

NO. 93381-2
Court of Appeals No. 33196-2-III (consolidated with No. 33239-0-III)

SUPREME COURT OF THE STATE OF WASHINGTON

CHELAN BASIN CONSERVANCY,

Petitioner,

v.

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

Respondents.

**STATE OF WASHINGTON'S RESPONSE
TO PETITION FOR REVIEW**

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 ORIGINAL

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I. INTRODUCTION

The State is a party to this case because the petitioner Chelan Basin Conservancy (CBC) claimed that a provision of the 1971 Shoreline Management Act (the SMA) is invalid. Specifically, CBC claimed that RCW 90.58.270 conflicts with the common law public trust doctrine. The court of appeals' ruling upholding this statute does not conflict with any decision by this Court or another. The Petitioner's claim under the public trust doctrine does not involve a significant constitutional question of law or question of public interest that needs to be addressed by this Court. The petition should be denied.

CBC made a claim for removal of fill on the shoreline of Lake Chelan based on *Wilbour v Gallagher*, 77 Wn.2d 306, 462 P.2d 232 (1969). That case ruled that certain fill in the waters of Lake Chelan was subject to removal because it interfered with public navigation rights. But *Wilbour* did not simplistically prohibit all past or present fill in all waters of the state. The Court explicitly recognized that a legislative branch should address when fill was allowed or not.

Wilbour thus created great uncertainty about the legality of filled areas used for residential, recreational, commercial, and industrial purposes across the state and sparked adoption of the SMA, RCW 90.58. See Geoffrey Crooks, *The Washington Shoreline Management Act of*

1971, 49 Wash. L. Rev. 423, 425 (1974). The SMA is best known today for authorizing planning and regulation of the uses of the waters and shorelines. But one provision, RCW 90.58.270, expressly limited future *Wilbour* actions by providing consent to impairment of navigation by certain historic fills—fills that were not trespassing or in violation of state laws.

CBC now claims this statute is invalid because the Legislature violated the public trust doctrine. This claim does not meet the criteria for review. First, CBC's argument does not claim there is a dispute over the legal standard for examining if legislation contradicts public trust doctrine restrictions. To the contrary, the court of appeals and CBC agree that such legislation is to be reviewed under this Court's case law starting with *Caminiti v. Boyle*, 107 Wn.2d 662, 732 P.2d 989 (1987). Thus, the Petition does not ask the Court to decide an open question of law; it asks the Court to reapply established law.

Second, CBC's attack on the statute does not present any significant questions warranting this Court's review. The statute intended, as Petitioner concedes, to limit when future litigants might otherwise rely on *Wilbour*. Indeed, the Court invited that type of legislatively given permission in *Wilbour*. There, the absence of governmental permission for a similar historic fill left this Court in a quandary. And the Legislature and

citizens who approved the SMA and RCW 90.58.270 had ample reason to consent to some historic fills. While every fill technically affects public trust interests in waters, fills can be consistent with the public trust interests. *Wilbour*, 77 Wn.2d at 316-17 and n.13.

In short, the statute in question has existed unchallenged for close to a half century. It implements the SMA's statewide control and management of shorelines and waters. CBC's theory that this component of the SMA exceeded legislative power by removing the potential of a *Wilbour* action for historic fills falls far short of showing a violation of our state's public trust doctrine. Given the case law that has long held that the SMA serves to implement the public trust doctrine, CBC's attack on the consent given by RCW 90.58.270 does not raise a question that warrants this Court's review.

II. IDENTITY OF RESPONDENTS

The State of Washington asks this Court to deny review of the court of appeals' June 14, 2016, decision terminating review.

III. COURT OF APPEALS' DECISION

The slip opinion is attached to the Petition.

IV. STATEMENT OF THE ISSUES

1. Did the court of appeals err when it determined that CBC's arguments regarding a single fill in Lake Chelan do not show that RCW 90.58.270(1) violates the public trust doctrine?

2. Did the court of appeals err by ruling that RCW 90.58.270 is intended to bar nuisance claims based on impairment of public rights of navigation against fill and development made before December 4, 1969, given the plain language and legislative history of the statute?

V. STATEMENT OF THE CASE

The State relies on the description of facts and procedural history provided in GBI Holding's response to the Petition for Review. The GBI brief fairly describes this case and the decision below. CBC's complaint was based on a theory that the fill in question could be abated for the same reasons given in *Wilbour*. The superior court gave summary judgment extending *Wilbour* to this site, notwithstanding the plain language and intent of RCW 90.58.270. The court of appeals reversed holding that RCW 90.58.270 precluded a *Wilbour* claim against this historic fill and that CBC's claim that the statute was invalid under the public trust doctrine as articulated by this Court in *Caminiti* and subsequent cases failed.

VI. REASONS WHY REVIEW SHOULD BE DENIED

CBC argues the court of appeals' decision presents a significant constitutional issue under RAP 13.4(b)(1) and conflicts with decisions of this Court under RAP 13.4(b)(3). As explained below, the decision does neither. Furthermore, all of the issues raised by CBC were thoroughly addressed by the court of appeals and concern a provision of the SMA that has generated little controversy since its enactment in 1971. Accordingly, review should be denied.

A. This Case Does Not Present a Significant Question of Law Under the State or Federal Constitution.

CBC argues that RCW 90.58.270(1) is invalid under the public trust doctrine, and, therefore, RAP 13.4(b)(3) supports review. CBC is incorrect on both counts. RCW 90.58.270 is valid, and CBC's claims do not present a significant constitutional issue.

As a preliminary matter, CBC's claims under the public trust doctrine do not involve a provision of the state or federal constitution. There are provisions of the state constitution that assert ownership over aquatic lands and protect harbor areas consistent with the public trust doctrine. *See* Const. art. XV, XVII. But the doctrine as argued by CBC does not involve constitutional text; it arises from the common law. *Caminiti*, 107 Wn.2d at 668 (“This *jus publicum* interest as expressed in

the English common law and in the common law of this state from earliest statehood, is composed of the right of navigation and the fishery”) (citations omitted). Moreover, CBC’s claims concern an area that was dry land to which the State never held title. Therefore, although the public trust doctrine applies to such waters, *Wilbour*, 77 Wn.2d at 315-16, CBC’s claim depends on common law. As such, the relevant criteria is whether the case involves a matter of significant public interest. RAP 13.4(b)(4). This case does not.

Enactment of RCW 90.58.270(1) in 1971 resolved a significant controversy concerning when *Wilbour* claims could be made to abate historic fill or development in navigable waters. The resolution provided by the statute as part of the SMA has been uncontroversial. In the 45 years since its enactment, the statute has not been the subject of a previous reported decision. CBC itself waited over 40 years to claim that the fill was causing a significant interference with public interests in removing the fill. In doing so, CBC did not focus on the significance of RCW 90.58.270 generally, but on its application to a single fill. Nothing in the case thus far suggests that CBC’s attack on the statute involves a question of broad importance to the general public. The issue is simply an argument raised in a local dispute over a few acres of long-established fill on the shore of Lake Chelan.

B. The Court of Appeals Correctly Applied *Caminiti* to Uphold RCW 90.58.270(1) Under the Public Trust Doctrine.

CBC's primary reason for review claims that the court of appeals should have found RCW 90.58.270(1) invalid based on this Court's analysis in *Caminiti*. This confirms how CBC's petition presents only a request for re-examination of settled law that does not merit review. Moreover, CBC's claim that *Caminiti* was misapplied does not withstand scrutiny.

The court of appeals agreed with CBC that when legislation is challenged under the public trust doctrine, the court must apply the test identified in *Caminiti*. Decision at 16, quoting *Caminiti*, 107 Wn.2d at 670 (emphasis added). But rather than consider how RCW 90.58.270 affects the public interest in navigable waters as called for by *Caminiti* and subsequent case law, CBC myopically focused on a single fill. Decision at 18-19. In doing so, CBC failed to properly evaluate the modest limits the public trust doctrine places on legislation. At most, the public trust doctrine "prohibits the State from disposing of its interest in the waters of the state in such a way that the public's right of access is substantially impaired, unless the action promotes the overall interests of the public." *Weden v. San Juan County*, 135 Wn.2d. 678, 698-99, 958 P.2d 273

(1998); *Rettkowski v. Dep't of Ecology*, 122 Wn.2d 219, 232, 858 P.2d 232 (1993) (citing *Caminiti*).

Therefore, just as *Caminiti* focused on the recreational dock statute as a whole, not whether a single dock authorized under the statute affected navigation, CBC's challenge to RCW 90.58.270(1) needed to examine the public interest in control and management of shorelines and navigable waters. Decision at 18; *Caminiti*, 107 Wn.2d at 672-74.

Properly applying *Caminiti*, the court of appeals relied on the dearth of evidence in the record showing that RCW 90.58.270 would have an impermissible effect on navigable waters generally. This fully supports the court of appeals' conclusion that CBC failed to show RCW 90.58.270 is invalid under the public trust doctrine.

In its Petition, CBC now recognizes that RCW 90.58.270(1) cannot be invalidated solely because the statute insulates a single fill from CBC's claims. Thus, CBC shifts focus to argue that "RCW 90.58.270(1) goes too far by granting blanket protection [for pre-December 4, 1969 fill]" Petition at 16. But despite this broad conclusion, the Petition still only repeats arguments concerning the single example of an isolated fill. *Id.* And, as to that example, CBC overstates the statute's effect by ignoring its limitations and its role within the SMA.

The first step under *Caminiti* asks if the challenged statute conveys state control over the public interest or “*jus publicum*” in navigable waters. If not, there can be no violation. But even if the statute is found to convey control, the statute is still valid under the second step or third step of analysis: if it still promotes the overall public interest in navigable waters, or if it does not substantially impair the *jus publicum*. *Caminiti*, 107 Wn.2d at 672. This is a demanding standard that other challenges have failed to meet. Decision at 17. CBC’s challenge is no different.

1. The State Retains Adequate Control Over Public Trust Resources.

CBC’s analysis of *Caminiti*’s first step—whether “the state has retained adequate control over trust resources,” *Caminiti*, 107 Wn.2d at 672—misses the mark because it fails to acknowledge the statute’s limitations and overstates its effect. RCW 90.58.270(1) expressly consents to the effect on navigation, but only to fills and development that are not “in trespass or in violation of state statutes.” This consent has a very limited and narrow effect. It “precludes new *Lake Chelan*-type actions against most existing uses” as of December 4, 1969, but does “not preclude private challenges based on theories other than public rights of navigation.” Crooks, 49 Wash L. Rev. at 460-61. Thus, this statute is a far

cry from a situation where the State gives up control over significant public interests in waters.

Contrary to CBC's arguments, the court of appeals' decision is consistent with *Caminiti* with regard to this first point. There, the questioned legislation was valid in part because it did not convey title to any state-owned tidelands or shorelands. *Caminiti*, 107 Wn.2d at 672. Likewise, RCW 90.58.270(1) does not convey any state-owned aquatic lands. The proviso in RCW 90.58.270(1) makes clear that no consent is given to fill or development trespassing on public lands. Moreover, the statute does not cede control by allowing future fill or development—future fill or development will be controlled by plans and regulations of the SMA. Thus, the effect of the statute is restricted to property already filled or developed almost half a century ago, and the effect is limited to preventing a *Wilbour* action based on the absence of historic government consent. The minimal effect of this legislative action is shown by the fact that *Wilbour* challenges are rare. This case appears to be the first case in decades to rely on *Wilbour* and the first to complain that the statute barred a *Wilbour* action.

Moreover, a *Wilbour* challenge to historic fill is not automatically “good” or in the public interest. The *Wilbour* Court recognized this reality when it discussed how its ruling implied that development that may benefit

the public interest is subject to removal because it must be authorized under appropriate legislation, not by the courts. *Wilbour*, 77 Wn.2d at 316 n.13.

Therefore, even if barring *Wilbour* action for CBC is labelled as a loss of control under the *Caminiti* test, it is not a loss of control viewed in its proper context. The statute is part of the SMA, which dramatically *increased* public control over public trust interests in shorelines and waters. After RCW 90.58.270, the state and local government have significantly more tools to protect the *jus publicum*. The historic fill or development consented to by the statute must also now comply with SMA plans and local shoreline master program regulations designed to advance public trust values. *Caminiti*, 107 Wn.2d at 670-71 (SMA policy “will promote and enhance the public interest” in navigable waters) (citations omitted). Moreover, it is subject to the public powers to adopt goals and plans for restoration of shorelines as part of shoreline management under the SMA. WAC 173-26-186(8)(c).

2. RCW 90.58.270(1) Promotes the Public Interest in Navigable Waters.

RCW 90.58.270(1) is also valid under the second step of *Caminiti*'s test because the Legislature is entitled to determine that the statute promotes the public interest in navigable waters. CBC, however, urges the Court to accept review claiming that the State has provided no evidence the statute

promotes the public interest. Petition at 15-16. CBC's argument is incorrect and wrongly attempts to shift the burden of proof.

As the court of appeals noted, a challenge to a statute under the public trust doctrine cannot be easier than a challenge under the constitution. Decision at 17. It is well settled that statutes are presumed valid. *See School Dist. Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 559, 605, 244 P.3d 1 (2010) (statutes are presumed constitutional, and a challenger has a heavy burden). Here, as in the case of a constitutional challenge, "the burden of proving the invalidity of a statute rests with the challenging party." Decision at 17. *Wash. State Geoduck Harvest Ass'n v. Dep't of Natural Res.*, 124 Wn. App. 441, 447, 101 P.3d 891 (2004) (challenger of statute under public trust doctrine claim must demonstrate invalidity beyond reasonable doubt). Moreover, under normal rules of judicial review and deference, the validity of the SMA compared to public trust considerations should be judged based on the facts a legislature may reasonably assume to exist. *Cf. New Orleans v. Dukes*, 427 U.S. 297, 303-04, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976) (when reviewing legislation under the Fourteenth Amendment, "the judiciary may not sit as a super legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines"). In fact, that is what this Court did in *Caminiti*.

Caminiti, 107 Wn.2d at 673-74 (the statute “is a *practical recognition* that one of the many beneficial uses of public tidelands and shorelands is the placement of private docks on such lands so homeowners and their guests may obtain recreational access”) (emphasis added).

Thus, although CBC complains about how the statute provided consent to avoid *Wilbour* challenges to all pre-1969 fill, it offers nothing beyond its observation that a single fill in Lake Chelan displaces water that could be used for boating or swimming. This argument does not confront the burden poised by *Caminiti*. It is beyond dispute that development in navigable water can benefit the public interest in navigation. *E.g.*, *Harris v. Hylebos Indus., Inc.*, 81 Wn.2d 770, 778, 505 P.2d 457 (1973) (“common observation should reveal that unless deep water can be reached conveniently for the loading of vessels, commerce by water is seriously hampered.”). *Wilbour* recognized that fills and development “would be desirable and appropriate” in many places and acknowledged the need for a statutory decision. *Wilbour*, 77 Wn.2d at 316 n.13.

Given the cloud created by *Wilbour*, the Legislature reasonably concluded that limiting *Wilbour* claims in favor of an SMA regulatory regime authorizing planning and regulation that promotes public trust values—even for historic development and fills—promotes the overall

interest of the public in navigable waters. Thus, for multiple reasons, the court of appeals rightly concluded that CBC had not met its burden.

3. RCW 90.58.270(1) Does Not Substantially Impair the *Jus Publicum*.

Finally, review is unwarranted because CBC's claim does not involve a substantial impairment of the *jus publicum* as required by the third step in *Caminiti*. As discussed above, the statute's intended effect of limiting *Wilbour* is insignificant because *Wilbour* claims are infrequently brought and may not benefit the *jus publicum* at all. CBC's claims also fail because they rely entirely on a flawed analysis regarding the effect of a single fill.

Again, CBC's argument is misdirected. Quoting the superior court, CBC argues "it is undisputed that public access to the lake is impaired and the existence of the fill wholly obliterated the ability to utilize that portion of the lake for navigation and recreation." Petition at 16. Under CBC's approach, any square yard of fill would be a substantial impairment, and the *Caminiti* Court should have invalidated the statute that allowed docks in public waters.

But the *Caminiti* test is derived from the United States Supreme Court case *Illinois Central*. Under that case, it takes an extraordinary default by the legislative branch to violate the public trust doctrine. To

show this, the Court explained that normal legislation affecting waters would be valid under the doctrine:

It is grants of parcels of lands under navigable waters, that may afford foundation for . . . structures in aid of commerce, and grants of parcels which, being occupied, do not substantially impair the public interest in the lands and waters remaining, that are chiefly considered . . . in the adjudged cases as a valid exercise of legislative power . . .

Illinois Cent. R.R. v. Illinois, 146 U.S. 387, 452, 13 S. Ct. 110, 118, 36 L. Ed. 1018 (1892) (emphasis added).

Consistent with *Illinois Central*, this Court has already recognized that the test for substantial impairment is thus whether the public interest in the lands affected “can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.” *Weden*, 135 Wn.2d at 699 (emphasis added). The court of appeals correctly ruled that CBC failed in this regard. Other than its misdirected argument that fill displaces navigation on the site of the fill itself, CBC offers nothing to show a substantial impairment in Lake Chelan. And it cannot show how the statute’s barrier to some *Wilbour* claims substantially impairs the *jus publicum* for the navigable waters of the state.

C. The Court of Appeals’ Decision Does Not Conflict With This Court’s Decision in *Grundy*.

CBC next asserts that review is appropriate under RAP 13.4(b)(1), claiming the decision below is contrary to a footnote in *Grundy v.*

Thurston County, 155 Wn.2d 1,7 n.5, 117 P.2d 1089 (2005). Petition at 17, 19. This claim contradicts CBC's own analysis of RCW 90.58.270(1) and amounts to no more than re-argument of issues of statutory interpretation thoroughly addressed by the court of appeals.

As the court of appeals' decision found, the plain language and legislative history of RCW 90.58.270 fully support its conclusion that the statute is intended to bar *Wilbour* claims against historic fill. Decision at 11-12. The paramount rule of statutory interpretation requires courts to "determine and give effect to the intent of the legislature." Decision at 11 (citations omitted). To do so, courts first look to the statute's plain meaning, gleaned from the language of the statute and related statutes. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). If there is ambiguity, a court may "look to legislative history for assistance" Decision at 11, quoting *State v. Evans*, 177 Wn.2d 186, 193, 298 P.3d 724 (2013).

Looking to the language of the statute, the court of appeals reasoned that RCW 90.58.270(4), which applies the statute to "any case . . . relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights," confirms that the Legislature intended the statute to bar such claims for removal. Decision at 12. In addition, as the court of appeals found, and

CBC admits, the legislative history of RCW 90.58.270 demonstrates “a clear intent to eliminate *Wilbour*-type suits for preexisting fills.” Decision at 12-13 (citing 1 Senate Journal, 42 Leg., 1st Ex. Sess., at 1411 (Wash. 1971); Petition at 14-15 (same). The decision of the court of appeals is thus fully consistent with the established rules of construction and the intent clearly expressed in legislative history.

Despite its admission that the clear intent of RCW 90.58.270(1) is to bar *Wilbour* claims for historic fills, and its argument that review is appropriate because RCW 90.58.270(1) provides “a blanket authorization for pre-December 1969 development and fills” in violation of the public trust doctrine (Petition at 13-16), CBC next argues such an interpretation is contrary to the proviso in RCW 90.58.270(1). Petition at 19-20. Here is where CBC claims a conflict with *Grundy* and the rule that a lawful activity may be a public nuisance when conducted in an unreasonable manner in some circumstances. Petition at 16-19, citing *Grundy*, 155 Wn.2d at n.5. CBC’s attempt to manufacture a conflict with a footnote in *Grundy* is without merit because it relies on an unreasonable interpretation of the statute, inconsistent with CBC’s own admissions.

CBC ignores the nuisance law in RCW 7.48.160, which provides “[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance.” Under this black letter law, the

Legislature may limit nuisance claims through express authorization of activity. It has often done so. *See, e.g.,* RCW 7.48.305 (“agricultural activities . . . and forest practices . . . established prior to surrounding nonagricultural and nonforestry activities, shall not be found a nuisance . . .”). Applying the language and history, the court of appeals correctly found that the Legislature intended to do so in RCW 90.58.270.

As the court of appeals found, RCW 90.58.270 expressly consents to any impairment of public rights of navigation by certain historic fill and development. Thus, as the court concluded, the rule that lawful activity may become a public nuisance has no application to CBC’s claims based on impairment of navigation rights. Decision at 15-16. Not only is there no conflict with *Grundy*, this reasoning is consistent with long-established precedent under RCW 7.48.160. *Judd v. Bernard*, 49 Wn.2d 619, 621, 304 P.2d 1046 (1956) (killing of fish by agency is not a nuisance if authorized by statute for management purposes); *cf. Grundy*, 155 Wn.2d at 11 (Fairhurst, J. concurring) (“RCW 7.48.160 does not bar . . . nuisance claims because the seawall, while it may have been lawful, was not expressly authorized by statute.”); *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 281, 337 P.3d 328 (2014) (RCW 7.48.160 does not apply to noise from club, as it is not expressly authorized by statute).

In a final argument, CBC claims the court of appeals' construction of RCW 90.58.270(1) fails to give meaning to the statute's proviso. Petition at 19-20. Under the court of appeals' decision, however, "[c]laims can still be made for trespass or violation of state statutes" consistent with the language of the proviso. Decision at 14. The limitation on such claims is that they cannot be based on the lack of consent to an impairment of public navigation rights as in *Wilbour*. *Id.* CBC's reliance on the proviso is particularly illogical since the CBC argument would have the proviso swallow the statute and leave it with no effect.

By preventing CBC's "end run" around the statutory consent, the court of appeals' construction follows the established rules of construction that statutes be read in context and to avoid absurd results. *See Estate of Bunch v. McGraw Residential Ctr.*, 174 Wn.2d 425, 433, 275 P.3d 1119 (2012) (examining "[t]he context of the statute, together with our duty to avoid absurd results"). In doing so, the decision also follows the long-established rule that "[p]rovisos operate as limitations upon or exceptions to the general terms of the statute to which they are appended and as such, generally, should be strictly construed with any doubt to be resolved in favor of the general provisions, rather than the exceptions." *State v. Wright*, 84 Wn.2d 645, 652, 529 P.2d 453 (1974), *quoted with approval in Wash. State Legis. v. Lowry*, 131 Wn.2d 309, 327, 931 P.2d

885 (1997). This construction of the statute is straightforward and does not present a question that meets the criteria of RAP 13.4(b).

VII. CONCLUSION

CBC's Petition does not raise a significant constitutional issue or question of broad public interest. It seeks to reargue its case after the court of appeals properly applied established precedent to uphold a provision of the SMA. That provision has generated little controversy in the near half century since its enactment. Review should be denied.

RESPECTFULLY SUBMITTED this 15th day of August, 2016.

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on the following parties or their counsel of record on August 15, 2016, as follows:

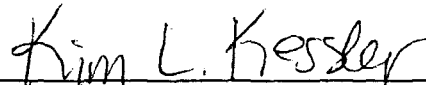
<p>Michael W. Gendler GendlerLaw PLLC 5006 Greenwood North Seattle, WA 98103 gendler@mickeygendler.com</p> <p><i>Attorney for Petitioner Chelan Basin Conservancy</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>
<p>Russell J. Speidel David J. Bentsen Speidel Law Firm PO Box 881 Wenatchee, WA 98807-0881 russ.speidel@speidellaw.com david.bentsen@speidellaw.com</p> <p><i>Attorneys for Petitioner Chelan Basin Conservancy</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>
<p>Markham A. Quehrn David S. Steele Perkins Coie LLP 10885 NE Fourth Street, Suite 700 Bellevue, WA 98004-5579 MQuehrn@perkinscoie.com DSteele@perkinscoie.com</p> <p><i>Attorneys for Respondent GBI Holding Co.</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>

<p>John Kirk Bromiley Bromiley Law, PLLC 227 Ohme Garden Road Wenatchee, WA 98801-9047 kirk@bromileylaw.com</p> <p><i>Attorney for Respondent GBI Holding Co.</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>
<p>Nick Lofing Davis, Arneil Law Firm, LLP PO Box 2136 Wenatchee, WA 98801 nick@dadkp.com</p> <p><i>Attorney for Respondent City of Chelan</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>
<p>Allan Galbraith Allan Galbraith, PLLC 949 Wheeler Hill Road Wenatchee, WA 98801-9705 allan@hillatty.com</p> <p><i>Attorney for Respondent City of Chelan</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>
<p>Kenneth W. Harper Menke Jackson Beyer Ehlis & Harper LLP 807 North 39th Avenue Yakima, WA 98902 kharper@mjbe.com</p> <p><i>Attorney for Respondent City of Chelan</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>

<p>Erik K. Wahlquist PUD No. 1 of Chelan County PO Box 1231 Wenatchee, WA 98807-1231 erik.wahlquist@chelanpud.org</p> <p><i>Attorney for Chelan County PUD No. 1</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>
<p>John Maurice Groen Pacific Legal Foundation 930 G Street Sacramento, CA 95814-1802 jmg@pacificlegal.org</p> <p><i>Attorney for Amicus Curiae Pacific Legal Foundation</i></p>	<p><input type="checkbox"/> U.S. Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> State Campus Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> ABC Legal Messenger <input type="checkbox"/> FedEx Overnight <input checked="" type="checkbox"/> Email</p>

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

DATED this 15th day of August, 2016, at Olympia, Washington.



KIM L. KESSLER
Legal Assistant
Natural Resources Division

OFFICE RECEPTIONIST, CLERK

From: Kessler, Kim (ATG) <KimS2@ATG.WA.GOV> *No attachment*
Sent: Monday, August 15, 2016 3:13 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: gendler@mickeygendler.com; russ.speidel@speidellaw.com; david.bentsen@speidellaw.com; allan@hillatty.com; nick@dadkp.com; kharper@mjbe.com; erik.wahlquist@chelanpud.org; jmg@pacificallegal.org; mquehrn@perkinscoie.com; dsteele@perkinscoie.com; kirk@bromileylaw.com; Pruitt, Terry (ATG)
Subject: Chelan Basin Conservancy v. GBI Holding Co., et al.; Supreme Court No. 93381-2; Court of Appeals No. 33196-2-III

Dear Clerk of the Court:

Attached is Respondent State of Washington's Response to Petition for Review to be filed in the above-referenced case:

Chelan Basin Conservancy, Petitioner, v. GBI Holding Co., State of Washington, and City of Chelan, Respondents
Supreme Court No. 93381-2
Court of Appeals No. 33196-2-III (consolidated with No. 33239-0-III)

Filed by:

Terence A. Pruitt, WSBA No. 34156
Jay D. Geck, WSBA No. 17916
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Kim Kessler
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From: Kessler, Kim (ATG) <KimS2@ATG.WA.GOV>
Sent: Monday, August 15, 2016 3:21 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: gendler@mickeygendler.com; russ.speidel@speidellaw.com; david.bentsen@speidellaw.com; allan@hillatty.com; nick@dadkp.com; kharper@mjbe.com; erik.wahlquist@chelanpud.org; jmg@pacificlegal.org; mquehrn@perkinscoie.com; dsteele@perkinscoie.com; kirk@bromileylaw.com; Pruitt, Terry (ATG)
Subject: RE: Chelan Basin Conservancy v. GBI Holding Co., et al.; Supreme Court No. 93381-2; Court of Appeals No. 33196-2-III
Attachments: DNR_RespPetitionReview_8-15-16.pdf

Document is attached. Sorry for the inconvenience.

From: Kessler, Kim (ATG)
Sent: Monday, August 15, 2016 3:13 PM
To: 'SUPREME@COURTS.WA.GOV'
Cc: 'gendler@mickeygendler.com'; russ.speidel@speidellaw.com; david.bentsen@speidellaw.com; 'allan@hillatty.com'; nick@dadkp.com; kharper@mjbe.com; erik.wahlquist@chelanpud.org; 'jmg@pacificlegal.org'; 'mquehrn@perkinscoie.com'; 'dsteele@perkinscoie.com'; 'kirk@bromileylaw.com'; Pruitt, Terry (ATG)
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Dear Clerk of the Court:

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Supreme Court No. 93381-2
Court of Appeals No. 33196-2-III (consolidated with No. 33239-0-III)

Filed by:

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