

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

CASE NO. 96227-8  
IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON  
COURT OF APPEALS CAUSE NO. 77741-6-I

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CHARLES WOLFE, a single person,  
JANICE WOLFE, a single person, and JOHN and DEE ANTTONEN,  
and the marital community comprised thereof,

Petitioners,

v.

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION,

Respondent.

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**PETITIONERS' REPLY TO STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION'S ANSWER TO  
PETITION FOR REVIEW**

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## I. INTRODUCTION

Pursuant to RAP 13.4(d), Petitioners submit this reply to the new assertions made or issues raised by the Washington State Department of Transportation in its Answer to the Petition for Review submitted to the Court; specifically, that Petitioners were “unable to meet the burden of proof at trial” and did not raise alteration of the flow as a contention.

Petitioners did offer facts to support their claims that the code of federal regulations and other laws required WSDOT to obtain approval to obstruct the floodplain via construction of the SR 4 bridge and approach (“Bridge”), but the superior court refused to acknowledge them. Petitioners also argued that man-made alterations to stream flows is “pollution,” despite what the Answer contends, page 12.

On the last point, an altered flow is “pollution” as a matter of law under Section 401 of the Federal Clean Water Act, as this Court ruled in *Department of Ecology v Jefferson County PUD #1*, 121 Wn. 2d 179, 20 P.2d 646 (1993) (*Elkhorn*).

*Section 502(19) of the Act, 33 U.S.C. § 1362(19), reads:*  
*"The term 'pollution' means the **man-made or man-induced alteration** of the chemical, **physical**, biological, and radiological integrity of water." Under this broad definition, man-induced alteration of stream flow level is "pollution."*

(Emphasis added.)

In their Opening Brief to the Court of Appeals, page 7, Petitioners stated:

***The new bridge support piers within the bed of the River were built at a 15-degree angle to the old piers changing the direction of flow of the River 15 degrees towards the Wolfe property, with greater water energy directed towards the bank than on the opposite side of the River.***<sup>1</sup>

On the alleged “lack of proof” for the required approvals, Mr. Lawrence (a registered Professional Engineer, Fluvial Geomorphologist, and licensed Surveyor)<sup>2</sup> was ready to be recalled after WSDOT’s witness Steve Zaske testified out of order. *See Answer*, p. 4. The trial judge, a former Senior Assistant Attorney General with the Washington State Department of Ecology, refused to allow him to testify in response to Mr. Zaske, a non-expert and former WSDOT employee, who admitted a No Rise Certificate was not obtained by WSDOT. The substance of Mr. Lawrence’s testimony that the superior court refused to hear is set out in Mr. Lawrence’s declaration dated September 18, 2015, annexed hereto as **Appendix A-1**. (CP 976 through 988). The Declaration unequivocally sets out the need for the No Rise Certification to dam the floodplain and

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<sup>1</sup> *See also Answer*, p 4.

<sup>2</sup> This witness was identified prior to the start of the trial as both Petitioners’ primary fluvial geomorphologic expert as well as rebuttal expert. He was slated to provide expert permit based rebuttal once WSDOT’s witness admitted, at trial, the No Rise Certificate was not obtained. The witness had admitted the lack of permits during a pre-trial deposition.

alter the flow of the Naselle River. *See also* Petition For Review, Appendix A-3, Pacific County Flood Damage Prevention Ordinance, No. 71.

Mr. Lawrence's rebuttal testimony would have been based upon his declaration, where he provided expert testimony on the permits. Specifically, four permits/approvals were required for both the 1985 and 1998 Bridge work (hydraulics, shorelines, floodplains/no rise, wetlands). The approvals were neither applied for nor obtained, and Mr. Zaske could not provide copies of them to the superior court. WSDOT admits it constructed a 600-long berm across the floodplain for the Bridge. Answer, p. 1.

## II. REPLY ARGUMENT

Within the constraints of the Rules of Appellate Procedure, Petitioners do not submit any re-argument. There is no "cherry-picking" of the superior court's ruling.

WSDOT admits:

The trial court ruled on WSDOT's motion to dismiss on October 17, 2016. RP 709:6-748:12, Oct. 17, 2016. It found that Petitioners had put forth sufficient evidence (through the Lawrence testimony and exhibits) that the bridge and its embankment were, in effect, obstructing the Naselle River's floodplain. RP 725:25-726:16, Oct. 17, 2016. The trial court also found that this obstruction was affecting the Naselle River's migration and

constricting its passageway, which was having an impact downstream on Wolfe's property through increased erosion. RP 726:17-727:2, Oct. 17, 2016.

(Answer, p. 7.)

According to the superior court, there was no proof that the Bridge itself caused a problem. Answer, p. 7; pp.8-9. WSDOT rides this horse, but ignores the other rulings set out above, choosing itself to "cherry-pick" those portions of the ruling with which it agrees. But this case is not about tangents, such as the bridge structure itself. The Bridge approach road fill or berm has affected the normal/natural flow of the River, not the Bridge. It acts as a dam to increase the height and velocity of the flow through the "cut" under the Bridge, which is then redirected 15 degrees, eating into banks downstream, which has resulted in a release of 32,000 cubic yards of dirt into the river, continuing to the present date. The altered flow and turbidity and scouring of dirt into the River will continue unless, and until, the obstruction is removed and the Bridge extended over the associated floodplain.

The floodplain functions and values were destroyed because the Naselle River has been disconnected from its floodplain. Petition, p. 8. This is the correct focus, not the alleged impacts of the Bridge itself. The superior court erred in holding Petitioners to a standard that required a causation connection to the Bridge, ignoring the fact of the floodplain

disconnection (found to exist in its ruling) which is, of itself, the cause of the scouring, pollution and flooding in the area.

Citizens of the State as a whole are impacted by WSDOT's failure to comply with the law. Unless reversed, the Court of Appeals has essentially directed the citizens of the State, "do not read the law," and has created a different standard for public agencies that excuses the failure to obtain permits, where that standard is rigorously applied to private individuals. The Washington Legislature passed laws to be read and followed in order to protect the public as a whole. A trier of fact does not need an expert to tell it that local and federal floodplain protection laws require an approval for a floodplain obstruction. Those laws establish a strong public interest in the protection of floodplains and river flows.

The public is a "community" for purposes of the public nuisance laws. Petition, p. 18. It is an insult to all citizens of the State for WSDOT to assert these protections are limited to a review of actions of private individuals, like the Petitioners. As set forth in a blog post by the Willamette Partnership, 7 Reasons Why You Should Care About Floodplains<sup>3</sup>:

Better information on flood risk from hydrological modeling, and new(ish) approaches such as Low Impact Development strategies and green infrastructure techniques are providing communities

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<sup>3</sup> <http://willamettepartnership.org/7-reasons-why-you-should-care-about-floodplains/> (Nicole Maness, October 23, 2015).



with tools to limit flood damage while maintaining valuable floodplain functions. ***Programs such as The Nature Conservancy's Floodplains By Design demonstrate how reconnecting rivers to their floodplains is a more effective solution for protecting urban infrastructure than traditional dams, dikes and levees.*** And mechanisms such as floodplain function mitigation banking and transfer development rights are being explored as ways to increase the flexibility communities need as they balance development and floodplain function.

Floodwaters are dangerous and scary, as shown by the video taken by Mr. Wolfe on January 9, 2009 (trial exhibit #69, CP440-444). Even the court commented on the powerful nature of that evidence.

The public deserves stringent enforcement of the laws concerning floodplain management that minimize the impact of structures like the Bridge that divert the direction and flow rate of a quiet river and diminish the storage capacity of the entire floodplain. After all, what is the purpose of such laws, if not to protect all citizens from floodwaters unnaturally increased due to un-reviewed, unpermitted and unmitigated man-made structures?

Most disconcerting is the double standard WSDOT urges, immunity for itself but not for others. Three months after this lawsuit was filed, on October 29, 2014, Washington State Attorney Robert Ferguson, at the request of Michael K. Dorcy, Mason County Prosecuting Attorney, filed a criminal complaint in Mason County District Court accusing Mr. Cayo of the crimes of Unlawful Hydraulic Project Activities (1 count),

Unlawful Shoreline Activity (1 count), and Unlawful Water Pollution (1 count).<sup>4</sup>

Mr. Cayo, who, at that time, lived in a house along the Tahuya River, had used a bulldozer to straighten out the main channel of the river which was naturally meandering towards his house and which would severely damage, if not outright destroy it, during the normal flooding that occurs along the river. Mr. Cayo had applied for all of the permits required by the state and federal environmental laws but could not show county and state officials that his proposed work would not adversely affect the river habit, so no permits were issued. He did the work anyhow, without permits, his neighbors complained, and he was charged with those three counts. Mr. Cayo was found guilty during a jury trial, served 30 days in jail, and fined.

It is disingenuous for Washington State courts to rule that what was good for the private goose is not now good for the public gander. This Court needs to step in and reaffirm the integrity and fair application of the flood protection, water quality and public nuisance laws.

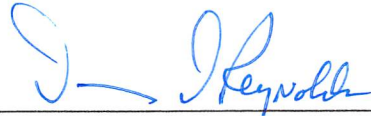
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<sup>4</sup> Attached as Appendix A-2.

### III. CONCLUSION

This Court should accept review.

RESPECTFULLY SUBMITTED this 22nd day of October, 2018.

By   
Dennis D. Reynolds, WSBA #04762  
DENNIS D. REYNOLDS LAW OFFICE  
*Counsel for Petitioners*

## CERTIFICATE OF SERVICE

I hereby certify that on this 22<sup>nd</sup> day of October, 2018, I caused the document to which this certificate is attached to be delivered to the following via e-mail and U.S. mail as follows:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Matthew D. Huot, AAG, WSBA #40606<br/>Attorney General of Washington<br/>Transportation &amp; Public Construction Div.<br/>P.O. Box 40113<br/>Olympia, WA 98504-0113<br/><u>Deliveries/FedEx Only:</u><br/>Transportation &amp; Public Construction Div.<br/>7141 Cleanwater Drive SW<br/>Tumwater, WA 98501-6503<br/>(360) 753-6126, tel / (360) 586-6847, fax<br/>MattH4@atg.wa.gov; tpcef@atg.wa.gov;<br/>JennahW@atg.wa.gov;<br/>MelissaE1@atg.wa.gov<br/><i>Attorneys for Respondent</i></p> | <p><input type="checkbox"/> <i>Legal Messenger</i><br/><input type="checkbox"/> <i>Hand Delivered</i><br/><input type="checkbox"/> <i>Facsimile</i><br/><input checked="" type="checkbox"/> <i>First Class Mail</i><br/><input type="checkbox"/> <i>Express Mail, Next Day</i><br/><input checked="" type="checkbox"/> <i>Email</i><br/><input type="checkbox"/> <i>COA Online Portal</i></p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Declared under penalty of perjury under the laws of the State of Washington at Bainbridge Island, Washington this 22<sup>nd</sup> day of October, 2018.

  
\_\_\_\_\_  
Kelley Strickland  
Administrative Assistant

# Appendix A-1

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WA

2015 SEP 22 PM 2:34

Linda Myhre Enlow  
Thurston County Clerk

THE HONORABLE MARY SUE WILSON  
HEARING DATE: SEPTEMBER 25, 2015; 11:00 A.M.

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THURSTON COUNTY

CHARLES WOLFE, a single person, JANICE WOLFE, a single person, and JOHN and DEE ANTONEN, and the marital community comprised thereof,

Plaintiffs,

v.

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION,  
Defendant.

NO. 14-2-01481-1  
(Consolidated with 14-2-01941-3)

**DECLARATION OF RUSSELL A. LAWRENCE IN SUPPORT OF PLAINTIFFS' AMENDED MOTION FOR SUMMARY JUDGMENT**

Russell A. Lawrence declares and states as follows:

1. I am a Fluvial Geomorphologist with StreamFix, Stream and Wetland Rehabilitation Specialists, in Oregon City, Oregon. I am a registered Professional Engineer for the State of Washington. In that capacity, I am authorized to make this declaration. I am over the age of 18 and competent to testify to the matters asserted herein. I make this declaration based upon personal knowledge.

2. Attached hereto as **Exhibit A** is a true and accurate copy of my current resume.

3. At the request of Plaintiffs Charles Wolfe, Janice Wolfe and John and Dee Anttonen in this matter, I have reviewed the pleadings and related materials submitted by the

LAWRENCE DECLARATION IN SUPPORT OF PLFS'  
AMENDED SUMMARY JUDGMENT MOTION - 1 of 13  
[90263-2]

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(206) 780-6865 (Facsimile)

1 State of Washington Department of Transportation in response to Plaintiffs' Motion for  
2 Summary Judgment.

3 4. I offer the following:

- 4 • A brief description of the No-Rise analysis and certification process.
- 5 • What the state apparently did, or did not, do in terms of a No-Rise  
6 analysis with regard to the Hwy 4 / Naselle R. bridge work performed  
7 around 1985 and the subsequent associated in-water structure work and  
8 bank armoring performed in 1998.
- 9 • My opinion of the likely results had this analysis been performed for  
10 those two projects.
- 11 • Compliance with WAC 220-110-070 requirements.

12 The purpose of a No Rise Analysis and Certification is to determine if a proposed  
13 project will result in flooding (within specified limits), above or below the proposed project.

14 5. The No-Rise analysis is primarily a computer modeling exercise. It is  
15 performed by entering data defining the river's plan, dimension (cross section) and profile  
16 characteristics together with projected flood volumes, usually defined as cubic feet per  
17 second. This modeling is required by FEMA when work is proposed that may affect a river's  
18 flood levels within an area where FEMA has established a need for flood plain management.  
19 The Hwy 4 bridge crossing the Naselle R. (Pacific County) project falls well within a FEMA  
20 flood plain management zone. The process for performing this work is defined by FEMA as:

21 ***This No-rise Certification must be supported by technical data  
22 and signed by a registered professional engineer. The  
23 supporting technical data should be based on the standard  
24 step-backwater computer model used to develop the 100-year  
25 floodway shown on the Flood Insurance Rate Map (FIRM) or  
26 Flood Boundary and Floodway Map (FBFM).***

[Ref: No-Rise Certification for Floodways, FEMA -  
<http://www.fema.gov/no-rise-certification-floodways>]

LAWRENCE DECLARATION IN SUPPORT OF PLFS'  
AMENDED SUMMARY JUDGMENT MOTION - 2 of 13  
[90263-2]

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1           The results of the analysis work are then entered into a No-Rise certificate indicating  
2 the work proposed will, or will not, increase flooding beyond certain limits. Permits may not  
3 be issued for work exceeding those limits.

4           6.       A review of the documentation provided by the Washington Department of  
5 Transportation was made. I did not find any documentation indicating a No-Rise analysis, or  
6 the modeling to support such an analysis had been performed for the 1985 or the subsequent  
7 1998 work. I also looked for evidence of the data that would have been collected to support  
8 such an analysis. I could not find such data. WSDOT has not provided an Engineered No  
9 Rise Certification for either the 1985 or the 1998 work. Such a certification was not found in  
10 any other state agency Public Records.

11           7.       Because the data necessary to perform a No-Rise analysis was not  
12 developed prior to the construction of the Hwy. 4 Bridge in 1985, or for the in-water  
13 structure and rip rap work performed in 1998, a definitive opinion on the results of  
14 such an analysis cannot be offered. However, based on prior experience, I can offer  
15 the opinion that an analysis of the proposed 1998 work would have likely resulted in  
16 a No-rise declaration.

17           8.       Such a declaration regarding the 1985 work becomes more problematic.  
18 The obstruction to flow resulting from changing the angle of the piling structure in  
19 the river may in fact be raising the flooding above the 0.2 feet (2 ½ inches) stipulated  
20 in the WAC, above flooding conditions that were occurring prior to the installation of  
21 the new bridge.



1           9.     The 15° degree angle in the piling wall is certainly causing destructive  
2 changes in the downstream hydrology. I have addressed this issue in-depth within  
3 my 2011 report.  
4

5           10.    Further, it is my professional opinion, had the various federal and state  
6 rules and regulations in place in 1985 been closely followed, and the 2,100 foot bridge  
7 design permitted in the circa 1984 HPA for this site installed (assuming removal of  
8 the 600 foot floodplain encroaching fill and shortening to simply span the 800 foot  
9 flood plain), the flooding and erosion issues now associated with this area would  
10 have been relieved. The river would be returning to its more natural meandering  
11 plan as it was prior to the placement of the 600 foot fill, circa 1926, across the FEMA  
12 recognized 800 foot floodplain immediately upstream and below said fill.  
13  
14  
15

16           11.    However, this was not the case. A 200 foot bridge was actually  
17 constructed that was apparently not included in the 1985 HPA review. That 200 foot  
18 bridge thus continued the 600 foot floodplain obstruction, in place since 1926, with  
19 the expected and resultant effects on your property detailed in my 2011 report.  
20

21           12.    WAC 220-110-070 was in effect when the projects under discussion  
22 were designed, permitted and constructed. In part that section states:  
23  
24

25                    220-110-070 (1)(a) *“Excavation for and placement of the foundation and*  
26                    *superstructure shall be outside the ordinary high water line...”* and

1  
2 *220-110-070 (1) (h) Abutments, piers, piling, sills, approach fills, etc., shall not*  
3 *constrict the flow so as to cause any appreciable increase (not to exceed .2*  
4 *feet) in backwater elevation (calculated at the 100-year flood) or channel wide*  
5 *scour and shall be aligned to cause the least effect on the hydraulics of the*  
6 *watercourse.*


7  
8 14. This section of the WAC is cited as a requirement for compliance in both  
9 of the permits obtained for this work. Yet we find both of these sections violated in  
10 the construction of the project. Furthermore, I find no indication that any mitigation  
11 efforts were undertaken to compensate for any anticipated significantly bad effects.

12 15. Clearly both of these projects failed to comply with that provision of the  
13 permits, i.e., portions of the structure are within ordinary high water (the pilings set  
14 at 15° to normal flow), there is no evidence of a No-Rise analysis having been  
15 performed and the resulting excessive downstream erosion that the 1998 work  
16 attempted to mitigate. The erosion is a result of the impacts on the ... *effect on the*  
17 *hydraulics of the watercourse.*

18 16. Further, those provisions were not met in that there is no evidence of any  
19 flooding analysis, so there is no way of knowing if the stipulated allowed raise (0.2  
20 feet) was likely to be exceeded as a result of the project(s).

21 I declare under penalty of perjury under the laws of the State of Washington that the  
22 foregoing is true and correct to the best of my knowledge and belief.

23 EXECUTED this 18th day of September, 2015 at Oregon City, Oregon.

24  
25   
26 Russell A. Lawrence, P.E., MSc.

LAWRENCE DECLARATION IN SUPPORT OF PLFS'  
AMENDED SUMMARY JUDGMENT MOTION - 5 of 13  
[90263-2]

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1 EXHIBIT A

2 **RUSS LAWRENCE, PE, PLS**

3 Fluvial Geomorphologist -*StreamFix* Principal

4  
5 **EDUCATION**

- 6 • MSc, Fluvial  
7 Geomorphology, Portland  
8 State  
9 University,  
10 2003  
11 • BS, Forest  
12 Engineering,  
13 Oregon State  
14 University,  
15 1970

Russ has been a professional civil and environmental engineer for over 30 years. In 2003, Russ completed his Master of Science degree with an emphasis in fluvial geomorphology. In the past several years, Russ has completed more than 1000 hours of specialized training associated with stream and wetland restoration. Russ is also a professional land surveyor. Russ brings 17 years of direct experience in wetland and stream restoration work to the team. Russ has completed 32 major stream restoration projects and has additional projects in the permitting process. His work includes watershed level assessment in streams ranging from Williams Creek, a relatively small stream in southern Oregon, to the Washougal, Wind and Grays River watersheds. Russ has designed and provided construction oversight for stream restoration projects ranging from streams with a bankfull flow of approximately 200 cubic feet per second (CFS) to over 15,500 CFS. All of these projects required regulatory permits. The projects have included stream bank stabilization, habitat improvement/enhancement, and riparian restoration. Many of these projects have involved privately owned land that required effective communication with property owners and community stakeholders.

16 **REGISTRATION**

- 17 • Professional  
18 Civil Engineer:  
19 Oregon  
20 Washington  
21 Alaska  
22 • Professional  
23 Environmental  
24 Engineer:  
25 Oregon  
26 • Professional  
Land  
Surveyor:  
Oregon  
Washington

The following is a sampling of Russ' project experience

**Coal Cr. Passage Barrier Mitigation, Lewis Co. Washington**

Coal Cr. home to ESA listed Coho salmon, passed under a private drive through two perched culverts, one a 24 inch the other a 30. Immediately downstream were three full stream width wood weirs installed to mitigate this problem several years earlier. The barrier was resolved by installation of a 60 inch bottomless culvert and 5 down stream wood vanes to mitigate the drop formed by the perched condition. Project was completed in September and Chinook were observed to be successfully passing through within weeks.

**Thadbar and Nikka Creeks Passage Barrier Mitigation, Wahkiakum Co., Washington**

These creeks are tributary to the Grays River, a river home to 4 ESA listed species. The culverts on these creeks were perched and complete passage barriers to anadromous fish. The soils bearing capacities were very poor ranging from 1,000 to 500 psf. The design called for a concrete spread footing on one (a 10 foot bottomless culvert) and an arched pipe, filled with 2 feet of gravel, on the other. Both streams required upstream stabilization to mitigate the perched conditions.

LAWRENCE DECLARATION IN SUPPORT OF PLFS'  
AMENDED SUMMARY JUDGMENT MOTION - 6 of 13  
[90263-2]

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1 **RUSS LAWRENCE, PE, PLS**

2 Fluvial Geomorphologist -*StreamFix* Principal

3  
4 **White River Bank Erosion Control, Greenwater, Washington (11,500 cfs bankfull flow)**

5 White River originates at the White River glacier on Mt. Rainer and is driven  
6 by glacial melt. Except for the occasional rain on snow flood events, spring  
7 and summer flows often match those of winter. The river carries an  
8 excessive sediment load that is destabilizing its banks. This is resulting in a  
9 multi-thread river, presently occupying a 400 foot, plus, wide active channel  
10 through the project reach. The project addresses the continuing expansion  
11 of this active river channel in the vicinity of a 240 lot residential subdivision.  
12 The primary water source for this subdivision is in close proximity to a river  
13 bank that has receded 70 feet in the past year. Several of the homes are  
14 losing substantial lot depth too. The river is home to several ESA species.  
15 The final design calls for construction of several low profile vanes to deflect  
16 shear stress away from the banks. There are 13 vanes along a 1500 foot  
17 frontage.

18  
19 **Lewis River Ridge, East Fork Lewis River, Clark County, Washington (9,400 cfs bankfull flow)**

20 This project was undertaken to mitigate the continued erosion of an 80  
21 foot tall bluff that was threatening residential development along said bluff.  
22 The work was constrained by a short time line, neighbors threatening  
23 litigation and severe permitting issues. This reach of the river is also  
24 nundated by excessive sediment, impacted by gravel mining and highly  
25 unstable in its configuration. The resulting project, designed and permitted  
26 in less than 8 months, protects the eroding bluffs today. As a result of  
regulatory limitations to the scope of the project, the river has substantially  
changed its alignment through the project area. In spite of these changes  
the project successfully met its project goals and objectives.

**River Bank Stabilization, North Fork Santiam, Stayton Oregon (14,500 cfs bankfull flow)**

This project is a required remediation for emergency work performed to  
protect water intakes for the City of Stayton and Salem. The original  
proposal envisioned this project starting in late October of 2006.  
Unforeseen issues delayed the award of the project to the first week in  
January 2007, however, the compliance required regulatory review  
submittal deadline remained March 15, 2007. Another compliance  
requirement was that the design must comply with restrictive SLOPES III  
protocols. This effort was facilitated by meeting with interested regulatory  
agencies and others to ensure the design submitted met the regulatory  
requirements while meeting the needs of the river. From project start to  
permit submittal is less than 60 days. This is a sediment neutral reach.

1 **RUSS LAWRENCE, PE, PLS**

2 Fluvial Geomorphologist -*StreamFix* Principal

3  
4 **Cowlitz River**

5 **City of Longview (16,200 cfs bankfull discharge)**

6 This project was an ongoing effort to assist the City of Longview to cope  
7 with the extreme sediment conditions resulting from run-off from the  
8 St. Helens basin. This work has included developing a means for keeping  
9 the river intake supplying water to 40,000 population operable while dealing  
10 with a river bottom intake elevation that has gone from elevation 0 to around  
11 9.5 while the surface elevation has remained around 10 feet during summer  
12 low flows.

13 **Grays River Geomorphic Assessment & Rehabilitation Plan**

14 **Grays River, Washington**

15 This project was in the lower 14 miles of the Grays River, Wahkiakum  
16 County, Washington. It included identifying projects, defining goals and  
17 objectives, public meetings and meetings with affected property owners  
18 and other stakeholders. The lower 10 miles of this assessment is tidally  
19 influenced.

20 **PUD Bar**

21 **Grays River, Washington (5,200 cfs bankfull flow)**

22 This project is a 1,700-ft avulsion repair in the main stem of the Grays River,  
23 Wahkiakum County, WA. The project involved returning summer flows to  
24 the old channel and installing an in-stream flow metering structure  
25 ("W" – weir) that activates a secondary winter flow Chum spawning channel.  
26 This project has withstood 25,000 cfs for 7 days and only needed minor  
repairs, 10 bankfull+ events in 2 years. This is a sediment rich reach.

**Ashland Creek at Water Street Bridge, Ashland Oregon (3100 cfs  
@ 100 yr flood)**

During original bridge design, appropriate measures to pass the sediment  
load were not included in the bridge construction project(2005). Sediment  
accumulation had reached a point the 100 year flood could not be passed.  
The project consisted of reconstructing 300 feet of channel, removal of a  
low head irrigation diversion dam (1850's water right), development of a new  
screened irrigation diversion. Design was complicated because historic  
hotel foundation formed one bank of creek and was undermined. Project  
completed and meeting goals and objectives.

**Washougal River Re-route**

**Washougal, Washington (7,450 cfs bankfull flow, tidal influence)**

Russ designed the several phase project to return 1-½ miles of the Lower  
Washougal River to its 1930's channel location. Unfortunately, this design  
was not followed and the project has failed to meet project goals and

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3 objectives. This is a sediment deprived reach

4 **Wind River Rehabilitation**

5 **Hemlock, Washington** (3,800 cfs bankfull flow)

6 This project entailed designing emergency and permanent bank stabilization  
7 in reach of river that had migrated more than 400 feet laterally in 4 years.  
8 This is a sediment rich reach.

9 **West Daybreak Restoration East Fork of the Lewis River**

10 **Ridgefield WA** (9,400 cfs bankfull flow)

11 This project addresses 4000 feet of prime Chinook, and past steelhead  
12 spawning area. The reach has degraded to no steelhead and limited  
13 Chinook spawning (30 redds in only 200 feet of the available 4000 feet).  
14 Fish habitat increased by more than 800%, 2000 feet of bank stabilization  
15 using wood/stone structure, more than 1200 lf of 30'wide, 6 foot deep side  
16 channel created.

17 **Middle Miller Creek Restoration Project**

18 **Seattle, Washington**

19 PACE worked with Southwest Suburban Sewer District and the Port of  
20 Seattle to improve stream habitat as part of the Middle Miller Creek  
21 restoration project. This consisted of emergency work to stabilize an under-  
22 washed 30 inch sanitary main in the bottom of the creek. Access was  
23 limited by a number of wetlands, steep, unstable valley walls, and residential  
24 development. A Spyder hoe was used to minimize the equipment footprint  
25 and a helicopter was used to bring in needed stone, supplemental river  
26 bottom materials and logs used in the stabilization work. The result is a well  
protected sanitary mainline, improved fish habitat and a stable stream  
configuration.

East Fork Williams Creek

**Williams, Oregon**

Russ performed level II and III assessments on the main stem and several  
tributary creeks of the East Fork of Williams Creek. Seventeen projects were  
identified for immediate attention and a number of opportunities for further  
stabilization and habitat improvement. Several of these projects have been  
implemented with positive aquatic habitat impacts and enhanced long term  
stream stability.

Springbrook Creek

**Lake Oswego, Oregon**

This project included the design and construction inspection of two fish  
passage projects. It consisted of overcoming a 4 ft vertical wall in a

LAWRENCE DECLARATION IN SUPPORT OF PLFS'  
AMENDED SUMMARY JUDGMENT MOTION - 9 of 13  
[90263-2]

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3  
4                   landscape feature and a 2 ft vertical fall leading into a 270 ft flat bottom  
5                   railroad culvert. Fish now successfully travel above both of these barriers, as  
6                   demonstrated by fish spawning above both for the first time in more than 35  
7                   years.

8                   **Kerr/Cirque Reach of Springbrook Creek**  
9                   **Lake Oswego, Oregon**

10                  Executed design/build restoration of this highly incised, steep-gradient  
11                  reach in the Mountain Park neighborhood of Lake Oswego. Project included  
12                  close collaboration with City staff for review of project plans and  
13                  implementation resulting in a stable reach and rich riparian re-vegetation.

14                  **Assessment of Springbrook Creek**  
15                  **Lake Oswego, Oregon**

16                  This project included a stream restoration plan form and topography with  
17                  trees, structures, and property monuments. This project surveyed  
18                  Springbrook Creek from Rainbow Drive to Oswego Lake, including the Hope  
19                  Church site (4500 feet).

20                  **Highway 43 Drainage Improvement (Glenmorrie Terrace)**  
21                  **Lake Oswego, Oregon**

22                  The project included establishing objectives, collaborating with City staff,  
23                  identifying and acquiring required regulatory approvals, internal engineering  
24                  review, supervision and quality control, and identifying and reviewing existing  
25                  records and documentation.

26                                   **SUPPLEMENTAL COURSE WORK:**

|                                                                   |                                                      |
|-------------------------------------------------------------------|------------------------------------------------------|
| Design and Retrofit of Culverts in the Northwest for Fish Passage | University of Washington, 1997                       |
| Applied Fluvial Geomorphology                                     | Wildland Hydrology, 1998, Dave Rosgen                |
| Culvert Fish Passage Improvement                                  | Oregon Department of Transportation, 1999            |
| Applied Workshop, Stream, River and Floodplain Restoration        | Waterways Restoration Institute, 1999, Dr. Ann Riley |
| River Assessment and Monitoring                                   | Wildland Hydrology, 1999, Dave Rosgen                |
| River Morphology and Applications                                 | Wildland Hydrology, 1999, Dave Rosgen                |

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|                                                                 |                                                                          |
|-----------------------------------------------------------------|--------------------------------------------------------------------------|
| 4                   Natural Stream Restoration Design           | Wildland Hydrology, 2000 & 2007, Dr. Dave Rosgen                         |
| 5                   Wetland Ecology                             | Portland State Univ., 2000                                               |
| 6                   Fish Passage Culvert Design                 | Washington Dept. Fish and Wildlife, 2001                                 |
| 7                   Geomorphology for Engineers                 | Wildland Hydrology, 2002, Dave Rosgen, & Dr. Richard Hey                 |
| 8                   Sediment Transport and Modeling             | Oregon State University, 2003, Dr. Peter Klingeman & Dr. Jeffery Bradley |
| 9                   Integrated Streambank Protection Guidelines | Washington Department of Fish and Wildlife, 2004                         |

10

11

12                   **PAPERS:**

13                   Profile Studies Using Cross Vanes in Perched Culvert Replacement; Research and  
14                   Extension Regional Water Quality Conference 2002, Washington State University, Feb 20-21,  
15                   2002, Vancouver WA

16                   Regional bankfull discharge and channel dimension relations for natural rivers of the  
17                   Willamette River watershed, Oregon; Oregon Academy of Science, Linfield College, Feb. 22,  
18                   2003

19                   Regional Bankfull Discharge And Channel Dimension Relations For Natural Rivers  
20                   Of The Willamette River Watershed, Oregon; Thesis, Portland State University, 2003

21

22                   Classes:

23                   Taught Classes on the use of wood in river restoration and Bank Erosion measurement at the  
24                   following conferences:

- 25                   Society of Ecological Restoration – NorthWest Chapter, Yakima, WA 2007  
26                   Society of Ecological Restoration – NorthWest Chapter, Marysville WA 2010

LAWRENCE DECLARATION IN SUPPORT OF PLFS’  
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1 Society of Ecological Restoration – Beyond Borders, Victoria, B.C. 2012  
2 Society of Ecological Restoration – North West Chapter, Bend OR 2014

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LAWRENCE DECLARATION IN SUPPORT OF PLFS'  
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[90263-2]

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein.

I caused a true and correct copy of the foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Matthew D. Huot, AAG, WSBA #40606<br/>         Attorney General of Washington<br/>         Transportation &amp; Public Construction Division<br/>         7141 Cleanwater Drive SW<br/>         P.O. Box 40113<br/>         Olympia, WA 98504-0113<br/>         (360) 753-6126, tel / (360) 586-6847, fax<br/> <a href="mailto:MattH4@atg.wa.gov">MattH4@atg.wa.gov</a>; <a href="mailto:tpcef@atg.wa.gov">tpcef@atg.wa.gov</a>;<br/> <a href="mailto:JennahW@atg.wa.gov">JennahW@atg.wa.gov</a>; <a href="mailto:LynnJ@atg.wa.gov">LynnJ@atg.wa.gov</a><br/> <i>Attorneys for Defendant</i></p> | <p><input type="checkbox"/> <i>Legal Messenger</i><br/> <input type="checkbox"/> <i>Hand Delivered</i><br/> <input type="checkbox"/> <i>Facsimile</i><br/> <input type="checkbox"/> <i>First Class Mail</i><br/> <input type="checkbox"/> <i>Express Mail, Next Day</i><br/> <input checked="" type="checkbox"/> <i>Email</i></p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

DATED at Bainbridge Island, Washington, this 22 day of September, 2015.

  
 \_\_\_\_\_  
 Jon Brenner  
 Paralegal

# Appendix A-2



IN THE DISTRICT COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON

|                              |   |                                            |
|------------------------------|---|--------------------------------------------|
| STATE OF WASHINGTON,         | ) | NO. <b>PA14066</b>                         |
| Plaintiff,                   | ) |                                            |
|                              | ) | <b>CRIMINAL COMPLAINT</b>                  |
| vs.                          | ) |                                            |
|                              | ) | Unlawful Hydraulic Project Activities      |
| <b>WILLIAM KENNETH CAYO,</b> | ) | RCW 77.55.300; Unlawful Shoreline Activity |
|                              | ) | RCW 90.58.220                              |
| Defendant.                   | ) | Unlawful Water Pollution-RCW 90.48.140     |
| _____                        | ) |                                            |

I, Robert Ferguson, Attorney General of Washington, in the name and by the authority of the State of Washington, pursuant to RCW 43.10.232 and at the request of Michael K. Dorcy, Mason County Prosecuting Attorney, do accuse WILLIAM KENNETH CAYO, of the crimes of: Unlawful Hydraulic Project Activities (1 count); Unlawful Shoreline Activity (1 count); and Unlawful Water Pollution (1 count), committed as follows:

**UNLAWFUL HYDRAULIC PROJECT ACTIVITIES – RCW 77.15.300**

On or about the period beginning with 1<sup>st</sup> through 9th days of February, 2013, in the County of Mason, State of Washington, the above-named Defendant did construct a form of hydraulic project or perform other work on a hydraulic project and did fail to have a hydraulic project approval required under Chapter 77.55 RCW for such construction or work; contrary to Revised Code of Washington 77.15.300(1).

(Maximum Penalty - 364 days in jail or \$5,000 fine, or both pursuant to RCW 77.15.300(2) and RCW 9.92.020, plus restitution, assessments and court costs.)

**UNLAWFUL SHORELINE ACTIVITY – RCW 90.58.220**

On or about the period beginning with 1<sup>st</sup> through 9th days of February, 2013, in the County of Mason, State of Washington, the above-named Defendant did engage in activities on the shorelines of the state, to wit: the Tahuya River, in violation of the provisions of RCW Chapter 90; or of a master program, to wit: The Mason County Shoreline Master Program; rule

or regulation pursuant thereto, to wit: Chapter 174-27 Washington Administrative Code (WAC); contrary to Revised Code of Washington 90.58.220.

(Maximum Penalty - 90 days in jail or \$1,000 fine, or both pursuant to RCW 90.58.220, plus restitution, assessments and court costs.)

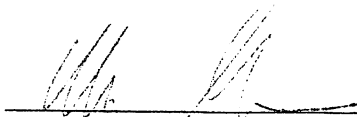
**UNLAWFUL WATER POLLUTION – RCW 90.48.140**

On or about the period beginning with 1<sup>st</sup> through 9th days of February, 2013, in the County of Mason, State of Washington, the above-named Defendant did throw, drain, run, or otherwise discharge, or did cause, permit, or allow to be discharged, into the waters of this state organic or inorganic matter that causes or tends to cause pollution of such waters; to wit: soil and gravel, contrary to Revised Code of Washington 90.48.080 and contrary to Revised Code of Washington 90.48.140.

(Maximum Penalty - 364 days in jail or \$10,000 fine, or both pursuant to RCW 90.48.140, plus restitution, assessments and court costs.)

DATED this 27 day of October, 2014.

ROBERT W. FERGUSON,  
Attorney General

  
\_\_\_\_\_  
WILLIAM SHERMAN, WSBA #29365  
Assistant Attorney General

ATTORNEY GENERAL'S OFFICE  
CRIMINAL JUSTICE DIVISION  
800 5<sup>th</sup> Avenue, Suite 2000  
Seattle, WA 98104  
(206) 464-6430

**DENNIS REYNOLDS LAW OFFICE**

**October 22, 2018 - 1:37 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96227-8  
**Appellate Court Case Title:** Charles Wolfe, et al. v. State Department of Transportation  
**Superior Court Case Number:** 14-2-01481-1

**The following documents have been uploaded:**

- 962278\_Answer\_Reply\_20181022133511SC306624\_9776.pdf  
This File Contains:  
Answer/Reply - Reply to Answer to Petition for Review  
*The Original File Name was Wolfe-Reply to State's Answer to Petition for Review-Final.pdf*

**A copy of the uploaded files will be sent to:**

- MattH4@atg.wa.gov
- alanscottmiddleton@comcast.net
- tpcef@atg.wa.gov

**Comments:**

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Sender Name: Jon Brenner - Email: jon@ddrlaw.com

**Filing on Behalf of:** Dennis Dean Reynolds - Email: dennis@ddrlaw.com (Alternate Email: dennis@ddrlaw.com)

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200 Winslow Way West  
Suite 380  
Bainbridge Island, WA, 98110  
Phone: (206) 780-6777

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