forest-edge effects" (instant case[67]). The plain language of RCW 76.09.330 immunizes forestland owners from liability for damages "resulting from these action***s***" (emphasis added) but the Court of Appeals restricted immunity to only one

---

[64] *Ruiz*, 154 Wn. App. at 459 (emphasis added).

[65] *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, 534 P.3d at 1218–19 (emphasis added).

[66] 154 Wn. App. at 459

[67] *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, 534 P.3d at 1218

action: "the ***decision*** to leave the RMZ trees standing."[68] RCW 76.09.330 is much broader than that.

Forestland Owner. The Court of Appeals' decision also conflicts with *Ruiz*'s interpretation of Forestland Owner. The Court reasoned that SPI and PFI did not have the right to harvest in the RMZ and therefore they are not forestland owners of the RMZ. SPI's counterpart in *Ruiz*, Hancock, did not have the right to harvest the RMZ trees but the Court still held it was immune from liability.

SPI is just like Hancock. Hancock requested permission from DNR to harvest timber from land to which it lacked title.[69] Hancock also lacked the right to harvest RMZ trees. DNR approved the request but forbade Hancock from cutting timber in the RMZ.[70] The *Ruiz* Court held that Hancock was a forestland owner: "It is clear that Hancock was in actual control of the forest

---

[68] *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, 534 P.3d at 1218–19.

[69] *Ruiz*, 154 Wn. App. at 456.

[70] *Id.*

land and had the right to sell or otherwise dispose of the timber."[71] The Court rejected as "without merit" the plaintiff's argument that Hancock "is not immune from suit because he was not a 'forest landowner' within the meaning of the statute."[72]

Like Hancock in *Ruiz*, SPI did not own title to any of the land it was harvesting. It also did not have the right to harvest RMZ trees, because it was proscribed by DNR. Rather, it had the right to cut trees in an area up to an RMZ. Hancock was immune from liability for injuries caused by a RMZ tree that DNR required it to leave standing.[73] SPI is immune for the same reason.

The Court of Appeals stated that it was merely distinguishing *Ruiz*, but its avoidance of the opinion (one paragraph of the Court's 17-page opinion is about *Ruiz*) belies the truth: the Court's opinion directly conflicts with *Ruiz.*

---

[71] *Id.* at 461.

[72] *Id*.

[73] *Ruiz*, 154 Wn. App. at 460.

VI. CONCLUSION

SPI petitions the Supreme Court to review *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State* because the Court of Appeals disrupted the certainty that RCW 76.09.330 and *Ruiz* gave to DNR and the timber industry.

This document contains 4718 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 27th day of November, 2023.

WAKEFIELD & KIRKPATRICK

By _____

Dan Kirkpatrick, WSBA 38674
Zach Parker, WSBA 53373
Noelle Symanski, WSBA 57022
David Ringold, WSBA 56756
Attorneys for respondent Sierra Pacific Industries, Inc.

CERTIFICATE OF SERVICE

I certify that on the date below I electronically filed the

SIERRA PACIFIC INDUSTRIES, INC'S PETITION FOR REVIEW with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant as follows:

Attorney for Appellants Barry and Kerry Chrisman:

Raymond J. Dearie, WSBA #28792
Drew V. Lombardi, WSBA #56997
Dearie Law Group 2025 First Avenue, Suite 1140
Seattle, WA 98121
rdearie@dearielawgroup.com
dlombardi@dearielawgroup.com
jzvers@dearielawgroup.com

Attorneys for Appellant Public Utility District No. 1 of Snohomish County:

Kit W. Roth, WSBA #33059
Christopher Huck, WSBA #34104
Goldfarb & Huck Roth Riojas, PLLC
925 Fourth Ave, Suite 3950
Seattle, WA 98104
roth@goldfarb-huck.com
huck@goldfarb-huck.com ritchie@goldfarb-huck.com trinh@goldfarb-huck.com

Attorneys for Respondent Precision Forestry, Inc.:

Jeffrey P. Downer, WSBA #12625

Donna M. Young, WSBA #15455
Lee Smart, PS, Inc.
1800 One Convention Place
701 Pike St
Seattle, WA 98101
jpd@leesmart.com
dmy@leesmart.com
kxc@leesmart.com
ttc@leesmart.com
pac@leesmart.com

Attorneys for Respondent State of Washington:

Thomas E. Hudson, WSBA #46855
Attorney for Respondent State
Department of Natural Resources
P.O. Box 40126
Olympia, WA 98504-0126
Thomas.Hudson@atg.wa.gov
Sharon.Klein@atg.wa.gov
Autumn.Nguyen@atg.wa.gov
Annya.Ritchie@atg.wa.gov

DATED this 27th day of November, 2023.

s/Erin Bour
Erin Bour Paralegal

WAKEFIELD & KIRKPATRICK PLLC

November 27, 2023 - 4:16 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Public Utility District No. 1 of Snohomish Co., et al., Apps v. State of Wa, et al., Resps (841661)

The following documents have been uploaded:

- PRV_Petition_for_Review_20231127161554SC951366_6736.pdf
  This File Contains:
  Petition for Review
  The Original File Name was SPI Petition for Review-FINAL.pdf

A copy of the uploaded files will be sent to:

- TortTAP@atg.wa.gov
- dlombardi@dearielawgroup.com
- dmy@leesmart.com
- dringold@wakefieldkirkpatrick.com
- gcastro@cityoftacoma.org
- huck@goldfarb-huck.com
- jpd@leesmart.com
- jzvers@dearielawgroup.com
- kcox@cityoftacoma.org
- kxc@leesmart.com
- nsymanski@wakefieldkirkpatrick.com
- rdearie@dearielawgroup.com
- roth@goldfarb-huck.com
- sandy@fmwlegal.com
- thomas.hudson@atg.wa.gov
- torolyef@atg.wa.gov
- zparker@wakefieldkirkpatrick.com

Comments:

Sender Name: Daniel Kirkpatrick - Email: dkirkpatrick@wakefieldkirkpatrick.com
Address:
17544 MIDVALE AVE N STE 307
SHORELINE, WA, 98133-4921
Phone: 206-629-5489

Note: The Filing Id is 20231127161554SC951366