No. 999431

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

HOOD CANAL SHELLFISH COMPANY, et al.,

Respondents,

v.

STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES,

Petitioner.

ANSWER TO PETITION FOR REVIEW AND CONTINGENT CROSS-PETITION

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I. INTRODUCTION AND IDENTITY OF RESPONDENTS

Hood Canal Shellfish Company, Earl James Iddings, Laure Iddings, and Lloyd Earl Iddings (collectively, the Iddings Respondents) ask this Court to deny the petition for review filed by the Washington State Department of Natural Resources ("DNR").

This case does not warrant the Supreme Court's attention. The proceedings are not finished, the factual record is not fully developed, and the questions DNR raises are highly fact-specific and relate to application of well-established doctrine. Specifically, DNR asks for review of the Court of Appeals' application of the summary judgment standard and the pleading standard for quiet title claims.[1] These standards do not raise complex legal questions that require resolution by the Supreme Court. The Court of Appeals' opinion is unpublished. This Court need not review application of settled law. The Court should instead let this litigation run its course on remand and, if there are appealable issues at that time, review them with a more fully developed record.

If (but only if) this Court grants DNR's petition, the Iddings Respondents ask that the Court also review the Court of Appeals' ruling that

[1] DNR also requests review of a *res judicata* issue that relates to Respondent Virgil Timmerman but does not relate to the Iddings Respondents. The Iddings Respondents join Mr. Timmerman's Answer regarding the issue.

extrinsic evidence may not be considered in determining tideland ownership. That ruling is contrary to this Court's holdings and wrong.

II. ISSUES PRESENTED

A. May upland ownership be resolved in an action that raises no claim of title except as to disputed tidelands?

B. Was DNR entitled to summary judgment despite genuine issues of material fact raised by the survey it submitted?

C. May extrinsic evidence be considered in determining lateral tideland boundaries?

III. STATEMENT OF THE CASE

A. Factual Background

This case arises from a dispute over the ownership of tidelands in Dewatto Bay, which is part of Hood Canal in Mason County, Washington.

Several members of the Iddings family own upland parcels that abut Dewatto Bay. Marlene Iddings owns and resides upon the parcel immediately adjacent to the tidelands (Mason County Tax Parcel 32328-42-00010). CP 220. Laure and Lloyd Earl Iddings own the upland property immediately to the east (Mason County Tax Parcel 32328-42-00040). CP 2572–74, 308. DNR now owns the parcel to the east of Laure and Lloyd Earl Iddings' upland property.

The Iddings Respondents own the aquatic tidelands parcel (Mason County Tax Parcel 32328-42-70280) that is adjacent to both the Iddings' upland parcels and DNR's property. CP 147–54, 226–30. The Iddings family acquired the tidelands from Therese Reidell. CP 220–21. Ms. Reidell purchased an upland parcel on the shore of Dewatto Bay in 1933. CP 1081–82. At the time of her purchase, the upland parcel adjacent to her property to the east was owned by the North Mason County School District No. 403 (the "School District"). CP 1064–66. The School District transferred the property to DNR in 1982. CP 2575.

On February 23, 1937, Ms. Reidell filed an application with the Department of Public Lands ("DPL") to purchase the tidelands—specifically, both second class tidelands and vacated oyster reserves in front of the western half of Government Lot 5. CP 161. In her application, she sought to purchase tidelands adjacent to both her uplands and the uplands owned by the School District. *Id.*

Ms. Reidell refiled her application on September 18, 1946, again asking to purchase the tidelands and vacated oyster reserves in front of her uplands. CP 864–66. A note from Chief Engineer Raymond Reed on Ms. Reidell's application represented the sole limitation on the scope of Ms. Reidell's request for tidelands in front of her property: "Deed V.4P.271 under App. 2561, covering portion of these lands above mean low tide in fr.

pt. Lot 5, to be excepted from tide lands and vacated oyster reserve lands to be sold under this App. 11330." CP 866. Deed V.4P.271 refers to the State's conveyance of the Murray Tidelands to James Murray in 1903, later purchased by Virgil Timmerman. CP 868.

On October 30, 1946, Ms. Reidell submitted an updated application form with an affidavit of upland ownership. She described the requested tidelands as including the "small rise at some distance from silt-wash" where clams and oysters were present. CP 870–71. This referred to the oyster spit DNR falsely claims is a "public beach."[2] On November 18, 1946, Ms. Reidell submitted a hand-drawn map of the requested tidelands. CP 198–200. Ms. Reidell also submitted an affidavit from the Mason County Auditor, confirming the legal description of her upland property. CP 872. On November 23, 1946, Commissioner Case responded, stating "[i]t is likely that this map will be of considerable assistance to us in processing your application." CP 202.

On May 20, 1947, Commissioner Case confirmed that Ms. Reidell's application covered "the major portion of the vacated oyster reserve in front of the W1/2 of said lot 5 . . . ." CP 886. The adjacent property owner at the time, the School District, filed no objection to her application.

[2] DNR describes its alleged use of the disputed tidelands over the years. DNR Petition at 1, 5. DNR's allegations are sharply disputed.

DPL summarized Ms. Reidell's purchase request in a staff report prepared by Mr. Reed. CP 210–11. This April 11, 1947, report confirmed that the requested tidelands included the "small rise" referenced in her application. *Id.* On August 12, 1947, DPL approved Ms. Reidell's application. CP 891–92. The Order confirmed that DPL intended to convey "such tide lands as lie in front of a tract of uplands owned by Therese D. Reidell on November 18, 1946." CP 892. DPL confirmed that the lineal frontage of Ms. Reidell's upland property was 5.76 lineal chains.[3] CP 216. On August 28, 1947, the Governor signed the deed conveying the tidelands, with the same legal description and declaration of intent, to Ms. Reidell (the "Reidell Deed"). *Id.*

Following Ms. Reidell's death, in a letter dated February 2, 1956, Commissioner Case described the scope of Ms. Reidell's tideland purchase to her estate's probate attorneys as follows:

> On September 24, 1946, Mrs. Theresa [sic] A. Reidell applied for purchase, under preference right as the abutting upland owner, the majority of the second class tidelands and vacated oyster reserve lands in front of the W1/2 of lot 5, section 28, township 23 north, range 3 west, W.M. with application No. 11330. On August 28, the following year, Deed No. 19670 granted her those second class tidelands and vacated oyster reserve in front of the W1/2 of said lot 5. Excluded from Mrs. Reidell's purchase were the tidelands conveyed to Mr. James Murray in 1903 with application No.

[3] A lineal chain is equivalent to 66 feet. *See* COA Reply Brief of Iddings Petitioners at 22 n.10.

> 2561. Cheif [sic] Engineer, Raymond Reed, had identified the tidelands conveyed to James Murray as extending to mean low tide and northeast of the second class tidelands and vacated oyster reserve conveyed to Theresa [sic] D. Reidell.

CP 218. On February 16, 1959, Lloyd and Marlene Iddings purchased Ms. Reidell's property, including the tidelands as described in the Reidell Deed. CP 898–99.

Since buying the tidelands, the Iddings family has used them as their own, including harvesting oysters and enjoying the spit for recreation. CP 1043. Members of the Iddings family have also owned Mason County Tax Parcel 32328-42-00040 since Lloyd and Marlene Iddings purchased the uplands in 1959 from Ms. Reidell's estate. CP 898–99. In 2011, Lloyd Earl Iddings and Laure Iddings acquired sole ownership of Tax Parcel 32328-42-00040. CP 2572–74. Part of their property is a water system that provides water to their property and other Iddings family properties, as established through a 1974 Water Rights Claim filed with the Washington State Department of Ecology. CP 1835.

In 2013 DNR first notified the Iddings Respondents of its ownership claim. CP 922–26, 1044. DNR now claims that the correct property boundaries are set forth in a survey prepared for the State in 2016 by Sitts & Hill Engineers, Inc. (the "DNR Survey"). CP 2554–55. The DNR Survey concludes that the eastern boundary of the uplands property owned by Laure

and Lloyd Earl Iddings is located near a "base of the hill" west of a creek that feeds into Dewatto Bay. CP 2542. The Iddings Respondents commissioned a survey by Terrell Ferguson. CP 1050. Mr. Ferguson concludes that, based upon several senior deeds, the eastern boundary of the uplands property now owned by Laure and Lloyd Earl Iddings is located immediately southwest of the creek that divides their property from the School District property, now owned by DNR. CP 1053–55.

Mr. Timmerman engaged two other surveyors, Robert Wilson and James Thalacker, to review the DNR Survey and conduct a survey of the property owned by Mr. Timmerman. CP 670–708, 709–42. They identified a number of other surveying errors in the DNR Survey, including establishing a wrong meander corner, using the wrong defining features to establish the "headlands" and "cove" subject to "equitable apportionment," using the wrong methodology to establish high tide, and improperly bifurcating Mr. Timmerman's property for the purpose of "equitable apportionment." CP 674–83, 711–18.

B. Procedural History

The Iddings Respondents filed suit against DNR in 2015 seeking to quiet title in the tidelands and to recover damages for inverse condemnation. CP 38–95. DNR filed an answer and counterclaims against numerous tideland owners. CP 1–22. DNR sought to quiet title in the tidelands (but

not any upland property). *Id.* The Iddings Respondents filed a motion for partial summary judgment. CP 96–137. DNR also filed a motion seeking summary judgment "on its counterclaims to quiet title to certain tidelands in Dewatto Bay . . . ." CP 3439.

On May 8, 2019, the trial court granted summary judgment to DNR. The trial court found that DNR's survey accurately depicts the tideland and upland boundaries. CP 1663–69. Both the Iddings Respondents and Mr. Timmerman sought interlocutory review, which the Court of Appeals granted. CP 1794–1813.

In an unpublished decision, the Court of Appeals held that extrinsic evidence concerning tideland ownership may not be considered; that the tideland lateral boundaries should be determined pursuant to *Spath v. Larsen*; that DNR failed to properly plead a claim to quiet title ownership of its uplands parcel; and that there were questions of material fact regarding the tidelands boundary that precluded summary judgment in favor of DNR. The Court of Appeals remanded the case to the trial court to determine tideland boundaries consistent with its ruling.

IV. ARGUMENT

A. DNR's petition does not warrant review under RAP 13.4.

The portions of the Court of Appeals' decision that DNR seeks to have reviewed do not conflict with any decision of the Supreme Court or

published decision of the Court of Appeals. DNR requests review of basic evidentiary questions concerning a property dispute between adjoining owners, which are questions courts address every day and do not involve significant questions of constitutional law or questions of substantial public interest. The Court of Appeals determined that these questions were not significant enough to warrant publication and that they should be addressed and resolved by the trial court on remand. DNR's petition should be denied.

B. The Court of Appeals adhered to established law in concluding that DNR failed to plead a claim to quiet title to the uplands property.

The Court of Appeals held that it would not determine the boundaries of the uplands property. Because DNR failed to assert a claim to quiet title in the uplands property in its pleadings, that issue was not properly before the trial court. DNR admits it did not raise such a claim in its cross-complaint. Petition for Review, at 13. However, DNR argues that this should be excused because it raised these issues in its motion for summary judgment and the Iddings Respondents' response to its arguments constituted "implied consent."

DNR did not seek to quiet title to the uplands property in its motion for summary judgment. *See* CP 3439–40 (DNR "moves this Court for an Order pursuant to CR 56 granting summary judgment to DNR on its counterclaims to quiet title to certain *tidelands* in Dewatto Bay . . .")

(emphasis added). The Iddings Respondents never consented to any claim to quiet title in the uplands. On the contrary, they argued that the matter had not been properly pleaded by DNR. *See* CP 811 ("Further the upland property boundary between Lloyd Earl and Laure A. Iddings and DNR is outside the scope of the current litigation . . . as DNR has not sought to quiet title associated with any boundary dispute concerning their shared uplands boundary").

The case DNR cites, *Dewey v. Tacoma Sch. Dist. No. 10*, supports the Iddings Respondents' position. *Dewey* held that, when evaluating whether a claim has been properly pled, the court must consider whether the necessary elements can be inferred from *the complaint*, including "a demand for judgment for the relief to which he deems himself entitled." 95 Wn. App. 18, 23–24, 974 P.2d 847 (1999); *Kirby v. City of Tacoma*, 124 Wn. App. 454, 469–70, 98 P.3d 827 (2004). As DNR admits, its cross-complaint did not include any assertion of ownership to disputed uplands nor any claim for relief associated with quieting title to the uplands. "A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was the case all along." *Id.* at 26. The Court of Appeals' decision does not conflict with *Dewey*.

DNR argues that both parties sought court approval of their respective surveys, which included a delineation of the upland boundary. But a court's recognition of a survey is not the same as a legal claim to quiet title. A property survey is a useful element to establish ownership, but it is not a legal claim of ownership, particularly when the party seeking validation of the survey does not plead any such claim. DNR's failure to properly plead a claim for quiet title of the uplands property deprived the Iddings Respondents of the opportunity to conduct discovery on the issue and to raise an affirmative defense of adverse possession vis-à-vis the School District based on their use and recordation of water rights within the disputed upland property.

DNR argues that the Court of Appeals' decision conflicts with *Spath*. It does not. This is a pleading issue and raises no conflict with *Spath*. The issue is whether the upland boundaries were properly before the trial court, not how *Spath* should be applied. The Court of Appeals decided this procedural question correctly when it concluded that *Spath* could be applied without quieting title to the upland property.

Although DNR argues that determination of the upland boundary is an essential element of apportioning the tidelands pursuant to *Spath,* this is refuted by the plain language of *Spath. Hood Canal Shellfish Co., et al. v. State*, No. 53486-0-II, slip op., at 31 (Wash. Ct. App. June 2, 2021) ("Court

of Appeals Opinion"). The Court of Appeals pointed out that, although surveys *may* be relevant *for the determination of tideland ownership*, this does not mean that the court must necessarily quiet title in upland ownership to determine lateral tideland boundaries. Indeed, it is questionable whether the trial court will need to consider these issues at all given that the State identified the lineal frontage of Ms. Reidell's upland property at the time of the tideland sale as 5.76 lineal chains. CP 216.

DNR claims that the Iddings Respondents did not raise any issues of material fact regarding the delineation of upland boundaries. Wrong. *See* COA Opening Brief of Iddings Petitioners, at 40–50; COA Reply Brief of Iddings Petitioners, at 21. The most strenuous dispute related to the fact that DNR's expert relied upon deeds and a survey that did not exist at the time of the tideland sale to Ms. Reidell, and those deeds and survey contained a critical error in the property description as compared to the senior deeds. This error resulted in a different upland boundary delineation. CP 1054–55. As the Court of Appeals held, disputes between surveyors cannot be resolved on summary judgment. *Accord Rinehold v. Renne*, No. 98694-1, slip op. at 20 (Wn. July 29, 2021); J; *Kelly v. Tonda*, 198 Wn. App. 303, 312, 393 P.3d 824 (2017); *Lake Chelan Shores Homeowners Ass'n v. St. Paul Fire & Marine Ins. Co.*, 176 Wn. App. 168, 174–75, 313 P.3d 408 (2013); *Larson v. Nelson*, 118 Wn. App. 797, 810 n.17, 77 P.3d 671 (2003).

The Court of Appeals properly applied the pleading standard for quiet title actions when it concluded that DNR did not plead a claim to quiet title in the upland property. This does not conflict with *Spath* or any other case. Under RAP 13.4, there is no basis for the Court to accept review.

C. The Court of Appeals adhered to established law in concluding that genuine issues of material fact regarding the delineation of tideland boundaries precluded summary judgment.

DNR next argues that the Court of Appeals opinion conflicts with *Seven Gables Corporation v. MGM/UA Entertainment Company* because it relies on speculative evidence to deny summary judgment. 106 Wn.2d 1, 13, 721 P.2d 1 (1986). The Court of Appeals did not rely on speculative evidence, and it properly applied the summary judgment standard, so there is no conflict with *Seven Gables* or any other relevant authority. The Court of Appeals applied the ordinary summary judgment standard—a standard about which there is no dispute, and which the Court of Appeals is more than capable of applying correctly.

The Court of Appeals found that there was a genuine dispute of material fact about the delineation of tideland boundaries. As noted above, the Iddings Respondents' expert raised the issue that the DNR Survey relied upon deeds that did not exist at the time of the tideland sale to Ms. Reidell and that erroneously describe the boundary line. CP 1054–55. This error resulted in the DNR Survey depicting significantly less upland frontage for

the parcels owned by Ms. Reidell than the State determined at the time of sale. DPL concluded that Ms. Reidell owned 5.76 lineal chains of upland frontage. CP 216. The DNR Survey depicted only 3.94 lineal chains, or approximately 120 feet less. CP 2554. The genuine disputes of material fact in this case are supported by evidence, not speculation.

Mr. Timmerman's experts also opined that, even in the event that *Spath* were applicable (which it is not), the DNR Survey did not appropriately scale the apportionment, in that it must identify both headlands in Dewatto Bay and equitably apportion the entirety of Dewatto Bay. CP 682–83; CP 715–16. Further, the DNR Survey establishes the wrong delineation of ordinary high tide, which is the line used to determine the upland frontage used for "equitable apportionment." CP 678, 683; CP 717. Errors in this calculation would significantly affect the pro rata amount of tidelands provided to each tideland owner. These expert opinions are thoroughly discussed in three declarations from the Iddings Respondents' and Mr. Timmerman's expert surveyors.

The Court of Appeals raised serious concerns about the DNR Survey. The court noted that Mr. Timmerman's experts raised the issue that the DNR Survey established arbitrary limits for what was considered a "cove" subject to apportionment under *Spath.* Court of Appeals Opinion, at 28–29. The court also noted that the different surveys established material

factual differences that would affect how tidelands would be apportioned. *Id.* at 29. The court cited extensively to the testimony of Iddings Respondents' expert Terrell Ferguson, who identified the language of the senior deeds as controlling as compared to the later erroneous deeds relied upon by DNR's expert. *Id.* at 16. Further, the DNR Survey's improper evaluation of Mr. Timmerman's tideland boundary created a "domino effect" that affected the delineation of all other tidelands, including the Iddings Respondents', by awarding lineal frontage to DNR that should have been included in Mr. Timmerman's tidelands. At a minimum, the DNR Survey must be redone to exclude Mr. Timmerman's tidelands and recalculate apportionment accordingly.

These types of disputes may not be resolved on summary judgment. Where the nonmoving party provides a reasonable interpretation of the deed language and identifies that the boundary survey resulted in a distance significantly different than the distance call in the deed, such issues preclude summary judgment. *Rinehold v. Renne*, slip op. at 20. Here, the Iddings Respondents' expert opined that the DNR Survey erred in its interpretation of the terms "gulch" and "creek" in the deed, resulting in 120 feet less lineal frontage than that described in the Reidell Deed. These are issues that can be addressed only by the trial court on remand.

D. If the Court accepts review of any issue raised by DNR, it should review the Court of Appeals' exclusion of extrinsic evidence.

DNR's petition for review lacks merit. If, however, DNR's petition is granted—and only in that case—the Court should also review the part of the Court of Appeals' decision that is both consequential and wrong: its exclusion of extrinsic evidence in interpreting the tideland deed between Ms. Reidell and the State. The Court of Appeals' holding on this issue is contrary to this Court's decisions in *Berg v. Hudesman,* 115 Wn.2d 657, 801 P.2d 222 (1990), and *Rinehold v. Renne*, as well as Division One's decision in *Kelley v. Tonda,* 198 Wn. App. 303, 393 P.3d 824 (2017). Its analysis would preclude the admission of any extrinsic evidence to establish the boundaries of tidelands, *even in cases where such evidence shows a clear description of the tidelands sold*. The Court of Appeals' holding is also contrary to *Strand v. State*, 16 Wn.2d 107, 132 P.2d 1011 (1943), and it would allow the State to retake tidelands previously sold to private tideland owners.

1. The Court of Appeals' holding is contrary to *Berg v. Hudesman* and *Rinehold v. Renne*.

The Court of Appeals held that "where the plain language of the deed is unambiguous, extrinsic evidence will not be considered." Court of Appeals Opinion, at 22. In *Berg*, this Court considered and rejected this same rule. *Berg*, 115 Wn.2d at 669 ("We thus reject the theory that

ambiguity in the meaning of contract language must exist before evidence of the surrounding circumstances is admissible. Cases to the contrary are overruled"). The proper approach is set forth in *Kelley v. Tonda*:

> In *Berg v. Hudesman* . . . our Supreme Court rejected the theory that contract language must be ambiguous before evidence of the surrounding circumstances is admissible. Accordingly, we may consider extrinsic evidence to assist us in ascertaining the intent of the parties in entering into a contract, regardless of whether the language used in the writings is deemed ambiguous.

198 Wn. App. at 312. Extrinsic evidence may include the circumstances surrounding the agreement, statements made in preliminary negotiations, and subsequent conduct of the parties. *Id.* This Court recently reaffirmed this standard in *Rinehold v. Renne*: "In interpreting a deed 'it is the real intention of the parties, to be gathered from the writing, if possible, but, when necessary, by resort to the circumstances surrounding the entire transaction, that must control.'" *Id.* at 13 (quoting *Hirt v. Entus*, 37 Wn.2d 418, 428, 224 P.2d 620 (1950)).

The Iddings Respondents cited to extensive evidence in their motion for summary judgment and appellate briefs, but all such evidence was summarily dismissed by the Court of Appeals. Because this holding is contrary to *Berg* and *Rinehold*, it should be overturned.

2. The Court of Appeals misconstrued *Davidson* and *Pearl Oyster*.

The Court of Appeals cited *Davidson v. State*, 116 Wn.2d 13, 802 P.2d 1374 (1991), and *Pearl Oyster Co. v. Hueston*, 57 Wash. 533, 107 P. 349 (1910), for the proposition that extrinsic evidence is inadmissible when evaluating tideland ownership. Court of Appeals Opinion, at 22–23. But *Davidson* and *Pearl Oyster* do not discuss when extrinsic evidence may be considered by a court. The Court of Appeals reasoned that, pursuant to *Davidson* and *Pearl Oyster*, it must construe tideland deeds in favor of the State (which is always the original grantor of tidelands), rather than the general rule of construction where deeds are generally interpreted in favor of the grantee. *Id.* at 23. The court then held that these general rules of interpretation preclude any consideration of extrinsic evidence. *Davidson* and *Pearl Oyster* do not support such a leap.

In *Davidson*, the court compared the owners' reliance on ambiguous contractual intent with the intent of the Legislature in expressly granting the Harbor Line Commission the authority to designate harbor lines, even after it had granted tidelands. *Id.* at 23–25. The court held that the Legislature granted the State the authority to later delineate harbor lines. *Id.* at 20.

Tideland purchasers in *Pearl Oyster* contended that their deeds extended beyond mean low tide, but mean low tide was the waterward

boundary established by the Legislature for tidelands that could be sold by the State at that time. *Id.* at 537–38. The court properly rejected the purchasers' contention. Along the way, the *Pearl Oyster* court found it appropriate to consider extrinsic evidence when such evidence was not contrary to legislative authority. *Id.* at 538 ("when the character of the land was determined by the proper officer of the state before the deed issued . . . the state deed could not be collaterally attacked").

To be sure, both cases hold that questions of intent relevant to deed interpretation cannot override legislative restrictions associated with the delineation of the waterward boundary of tidelands. State officials may not sell property that they have no legislative authority to sell. But if statutory restrictions are not at issue, these cases have nothing to say about whether a court may examine extrinsic evidence of the parties' agreement.

Here, there was no statutory or other legal limitation on DPL's sale to Ms. Reidell of the tidelands between her uplands and extreme low tide. *Spath* did not prevent DPL from establishing lateral tideland boundaries as agreed upon by the parties at the time of the sale to Ms. Reidell. *See Spath v. Larsen*, 20 Wn.2d 500, 517–18, 148 P.2d 834 (1944). Indeed, the Court of Appeals clarified that it did not rely upon *Spath* to exclude the Iddings Respondents' extrinsic evidence. Court of Appeals Opinion, at 27.

The controlling authority in cases where a State grant does not exceed the State's statutory authority is *Strand v. State*, 16 Wn.2d 107, 119–120, 132 P.2d 1011 (1943). That case held that the State could not change the terms of its agreement to sell tidelands years after the sale. *See also State v. Sturtevant*, 76 Wash. 158, 166, 135 P. 1035 (1913) (holding that, despite construction of deeds in favor of grantor state, a deed should not be construed contrary to State's intent in making it, and the construction must avoid unjust and absurd consequences). When tideland boundaries are not defined by statute, the boundaries are determined "under the general rules of law as construed by the courts." *Id.* at 172. A court does not need to look to general canons of construction. If extrinsic evidence is properly considered, the only reasonable interpretation is that DPL sold Ms. Reidell the tidelands she requested.

V. CONCLUSION

DNR fails to show any basis for review under RAP 13.4(b). The Court of Appeals applied well-established, uncontroversial principles of law to the facts of this case. DNR's petition for review should be denied, and the case should be remanded to the trial court to complete the factual record and render a decision on the merits. If, nevertheless, this Court grants DNR's petition, it should also review the Court of Appeals' exclusion of extrinsic evidence in determining questions of tideland ownership.

DATED this 2nd day of August 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jessica Pitre-Williams, certify and declare under penalty of perjury under the laws of the State of Washington, that I am a citizen of the United States and a resident of the State of Washington, that I am of legal age, and that I caused the foregoing document to be served on all parties or their counsel of record via U.S. Mail or via the Court's e-filing system on August 2, 2021, as follows:

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DATED this 2nd day of August 2021.

s/ Jessica Pitre-Williams
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