

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/18/2019 11:00 AM  
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No. 96798-9

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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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GREGORY REGELBRUGGE, *et al.*,

Appellants,

v.

SNOHOMISH COUNTY,

Respondent.

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**REPLY IN SUPPORT OF MOTION TO STRIKE**

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ADAM CORNELL  
Snohomish County Prosecuting Attorney

Joseph B. Genster, WSBA #14968  
Michael C. Held, WSBA #19696  
Deputy Prosecuting Attorneys  
Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, MIS #504  
Everett, WA 98201  
(425) 388-3333

HARRIGAN LEYH FARMER &  
THOMSEN LLP

Timothy G. Leyh, WSBA #14853  
Randall Thomsen, WSBA #25310  
Kristin Ballinger, WSBA #28253  
999 Third Ave., Suite 4400  
Seattle, WA 98104  
(206) 623-1700

## I. REPLY

The Court should grant the County's motion to strike Appendix B to the plaintiffs' Motion for Discretionary Review because the plaintiffs' response to the motion fails to justify inclusion of those materials.

The plaintiffs cite no authority for submitting documents not listed in RAP 13.4(c)(9) because there is none. Clerk's papers are not to be re-submitted (let alone annotated) as an appendix. *Cf.* RAP 9.1(d) ("Material appearing in one part of the record on review should not be duplicated in another part of the record on review.").

Concerning plaintiffs' submission of documents not part of the record *at all*, RAP 13.4 (concerning motions for discretionary review) is silent but RAP 10.3 (concerning briefs) is instructive. Except for text of statutes and the like, RAP 10.3(a)(8) prohibits appending "materials not contained in the record on review without permission of the appellate court." *Id.*; *see also* RAP 10.4(c).

Even if plaintiffs had sought permission, plaintiffs fail to address the six factors that must be met before "additional evidence on the merits of the case" may "be taken." RAP 9.11(a). To justify submitting this new material, plaintiffs mistakenly claim they did so to rebut a new argument. Response at 2 ("On appeal, [the County] first raised the issue of whether the Petitioners were rightful riparian owners."). But the County did raise

this issue at the trial court, and plaintiffs obviously know this as their B3 (CP 2272) is precisely the document the County relied on in making that point:

[None of the plaintiffs] can establish that their property ever had riparian rights . . . .<sup>28</sup> [FN28] Only landowners adjacent to a navigable waterway have riparian rights. . . . The Regelbrugges did not own property along the river. [CP 2272] The Harrises and Hargraves owned property adjacent to the river, but in areas unaffected by the Tribe’s alleged “movement” of the river—their property was upriver hundreds and thousands of feet respectively. [CP 2272] Lon Slauson owned property adjacent to the river but only because the river experienced a sudden change in its course (i.e., an avulsion) because of the 1967 landslide. Compare Plat Map [CP 2177] (Lon Slauson’s property is lot numbers 58–62, see [CP 2272]) with Steelhead Haven Vicinity - Parcel Map [CP 2162]. An avulsion does not create riparian rights in favor of property owners who did not possess those rights previously.

CP 2133.

## II. CONCLUSION

For the foregoing reasons, the County asks the Court to strike Appendix B to the plaintiffs’ Motion for Discretionary Review.

RESPECTFULLY SUBMITTED this 18th day of April, 2019.

ADAM CORNELL  
Snohomish County Prosecuting Attorney

Joseph B. Genster, WSBA #14968  
Michael C. Held, WSBA #19696  
Deputy Prosecuting Attorneys  
Civil Division

HARRIGAN LEYH FARMER &  
THOMSEN LLP

By 

\_\_\_\_\_  
Timothy G. Leyh, WSBA #14853  
Randall Thomsen, WSBA #25310  
Kristin Ballinger, WSBA #28253

*Attorneys for Snohomish County*

**CERTIFICATE OF SERVICE**

I, Florine Fujita, declare that I am employed by the law firm of Harrigan Leyh Farmer & Thomsen LLP, a citizen of the United States of America, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On April 18, 2019, I caused a true and correct copy of the foregoing document to be served on the parties listed below in the manner indicated:

Karen A. Willie  
Law Office Of Karen A. Willie Plc  
2212 Queen Anne Ave. N.  
Seattle WA 98109-2312

- Via Legal Messengers
- Via First Class Mail
- Via Facsimile
- Via Electronic Mail

Michael D. Daudt  
Daudt Law PLLC  
2200 6th Ave. St. 1250  
Seattle, WA 98121-1820

- Via Legal Messengers
- Via First Class Mail
- Via Facsimile
- Via Electronic Mail

Emily J. Harris  
David B. Edwards  
Guy P. Michelson  
Corr Cronin Michelson Baumgardner  
Fogg & Moore, LLP  
1001 4th Ave. – Suite 3900  
Seattle, WA 98154-1051

- Via Legal Messengers
- Via First Class Mail
- Via Facsimile
- Via Electronic Mail

Corrie J. Yackulic  
Corrie Yackulic Law Firm, PLLC  
315 5th Ave. S. – Suite 1000  
Seattle, WA 98104

- Via Legal Messengers
- Via First Class Mail
- Via Facsimile
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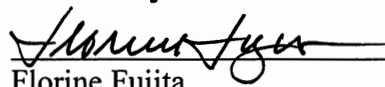
John W. Phillips  
Phillips Law Group, PLLC  
315 5th Ave. S. – Suite 1000  
Seattle, WA 98104

- Via Legal Messengers
- Via First Class Mail
- Via Facsimile
- Via Electronic Mail

Darrell L. Cochran  
Loren A. Cochran  
Pfau Cochran Vertetis Amala PLLC  
911 Pacific Ave. – Suite 200  
Tacoma, WA 98402

- Via Legal Messengers
- Via First Class Mail
- Via Facsimile
- Via Electronic Mail

DATED this 18<sup>th</sup> day of April, 2019.



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Florine Fujita  
999 Third Avenue, Suite 4400  
Seattle, WA 98104  
Tel: (206) 623-1700  
Fax: (206) 623-8717  
Email: [florinef@harriganleyh.com](mailto:florinef@harriganleyh.com)

# HARRIGAN LEYH FARMER & THOMSEN LLP

April 18, 2019 - 11:00 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96798-9  
**Appellate Court Case Title:** Gregory Regelbrugge, et al. v. Snohomish County  
**Superior Court Case Number:** 14-2-18401-8

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- mike@daudtlaw.com
- mmadderra@bllaw.com
- patricia@cjylaw.com
- randallt@harriganleyh.com
- renet@atg.wa.gov
- sawes@pcvalaw.com
- sdamon@corrchronin.com
- tkranz@snoco.org
- wwalsh@cozen.com

### Comments:

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Sender Name: Florine Fujita - Email: florinef@harriganleyh.com

**Filing on Behalf of:** Timothy George Leyh - Email: timl@harriganleyh.com (Alternate Email: florinef@harriganleyh.com)

Address:

999 Third Avenue

Suite 4400

Seattle, WA, 98104

Phone: (206) 623-1700 EXT 303

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