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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

COOKE AQUACULTURE PACIFIC, LLC,

Appellant,

vs.

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES
and HILARY FRANZ, the Washington Commissioner of Public Lands,

Respondents.

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT
(Hon. Carol Murphy)

APPELLANT COOKE AQUACULTURE PACIFIC, LLC'S REPLY
BRIEF

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I. INTRODUCTION

This is a contract interpretation case arising from a landlord's decision to terminate a lease in violation of that lease's terms. To make its lease termination decision, the Washington Department of Natural Resources ("DNR") made factual determinations regarding Cooke Aquaculture Pacific, LLC's ("Cooke") 2015 lease for its Port Angeles fish farm (the "Lease"). DNR then applied those facts to the Lease, interpreted the Lease provisions, and drew legal conclusions. DNR's letter to Cooke, dated December 15, 2017 (the "Termination Letter"), outlines these factual and legal determinations. REC1756-57. This case is about whether that Termination Letter withstands legal and factual scrutiny.

In its Response Brief, DNR agrees that the Court should apply the standards of *Northwest Alloys, Inc. v. Department of Natural Resources*, 10 Wn. App. 2d 169, 447 P.3d 620, *review denied*, 194 Wn.2d 1019, 455 P.3d 138 (2020), and *Francisco v. Board of Directors of Bellevue Public Schools, District No. 405*, 85 Wn.2d 575, 537 P.2d 789 (1975). *See* DNR's Resp. Br., 17-20. The parties disagree about whether the Termination Letter constitutes an administrative or quasi-judicial decision, but the Termination Letter is clear. It contains no mention of DNR's public trust responsibilities or DNR's duties to protect aquatic lands—it simply interprets the Lease provisions. *See* REC1756-57. Such

interpretation is the purview of a court and the Termination Letter represents a plainly quasi-judicial decision.

DNR relies on cases that conclude that DNR's actions when it *makes* leases or contracts are administrative and are entitled to judicial deference. But these cases are inapplicable because DNR did not *make* a lease here—it interpreted provisions of an ongoing agreement to justify terminating a lease. DNR's decision was simply a landlord unjustly terminating a lease when its tenant became politically unpopular. If DNR's post-contracting determinations regarding interpretation of established lease provisions are administrative decisions, then DNR is shielded from accountability for its actions as a landlord and DNR's lessees are left with no meaningful contractual assurances. The law is clear that once DNR enters a contract, it must abide by the contract as if it were a private party. The superior court should have reviewed DNR's termination decision *de novo* consistent with the plain language of RCW 79.02.030.

II. ARGUMENT

A. The Dispute Between Cooke and DNR is One Between a Tenant and a Landlord.

This dispute arose after DNR abruptly, and without providing an opportunity to cure, terminated Cooke's lease for aquaculture lands via

letter dated December 17, 2017. REC1756-57. DNR claims that it “elect[ed]” to terminate the Lease “in the context of the strong public interest in public lands and DNR’s obligation to protect the public’s interest in these lands.” DNR’s Resp. Br., 44; CP647 (acknowledging termination was in response to “intense media attention, opposition from special interest groups and negative past experiences associated a [sic] specific use of aquatic lands.”). Not only is there no evidence in the record showing any threat to public trust lands by Cooke’s Port Angeles fish farm, but DNR never asserted this rationale in any of its termination-related correspondence.

DNR’s termination decision was the action of a landlord that no longer wanted its tenant. DNR knew at the time of its decision that to terminate the Lease, it needed to use the Lease terms. It reached for reasons to terminate in response to public pressure. This Court should preserve tenants’ contractual protections and afford no deference to DNR’s actions.

B. *Northwest Alloys* Does Not Shield All of DNR’s Aquatic Lands Leasing Decisions from Meaningful Judicial Review.

DNR argues that *Northwest Alloys* stands for the proposition that all its “aquatic lands leasing decisions” are administrative actions reviewable under an arbitrary and capricious standard. DNR’s Resp. Br.,

18-23. DNR’s conclusion is an improper expansion of *Northwest Alloys*, which addressed the limited issue of “the degree of deference owed to DNR’s decision denying consent to sublease.” *See Nw. Alloys*, 10 Wn. App. 2d. at 183. While this Court noted in *Northwest Alloys* the role of DNR in carrying out the public trust doctrine, it did not hold—or even consider the possibility that—the public trust doctrine warranted a blanket rule that DNR acts in its administrative capacity whenever it acts as a landlord of aquatic lands. *See id.* at 184-86.

The request to sublease at issue in *Northwest Alloys* was a request to substantially change the use of the land from a shipping terminal to a large coal export terminal, implicating the policies and purposes of aquatic lands. *Id.* at 174-75, 187-88. This Court narrowly held that “DNR is vested with the discretionary, administrative responsibility to *reject a bid to lease state lands* as the interests of the State or affected trust require.” *Id.* at 185 (emphasis added).

DNR is now asking this Court to ignore its *Northwest Alloys* holding and the long-standing precedent requiring courts to distinguish between administrative and quasi-judicial agency actions. *See Standow v. City of Spokane*, 88 Wn.2d 624, 629-30, 564 P.2d 1145 (1977) (separation of powers requires courts to distinguish between when agency acts in legislative/administrative capacity versus judicial capacity), *overruled on*

other grounds by State v. Smith, 93 Wn.2d 329, 610 P.2d 869 (1980).

Moreover, DNR suggests a precedent that would shield it from meaningful review whenever it acts as a landlord of aquatic lands and would prevent its aquatic lands tenants from enjoying the protections and benefits of executing an agreement. Such a holding forces aquatic lands tenants to accept a lease that reads: “Landlord may elect to terminate this agreement at any time, for any stated reason.”

C. DNR’s Termination Letter Shows It Was Acting in a Quasi-Judicial Capacity.

The two-page Termination Letter is a legal interpretation of the Lease, showing that DNR was acting in a quasi-judicial capacity. In that Termination Letter, DNR stated that, following inspection of the facility, it had discovered three defaults of the Lease: (1) a concrete float with some exposed Styrofoam; (2) some anchors, which rest on the seafloor to secure the net pen structures, located outside of the leasehold boundaries; and (3) two disconnected anchors and one compromised anchor chain. REC1756-57. DNR then interpreted the Lease provisions to make the legal conclusion that Cooke was not entitled to a cure period for any of these alleged defaults. *See id.*; Cooke’s Opening Br., 39-49. Specifically, DNR reasoned that the Lease had provided express cure periods for the Styrofoam and anchor location issues, which negated the Lease’s general

cure period provision. REC1756-57; *see* Cooke’s Opening Br., 39-41. It also reasoned that the anchor connection issues were an “Event of Default,” allowing for no cure period, because the issue occurred within six months of Cooke’s late October rent payment. REC1756-57; *see* Cooke’s Opening Br., 39-41.

As outlined in detail in Cooke’s Opening Brief, analysis of all four *Francisco* factors reveals that the Termination Letter was a quasi-judicial agency action and therefore RCW 79.02.030 requires de novo review. *See* Cooke’s Opening Br., 12-17. This Court applied the *Francisco* test in *Northwest Alloys* when it held that “DNR acted in its administrative capacity when it decided whether to grant or deny consent to sublease.” 10 Wn. App. 2d. at 184. The Court reasoned that courts do not approve requests for subleases in the first instance, “[n]or have courts historically managed aquatic lands held in public trust because that is a function DNR performs.” *Id.* at 186. The Court specifically identified DNR’s steps to assess the potential sublessee’s “suitability” by “[d]etermining whether Millennium had the financial soundness, environmental awareness, and business reputation to meet the obligations of the lease of state-owned aquatic lands held in public trust” *Id.*

This Court also focused on the legislative directives regarding DNR’s authority to review and approve subleases pursuant to RCW

79.02.280 and RCW 79.105.210(4). *Id.* The Court reasoned that “RCW 79.105.210(4) states, ‘The power to lease state-owned aquatic lands is vested in the department, which has the authority to *make leases* upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.105 through 79.140 RCW.’” *Id.* (emphasis changed from original). Because DNR acted pursuant to this legislative delegation of power to “make leases” when it reviewed the request for consent to sublease and the suitability of the proposed sublessee, the judiciary was required to defer to DNR’s expertise in carrying out that authority. *See id.*; *Francisco*, 85 Wn.2d at 578.

In *Northwest Alloys*, DNR was faced with the decision of whether to *make* a lease, via a sublease, allowing construction of the largest coal export facility on the West Coast. 10 Wn. App. 2d at 174-75, 187-88. The decision implicated far-reaching policies regarding the future of coal export in Washington at a time when coal production was a national controversy faced with mounting financial insecurity. *Id.* In contrast, DNR’s decision here regarded established rights under an active agreement. It was 2015 when DNR looked to the future and determined that it would renew Cooke’s lease. *See* REC4893-946; REC2415-45. At that time, DNR conducted an assessment similar to that conducted by DNR in *Northwest Alloys*, and it made a determination involving Cooke’s

future rights as a tenant and aquaculture policy. *See Nw. Alloys*, 10 Wn. App. 2d at 174. But when DNR terminated the Lease, it was interpreting the provisions of a contract made years prior, not exercising its statutory discretion to enter leases and determine the terms of those leases. *See id.*

D. DNR is Entitled to No Different Treatment in a Contract Dispute and Ordinary Principles of Contract Interpretation Apply.

Not all agency actions related to the management of public lands are pursuant to legislative authority and entitled to judicial deference. After an agency has entered into an agreement, such as a lease, it has made its commitment and the agency “is beholden to the terms of its lease,” just like any other party to an agreement. *Id.* at 185; *see, e.g., Metro. Park Dist. of Tacoma v. Dep’t of Nat. Res.*, 85 Wn.2d 821, 827-28, 539 P.2d 854 (1975) (When an agency “undertakes to dispose of public lands, either by lease or sale, . . . it will receive no better treatment than any two private individuals who bring their dispute before the courts for final resolution.”). While DNR “has the authority to *make leases upon terms, conditions, and length of time* in conformance with the state Constitution” and the applicable laws, it also has a duty to uphold the terms of the leases to which it commits. *See Nw. Alloys*, 10 Wn. App. 2d. at 187 (quoting RCW 79.105.210(4)) (emphasis changed from original). Its public trust duties do not excuse it from its contractual obligations. *See id.*

Once DNR enters a lease or sublease, the aquatic-lands statutes grant no specific authority to DNR regarding its performance under such lease. *See* RCW 79.105.130 (“The department may review and reconsider any of its official acts relating to state-owned aquatic lands *until such time as a lease . . . is made, executed and finally issued . . .*”) (emphasis added). Indeed, DNR cites to its statutory authority to manage aquatic lands, but not one of these statutes directs DNR’s performance under an existing lease or contract or concerns when to terminate an existing lease or contract. *See* DNR’s Resp. Br., 2 (citing RCW 79.105.200, RCW 79.36.355, ch 79.103 RCW, ch 79.105 RCW, ch 79.110 RCW, ch 79.125 RCW, ch 79.135 RCW, ch 79.140 RCW). As century-old Washington law holds, once DNR enters a lease, it acts outside of its administrative capacity and is treated as a private party to a contract. *See, e.g., State ex rel. Gillette v. Clausen*, 44 Wn. 437, 441, 87 P. 498 (1906) (asserting that in the context of existing contracts, “[t]here is not one law for the sovereign and another for the subject”); *State ex rel. Wash. Paving Co. v. Clausen*, 90 Wn. 450, 452, 156 P. 554 (1916) (“We have repeatedly held that in its business relations with individuals the state must not expect more favorable treatment than is fair between men.”).

In addition to and contrary to DNR’s assertion, ordinary principles of contract interpretation apply to DNR’s agreements, including that

ambiguous provisions are interpreted in favor of the grantee. DNR cites two cases for this proposition that address interpretation of statutes or agreements that impair public trust lands by allowing for disposition to private entities. In *Chelan Basin Conservancy v. GBI Holding Company*, 190 Wn.2d 249, 256, 413 P.3d 549, 552 (2018), the Washington Supreme Court analyzed the Savings Clause, which protected development of shores and tidelands made early in statehood without regard to public trust rights. Similarly, *Davidson v. State*, 116 Wn.2d 13, 20, 802 P.2d 1374, 1378 (1991), involved an action challenging the Harbor Line Commission's placement of the inner harbor line on a particular parcel. There, the Supreme Court stated that "ordinary rules of contract interpretation do not apply," citing caselaw regarding agency interpretation of undefined boundaries in deeds and land grants from the state. *Id.* The rule put forth by DNR provides extra protection of public lands when the state has granted ownership of those lands to private parties. It is entirely inapplicable here.

E. DNR's Argument that its Termination of Cooke's Lease Was an Administrative Decision Would Nullify RCW 70.02.030.

DNR's assertion that all its actions as a landlord taken pursuant to aquatic land leases are administrative actions renders RCW 70.02.030

meaningless. *Northwest Alloys* did not nullify RCW 79.02.030 and this Court should reject DNR's urging to do so here.

A party aggrieved by an agency's decision regarding an agreement to lease or purchase public lands may bring appeal to the superior court under RCW 79.02.030. As Cooke outlined in its Opening Brief, RCW 79.02.030 requires that the superior court conduct de novo review on the record. *Id.*; see Cooke's Opening Br., 10-12. Applying the separation of powers doctrine, courts have interpreted RCW 79.02.030's "de novo" language to control only when an agency acts in a quasi-judicial manner. *Yaw v. Walla Walla Sch. Dist. No. 140*, 106 Wash. 2d 408, 413, 722 P.2d 803, 806 (1986); see Cooke's Opening Br., 10-12.

Northwest Alloys is an example of reconciling the separation of powers limitation of RCW 79.02.030, while still giving the statute effect. In *Northwest Alloys*, this Court found that DNR's public trust responsibilities mandated that it exercise its discretion "when it decided whether to grant or deny consent to sublease." 10 Wn. App. 2d at 184. But this Court was clear that DNR was required to uphold its lease commitments by not unreasonably withholding consent and DNR's "discretionary, administrative responsibility to reject a bid to lease state lands" did not interfere with its other lease obligations. *Id.* at 185.

DNR now argues that under *Northwest Alloys*, DNR always acts in an administrative capacity when managing aquatic-lands leases. DNR’s Resp. Br., 18-20. But if every aquatic-lands decision made by DNR was made in its administrative capacity, RCW 79.02.030 would be meaningless. *Northwest Alloys* did not make RCW 79.02.030 meaningless, and the Court should avoid such a result here. See *Broughton Lumber Co. v. BNSF Ry. Co.*, 174 Wn.2d 619, 634, 278 P.3d 173, 181 (2012) (“[A] court must not interpret a statute in any way that renders any portion meaningless or superfluous.”).

F. DNR Provides No Authority for Its Proposition That All of Its Aquatic Lands Management Actions are Administrative.

In addition to improperly attempting to expand the holding of *Northwest Alloys*, DNR provides no authority for its proposition that all of its aquatic lands management actions are administrative. Like *Northwest Alloys*, all of the cases that DNR cites to support its assertion involve agency decisions regarding the use of land in the first instance, such as the granting of an easement, the granting of a lease, or the extension of a timber sale contract. None of DNR’s authorities apply judicial deference to an agency decision made under an existing contract.

DNR relies on *Hood Canal Sand & Gravel, LLC v. Goldmark*, 195 Wn. App. 284, 381 P.3d 95 (2016), *State ex rel. White v. Board of*

State Land Commissioners, 23 Wash. 700, 705, 63 P. 532 (1901), and *Malmo v. Case*, 28 Wn.2d 828, 836, 184 P.2d 40 (1947) to argue that DNR’s leasing decisions require judicial deference. See DNR’s Resp. B., 20-21. In *Hood Canal Sand & Gravel*, DNR negotiated an easement with the Navy over bedlands, precluding a gravel company’s pier project for which the company had submitted permit applications years earlier. 195 Wn. App. at 290-92. This Court concluded “that DNR had broad authority to *grant* an easement under RCW 79.36.355.” *Id.* at 300 (emphasis added). The Court noted that “chapter 79.110 RCW enumerates specific powers to *grant* certain easements, and separately, RCW 79.36.355 confers DNR authority to *grant* easements that are not otherwise provided in law.” *Id.* at 301 (emphasis added).

Like in *Northwest Alloys*, DNR’s decision in *Hood Canal Sand & Gravel* was regarding a *new* use of public lands which DNR was authorized to make under statute. See *id.*; *Nw. Alloys*, 10 Wn. App. 2d. at 184. The Court did not analyze the applicable standard of review in *Hood Canal Sand & Gravel*, stating only that the gravel company “cite[d] no facts and ma[de] no argument supporting the notion that DNR exercised any judicial or quasi-judicial functions.” 195 Wn. App. at 305.

Similarly, in a 1901 case, *State ex rel. White v. Board of State Land Commissioners*, 23 Wash. 700, 701, the Washington Supreme Court

set aside a writ of prohibition issued to challenge the decision of the board of state land commissioners to accept the bids for leasing from the highest bidders for three harbor area parcels at public auction. The Court reasoned that the language of the authorizing statute gave the board “full control relative to leasing . . . [and] [i]n leasing they are not acting without or in excess of their powers” *State ex rel. White*, 23 Wash. at 705. Again, the commissioners were *making* leases, not determining rights under existing leases.

Finally, DNR supports its assertion with *Malmo v. Case*, 28 Wn.2d 828, 184 P.2d 40 (1947). DNR’s Resp. Br., 21. But *Malmo v. Case* involved a decision by the Commissioner of Public Lands not to extend contracts made during World War II for the sale of poplar trees that had expired under the express terms of the contracts. 28 Wn.2d at 835. *Malmo v. Case* is another example of an agency decision regarding the *making* of a contract for a land use, not a decision under an ongoing agreement.

DNR also argues that “[e]xercising its discretion in administering leases under the aquatic lands statutes *is* how DNR carries out its public trust obligations.” DNR’s Resp. Br., 23 (*citing Pope Resources v. Dep’t of Nat. Res.*, 190 Wn.2d 744, 755, 418 P.3d 90 (2018)). But, again, the exercising of that discretion occurs when making or entering leases—as

Northwest Alloys and all other cases addressing this issue recognize. Once the lease is executed, nothing about the public trust doctrine excuses DNR from its contractual obligations. *See Nw. Alloys*, 10 Wn. App. 2d. at 187. DNR is then treated no differently than any other private party to a contract. Holding otherwise prevents meaningful review of DNR’s actions when it acts simply as a landlord and such a precedent would negate the protections and benefits—and therefore the very purpose—of entering a lease with DNR.

G. DNR was Bound by and Violated the Duty of Good Faith and Fair Dealing and This Court Can Review This Issue.

Contrary to DNR’s assertion, Cooke does not argue that the duty of good faith and fair dealing would “allow Cooke to continue violating the explicit terms of its Lease.” *See* DNR’s Resp. Br, 43. Cooke argues that DNR violated the duty of good faith and fairing dealing when it suddenly changed a well-established practice and then refused to provide an opportunity to cure. *See* Cooke’s Opening Br., 37-38.

Washington’s “context rule” requires courts to “consider the surrounding circumstances leading to the execution of the agreement . . . as well as the subsequent conduct of the parties . . . for the purpose of determining the parties’ intent.” *Berg v. Hudesman*, 115 Wn.2d 657, 666, 801 P.2d 222 (1990). The duty of good faith and fair dealing then assures

the parties that this “agreed common purpose” will be carried out with “faithfulness . . . and consistency with the justified expectations” of the parties. *Edmonson v. Popchoi*, 172 Wn.2d 272, 280, 256 P.3d 1223, 1227 (2011); *see also Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569, 807 P.2d 356, 360 (1991) (finding that the duty of good faith and fair dealing “obligates the parties to cooperate with each other so that each may obtain the full benefit of performance”).

The justified expectations here and the intent of the parties show that DNR’s termination decision was not aligned with the duty of good faith and fair dealing. First, after years of accepting late rent payments, DNR suddenly determined the practice was unacceptable. It provided an opportunity to cure that alleged default, and Cooke promptly cured. Then, it identified three issues at the facility that it alleged were defaults, one of which it had known about for years and which had even been discussed during lease negotiation years earlier. And, finally, DNR determined that the late rent payment, although cured within the stated time period, justified providing no opportunity to cure the three alleged defaults.

Cooke is not arguing that late rent payment should always be acceptable; it argues that after more than ten years of accepting late rent payments without complaint, it is a violation of the duty of good faith and fair dealing to suddenly decide that the practice is a default. Even more, it

is a violation of the duty of good faith and fair dealing to provide an opportunity to cure—which was exercised—and then use that cured default to justify denying Cooke a right to cure other alleged defaults.

Regarding anchor locations, DNR argues that it never waived its alleged “right” to have the anchors within the lease area. DNR’s Resp. Br., 27-28. But the context of the agreement shows that the parties never intended to include the anchors within the lease boundaries. *See Berg*, 115 Wn.2d at 666; Cooke’s Opening Br., 44-46; CP588-589; CP593-94. Both parties’ behavior prior to and after execution of the Lease established the expectation that the anchor locations were acceptable. *See Edmonson*, 172 Wn.2d at 280. DNR’s sudden change of course is an assault on the reasonable expectations of the parties and the intent of the agreement, again implicating the duty of good faith and fair dealing.

DNR further argues that this Court cannot consider issues related to the duty of good faith and fair dealing because such issues were not raised below. However, Cooke pleaded a breach of duty of good faith and fair dealing in its original complaint against DNR and that issue is still pending before the Thurston County Superior Court. CP252; CP353-56.¹

¹ The appeal filed by Cooke under RCW 79.02.030 was filed out of an abundance of caution, as Cooke noted to the court below. CP600, Note 4. It was filed with companion civil claims which were then bifurcated by the court, with the civil claims, which include the duty of good faith and fair dealing, still pending before the court.

Moreover, as this Court recognized, appellate review of trial court decisions under RCW 79.03.020 are de novo where, as here, the trial court did not weigh evidence or resolve evidentiary conflicts. *Nw. Alloys*, 10 Wn. App. 2d at 183. “Given that the superior court made no factual findings, leaving only its conclusions of law for [this Court’s] review,” the proper review is de novo. *See id.* at 183. DNR cites no cases in which an appellate court declined to review an issue not raised below where the trial court made no findings of fact, as it did here.

While Cooke does not concede that it did not raise the issue of the duty of good faith and fair dealing below, this Court has the discretion to consider new issues that are “arguably related to issues raised in the trial court,” even where the trial court weighed the evidence. *See Lunsford v. Saberhagen Holdings, Inc.*, 139 Wn. App. 334, 338, 160 P.3d 1089, 1091 (2007), *aff’d*, 166 Wn.2d 264, 208 P.3d 1092 (2009). In *Lunsford v. Saberhagen Holdings, Inc.*, 139 Wn. App. 334 (2009), the Washington Court of Appeals, Division I, held that respondent’s objection that an issue was raised for the first time on appeal was “not well taken.” *Id.* The court reasoned that although the argument below was not framed in the exact manner, respondents there “recognized [appellant’s] argument for what it was and responded.” *Id.* at 339.

The same is true here. Cooke argued at the trial court that DNR's termination was "unreasonable and in complete disregard of the facts and history of the leasehold." CP602-09. In response, DNR argued that its termination was based on it having "reasonably relied on the terms of the lease when it exercised its right to terminate," CP640-46, and on reply, Cooke repeatedly asserted that DNR "acted unreasonably when it provided Cooke no notice that it would suddenly base a termination on conduct (late rent payments) that had been of no consequence for years." CP666.

The duty of good faith and fair dealing is properly before this Court. The issue is more than "arguably related" to Cooke's arguments below regarding reasonableness and DNR responded to those arguments. *See Lunsford v. Saberhagen Holdings, Inc.*, 139 Wn. App. at 339. In addition, this Court's review is de novo because the trial court made no findings of fact. *See Nw. Alloys*, 10 Wn. App. 2d at 183.

III. CONCLUSION

DNR's termination of Cooke's lease was a landlord's decision, not an administration of aquatic lands pursuant to a statute. DNR's Termination Letter shows the quasi-judicial nature of the decision and the Termination Letter cannot withstand legal and factual scrutiny. DNR's interpretation of *Northwest Alloys* and numerous cases involving the

making and granting of agreements urges a precedent that would shield DNR from meaningful review when it acts as a landlord of aquatic lands. DNR seeks to cast aside the century-old proposition that it receives the same treatment as a private party with respect to its contracts and replace that treatment with unchecked discretion that would allow it to rewrite or reconsider any contract at will.

This Court should hold DNR accountable to its agreements and review DNR's conduct de novo applying a substantial evidence standard. The record lacks any evidence, much less substantial evidence, supporting DNR's decision to terminate the Lease. As a result, Cooke respectfully asks the Court to reverse DNR's decision and reinstate the Lease.

RESPECTFULLY SUBMITTED this 21st day of September,
2020.

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DECLARATION OF SERVICE

I declare that I caused the foregoing to be served to each of the following via email and electronic notification via the electronic court filing system:

<i>Attorneys for Respondent-Defendants</i>	
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I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

DATED this 21st day of September, 2020, in Seattle, Washington.

s/Eliza Hinkes
Eliza Hinkes, Paralegal

NORTHWEST RESOURCE LAW PLLC

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