Supreme Court No. 92335-3

Court of Appeals No. 46130-7-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

COLUMBIA RIVERKEEPER; and NORTHWEST ENVIRONMENTAL DEFENSE CENTER,

Petitioners,

v.

PORT OF VANCOUVER USA; JERRY OLIVER, Port of Vancouver USA Board of Commissioners President; BRIAN WOLFE, Port of Vancouver USA Board of Commissioners Vice President; and NANCY I. BAKER, Port of Vancouver USA Board of Commissioners Secretary,

Respondents.

ANSWER TO PETITION FOR REVIEW

David B. Markowitz, *specially admitted*
Kristin M. Asai, WSBA No. 49511
MARKOWITZ HERBOLD PC
3000 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204-3730
Telephone: (503) 295-3085
Facsimile: (503) 323-9105

Lawson E. Fite, WSBA No. 44707
5100 SW Macadam Avenue,
Suite 350
Portland, OR 97239
Telephone: (503) 222-9505
Facsimile: (503) 222-3255

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

Rules

I. INTRODUCTION

The Port of Vancouver USA (together with the other respondents, the "Port") opposes the Petition for Review ("Petition") filed by Columbia Riverkeeper and Northwest Environmental Defense Center (collectively "Riverkeeper"). Riverkeeper has not shown any basis for this Court to accept review pursuant to RAP 13.4(b). The Court of Appeals correctly determined that the lease execution at issue in this case did not violate state environmental law. Although the underlying project itself is of substantial public interest, the legal issue raised by Riverkeeper is neither substantial nor worthy of this Court's review.

The lone issue raised by Riverkeeper is whether the Port, which is not the final decisionmaker on this project, improperly limited its own alternatives rather than "the choice" of alternatives by the final decisionmaker, which in this instance is the Governor. Riverkeeper concedes that the ultimate choice of alternatives has not been limited, but asks for an advisory opinion regarding whether the Port's actions would be permissible if the Port were preparing the environmental impact statement and served as the ultimate decisionmaker. But the Port is doing neither.

Thus, the issue presented by the Petition has no relevance to the ultimate issue in this case. Riverkeeper admits that its goal here is to obtain guidance for future cases involving oil terminals around the state,

regardless of whether those terminals are subject to review by the Energy Facilities Siting Evaluation Council ("Council"). (Pet. at 13-15.) Relying on impermissible non-record evidence, Riverkeeper attempts to equate the narrow and insubstantial legal issue here with broader policy controversies. The Court should deny Riverkeeper's attempt to undermine the centralized Council process, and ensure the integrity of this process, which is designed for a final policy-oriented decision by the Governor.

Moreover, the Court of Appeals' interpretation of applicable law was correct. The Court of Appeals determined that the lease did not violate WAC 197-11-070 because it did not predetermine any project outcomes prior to the publication of an environmental impact statement. (App. A. at 17-18.) This principle is broadly accepted and does not need correction or amendment by this Court.

II. STATEMENT OF THE CASE

In October 2013, the Port entered into a contingent ground lease with Tesoro-Savage Joint Venture ("Tesoro-Savage"), a company proposing to develop the Vancouver Energy Distribution Terminal. The lease contains a condition precedent requiring Tesoro-Savage to obtain all "licenses, permits, and approvals" prior to the lease becoming effective. (CP[1] at 288.)

[1] "CP" refers to the Clerk's Papers filed in the Court of Appeals.

The most significant of these approvals is a site certification by the Governor after adjudication and a recommendation by the Council, pursuant to the Energy Facilities Site Locations Act ("EFSLA"), RCW Chapter 80.50. The Council's recommendation occurs well after publication of a final environmental impact statement ("EIS"). Thus, both the Council's recommendation and the Governor's final, plenary decision will have the benefit of full environmental review.

In addition to the Council's site certification, Tesoro-Savage must obtain a federal Clean Water Act permit before it satisfies the lease's conditions precedent. (CP 303, 392-96.) The lease further requires Tesoro-Savage to obtain the Port's approval for its operation and safety plans and obey all environmental laws, including the conditions of all environmental permits, before it can begin construction. (CP 287-89.) Consequently, although the lease binds Tesoro-Savage to certain conditions and prevents the Port from leasing the property to another entity during the certification process, the lease is subordinate to the ultimate state decision on the project by the Governor, following the Council's extensive review and recommendations.

Riverkeeper brought suit alleging that the Port violated the State Environmental Policy Act ("SEPA"), RCW Chapter 43.21C. Specifically, Riverkeeper claimed that (1) the Port improperly executed the lease prior

to completion of an environmental impact statement, and (2) the lease improperly limited the choice of reasonable alternatives to the project in violation of WAC 197-11-070(1)(b). (CP 14-15.) The Superior Court granted the Port's motion for summary judgment and dismissed Riverkeeper's SEPA claims. (CP 1010-12.)

A unanimous panel of Division II affirmed. First, the Court of Appeals held that the lease was exempt from SEPA requirements by RCW 80.50.180, a provision of the energy siting law. (App. A at 10-12.) Riverkeeper does not seek review of this holding.

Second, the Court of Appeals held that the lease did not violate WAC 197-11-070(1)(b). "[T]he terms of the lease agreement – which might be binding on the Port but not on the Council or the governor – necessarily can have no effect on the certification decision." (App. A at 17.) The Court of Appeals also held that the lease did not create an impermissible "snowballing" effect. (*Id.* at 17-19.)

Riverkeeper seeks partial review of the second holding. It concedes that the lease does not limit the choice of alternatives available to the Council and, by extension, the Governor. (Pet. at 9 n.2.) Thus, Riverkeeper agrees that the decisionmaker's discretion and options have not been coerced, limited, or constrained by the Port. Instead, it argues that the Port's lease impermissibly limited its own choices in "negotiating

and executing the lease." (Pet. at 18.) Riverkeeper argues the Court of Appeals, in holding to the contrary, acted inconsistently with WAC 197-11-070 and with *Public Utility District No. 1 of Clark County v. Pollution Control Hearings Board*, 137 Wn. App. 150, 151 P.3d 1067 (2007) ("*Clark PUD*"). Riverkeeper claims that the Court of Appeals created a "SEPA loophole" that allows a non-lead agency with jurisdiction over a project to limit its own reasonable alternatives prior to the completion of an EIS.

Riverkeeper is wrong. First, the Court of Appeals correctly interpreted WAC 197-11-070(1)(b) in concluding that, because approval of the project was subject to EFSLA and the lease was explicitly contingent on that process, the dispositive issue was whether the freedom of choice by the Council and the Governor was preserved. The Court of Appeals concluded that WAC 197-11-070(1)(b), which prevents a governmental agency from taking action that would limit the choice of reasonable alternatives until the EIS is completed, did not specify "*whose* choice cannot be limited." (App. A at 15-16.) After reviewing the general SEPA regulation in accordance with the more specific EFSLA, the Court of Appeals held that because EFSLA places all environmental review with the Council and final decision-making with the Governor, the SEPA regulation only prohibits a governmental agency from limiting the choices

available to the Council and the Governor. The Court of Appeals' decision was specific to projects subject to the extensive environmental review by the Council and the Governor. And the decision is consistent with the purpose of the regulation: ensuring that the decisionmaker has a free hand while SEPA review is completed. Thus, contrary to Riverkeeper's argument, the decision does not conflict with the SEPA regulations or appellate decisions in other contexts. The thin legal issue does not justify this Court's intervention. Riverkeeper instead seeks a policy opinion from this Court in light of the broader controversy regarding oil transport. While such issues are obviously of substantial interest, this case does not present those issues, and no ground for review exists.

Second, the Court of Appeals did not create a SEPA loophole or conclude generally that it is irrelevant whether any agency with jurisdiction over a project has limited its available alternatives. The court's decision was consistent with precedent from Divisions I and II. The Court of Appeals found that the specific lease in this case, which was expressly conditioned on the Council's review and the Governor's approval, did not limit the choice of reasonable alternatives available to the entities with final decision-making authority over the project.

Finally, the Court of Appeals followed precedent regarding resolving ambiguities between specific and general statutes. The Court of

Appeals found that WAC 197-11-070 was ambiguous, and therefore relied on the specific nature of EFSLA to determine that the relevant choice was the Governor's, not the Port's. Because the decision below complied with law, regulation, and precedent, no conflict of authority justifying this Court's intervention exists.

III. RESTATEMENT OF THE ISSUE

For a project subject to EFSLA, does a local agency comply with SEPA when it enters a lease containing an express condition precedent that ensures the siting council and the Governor retain the full range of discretion and authority regarding alternatives for the project?

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. Standard of review.

This Court will grant review only if one or more of the factors in RAP 13.4(b) is present. Supreme Court review is appropriate only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Riverkeeper proceeds under the first, second, and fourth criteria, arguing review should be granted due to "the substantial public interest raised" in the Court of Appeals' decision and because the decision allegedly "conflicts with existing precedent." (Pet. at 11.) Although the larger controversy regarding the Vancouver Energy terminal is of public significance and interest, the legal issue raised by Riverkeeper in its Petition is not. Indeed, the Court of Appeals found that the issue presented by the Petition was immaterial and irrelevant. And the decision is consistent with, rather than in conflict with, relevant precedent.

B. The Petition does not raise an issue of substantial public interest, as the Court of Appeals' interpretation of SEPA regulations is uncontroversial.

The Petition does not involve a substantial public interest because the sole legal issue—whether an entity without final decision-making authority could constrain the final decisionmaker when the subordinate agency acts contingently—is not one that is in substantial controversy, or one that has meaning for the outcome of this case.

To constitute an issue of substantial public interest, a Court of Appeals' decision should have broad application to numerous situations and significantly affect the legal landscape. *See State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005) (finding substantial interest

where Court of Appeals' holding could affect every sentencing in the county, invited unnecessary litigation, and could chill policy actions by attorneys and judges); *In re Disciplinary Proceedings Against Bonet*, 144 Wn.2d 502, 513, 29 P.3d 1242, 1248 (2001) (granting review regarding whether a prosecutor may offer an inducement to a defense witness to not testify at a criminal proceeding). A litigant's mere disagreement with the Court of Appeals' decision is not sufficient. *See* RAP 13.4(b) (stating that this Court will accept review "only" on the four grounds listed).

The relevant regulation provides that "[u]ntil the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would . . . [l]imit the choice of reasonable alternatives." WAC 197-11-070(1)(b). An action limits the choice of reasonable alternatives if it "coerce[s]" a specific final outcome prior to issuance of the EIS. *Clark PUD*, 137 Wn. App. at 162, 151 P.3d at 1072; *accord Int'l Longshore & Warehouse Union Local 19 v. City of Seattle,* 176 Wn. App. 512, 524-25, 309 P.3d 654, 660-61 (2013) (rejecting argument that a memorandum of understanding had "coercive effect"). This does not mean that an agency or applicant cannot propose a specific course of action, but only that the final decision must not be predetermined. "Early designation of a preferred alternative in no way

restricts the lead agency's final decisions." (Wash. Dep't of Ecol., SEPA Handbook § 3.3.2.2., p. 55.)

The regulation "does not preclude developing plans or designs, issuing requests for proposals (RFPs), securing options, or performing other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection (1)." WAC 197-11-070(4). In sum, the regulation prohibits an agency from making an "irreversible or irretrievable commitment of resources" before completion of environmental review. *Int'l Longshore*, 176 Wn. App. at 525, 309 P.3d at 661 (citing *Metcalf v. Daley*, 214 F.3d 1135, 1142-43 (9th Cir. 2000)). Here, the lease does not restrict full consideration of the proposed terminal, but simply frames the proposal for environmental review.

Riverkeeper argued below that the lease restricted the Governor's and Council's ultimate authority. (App. B at 33-36.) It also argued that the Port had made a commitment that would be binding once the Governor approved the project. (*Id.* at 25-32.) The Court of Appeals analyzed those arguments in the context of the applicable regulation. Because the regulation refers only to "*the* choice" of reasonable alternatives, the court asked whose choice was at issue. (App. A at 15-16.) In the context of the energy siting law, the decisionmakers are the Council and the Governor. RCW 80.50.100. Because the siting law preempts all other laws relating

to energy facilities, the court looked to whether the Port had restricted the Governor's or Council's choice. In light of the express contingency of the lease upon the final Council and Governor determinations, the court held the lease did not limit the choices by those decisionmakers.

Riverkeeper argues that the Court of Appeals erred by not asking whether "the choice of reasonable alternatives" included choices by the Port. (*See* Pet. at 16-19.) In the context of this case, that is an irrelevant question. Riverkeeper concedes that the Council's and Governor's choices were not limited. And it does not claim that the Port has any power to override those final decisionmakers. Regardless of the policy implications of this project, and the substantial public interest in the project, whether the Port's alternatives were limited is not a question that this Court needs to answer.

By its very nature, the decision is limited to projects subject to Council review. Riverkeeper did not argue, and consequently the Court of Appeals did not hold, that the Court of Appeals' decision about the Port's lease would apply to every project involving fossil fuels or all leases that might be subject to SEPA review. Instead, consistent with the Port's arguments, the Court of Appeals held that the Port's entry into the lease agreement did not violate SEPA because the project involved an energy facility subject to EFSLA, the lease was "expressly conditioned" on the

tenant obtaining certification through the Council process, and the Council and the Governor had broad discretion to approve, reject, modify, or supplement the lease terms. (App. A at 17; *see also* App. E at 16:13-17:11.) The Court of Appeals' decision is limited to projects subject to Council review and further limited by the terms of the specific lease.

Riverkeeper claims that the Court of Appeals' focus on the Governor's and Council's choice of alternatives was not argued below, but the Port presented this argument to the Court of Appeals and both parties discussed it during oral argument. (*See, e.g.*, App. C at 4 ("Riverkeeper has not identified how the Port can limit the ultimate decision making of the Council or of the Governor."); *id.* at 40 (arguing same); App. D at 19, 23 (arguing that the lease "irreversibly and irretrievably committed the Port to hosting the oil terminal," and was "designed to, and does, build momentum that [the Council] and Governor may find difficult to resist"); App. E at 10:24-14:4, 16:13-20:25, 26:23-27:17.)

Riverkeeper claims the Court of Appeals established a "loophole" for non-lead agencies to violate WAC 197-11-070. (Pet. at 15.) Not so. In any project, every agency is required to comply with section - 070. This case is the unusual instance where the lead agency (the Council) has the authority to approve the project after the Governor's final decision. Thus, as in *Clark PUD*, an agency that will be the final decisionmaker

cannot tie its own hands prior to environmental review. But the question is always addressed from the point of view of the final decisionmaker. This principle is noncontroversial and does not require review.

Riverkeeper points to WAC 197-11-786, the definition of "reasonable alternative," in an attempt to find flaws in the panel's reasoning. As Riverkeeper points out, the regulation refers to alternatives over which "an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures." (Pet. at 17.) Riverkeeper, however, ignores the phrase "has authority." While the Port has authority over the project, the Port does not have SEPA authority because that review will be conducted by the Council with the Governor making the final permitting decision. The Court of Appeals also did not find that the Port had limited its choice of alternatives. Instead, the Court of Appeals held that "[b]ecause the legislature has placed all authority regarding certification of energy facilities with the Council and the governor, in this context whether a local agency's choices have been limited is irrelevant." (App. A at 17.)

The arguments raised in the Petition threatens the special review system that the Legislature established with EFSLA. The Legislature recognized that there is a "pressing need" for energy facilities, but that such facilities also raise significant environmental questions. RCW

80.50.010. The Legislature concentrated and centralized the review and approval process for such facilities, placing the ultimate decision in the hands of the Governor. Siting decisions implicate significant policy questions and substantial public interests, and the Governor is well equipped to weigh the interests and answer the questions. This suit inappropriately tries to piecemeal a review process that should be concentrated with the Governor and the Council. There is a substantial public interest, as declared by the Legislature, in maintaining the integrity of the Council process—an interest that weighs against the Petition.

Riverkeeper ignores another timing issue. WAC 197-11-070(1) applies only "[u]ntil the responsible official issues a final determination of nonsignificance or final environmental impact statement[.]" The EIS here will be issued several months before the Council makes its recommendation or the Governor issues a decision. These latter events, rather than the issuance of the EIS, are necessary to satisfy the lease's condition precedent. Thus, at the time the EIS is issued, and WAC 197-11-070 ceases to apply, the lease will still be fully contingent on events that have not yet happened. Thus, this lease could not limit the Port's alternatives in a way that would violate WAC 197-11-070.

C. The Court of Appeals' decision does not conflict with another appellate decision of this State.

Riverkeeper fails to establish that the Court of Appeals' decision conflicts with another decision of the Court of Appeals interpreting SEPA regulations or a decision from this Court setting forth principles of statutory interpretation. Because no direct conflict exists between the decision and the appellate decisions cited by Riverkeeper, review is unwarranted.

1. The Court of Appeals correctly applied *Clark PUD*.

The decision comports with, rather than conflicts with, Division II's decision in *Clark PUD*. Indeed, the Court of Appeals here acknowledged that Riverkeeper's argument regarding *Clark PUD* "might have some merit if the Port was conducting the EIS and making the certification decision." (App. A at 18.) But because the Port's lease was expressly conditioned on Council review and certification—where the Council and the Governor enjoy broad discretion and decision-making authority—*Clark PUD*'s statements forbidding the decision maker from committing all of its financial resources to a project prior to an EIS does not apply to the lease at issue.

In *Clark PUD*, the public utility district applied to the Department of Ecology for a preliminary permit to allow testing of groundwater at a

location where the utility planned a new wellfield project. 137 Wn. App. at 154, 151 P.3d at 1068. Ecology approved the permit initially, but the Pollution Control Hearings Board reversed the approval because it found that Ecology should have conducted a SEPA review in advance and the approval limited the choice of reasonable alternatives. *Id.* at 155-56, 151 P.3d at 1069. After Ecology completed the required review, it again approved the preliminary permit, but the Board dismissed the approval. *Id.* at 156, 151 P.3d at 1069.

On appeal, the Court of Appeals reversed, holding that Ecology's approval of a preliminary permit did not limit the choice of reasonable alternatives. *Id.* at 162, 151 P.3d at 1072. The court noted that Ecology's approval of the permit "will have no influence on whether it approves [the utility's] application for groundwater rights" and does not "coerce Ecology to grant groundwater rights at Fruit Valley simply because it issued the permit." *Id.* The court explained that the utility's reasonable alternatives might be limited "if it was forced to put all of its financial resources in one project," and therefore "might be less inclined to explore alternate sites that could have a lower environmental impact." *Id.* However, because the parties agreed that the utility's cost for the testing was a small fraction of the overall cost for the project and the utility planned to conduct the testing to obtain data on environmental impacts of the project, the Court of

Appeals held that the permit allowing testing did not limit the utility's choice of alternatives. *Id.* at 163, 151 P.3d at 1072.

Similarly here, the Court of Appeals noted that the Port's entry into the lease would not influence or affect the Council's or the Governor's ultimate decision about the project. (App. A at 18.) The lease was instead conditioned on and subject to that ultimate decision. In so holding, the Court of Appeals followed *Clark PUD* to the extent it applies here.

2. The Court of Appeals' decision is consistent with precedent regarding statutory conflicts.

In its last-ditch argument for review, Riverkeeper asserts that the Court of Appeals misapplied this Court's precedent by resolving the ambiguity in WAC 197-11-070(1)(b), by reference to EFSLA, which places the administrative responsibility for energy facilities with the Governor and the Council. (App. A at 16.) Riverkeeper argues that "no such conflict exists" between the SEPA regulation and the EFSLA statute, so it contends the Court of Appeals misapplied precedent by finding that the more specific statute controlled its resolution of the ambiguity. (Pet. at 20.) Riverkeeper is incorrect.

The Court of Appeals explained that it strives to construe laws relating to the same subject matter together, but to the extent the laws conflict, it gives precedence to the more specific law. (App. A at 16, citing *Residents Opposed to Kittitas Turbines v. State Energy Facility Site*

Evaluation Council (EFSEC), 165 Wn.2d 275, 308-09, 197 P.3d 1153, 1169 (2008).) That was consistent with this Court's precedent. *Kittitas*, 165 Wn.2d at 308-09; *see, e.g.*, *Staats v. Brown*, 139 Wn.2d 757, 789, 991 P.2d 615, 632 (2000) (holding that "our rule of statutory construction . . . provides that a specific statute controls over a general statute on the same topic").

The Court of Appeals' reasoning harmonizes EFSLA and SEPA. It respects the Legislature's command to centralize energy project review with the Council. This is just what this Court directs: to read statutes together to the extent possible. *O.S.T. ex rel. G.T. v. BlueShield*, 181 Wn.2d 691, 701, 335 P.3d 416, 421 (2014). The Court of Appeals used EFSLA as an interpretative tool to determine what the regulation means in the context of this case.

Like this Court in *Kittitas Turbines*, the Court of Appeals was tasked with construing EFSLA, which centralizes regulation of energy facilities with the Council, with potentially overlapping environmental regulations. The Court of Appeals analyzed the competing laws and construed the SEPA regulation in accordance with EFSLA's purpose, preemptive effect, and grant of broad discretion to the Council and the Governor. (App. A at 16.) As a result of its analysis, the Court of Appeals resolved the ambiguity in the regulation, and any statutory conflict, by

holding that when certification of energy facilities is involved, SEPA prohibits actions that would limit the choice of reasonable alternatives available to the Council and the Governor. (*Id.* at 16-17.) The Court of Appeals thus followed this Court's precedent and there is no basis for review.

V. CONCLUSION

The Court of Appeals applied existing precedent and interpreted the relevant statutes in accordance with their plain language and purposes. The Court of Appeals' decision does not trigger any of the RAP 13.4(b) considerations, as it is not in conflict with other appellate precedent and does not raise issues of substantial public interest. This Court should deny the Petition for Review.

DATED this 27th day of October, 2015.

By: *s/ Kristin M. Asai*

David B. Markowitz, *specially admitted*
Kristin M. Asai, WSBA No. 49511
MARKOWITZ HERBOLD PC
3000 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204-3730
Telephone: 503.295.3085

Lawson E. Fite, WSBA No. 44707
5100 SW Macadam Avenue, Suite 350
Portland, OR 97239
Telephone: (503) 222-9505
Facsimile: (503) 222-3255
Attorneys for Respondents

480494

DECLARATION OF SERVICE

I, Kristin M. Asai, declare under penalty of perjury under the laws of the State of Washington that I am an attorney employed by Markowitz Herbold PC and that on October 27, 2015, I caused to be mailed, via first-class U.S. Mail, an original **ANSWER TO PETITION FOR REVIEW**, to the following counsel for parties at the addresses shown below:

Eric D. 'Knoll' Lowney Smith and Lowney PLLC 2317 E John Street Seattle, WA 98112-5412	☐ ☐ ☐ ☒	U.S. Mail Facsimile Hand Delivery (___ copies) Email knoll@igc.org jessie.c.sherwood@gmail.com
Brian A. Knutsen Kampmeier & Knutsen PLLC 833 SE Main Street, Suite 327 Mail Box No. 318 Portland, OR 97214	☒ ☐ ☐ ☒	U.S. Mail Facsimile Hand Delivery (___ copies) Email brian@kampmeierknutsen.com
Miles B. Johnson *(admitted pro hac vice)* 111 Third Street Hood River, OR 97031 Attorneys for Appellants	☒ ☐ ☐ ☒	U.S. Mail Facsimile Hand Delivery (___ copies) Email miles@columbiariverkeeper.org

Frank Chmelik John Sitkin Chmelik Sitkin & Davis 1500 Railroad Avenue Bellingham, WA 98225	☒ U.S. Mail ☐ Facsimile ☐ Hand Delivery (___ copies) ☒ Email jsitkin@chmelik.com fchmelik@chmelik.com

Attorneys for Proposed Amicus Washington Public Ports Association

DATED this 27th day of October, 2015, at Portland, Oregon.

MARKOWITZ HERBOLD PC

By: *s/ Kristin M. Asai*

David B. Markowitz, *specially admitted*
Kristin M. Asai, WSBA No. 49511
1211 SW Fifth Avenue, Suite 3000
Portland, OR 97204-3730
Telephone: 503.295.3085

Lawson E. Fite, WSBA No. 44707
5100 SW Macadam Avenue, Suite 350
Portland, OR 97239
Telephone: (503) 222-9505
Facsimile: (503) 222-3255

Attorneys for Respondents

OFFICE RECEPTIONIST, CLERK

To: Lynn Gutbezahl
Cc: Kristin Asai; David Markowitz; Lawson Fite; brian@kampmeierknutsen.com; knoll@igc.org; jessie.c.sherwood@gmail.com; miles@columbiariverkeeper.org; jsitkin@chmelik.com; fchmelik@chmelik.com
Subject: RE: Columbia Riverkeeper, et al. v. Port of Vancouver USA, et al., Supreme Court No. 92335-3

Received on 10-27-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Lynn Gutbezahl [mailto:lynngutbezahl@markowitzherbold.com]
Sent: Tuesday, October 27, 2015 12:07 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Kristin Asai <kristinasai@markowitzherbold.com>; David Markowitz <davidmarkowitz@markowitzherbold.com>; Lawson Fite <lawsonfite@gmail.com>; brian@kampmeierknutsen.com; knoll@igc.org; jessie.c.sherwood@gmail.com; miles@columbiariverkeeper.org; jsitkin@chmelik.com; fchmelik@chmelik.com
Subject: Columbia Riverkeeper, et al. v. Port of Vancouver USA, et al., Supreme Court No. 92335-3

Attached for filing are Respondents' Answer to Petition for Review and Declaration of Service with regard to the above-referenced case. The Appendix will follow via FedEx as it contains more than 25 pages.

Respectfully submitted,

Lynn A. Gutbezahl | Legal Assistant
Markowitz Herbold PC
1211 SW Fifth Avenue, Suite 3000 | Portland, OR 97204-3730
T (503) 295-3085 | Web