

FILED
COURT OF APPEALS
DIVISION II
2017 APR 17 AM 11:47
STATE OF WASHINGTON
BY  No. 49806-5-11
DEPUTY

COURT OF APPEALS, DIVISION 2
OF THE STATE OF WASHINGTON

Kurt Kanam, Appellant

Dept of Natural Resources , Respondent

APPEAL BREIF

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Assignment of Error

1. The trial court erred in dismissing the case when the State attorney General was served and appeared in the case per 28 U.S.C. 5
2. The trail court erred when it failed to recognize that the Commerce clause of the United States Constitution deprive the State of jurisdiction over the Navigable Waters of The United States Article I, Section 8, **Clause 3** The Trial Court failed to recognize that the State of Washington does not own the ocean.
3. The Trial Court Failed to recognize that the Kikiallus Indian Nation vessel is protected under the Point Elliot Treaty of 1855 and subject to due process protection of this appeal when it destroyed the vessel and sold its contents for personal gain during this appeal.
- 4 The Trial Court failed to compel the State to issue a final decision on petitioners buoy permit when the State has stipulated the application is final. The trail court failed to recognize that petition relied upon an email from the

State stating that his buoy application was sufficient and under review.

Good morning, Kurt,

We got your Google map with Post-It notes showing the location of your buoy and utility building. We will add it to your file and continue our review.

Please note that your new contact for this mooring buoy review is Angie Hong. She is cc'd on this email.

Regards,
Stacy Birk
Mooring Buoy Program
Department of Natural Resources (DNR)
(360) 902-1068

5. The Trail Court failed to notice that the State destroyed and sold the contents of the sailboat in question while petitioners buoy permit was pending.

Issues Pertaining to Assignment of Error

Wether the the Pollution control hearing board and the State of Washington

Department of Natural resources represent by the State attorney general? And

wether the State attorney General appeared in this matter per 28 U.S.C. 5

Wether petitioner relied upon the Stacy Birk email assurance that his application

was complete? Wether the Point Elliot Treaty is in force and effect? Wether the

State of Washington owns the ocean?

Statement of the case

Petitioner appealed the pollution control hearing board decision by filling a lawsuit and serving it upon the State attorney General who responded. Per 28 U.S.C. 5 the State has appeared and service has been perfected.

Petitioner does not have a GPS device and Stacy Birk of the State DNR requested a google map picture instead which petitioner has supplied.

Therefor petitioner has paid his \$25 and completed his application and is entitled to a final decision on his application.

The Kikiallus Indian Nation has a right rely upon the *Point Elliot Treaty to Worcester v. Georgia*, 31 U.S. 515 (1832) to ensure access to the Navigable waters of the United States.

The United States is the Supreme authority over the navigable waters of the United States *Phillips Petrol v. Mississippi*, 484 US 469,480 (1988) and the State is without authority to seize and destroy for profit the vessel belonging to the

Kikiallus Indian Nation. This is because the State of Washington clearly does not own the ocean.

Conclusion

The Trial court erred when it dismissed Plaintiff's action. The judgment of dismissal should be reversed and the court should be instructed to order the state to make a final decision on plaintiff application. The Appeal court should declare that the STATE OF WASHINGTON does not own the ocean.



Kurt Kanam for Plaintiffs-Appellants

PROOF OF SERVICE

I certify that on the 15rd day of April 2017 the original foregoing Petitioner's Brief was deposited in the United States Post Office Olympia with first class postage prepaid thereon addressed to:

Appellate Court Administrator
950 Broadway Suit 300
Tacoma WA 98402

I further certify that on the 15rd day of April 2017 two (2) copies of the foregoing Petitioner's Brief were deposited in the United States Post Office at Olympia, with first class postage prepaid thereon addressed to:

Jenifer Morey
1125 Washington Street SE
PO Box 40100
Olympia WA
and
Jason Foust same address

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