FILED

MAY 29 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

No. 29121-9-III

IN THE COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, a municipal corporation, Respondent/Cross-Appellant,

v.

STATE OF WASHINGTON, PETER GOLDMARK, Commissioner of Public Lands, and CONSERVATION NORTHWEST, a non-profit corporation, Appellants/Cross-Respondents,

and

CHRISTINE DAVIS, a single person, TREVOR KELPMAN, a single person, DAN GEBBERS and REBA GEBBERS, husband and wife, and WILLIAM C. WEAVER, custodian for Christopher C. Weaver, a minor, Respondents.

BRIEF OF RESPONDENT PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY – PUD STATUTORY CONDEMNATION AUTHORITY

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CHRONOLOGY OF KEY EVENTS

1904 Washington Supreme Court holds that statutory authority to condemn school trust lands must be expressly stated. *State v. Super. Ct. of Chelan County*, 36 Wash. 381, 78 P. 1011.

1907 Legislature amends condemnation statute to expressly include state, county, and school lands. *See City of Seattle v. State*, 54 Wn.2d 139, 145, 338 P.2d 126 (1959).

1911 Washington Supreme Court upholds condemnation of school trust lands. *Roberts v. City of Seattle*, 63 Wash. 573, 116 P.2d 25.

1922 Washington Supreme Court upholds condemnation of school and other state lands dedicated to a public use where the proposed use would not destroy the public use or preclude its successful operation. *City of Tacoma v. State*, 121 Wash. 448, 209 P. 700.

1927 Legislature passes the Public Lands Act, which defines "state lands" to include school trust lands "which are not devoted to or reserved for a particular use by law." Laws of 1927, ch. 255, § 1.

1930 Voters pass Initiative to the Legislature No. 1, authorizing the creation of public utility districts.

1931 Legislature enacts public utility district statute, granting districts the express authority to condemn "state, county, and school lands." Laws of 1931, ch. 1, § 6(e) (now codified at RCW 54.16.050).

1959 Washington Supreme Court upholds condemnation of school trust lands not dedicated to a public use and reaffirms its decision in *City of Tacoma v. State*. *City of Seattle v. State*, 54 Wn.2d 139, 338 P.2d 126.

1996 Okanogan PUD begins planning the Methow Transmission Project ("Project") to construct a new electrical

transmission line and substation between Pateros and Twisp.

2003-2006 The PUD completes an environmental impact statement for the Project, receiving formal written comments from DNR that DNR does not object to the transmission line route and that DNR will grant easements over school trust lands within the Project area if certain mitigation measures are taken. CP 143-47. Citizen groups file suit to challenge the route selection and the sufficiency of the FEIS (Okanogan County Cause No. 06-2-00168-2). DNR does not participate in the challenge.

2008 The Project's environmental review is upheld by the Court of Appeals, and the Supreme Court denies review. *Gebbers v. Okanogan County PUD No. 1*, 144 Wn. App. 371, 183 P.3d 324, *rev. denied*, 165 Wn.2d 1004 (2008).

2007-2009 The PUD negotiates with DNR to acquire the necessary easements. The PUD's formal easement application is submitted in October 2008. DNR represents that final action on the easements could be expected in two to three months. CP 125-26.

Jan. 2009 Peter Goldmark takes office as Commissioner of Public Lands.

Nov. 2009 Still awaiting final action on its October 2008 easement application, the PUD files its petition to condemn the necessary easements over state lands in Okanogan County Superior Court, Cause No. 09-2-00679-4. CP 610-41. An amended petition is filed on April 14, 2010. CP 168-227.

Feb. 2010 The trial court grants Conservation Northwest's motion to intervene in the eminent domain proceedings. CP 506-08.

May 2010 On the parties' cross-motions, the trial court upholds the PUD's condemnation authority and enters an uncontested order of public use and necessity. CP 14-24.

June 2010 Conservation Northwest appeals the orders on summary judgment and public use and necessity. CP 1-13. The PUD cross-appeals Conservation Northwest's intervention. CP 918-22. The State files a "contingent notice of appeal." CP 906-17. Commissioner Goldmark files a petition for a writ of mandamus requiring the Attorney General to represent him in an appeal, Supreme Court No. 84704-5.

Oct. 2010 This appeal is stayed pending a ruling in *Goldmark v. McKenna*.

Sept. 2011 The Washington Supreme Court holds that the Attorney General is required to prosecute an appeal on behalf of DNR. *See Goldmark v. McKenna*, 172 Wn.2d 568, 259 P.3d 1095.

1. INTRODUCTION

There is no dispute that Okanogan PUD has the express statutory authority to condemn school trust lands. Since 1931, it has been the will of the people and the Legislature of this State that a public utility district

> may take, **condemn** and purchase, purchase and acquire **any public and private property**, franchises and property rights, **including state, county, and school lands**, and property and littoral and water rights, **for ... transmission lines, and all other facilities necessary or convenient**.

Laws of 1931, ch. 1, § 6(e) (codified at RCW 54.16.050) (emphasis added)[1]; *see also* RCW 79.36.580 (reserving the PUD's right to condemn easements over state lands).

No party has challenged the constitutionality or validity of this law. It remains in full force today, despite the failed efforts of the Department of Natural Resources ("DNR") to amend the law during the course of this litigation.[2] And, for more than a century, the Washington Supreme Court has permitted the condemnation of school trust lands. *See, e.g.*, *Roberts v. City of Seattle*, 63 Wash. 573, 575-76, 116 P.2d 25 (1911).

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[1] CP 70-82, attached hereto as Appendix A. The legislation creating public utility districts was initially passed by voters as an Initiative to the Legislature in 1930. CP 393-417 (Initiative to the Legislature No. 1). It was then submitted to and approved by the Legislature during its 1931 session. The law therefore evinces the intent of the people and the Legislature.

[2] CP 84-112 (Senate Bill 6838 and related documents, 2010 session).

DNR and Conservation Northwest devote no more than a few sentences in their more than 80 pages of briefing to the controlling statute.[3] Instead, they ask this Court to legislate. That is not the function of the courts. *See Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002) ("The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.").

The PUD has express statutory authority to condemn school trust lands not devoted to or reserved for a particular use by law. RCW 54.16.050, 79.02.010(13). DNR and Conservation Northwest present no fact or law for the conclusion that the school trust lands at issue are so reserved. And, even if the trust lands were dedicated to some public use, the PUD can still condemn the necessary easements because the PUD's proposed use would not destroy DNR's use of those lands. *See City of Tacoma v. State*, 121 Wash. 448, 453, 209 P. 700 (1922). This fact was **undisputed** before the trial court. Based on the clear factual record, the trial court properly found that the PUD's transmission line project over the State's land would not destroy or interfere with the grazing on some of

[3] State's Opening Brief at 17, 29; Conservation Northwest's Opening Brief at 38.

that land. This Court should affirm the summary judgment orders in favor of the PUD.

2. RESPONSE TO APPELLANTS' ASSIGNMENTS OF ERROR AND ISSUES

The Superior Court for Okanogan County did not err in granting summary judgment to the PUD on its authority to condemn state school trust lands; and, it did not err in entering an uncontested order on public use and necessity. The PUD restates the assignments of error asserted by DNR and Conservation Northwest,[4] and the issues relating to those assignments, as follows:

2.1. Chapter 1, Section 6(e), of the Laws of 1931, codified at RCW 54.16.050, specifically authorizes public utility districts to condemn school lands for transmission lines. The PUD is condemning easements over school lands for the Methow Transmission Project. Was it error for the trial court to hold that the school lands are subject to condemnation? [Assignment of Error No. 1 of State; Assignment of Error of Conservation Northwest.]

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[4] This Brief of Respondent addresses both DNR's and Conservation Northwest's appellate briefs. The PUD responds to Conservation Northwest's arguments despite its continuing objection to Conservation Northwest's participation in these eminent domain proceedings. *See* PUD's Opening Brief on Intervention (filed April 23, 2012, in Case No. 29123-5).

2.2. School lands not dedicated to a public use or devoted to or reserved for a particular use by law are subject to condemnation. *City of Seattle v. State*, 54 Wn.2d 139, 147, 338 P.2d 126 (1959). Lands subject to sale are not dedicated to a public use or devoted to or reserved for a particular use by law. *Id.*; *State v. Super. Ct. for Jefferson County*, 91 Wash. 454, 459, 157 P. 1097 (1916). School trust lands may be sold, even if subject to grazing leases. Was it error for the trial court to hold that the school lands may be condemned because they are not dedicated to a public use or devoted to or reserved for a particular use by law? [Assignment of Error No. 1 of State.]

2.3. The Washington Supreme Court considers whether a proposed condemnation use is compatible with an existing public use; and, if the proposed use will not destroy the existing use, school trust lands may be condemned. *City of Tacoma*, 121 Wash. at 453; *Roberts*, 63 Wash. at 576. DNR did not dispute the PUD's evidence before the trial court that the proposed transmission line easements are compatible with cattle grazing. Was it error for the trial court to hold that compatibility of use is relevant to the condemnation question and to hold that the undisputed evidence showed that the uses are compatible? [Assignments of Error Nos. 2 and 3 of State.]

3. STATEMENT OF THE CASE

3.1. Methow Transmission Project.[5]

Okanogan PUD transmission lines already cross State lands managed by DNR in Okanogan County. CP 127. For more than fifteen years, the PUD has been trying to construct a new transmission line to improve electrical service to the citizens of the Methow Valley. The existing transmission line has long experienced reliability, capacity, and line loss problems; and, service failures are expected to increase in the future. To address this growing problem, the PUD is to construct a new transmission line and substation between Pateros and Twisp ("Project").[6]

From initial planning for the Project in 1996, it has been subject to extensive scrutiny. The PUD and the U.S. Forest Service prepared a Draft Environmental Impact Statement ("DEIS"), seeking input from citizens, environmental groups, and government agencies. DNR did not seek a change of lead agency status. *See* WAC 197-11-944.

Fifteen alternatives were identified and compared against the PUD's objectives, and six alternatives and a no-action alternative were

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[5] The PUD recognizes that some of this factual recitation is contained the PUD's Opening Brief on Intervention (filed April 23, 2012, in Case No. 29123-5). But, DNR's failure to properly characterize the factual background demands a more accurate description through this response.

[6] A comprehensive discussion of the Project is contained in this Court's opinion in *Gebbers v. Okanogan County PUD No. 1*, 144 Wn. App. 371, 183 P.3d 324, *rev. denied*, 165 Wn.2d 1004 (2008).

approved for detailed consideration. The PUD conducted two public hearings, held several public meetings, and responded to over 400 public comment letters. DNR participated in this review and comment process. It expressed **no objection** to the PUD's preferred route, which crosses school trust lands owned by the State of Washington and managed by DNR.[7] CP 143-47. The Final Environmental Impact Statement ("FEIS") for the Project was released in March 2006,[8] and the PUD Board made its route selection later that month.

Following this decade-long environmental review and planning process, the PUD's decisions regarding the Project and the sufficiency of the FEIS were affirmed by the superior court and this Court. *Gebbers*, 144 Wn. App. at 393 (holding that the environmental effects of the Project were adequately disclosed, discussed, and substantiated in the FEIS). This Court further held that the PUD did not act arbitrarily and capriciously in selecting the transmission line route. *Id.* The Supreme Court denied review. *Gebbers v. Okanogan County PUD No. 1*, 165 Wn.2d 1004, 198

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[7] DNR, as a consulted agency, cannot be later heard to complain about the Project or the environmental review. *See* WAC 197-11-545 (effect of no comment); *see also Marino Prop. Co. v. Port of Seattle*, 88 Wn.2d 822, 834, 567 P.2d 1125 (1977).

[8] The Project FEIS is available to the public online at https://www.okanoganpud.org/document-library/methow-transmission-project/document-library-legacy-view. Although a complete copy of the FEIS is not a part of the record on appeal, the PUD agrees that the Court may take judicial notice of the FEIS.

P.3d 511 (2008). DNR did not participate in the legal challenge to the Project.

3.2. Nature Of The Easements Required Over State Trust Lands.

3.2.1. Easements And Road Access.

The Project requires 100-foot-wide easements across 11.6 miles of generally vacant school trust land for the purpose of constructing and maintaining electrical transmission structures and conductors.[9] CP 127, 187-99. The PUD is not seeking a fee simple interest in any State land. CP 168-227. The school trust lands will remain under State ownership and DNR management. Although the entire Project requires 21.6 miles of temporary track roads for construction of the transmission line, it does not require any new permanent roads within the Project area. CP 187-99; FEIS at 2-35. The Project was substantially modified to eliminate all permanent road construction (20.8 miles) and reconstruction (24.3 miles), in part due to DNR's concern for minimizing permanent roads on State land. CP 144; FEIS at 2-7.

While not relevant to this proceeding, DNR's characterization of these roads is misleading. *See* State's Opening Brief at 7-8. Contrary to DNR's incorrect statement of facts, 21.6 miles of **temporary** track roads

[9] Except for existing roads and fencing, the lands are subject only to active and inactive grazing rights.

are needed for the **entire** 28-mile Project, with only approximately 8.2 miles of those temporary track roads on State land.[10] FEIS at 2-35 (tbl. 2-11); CP 187-99. The PUD is also seeking easements on State land over 13.2 miles of **existing** permanent public roads. CP 187-99. For context, there are approximately 590 miles of existing roads within the Project area. FEIS at 2-35 (tbl. 2-11). Moreover, as acknowledged by DNR staff, the temporary construction access roads over State lands would generally involve only "a single trip in to the pole sites and a single trip out, without the need to excavate road cuts." CP 129.

3.2.2. Grazing Leases And Permits.

The school trust lands are subject to five grazing leases and two grazing permits. CP 231-369 (copies of leases and permits). The leases generate less than $3,000 annually for the school trust beneficiaries, not accounting for DNR's administrative costs. CP 232, 252, 273, 298, 319 (providing rates for each lease); *see also* RP 18-19 (May 11, 2010). DNR admits that the PUD's proposed easements will pass over no more than an estimated 4% of the area for any one lease and as little as 0.02% for one of the leased areas (which will not actually contain any PUD structures).[11]

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[10] *See* State's Opening Brief at 8 (alleging an "additional 22 miles of roads through undeveloped state trust lands").

[11] As described by DNR, this last lease is a "400 acre lease with no power line impacts. The power line [will cross] the extreme northeast corner of the property with aerial lines only, no structures, affecting 0.06 acres." CP 130.

CP 135-38. Another of the leases has not been actively grazed in several years due to lack of fencing and water development for cattle. CP 135.

The PUD's proposed easements do not exclude cattle grazing or other compatible uses. CP 127. In fact, the easements are similar to many previously granted to the PUD from DNR over lands leased for grazing. *Id.* Throughout Okanogan County, electric transmission lines cross grazing lands with no appreciable impact on cattle grazing. *Id.* One example of this peaceful co-existence between cattle grazing and power transmission is the PUD's Loup Loup transmission line, which occupies an easement over DNR lands leased for grazing. *Id.*

DNR's grazing leases specifically contemplate other compatible uses and the exercise of condemnation authority against leased lands. This is consistent with state law requiring DNR and the Board of Natural Resources to include lease conditions they deem "advisable … to achieve the purposes of the state Constitution and this chapter." RCW 79.13.030. Each lease includes a reservation of DNR's rights to grant easements on the leased land, to lease the land for other compatible uses, and to grant easements to others for use of new and existing roads on the leased land.[12]

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[12] Similarly, grazing permits issued under RCW 79.13.390 do not exclude other uses. *See* WAC 332-20-191; *Sacramento Grazing Ass'n, Inc. v. United States*, 66 Fed. Cl. 211, 216-17 (2005) (citing *United States v. Fuller*, 409 U.S. 488, 493, 93 S. Ct. 801, 35 L. Ed. 2d 16 (1973)).

E.g., CP 233 (§§ 4.02-.03, .06). Each lease also specifically acknowledges that all or part of the leased land may be condemned by **any** public authority under the power of eminent domain. *E.g.*, CP 240 (§ 10.06).

3.3. The PUD's Easement Application And Negotiations With DNR.

3.3.1. No DNR Objection To The Project Route Or EIS.

As part of the Project's environmental review process, DNR submitted formal comments on the DEIS, stating that it had "no objection" to the Project route, or any of the other alternatives presented. CP 143-47. DNR further commented that an easement for the transmission line could be issued as long as certain mitigation measures were taken. CP 143. The PUD responded to DNR's comments as part of the FEIS. CP 146-47. In April 2006, DNR acknowledged the FEIS accomplished the SEPA review necessary prior to granting easements. CP 140.

3.3.2. DNR Refuses To Process PUD Easement Application.

After the route selection, the PUD began negotiating with DNR for the necessary easements, using the easement application process set forth in chapter 79.36 RCW. CP 125-26. Between May 2007 and February 2010, the PUD and DNR communicated extensively about the easements, including at least 90 contacts (meetings, phone calls, or e-mails). *Id.* When the PUD submitted its formal easement application in

October 2008, it was informed by DNR that final action on the application could be expected in two to three months. CP 126. Peter Goldmark took office as Commissioner of Public Lands three months later, in January 2009.

Over three and one-half years after the PUD's formal request, DNR has yet to make a determination on the PUD's easement application, which is still pending.[13] CP 126. DNR has acknowledged that it has no timetable for a decision on the application. CP 123. Meanwhile, each loss of a construction season – and each year of delay – costs the PUD's ratepayers an additional $400,000 in line loss. CP 127. It also impairs the PUD's ability to benefit from the current economic climate that has significantly reduced construction costs. *Id.*

After years of working with DNR through its easement process without approval of the PUD's application, the PUD was left with no choice but to condemn the necessary right of way. CP 126-27. The PUD filed its original Petition for Condemnation on November 30, 2009, which was later amended on April 14, 2010. CP 168-227, 610-41.

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[13] The PUD has not withdrawn its easement application, as alleged by the State. State's Opening Brief at 9. To the contrary, the PUD continues to be ready and willing to work with DNR on the easements.

3.4. Summary Judgment Motions On The PUD's Condemnation Authority.

After the PUD filed its condemnation petition, the State and Intervenor Conservation Northwest filed separate motions for summary judgment, arguing that the PUD does not have the authority to condemn the school trust lands. CP 460-504. DNR conceded that the PUD has the statutory authority to condemn,[14] but argued that the specific trust lands for the Project are not subject to condemnation because they are devoted to a particular use by law. CP 476-77. The PUD opposed both motions and requested summary judgment in its favor. CP 52-66, 148-67.

No party claimed that there were disputed material facts that precluded summary judgment. Throughout its briefing, the PUD argued and provided supporting evidence that the school trust lands could be condemned because the PUD's proposed use was compatible with the State's use of the land. *E.g.*, CP 124-47, 151-53, 162-66. Despite ample opportunity in its reply brief and at oral argument, DNR presented **no** facts, evidence, or argument to show that the Project would impact DNR grazing leases or permits or otherwise inhibit cattle grazing in or near the

[14] Only Conservation Northwest argued that chapter 54.16 RCW did not grant the PUD express authority to condemn. *See* CP 486-504. It has abandoned this argument on appeal. Conservation Northwest's Opening Brief at 2 n.1.

transmission line easements.[15] *See* CP 41-47; RP 27-38 (Apr. 30, 2010); *see also* RP 12-13 (May 11, 2010) ("There's no evidence of any negative effect on grazing."); RP 18 (May 11, 2010).

After hearing oral argument on the cross-motions for summary judgment, the superior court issued its oral ruling on May 11, 2010. First, the court rejected Conservation Northwest's statutory argument and found that the PUD has express authority to condemn school trust lands under RCW 54.16.020 and .050. RP 7-12, 22 (May 11, 2010). Second, the court rejected the contention that these specific trust lands are not subject to condemnation because they are dedicated to a public use. RP 12-22 (May 11, 2010). The court further explained that compatible use is highly relevant to the condemnation question, as evidenced by the Supreme Court's decisions in *Roberts*, *City of Tacoma*, and *Jefferson County*. RP 15-22 (May 11, 2010) ("The courts do look deeper into issues of effects, results, interference, and compatible use." (RP 17)). The court found no genuine issue of material fact; the PUD's proposed easements did not conflict with DNR's use of the land. *Id.*

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[15] Indeed, Commissioner Goldmark was present at the summary judgment hearing and could have provided testimony on this topic if requested. *See* RP 7 (Apr. 30, 2010).

The trial court entered orders denying summary judgment for Conservation Northwest and the State, and granting summary judgment to the PUD on the issue of condemnation authority. CP 19-24. Because the State did not otherwise oppose an order of public use and necessity, the court also entered its Findings of Fact, Conclusions of Law, and Order on Public Use and Necessity. CP 14-18. These appeals followed.

4. SUMMARY OF ARGUMENT

Public utility districts have express statutory authority to condemn school trust lands for transmission lines. RCW 54.16.050. This authority is confirmed in DNR's easement statutes, which expressly reserve the right of local governments such as public utility districts to condemn easements over state lands. RCW 79.36.580. No party challenges these longstanding statutes.

The school trust lands here are not devoted to or reserved for a particular use by law. They are not dedicated to a public use. The lands are subject to sale, subject to easements, and subject to multiple uses. These facts are uncontested. Condemnation is therefore permitted by statute and Supreme Court precedent dating back more than a century.

Moreover, even if the limited grant of grazing rights is a public use, our Supreme Court has held that condemnation is authorized if the

proposed use does not destroy the use to which the lands are dedicated. *City of Tacoma*, 121 Wash. at 453. No party disputed the PUD's evidence and argument before the trial court that its easements are compatible with cattle grazing (as they are elsewhere on DNR lands). Indeed, the PUD's proposed use actually benefits the trust by providing additional revenue, while allowing continued income generation through grazing leases and permits. On these uncontested facts, condemnation is permitted. *See id.*; *Roberts*, 63 Wash. at 576.

5. ARGUMENT

5.1. Standard Of Review.

This Court reviews the trial court's summary judgment orders *de novo*. *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, 271, 267 P.3d 998 (2011).

5.2. Public Utility Districts Have Had Express Statutory Authority To Condemn School Trust Lands Since 1931.

For more than 80 years, it has been the law of our State that a public utility district

> may take, **condemn** and purchase, purchase and acquire **any public and private property**, franchises and property rights, **including state, county, and school lands**, and property and littoral and water rights, **for . . . transmission lines, and all other facilities necessary or convenient**.

Laws of 1931, ch. 1, § 6(e) (codified at RCW 54.16.050) (emphasis added) (attached as App'x A).

As the Washington Supreme Court acknowledges, the Legislature has granted public utility districts almost unlimited authority to perform their duties:

> The legislature has seen fit to vest the commissioners of a public utility district with almost unlimited powers relative to the construction, purchase, etc., of utilities.... This the legislature had a right to do, and we cannot therefore limit the powers granted, unless such limitation is plain, nor can we otherwise interfere with the exercise of the powers granted, unless such powers are exercised capriciously and arbitrarily, or fraudulently.

Bayha v. PUD No. 1 of Grays Harbor County, 2 Wn.2d 85, 98, 97 P.2d 614 (1939) (addressing the PUD's authority to acquire electric utilities). The 1931 PUD Act is not subject to strict construction. Rather, it must be liberally construed in order to carry out its purposes.[16]

Consistent with this broad grant of power, public utility districts are statutorily authorized to condemn school trust lands (not devoted to or reserved for a particular use by law). RCW 54.16.050, 79.02.010(13).[17]

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[16] Laws of 1931, ch. 1, § 11 (attached as App'x A) ("The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended. When this act comes in conflict with any provision, limitation or restriction in any other law, this act shall govern and control.").

[17] The PUD statute itself does not actually contain any limitation on the type of state or school land that may be condemned. However, the definition of "state lands" (which encompasses school trust lands) in the Public Lands Act does not

No party argues otherwise. The PUD's statutory condemnation authority is therefore clear and undisputed.

5.3. As DNR Acknowledged, School Trust Lands Are Not Per Se Exempt From Condemnation.

Recognizing the clear state of the law, DNR admitted before the trial court that not all trust lands are dedicated to a public use, thereby subjecting such lands to condemnation. Now, DNR (and Conservation Northwest) assert that all school trust lands are per se exempt from condemnation. This argument is meritless. It not only ignores the controlling PUD statute and longstanding Supreme Court precedent allowing condemnation of school trust lands, it renders meaningless the entire statutory scheme specifically granting public agencies the authority to acquire trust lands through the power of eminent domain.

5.3.1. School Trust Lands Are Not Reserved For A Particular Use By Law Merely Because They Are Granted Lands.

School trust lands are not dedicated to a public use or devoted to or reserved for a particular use by law simply because they are school trust lands. DNR **conceded** this point to the trial court. CP 479-80; *see* RP 7 (May 11, 2010). On appeal, however, DNR frequently disregards the law and now asserts for the first time that all school trust lands are reserved for

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include lands "that are devoted to or reserved for a particular use by law." RCW 79.02.010(13).

a particular use by the Washington Constitution and the Enabling Act. State's Opening Brief at 18, 24 n.10. This argument is frivolous.

First, the Public Lands Act defines "state lands" as including school trust lands "**that** are not devoted to or reserved for a particular use by law." RCW 79.02.010(13) (emphasis added). This necessarily means that not all school trust lands are so reserved; otherwise, there would be no reason to include a qualifier.[18] This Court must give effect to each provision of the statute. *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) ("Statutes must be construed so that all the language is given effect and no portion is rendered meaningless or superfluous."); *Pierce County v. State*, 144 Wn. App. 783, 852, 185 P.3d 594 (2008) ("We do not interpret a statute in a manner that renders a provision meaningless or creates an absurd or strained result.").

Second, DNR's interpretation would render meaningless the many statutes that specifically permit local governments to condemn state and school trust lands. *See, e.g.*, RCW 8.12.030 (cities and towns), 53.34.170

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[18] The original version of the Public Lands Act stated similarly:

> Public lands of the State of Washington are lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include ... School lands, that is, lands held in trust for the support of the common schools.

Laws of 1927, ch. 255, § 1 (attached as App'x B (CP 391)). DNR admits that the current version of the law retains the Act's original meaning. State's Opening Brief at 16 & n.7.

(port districts), and 54.16.050 (public utility districts). If all trust lands were, in fact, intended to be exempt from condemnation, it makes no sense for the Legislature to have granted numerous local governments the express authority to condemn such lands. DNR sought to remove this widespread authority to condemn trust lands in the 2010 legislative session – an attempt the Legislature rejected.[19] CP 84-112 (Senate Bill 6838 and related documents). Its argument on appeal is merely an attempt to render broad swaths of granted legislative authority inoperable while circumventing the legislative process.

Finally, DNR's argument ignores established Washington Supreme Court precedent. As the *Roberts* Court held more than a century ago, the fact that school trust lands are devoted to the purpose of financing education is insufficient to exempt them from condemnation:

> It is also argued that the land taken was already devoted to a public use – that of education – and therefore cannot be taken for another public use. There is nothing in the record to indicate that the 30-foot strip of land in question is actually in use by the university, and there is nothing to

[19] Although legislative intent is not at issue here because the authority granted to the PUD under RCW 54.16.050 is clear and unambiguous, the Legislature's refusal to amend the statute is indicative of the statute's meaning. *See CLEAN v. State*, 130 Wn.2d 782, 818-19, 928 P.2d 1054 (1996) ("The absence of an amendment may be indicative of legislative intent."); *State v. Clark*, 129 Wn.2d 805, 812-13, 920 P.2d 187 (1996) (rejection of an amendment to existing statute may indicate legislative intent underlying the statute); *Carnation Co. v. Hill*, 115 Wn.2d 184, 189, 796 P.2d 416 (1990) (Legislature's failure to amend statutory language in face of longstanding interpretation of statute by court may be indicative of legislative intent).

> indicate that the taking of the strip of land will impair the use of the land remaining. On the other hand, the record shows that the remaining land will be benefited. Under this condition it may be taken.

63 Wash. at 576.[20] Since *Roberts*, the Supreme Court has continued to authorize condemnation of school and other types of trust lands, even though they exist for the purpose of serving the various trust beneficiaries. *See City of Seattle*, 54 Wn.2d at 147; *City of Tacoma*, 121 Wash. at 453.

DNR previously acknowledged this controlling precedent. CP 479-80 (observing that *City of Seattle* "indicates that not all trust lands are dedicated to or devoted to a public use, consistent with the line of prior cases inquiring into the actual use to which the land is being put"). As DNR admitted, "Courts would not inquire into whether state trust land was devoted to a public use if the question were irrelevant." CP 479. Yet, on appeal, DNR urges the opposite position and asserts that Supreme Court decisions such as *Roberts*, *City of Tacoma*, and *City of Seattle* were all erroneous. State's Opening Brief at 18.[21] DNR offers no viable grounds for this radical revision of condemnation law.

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[20] The fact that the land in *Roberts* was not "in use" does not change the underlying principle. Indeed, DNR does not argue that failing to actually use school trust land somehow strips the land of its intended purpose of supporting schools. School trust lands inherently have this purpose. Nevertheless, the Supreme Court upheld the condemnation of the trust lands.

[21] "[F]ederally-granted trust land should as a whole be held immune from condemnation by local governments.... Any authority holding or implying otherwise is in error."

The Legislature may authorize local governments to act against state lands. There is no constitutional limit on the Legislature in this regard. The Legislature has had more than 80 years to change the law. It has not. As a result, DNR's (and Conservation Northwest's) argument is for judicial legislation – not for application of existing laws.

5.3.2. School Trust Lands Are Held In Express Trust – Not Public Trust.

Like DNR, Conservation Northwest asks this Court to hold all school trust lands exempt from condemnation. In doing so, however, it asserts a new argument on appeal that even DNR does not adopt – that school lands are actually public trusts. The law holds otherwise. But, even under public trust principles, there is no constraint on the Legislature's authority.

5.3.2.1. The Federal Grant Of School Lands To Washington Created An Express Trust.

The State, the PUD, the Attorney General's Office, and the Washington Supreme Court all agree: the Washington Enabling Act and Constitution impose an express trust and corresponding trust management principles on state trust lands, including those at issue in this case. *County of Skamania v. State*, 102 Wn.2d 127, 685 P.2d 576 (1984); AGO 1996

No. 11 (Question 1); State's Opening Brief at 12, 26-33; *see O'Brien v. Wilson*, 51 Wash. 52, 97 P. 1115 (1908).

Washington's *Skamania* decision is not unique in interpreting the Enabling Act and constitutional provisions regarding trust lands in the western states to conclude that express trusts were created and that a fiduciary duty is owed to trust beneficiaries. *See* AGO 1996 No. 11 (Question 1) (citing Montana, South Dakota, and North Dakota decisions detailing creation of express trusts without a specific reference in their enabling acts and constitutions). Yet, Conservation Northwest (and the advocacy-minded professors and law student to which it cites) chastise *Skamania* and similar cases for following the United States Supreme Court's decision in *Lassen v. Arizona ex rel. Ariz. Hwy. Dep't*, 385 U.S. 458, 87 S. Ct. 584, 17 L. Ed. 2d 515 (1967). Their political polemic ignores the careful analysis of the Washington Supreme Court and other courts in determining whether express trusts had or had not been created. *See Skamania*, 102 Wn.2d at 132-34 (holding Washington has an express trust and citing similar Oklahoma, Alaska, and Nebraska analyses); *Dist. 22 United Mine Workers of Am. v. Utah*, 229 F.3d 982 (10th Cir. 2000) (holding Utah does not have an express trust); *Branson Sch. Dist.*

RE–82 v. Romer, 161 F.3d 619 (10th Cir. 1998), *cert. denied*, 526 U.S. 1068 (1999) (holding Colorado has an express trust).

Notably, Conservation Northwest fails to mention binding Washington authority that directly contradicts its argument comparing the Washington Enabling Act to Alabama's, which granted federal lands without creating express trust responsibilities.[22] *See* Conservation Northwest's Opening Brief at 16-17, 21. In *O'Brien v. Wilson*, the Washington Supreme Court rejected the application of adverse possession statutes to common school trust lands, holding that Washington "accepted the **trust**, and by its Constitution solemnly covenanted with the United States to apply the granted lands to the **sole** use of its schools according to the purpose of the grant." 51 Wash. at 56-57 (quoting *Murtaugh v. Chicago, M. & St. P. Ry. Co.*, 112 N.W. 860 (Minn. 1907)) (emphasis supplied); *see also State v. City of Seattle*, 57 Wash. 602, 107 P. 827 (1910) (applying trust principles to reject adverse possession against university lands). The *O'Brien* Court further rejected comparison to Oregon laws because "there was no limitation on the power of alienation in [Oregon's Enabling Act], admitting Oregon into the Union, or in the

[22] *See* RPC 3.3 ("A lawyer shall not knowingly fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.").

Oregon Constitution, such as are found in our enabling act and in the Constitution of this state." 51 Wash. at 58.

In contrast, *Alabama v. Schmidt*, relied on by Conservation Northwest, is inapplicable to Washington's Enabling Act and is directly contradictory to *O'Brien*. In *Alabama*, the United States Supreme Court upheld use of Alabama's adverse possession statutes against federally granted lands because there was no limiting language in Alabama's Enabling Act. *Alabama v. Schmidt*, 232 U.S. 168, 172-74, 34 S. Ct. 301, 58 L. Ed. 555 (1914). Like the *O'Brien* Court, more recent decisions examining the Washington Enabling Act and Constitution continue to hold that an express trust was created at statehood, unlike the Alabama grant. *Skamania*, 102 Wn.2d at 132; *United States v. 111.2 Acres of Land*, 293 F. Supp. 1042, 1048 (E.D. Wash. 1968), *aff'd*, 435 F.2d 561 (9th Cir. 1970); *accord* AGO 1996 No. 11 (Question 1).

In short, for more than a century, courts, the Legislature, and public officials examining the language of Washington's Enabling Act and Constitution have reached the same conclusion: state trust lands are administered under trust management principles to benefit public schools as the trust beneficiaries, and subject to statutory controls and authority.

5.3.2.2. Regardless Of The Trust's Purpose, The Legislature Granted PUDs The Authority To Condemn State Trust Lands.

In the face of clear law, it should not be a surprise to this Court that no party has challenged the PUD condemnation statutes as unconstitutional or otherwise facially invalid. DNR and Conservation Northwest have asserted that the PUD does not have authority to condemn trust land generally or the trust lands in question here. Conservation Northwest's lengthy public trust argument ultimately has no bearing on this issue. The public trust doctrine does not bar the Legislature from granting PUDs the authority to condemn school lands.[23]

RCW 54.16.050 must have meaning where it explicitly authorizes condemnation of state and school lands:

> A district may take, **condemn** and purchase, purchase and acquire **any public and private property**, franchises and property rights, **including state, county, and school lands**....

See Pierce County, 144 Wn. App. at 852 ("We do not interpret a statute in a manner that renders a provision meaningless or creates an absurd or strained result."). Following Conservation Northwest's logic, however,

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[23] Indeed, the Legislature regulates public trust lands in many contexts. *See, e.g.*, chapters 79.105 and 79.125 RCW (regulating use, lease, and sale of state aquatic lands, including shorelands and tidelands); chapter 90.58 RCW (Shoreline Management Act).

this admittedly valid statute would have meaningless terms, granting public utility districts the authority to condemn land that, by Conservation Northwest's definition, could never be subject to condemnation. This creates an absurd result – particularly because the application of public trust principles to school lands would not bar the Legislature's action. If school lands are indeed subject to a public trust, then the Legislature has the authority to manage that trust for the public interest.[24] The public interest includes allowing other publicly beneficial uses on trust land, as is the case here.

5.3.2.3. Conservation Northwest May Not Raise New Issues On Appeal.

Setting aside the deficiencies in Conservation Northwest's public trust argument, and its contradiction of the State's position, the argument was not presented to the trial court and should be disregarded here. "Generally, appellate courts will not entertain issues raised for the first time on appeal." *Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 166 Wn. App. 683, 695, 271 P.3d 925 (2012) (citing RAP 2.5(a)). "The reason for this rule is to afford the trial court an opportunity to correct errors, thereby

[24] Trust land policy is ultimately the responsibility of the Legislature, not DNR. The Commissioner of Public Lands has only that authority which is specifically granted. Const. art. III, § 23 ("The commissioner of public lands shall perform such duties and receive such compensation as the legislature may direct."). No party has argued that the Legislature is barred from granting public utility districts condemnation authority over state trust lands as part of the Legislature's overall management of trust land policy.

avoiding unnecessary appeals and retrials." *Id.* Conservation Northwest's new argument, contradicted by longstanding state jurisprudence, does not fall within any of the exceptions allowing for new argument on appeal. *See* RAP 2.5(a). Accordingly, Conservation Northwest's public trust argument should be disregarded.

5.4. The School Trust Lands Here Are Not Devoted To Or Reserved For A Particular Use By Law. They Are Therefore Subject To Condemnation.

The trial court correctly concluded that the school trust lands in question are subject to condemnation. These lands are not "devoted to or reserved for a particular use by law." RCW 79.02.010(13). The few courts that have considered this statutory language all agree that reservation from sale is a critical component, if not *the* critical component, in making a determination that land is not "devoted" or "reserved." School trust lands, leased or not, may be sold. Further, school trust lands are subject to lease, sale, multiple uses, and not to any "particular" use. School trust lands are not reserved under RCW 79.02.010(13).

5.4.1. School Trust Lands Are Subject To Sale, And Condemnation.

School trust lands have been subject to sale since they were granted at the time of statehood. Const. art. XVI, § 1[25]; AGO 1996 No. 11 (Question 1); *see* RCW 79.11.020; *Roberts*, 63 Wash. at 575-76. The sale of trust land is subject to constitutional and legislatively created restrictions. Const. art. XVI; ch. 79.11 RCW. But, the Washington Supreme Court has held that the Legislature has not by law devoted or reserved those lands to a particular use. This is clear from *City of Seattle*, where the Court found that capitol building trust lands (which are of the same character as school trust lands) were not devoted to or reserved for a particular use by law:

> It is admitted by the state in this action that the capitol building lands which the city of Seattle seeks to condemn are **not devoted to or reserved for a particular use but are subject to sale.** If the legislature had intended to exempt such state lands from condemnation, it would seem that it would have expressly so limited the term 'state lands,' as used in RCW 8.12.030.... This the legislature did not see fit to do, and the relator suggests no reason why such a limitation should be inferred.

54 Wn.2d at 147 (emphasis added).

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[25] "All the public lands granted to the state are held in trust for all the people and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest disposed of ... be paid...."

Although few cases have addressed the issue, the Supreme Court consistently finds that reservation from sale is critical to determining whether public lands have been reserved for a particular use by law. *See Draper Machine Works, Inc. v. Dep't of Natural Res.*, 117 Wn.2d 306, 318, 815 P.2d 770 (1991) ("reserved" lands "must remain in state hands"); *Fransen v. Bd. of Natural Res.*, 66 Wn.2d 672, 675, 404 P.2d 432 (1965) (state forest lands reserved for a particular use by law because they are "forever reserved from sale" under RCW 79.22.050); *City of Seattle*, 54 Wn.2d at 147; *see also Jefferson County*, 91 Wash. at 459 (dedicated land is "severed from the mass of public lands, [so] that **no subsequent** law, or proclamation, or **sale** would be construed to embrace it, or operate upon it." (emphasis added)).

School trust lands are subject to sale. Const. art. XVI, § 1. Therefore, they are not devoted to or reserved for a particular use by law and may be condemned. *See City of Seattle*, 54 Wn.2d at 147.

5.4.2. Leased School Trust Lands Are Subject To Sale, And Condemnation.

Similarly, DNR's leasing of trust lands for grazing does not reserve those lands for a particular use by law. Even trust lands subject to grazing leases can be sold during the life of the lease. RCW 79.11.290 specifically allows for sale to the lessee. And, the specific leases in this

case reserve DNR's right to sell the property. *E.g.*, CP 233 (§ 4.08) (reserving the State's right to sell upon 60 days' notice).

Rather, the sale of leased school trust lands is simply limited to certain conditions, as is true of all school trust lands. *See* Const. art. XVI. These sale limitations are insufficient to fall within the statutory language of "devoted to or reserved for a particular use by law." *City of Seattle*, 54 Wn.2d at 147. They are also fundamentally different from the restrictions placed on state forest lands, which are **wholly and permanently** exempt from sale **by statute**, *i.e.*, "by law." RCW 79.22.050 (state forest lands "forever reserved from sale"); *Fransen*, 66 Wn.2d at 675; *see also* RCW 79.02.420(2) (community and technical college forest reserve land "forever reserved from sale" to be "managed in perpetuity"). As pointed out by the *Draper* Court, reserved lands "must remain in state hands." 117 Wn.2d at 318; *see Jefferson County*, 91 Wash. at 459 (dedicated land can no longer be sold). This is categorically untrue for school trust lands, which may be sold. Const. art. XVI, § 1; RCW 79.11.020.

5.4.3. The Legislature Has Reserved The Right Of The PUD To Condemn Easements Over School Lands.

Whether or not a sale is at issue, easements can be granted over trust lands leased for grazing, as evidenced by the leases themselves and

DNR's own admission.[26] CP 114-15; *e.g.*, CP 233 (§§ 4.02, 4.06). Here, the PUD does not seek fee ownership of school trust lands, only easements. Because easements can be granted over leased lands, the PUD may condemn easements, as expressly permitted by statute.

In addition to the PUD's express condemnation authority under RCW 54.16.050, the Legislature again reserved the PUD's right to condemn easements over state lands in DNR's land management statutes:

> The foregoing sections relating to the acquiring of rights-of-way and overflow rights through, over and across lands belonging to the state, **shall not be construed as exclusive or as affecting the right of municipal** and public service **corporations to acquire lands belonging to** or under control of **the state, or rights-of-way or other rights thereover, by condemnation proceedings**.

RCW 79.36.580 (emphasis added). Again, there is no challenge to this statutory reservation of condemnation authority to the PUD.

The PUD made every effort to use DNR's easement process. CP 125-27. That process, however, is not exclusive and expressly reserves the right of the PUD (and other local governments) to condemn easements. RCW 79.36.580. With its long-planned and court-validated

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[26] It is of interest that the PUD did not name lessees as parties to the condemnation action, as the Project easements did not take or damage any property interest that the lessees may have. *See* RCW 8.12.050. And, there is no "necessary party" defense asserted by DNR in this case. *See* CR 12(h), 19.

Project frustrated by new DNR administration, the PUD used its statutory grant of condemnation authority.

5.4.4. Leased School Trust Lands Are Subject To Multiple Uses, Not A "Particular Use."

Furthermore, leased lands are not devoted to or reserved for a "**particular** use" by RCW 79.13.370. Rather, the statute merely states that if a grazing lease is issued, the **lessee** can only use the land for the purposes set forth in the lease (or the lease can be exchanged for an agricultural lease). RCW 79.13.370. The statute does not prohibit multiple uses of leased lands, and in fact, other statutes specifically allow additional uses.[27] *See, e.g.*, RCW 79.10.120 (uses or activities by public agencies may be considered compatible with financial obligations of trust management); RCW 79.10.125 (allowing fishing, hunting, and nonconsumptive wildlife activities on lands subject to grazing leases); *see generally* "Multiple Use" statutes, RCW 79.10.100-.280.

Significantly, leased lands are also not devoted to or reserved for a particular use **by law**. At best, a lease creates a contractual right for the

[27] The same multiple-use principles hold true for school trust lands generally. In asserting that school trust lands cannot be used for anything other than to benefit Washington's schools (State's Opening Brief at 12), DNR ignores the statutory scheme governing DNR land management. While it is true that trust lands must be used for the beneficiaries, it is entirely inaccurate to assert that all other uses are excluded. *See, e.g.*, RCW 79.10.120 (permitting multiple uses when compatible with trust management obligations and listing examples); *see also* RCW 79.36.580 (state lands subject to condemnation despite easement process).

lessee to use DNR property for certain purposes defined in the lease. If simple leasing of trust lands to private parties was construed as devotion to a particular use by law, the exclusion in RCW 79.02.010(13) would swallow the rule. The Court must avoid such a construction. *See Pierce County*, 144 Wn. App. at 852.

The school trust lands at issue are subject to sale and are thus not devoted to or reserved for a particular use by law. *City of Seattle*, 54 Wn.2d at 147. The lands are further subject to multiple uses, not a "particular use." Therefore, the trust lands fall within the plain definition of state and school lands and can be condemned by the PUD. RCW 54.16.050, 79.02.010(13); *City of Seattle*, 54 Wn.2d at 147.

5.5. <u>The School Trust Lands Here Are Likewise Not Dedicated To A Public Use.</u>

As settled by the Washington Supreme Court more than 50 years ago, state trust lands not dedicated to a public use are subject to condemnation. *City of Seattle*, 54 Wn.2d at 147. DNR did not, and cannot, show that the trust lands at issue have been dedicated to a public use. Condemnation is therefore authorized pursuant to RCW 54.16.050 and *City of Seattle.*

5.5.1. Dedication To A Public Use Requires More Than "Active Management" Of Trust Lands.

This Court should reject, as did the trial court, DNR's argument that these trust lands are dedicated to a public use simply because they may be "actively managed" by DNR. According to DNR, "active management" entails actually using trust lands for their intended purpose (generating income) **or** holding the lands in reasonable anticipation of fulfilling that purpose. State's Opening Brief at 23, 30-31. In other words, "active management" is DNR fulfilling its trust obligations. But, all school trust lands are being managed in some capacity by DNR, as is required by state law.[28] *See, e.g.*, RCW 79.10.090 (requiring periodic analysis of all trust lands). DNR's position is therefore nothing more than another attempt to exclude all school trust lands from condemnation – an untenable position under the statutes and controlling precedent. *See supra* Section 5.3.

5.5.2. Dedication To A Public Use Reserves Land From Subsequent Sale, Which Does Not Apply Here.

"Dedication" of state land requires more than DNR simply putting the property to a productive use (or holding it inactive in anticipation of

[28] "The law will not presume, unless forced to do so, that a person intends to do an illegal act." *Hall v. Anderson*, 18 Wn.2d 625, 636, 140 P.2d 266 (1943).

use).[29] DNR's interpretation of the meaning of "dedication" to a public use is unsupported. The Washington Supreme Court has described dedication in terms of dedication by act of the Legislature,[30] "platting, dedicating, and reserving" the specific land for a public use,[31] segregating the specific land from the public domain and appropriating it to the public by "due dedication,"[32] and dedication by some "official act or declaration."[33]

There has been no dedication of these school trust lands. Even if a formal dedication was not required, there is nothing to suggest that "active management" as claimed by DNR would suffice under the Supreme Court's holdings. Indeed, DNR's interpretation would strip "dedication to a public use" of all practical meaning. The Supreme Court held more than one hundred years ago that devotion to the public purpose of education is

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[29] It is clear that dedicated land need not necessarily be put to present use to be exempt from sale (or condemnation). *See Jefferson County*, 91 Wash. at 462. But, the land must have been properly dedicated. Here, of course, the lands have never been dedicated.

[30] *Jefferson County*, 91 Wash. at 455-56 (waterway permanently reserved from sale by statute).

[31] *Id.* at 455.

[32] *City of Tacoma v. Taxpayers of Tacoma* ("*Tacoma Taxpayers*"), 49 Wn.2d 781, 797, 307 P.2d 567 (1957), *rev'd on other grounds*, 357 U.S. 320 (1958). DNR asserts that the land in *Tacoma Taxpayers* was not formally dedicated. State's Opening Brief at 20 n.9. In fact, that case did not specify how the land was dedicated, just that it was dedicated.

[33] *City of Tacoma*, 121 Wash. at 452. Indeed, "dedication to a public use" appears functionally equivalent to "devoted to or reserved for a particular use by law." *See* RCW 79.02.010(13).

insufficient to prevent condemnation. *Roberts*, 63 Wash. at 576. DNR ignores this by proposing that dedication to a public use applies to essentially all trust lands.

Moreover, as explained by the Supreme Court in *Jefferson County*, land that has been dedicated to a public use is no longer subject to sale. Dedicated land becomes "**severed from the mass of public lands**, [so] that **no subsequent** law, or proclamation, or **sale** would be construed to embrace it, or operate upon it."[34] 91 Wash. at 459 (quoting *Samish Boom Co. v. Callvert*, 27 Wash. 611, 613, 68 P. 367 (1902)); *see also, e.g.*, *Fransen*, 66 Wn.2d at 675 (state forest lands "forever reserved from sale"). As set forth above, school trust lands are subject to sale generally, and even if leased they can be sold or further easements granted upon them. They are not "dedicated lands" under *Jefferson County*.

Further, *Jefferson County* does not hold that sovereign lands cannot be condemned. DNR misconstrues *Jefferson* on this issue. *See* State's Opening Brief at 15, 19-21. *Jefferson County*, which did not involve trust lands, holds only that the authority to sell or condemn sovereign lands is not presumed, but must be expressly conferred by

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[34] DNR correctly points out that dedicating land removes it from the corpus of state lands (State's Opening Brief at 15); yet, DNR also acknowledged before the trial court that the lands in question remain part of the corpus (*see* CP 36-37 (Declaration of DNR official)).

statute. 91 Wash. at 458-59.[35] The PUD condemnation statute expressly allows for the condemnation of school lands. RCW 54.16.050. By asserting that all school trust lands are exempt from condemnation simply because they are held in the State's sovereign capacity, DNR would render this statute (and other condemnation statutes) meaningless.

Even if this Court assumes that school trust lands are held in the State's sovereign capacity,[36] the Legislature has expressly authorized their condemnation. This is not only consistent with *Jefferson County*, but with all Supreme Court decisions upholding the condemnation of school trust lands. *See City of Seattle*, 59 Wn.2d at 147; *City of Tacoma*, 121 Wash. at 453; *Roberts*, 63 Wash. at 576. Because the trust lands here are not dedicated to a public use, they can be condemned. *City of Seattle*, 59 Wn.2d at 147.

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[35] "The rule therefore is that a statute conferring upon the state or other municipal corporation the **general** authority to sell, or a statute conferring the right to condemn state or other municipal property **generally**, will, in the absence of express words to the contrary, be confined to such property as it holds in its proprietary character." (Emphasis supplied.) *See also HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.*, 155 Wn.2d 612, 622, 121 P.3d 1166 (2005) (condemnation powers may be expressly conferred or necessarily implied).

[36] The PUD does not concede this point. The only authority DNR cites for this proposition is *Soundview Pulp Co. v. Taylor*, 21 Wn.2d 261, 150 P.2d 839 (1944), *overruled by Case v. Bowles*, 327 U.S. 92, 66 S. Ct. 438, 90 L. Ed. 552 (1946). *Soundview* did not involve condemnation authority, and is actually contrary to other Supreme Court decisions recognizing that dedicated sovereign lands cannot be sold. *Draper Machine Works, Inc.*, 117 Wn.2d at 318 (sovereign lands "must remain in state hands"); *Jefferson County*, 91 Wash. at 459. School trust lands, however, are undisputedly subject to sale. Const. art. XVI, § 1; RCW 79.11.020.

5.6. <u>The PUD's Condemnation Is Authorized Even If The Trust Lands Are Dedicated Or Reserved Because The PUD's Proposed Use Is Compatible With DNR's Use.</u>

Despite DNR's attempts to confuse a simple issue, Supreme Court precedent is clear: even if dedicated to a public use, condemnation of school trust land is authorized when the proposed use will not destroy the existing public use. *City of Tacoma*, 121 Wash. at 453; *Roberts*, 63 Wash. at 576. Here, it is undisputed that the PUD's proposed use will not destroy DNR's use of the property. The trial court properly found on uncontested facts that the PUD could condemn the trust lands under such circumstances.

5.6.1. The Supreme Court Has Held For More Than A Century That The Impact From The Proposed Use Must Be Considered.

As correctly noted by the trial court, "courts do look deeper into issues of effects, results, interference, and compatible use" in assessing condemnation authority. RP 17 (May 11, 2010). Nevertheless, DNR continues to assert on appeal that courts look only at dedication to a public use in determining whether condemnation is permitted. State's Opening Brief at 35. In doing so, DNR mischaracterizes controlling Supreme Court precedent.

First, DNR's attempts to discount the Supreme Court's holding in *City of Tacoma* are unavailing. The condemnation at issue in that case involved the rights to divert water from an eyeing station, a fish hatchery, and certain school lands, and the right to condemn a 250-foot strip of the school lands.[37] *City of Tacoma*, 121 Wash. at 450. In analyzing whether Tacoma could condemn the right to divert waters flowing past the fish hatchery, the court explained:

> This property is **now devoted to a public use**, and if the proposed diversion of the waters of the North fork **would destroy this public use, or so damage it as to preclude its successful operation**, our inquiry would end here.

Id. at 453 (emphasis added). However, the Court found that the public use in that case would not be destroyed and that diversion would even benefit the hatchery, which was prone to flooding. *Id.* Citing *Roberts*, the Supreme Court held that condemnation was therefore permissible, despite the fact that the property was already devoted to a public use. *Id.* With respect to the 250-foot strip of school trust lands, the Court likewise held that *Roberts* authorized condemnation. *Id.*

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[37] The State misreads the facts of *City of Tacoma*. State's Opening Brief at 35. There is no indication that the school lands at issue were not in use. Although the eyeing station did not appear to be in use, there was no attempt to condemn the eyeing station, only the right to divert water from it, just as with the fish hatchery. *City of Tacoma*, 121 Wash. at 450, 452.

Contrary to DNR's assertion, the court did **not** use a different analysis for the right to condemn the school land itself and the right to divert water. *Id.* at 452-53. Indeed, the court expressly stated that the *Roberts* analysis applied to both the water diversion **and** the taking of the school lands. *Id.* at 453. Moreover, the Supreme Court subsequently reiterated the principles of both *Roberts* and *City of Tacoma* in upholding the condemnation of trust lands in *City of Seattle*, 54 Wn.2d at 143-44.

DNR's attempt to reinterpret *Roberts* is also untenable. *See* State's Opening Brief at 36. When read in context, it is clear that the effect of the condemnation in *Roberts* was, in fact, quite significant to the Court's decision:

> It is also argued that the land taken was already devoted to a public use – that of education – and therefore cannot be taken for another public use. There is nothing in the record to indicate that the 30-foot strip of land in question is actually in use by the university, and there is nothing to indicate that the taking of the strip of land will impair the use of the land remaining. On the other hand, the record shows that the remaining land will be benefited. Under this condition it may be taken.

63 Wash. at 576. Indeed, DNR's characterization of *Roberts* is rejected by the Supreme Court's subsequent application of *Roberts* in *City of Tacoma*, 121 Wash. at 453.

Finally, DNR fails to recognize the Supreme Court's direction from cases such as *Jefferson County*. *See* State's Opening Brief at 37. These decisions demonstrate that even cases preventing condemnation of state land are consistent with *Roberts* and *City of Tacoma* because the proposed uses in those cases would have destroyed the public use. *See Tacoma Taxpayers*, 49 Wn.2d at 791 ("The state-owned Mossyrock Fish Hatchery and the land necessary for its operation, which are of substantial value, will be inundated by the proposed dam."); *Jefferson County*, 91 Wash. at 455 ("[A]n appropriation of the parts sought to be condemned by the railway company will render [the waterway and adjoining public streets] useless for the purposes for which they were dedicated."). The PUD's Project neither interferes with, nor destroys, any public use of the school trust lands.

In other words, cases such as *Jefferson County* are not intended to show an in-depth compatible use analysis, but to show why compatible use was not at issue in those cases – destruction of the public use was undisputed. The cases also illustrate the consistency of the Supreme Court on this point. If the public use is compatible with the proposed use (as in *Roberts* and *City of Tacoma*), condemnation is permitted. If the public use would be destroyed (as in *Jefferson County* and *Tacoma Taxpayers*),

condemnation is precluded.[38] DNR's assertion that such an inquiry is irrelevant ignores the Supreme Court's analysis in *Roberts* and *City of Tacoma*. The trial court was correct to employ the Supreme Court's approach.[39] This Court will find that the trial court's decision is supported by the uncontested facts in the record.

5.6.2. DNR Did Not Present Any Evidence That The PUD's Proposed Use Will Destroy DNR's Use.

Critically, DNR never disputed at the trial court the PUD's evidence that its easements will not destroy the current uses of the State's trust land, or destroy the purpose behind such use. Indeed, the PUD's proposed easements will benefit the economic purpose behind the trust lands by providing revenue through compensation for the easements, while still allowing continuing revenues from grazing uses. There was no suggestion, let alone fact, before the trial court that grazing and transmission lines are incompatible. To the contrary, the trial court had

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[38] DNR's citation to *Jefferson County* and claim that the question is "solely one of power," not of whose right to the land is "superior" (State's Opening Brief at 35), is inapposite. The controlling standard here is compatibility, not superiority.

[39] DNR cites no authority for its argument that DNR is the proper authority to determine compatible uses. In fact, case law demonstrates that it is within the court's province to make this determination. *See City of Tacoma*, 121 Wash. at 453; *Roberts*, 63 Wash. at 576. While DNR is free to present evidence and argument as to whether a proposed use is compatible with an existing one, there is no authority designating DNR as the arbiter of such disputes. *See* RCW 79.36.580 (reserving the PUD's authority to condemn rather than utilize DNR's easement application process).

ample evidence in the record to support its finding of compatibility. *E.g.*, CP 124-47, 151-53, 162-66.

DNR cannot challenge its own leases that recognize easements over grazing lands are a contemplated part of the leased lands. *E.g.*, CP 233 (§§ 4.02-.03, .06); *see also* RCW 79.13.030. Those leases also contain specific provisions that address condemnation of all or part of the leased land by "**any** public authority." *E.g.*, CP 240 (§ 10.06). These condemnation provisions not only recognize that such condemnation can occur, they allow for continuation of the leases after condemnation if the parties desire. *Id.* The condemnation of easements will not destroy (or even interfere with) the current uses of the property.

As discussed above, multiple uses of trust land are not only permitted by statute, they are encouraged when in the best interests of the State and its citizens and consistent with applicable trust provisions. RCW 79.10.100 (directing that a multiple-use concept be utilized by DNR); *see* RCW 79.10.120 (use by public agencies specifically considered an appropriate additional use). The current presence of PUD transmission lines across State lands in Okanogan County, and transmission lines across State lands throughout Washington, conclusively demonstrate the application of those laws.

Where, as here, the purpose of the trust mandate is being fulfilled by compensation for the easements, and those easements will provide a significant benefit to the public through the provision of electrical power, multiple uses are to be encouraged, not impeded. If DNR believes that policy should change, the remedy lies with the Legislature, not this Court.

As the trial court correctly found, the condemnation of easements in this case furthers the purpose of the trust mandate. RP 21-22 (May 11, 2010). The primary purpose of federally granted trust lands is to provide economic support to the trust beneficiaries.[40] *See, e.g.*, AGO 1996 No. 11 (Question 5(c)). Accordingly, in its management of school trust lands, DNR may consider factors other than the economic well-being of the trust (such as environmental considerations), but it can **only** act on those factors if they "do not interfere with the value of the trusts or the economic productivity of the trusts."[41] *Id.*

DNR did not argue that condemnation of the easements will negatively impact the economic productivity of the trusts. To the

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[40] This stands in contrast to state forest lands, which are designated to promote reforestation. *See* RCW 79.22.010; AGO 1996 No. 11 (questions concerning forest board transfer lands). While management of forest lands may be similar to that of federally granted lands, the underlying purpose is quite different, even if economics plays a role.

[41] As noted earlier, DNR is bound by the EIS process (WAC 197-11-545) and this Court's holding regarding the adequacy of the EIS and the propriety of the PUD's route selection (*Gebbers v. Okanogan County PUD No. 1*, 144 Wn. App. 371, 183 P.3d 324, *rev. denied*, 165 Wn.2d 1004 (2008)).

contrary, by compensating the State for the easements, whether through the easement application process or through condemnation, the PUD is furthering the purpose of the trust through additional income to the trust beneficiaries. Because the PUD will not take fee ownership over the condemned lands, DNR can also continue to lease those lands for grazing purposes as an ongoing source of revenue.

Despite ample opportunity, DNR presented no evidence or argument to show that the Project would impact DNR grazing leases or permits or otherwise inhibit cattle grazing in or near the transmission line easements. *See* CP 41-47; RP 27-38 (Apr. 30, 2010); *see also* RP 12-13 (May 11, 2010) ("There's no evidence of any negative effect on grazing."); RP 18 (May 11, 2010). The fact that DNR adopted a legal strategy that did not involve disputing the PUD's evidence that the uses are, in fact, compatible does not mean that the trial court's determination was in error. DNR simply failed to raise a genuine issue of material fact on this issue. It is precluded from now asserting a different factual claim (even if it could be supported) at this level.

5.7. DNR And Conservation Northwest Argue Policy, Not The Law.

The statutes are clear. The PUD may condemn school trust lands for its transmission line project. RCW 54.16.050. This is controlling

authority. DNR and Conservation Northwest argue their policy views in this appeal, not the law. DNR asserts that allowing condemnation in this case would effectively elevate the PUD's condemnation authority over DNR's duties and authority to manage state trust lands. State's Opening Brief at 29-33. **But this is precisely the scheme the Legislature (and the people by initiative) chose to adopt more than 80 years ago.** The Legislature reinforced this framework by reserving the condemnation rights of public utility districts and other local governments in DNR's own land management statutes. RCW 79.36.580.

In truth, it is DNR's argument that improperly elevates DNR's claimed authority above the Legislature's choice to grant public utility districts and other local governments the authority to condemn trust lands.[42] DNR would have the Court ignore this express grant of authority. However, it is not the role of this Court to legislate. *See Campbell & Gwinn, L.L.C.*, 146 Wn.2d at 9-10 ("The court's fundamental objective is

[42] Notably, the State's assertion that the PUD is not burdened by any trust obligations mischaracterizes the role of public agencies. State's Opening Brief at 31. Courts have held public office to be synonymous with public trust and that a public officer's relationship with the public is that of a fiduciary. *City of Northport v. Northport Town Site Co.*, 27 Wash. 543, 548-50, 68 P. 204 (1902). The Legislature has expressly recognized that relationship in various statutes. *See, e.g.*, ch. 42.23 RCW; ch. 42.30 RCW. The real question is whether the Commissioner of Public Lands is upholding his fiduciary duties by wasting taxpayer and ratepayer resources on an appeal that the Attorney General has called "meritless."

to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent."). DNR's and Conservation Northwest's policy arguments must be rejected in light of the controlling statutes and Supreme Court precedent.

6. CONCLUSION

The Washington Constitution, and the longstanding expression of the people's and the Legislature's direction, authorize the sale of school trust lands. Lands available for sale are lands that may be condemned for public use.

For more than 80 years, the PUD has had express statutory authority to condemn school trust lands (not devoted to or reserved for a particular use by law or dedicated to a public use). RCW 54.16.050, 79.02.010(13); *City of Seattle*, 54 Wn.2d at 147. The Legislature reaffirmed this condemnation authority in DNR's controlling statutes. RCW 79.36.580. That authority is undisputed and unchallenged.

Here, the state trust lands are not devoted to or reserved for a particular use by law, and not dedicated to a public use. And, even if the trust lands were reserved or dedicated, the Supreme Court holds that the PUD can condemn its proposed easements because the easements would not destroy DNR's use of those lands. *See City of Tacoma*, 121 Wash. at

453. The PUD's easements do not destroy, or even interfere with, the existing grazing. Therefore, pursuant to state statute and longstanding Supreme Court precedent, condemnation is authorized in this case.

The State Constitution places the duty to legislate on the Legislature. The duty to interpret and apply ambiguous legislation rests with the courts. There is no assertion or argument that the controlling statutes are unclear or invalid. Therefore, it is the duty of the Court to apply those statutes to affirm the condemnation of the school trust lands in this case. The PUD requests that this Court affirm the summary judgment orders in favor of the PUD, and dismiss the appeals of DNR and Conservation Northwest.

RESPECTFULLY SUBMITTED this 23rd day of May, 2012.

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Appendix A

LAWS OF WASHINGTON

PASSED AT THE

Twenty-Second Regular Session

1931

CHAPTER 1.

[INITIATIVE TO THE LEGISLATURE NO. 1.]

POWER AND WATER DISTRICTS.

AN ACT relating to and authorizing the establishment of public utility districts, and the consolidation thereof and annexation thereto; providing for the construction, purchase, condemnation and purchase, acquisition, maintenance, conducting, operation, development and regulation by such districts of certain kinds of public utilities; providing methods of payment therefor; and providing for the creation of local assessment districts by, and defining, prescribing and regulating the powers, duties and government of, such utility districts.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. The purpose of this act is to authorize the establishment of public utility districts to conserve the water and power resources of the State of Washington for the benefit of the people thereof, and to supply public utility service, including water and electricity for all uses. Purpose of act.

SEC. 2. Municipal corporations, to be known as public utility districts, are hereby authorized for the purposes of this act and may be established within the limits of the State of Washington, as provided herein. Districts may be established.

Proposal to create submitted to vote.

SEC. 3. At any general election the board of county commissioners of any county in this state may, or on petition of ten (10%) per cent of the qualified electors of such county, based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of such county the proposition of creating a public utility district which shall be coextensive with the limits of such county as now or hereafter established. Such petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of election officers within such county. If such petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners, who shall thereupon immediately transmit such proposition to the election board of such county, and it shall be the duty of such county election board to submit such proposition to the voters at the next general election. The notice of the election shall state the boundaries of the proposed public utility district and the object of such election, and shall in other respects conform to the requirements of the general laws of the State of Washington, governing the time and manner of holding elections. In submitting the

Petition filed.

Withdrawal of signatures.

Auditor's certificate.

Notice of election.

said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

Ballot title.

Public Utility District No..... YES ☐

Public Utility District No..... NO ☐

Any petition for the formation of a public utility district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publication, and all other publications required by this act, shall be in a newspaper published in the proposed or established public utility district, or, if there be no such newspaper, then in a newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find that any lands have been unjustly or improperly included within the proposed public utility district and will not be benefited by inclusion therein, the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the public welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public utility district: *Provided,* That no lands shall be included within the boundaries so fixed lying outside the

District area.

Hearing on petition.

Publications.

Final hearing.

Boundaries fixed.

boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in this act for the formation of a public utility district including an entire county, except that the petition and election shall be confined solely to the lesser public utility district.

Election returns, canvass.

SEC. 4. Within five days after such election, the election board of the county shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the election board shall so declare in its canvass of the returns of such election, and such public utility district shall then be and become a municipal corporation of the State of Washington, and the name of such public utility district shall be Public Utility District No. ..... of ..... County. The powers of the public utility district shall be exercised through a commission consisting of three members, one from each of the three county commissioner districts of the county in which the public utility district is located, when the public utility district is coextensive with the limits of such county. When the public utility district comprises only a portion of the county, three commissioner districts, numbered consecutively, having approximately equal population and boundaries, following ward and precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, and one commissioner shall be elected from each of said commissioner districts. No person shall be eligible to hold the office of public utility district commissioner unless he is a qualified voter and a freeholder within such public utility district, and is and has been a resident for a period of three years, except as hereinafter provided, of the commissioner district from which he is elected.

District named.

Commission.

Districts numbered.

Commissioners, qualifications.

Commissioners, terms, elections, dates.

Public utility district commissioners shall hold office for the term of three (3) years and until their respective successors are elected and qualified, each term to commence on the fourth Tuesday in March in each year in Class A counties and counties of the first class, and in all other counties on the second Monday in January in each year, following the election thereto. At the same election at which the proposition is submitted to the voters as to whether a public utility district shall be formed, three (3) commissioners shall be elected to hold office, respectively, for the term of one, two and three years. All candidates shall be voted upon by the entire public utility district, and the candidate residing in commissioner district number one receiving the highest number of votes in the public utility district shall hold office for the term of three (3) years; and the candidate residing in commissioner district number two receiving the highest number of votes in the public utility district shall hold office for the term of two (2) years, and the candidate residing in commissioner district number three receiving the highest number of votes in the public utility district shall hold office for the term of one (1) year, each of said terms to date from the times specified in this section following the election, but also to include the period intervening between the election and the beginning of the regular terms specified in this section. All expenses of elections for the formation of such public utility districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the public utility district, if formed. Nominations for public utility district commissioners shall be by petition signed by one hundred (100) qualified electors of the public utility district to be filed in the office of the county auditor

Commissioner districts.

Formation expenses.

Commissioners nominated.

not more than sixty (60) days, and not less than thirty (30) days prior to the day of such election: *Provided, however,* That in any public utility district having a population of less than four thousand, such nominating petition shall be signed by a number of qualified electors equaling ten (10) per cent or more of the qualified electors of the public utility district. A vacancy in the office of public utility district commissioner shall occur by death, resignation, removal, conviction of a felony, non-attendance at meetings of the public utility district commission for a period of sixty (60) days unless excused by the public utility district commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. In the event of a vacancy in said office such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by the remaining commissioners. If there should be at the same time such number of vacancies that there are not in office a majority of the full number of commissioners fixed by law, a special election shall be called by the county election board upon the request of the remainder, or, that failing, by the county election board, such election to be held not more than forty (40) days after the occurring of such vacancies.

Commissioner vacancies.

Vacancies filled.

A majority of the persons holding the office of public utility district commissioner at any time shall constitute a quorum of the commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted unless there are in office at least a majority of the full number of commissioners fixed by law.

Commissioners, quorum.

The boundaries of the commissioners districts shall not be changed oftener than once in four (4) years, and only when all members of the commission are present: *Provided,* That any proposed change therein must be made by resolution and notice of the time of a public hearing thereon shall be published for two (2) weeks prior thereto: *And Provided further* That upon a referendum petition signed by six per cent (6%) of the qualified voters of the public utility district being filed with the clerk, the commission shall submit such proposed change to the voters of the public utility district for their approval or rejection. The checking of said petition as to its sufficiency or insufficiency shall be governed by the provisions in this act relating thereto.

Boundaries changed.

Hearing.

Referendum.

SEC. 5. The term general election as used in this act shall be held and construed to mean biennial general elections at which state and county officers are elected, and also public utility district elections for the election of commissioners. Public utility district elections for the election of commissioners held in Class A counties and counties of the first class shall be held on the second Tuesday in March in each year, and in all other counties on the first Saturday in December in each year. The election board of the county shall give notice of all elections held under the provisions of this act for the time and in the manner and form provided by law for city, school district and port district elections. Whenever in the judgment of the election board of the county an emergency exists, and such board is requested so to do by a resolution of the public utility district commission, it may call a special election at any time in such public utility district, and at any such special election said board may combine, unite or divide precincts for the purpose of holding such special election, and every such special

Elections.

Notice.

Emergency.

election so called shall be conducted and notice thereof given in the manner provided by law.

Election board.

The chairman of the board of county commissioners, the county auditor and the prosecuting attorney of the county in which the election is held shall constitute an election board for all elections held under the provisions of this act; and it shall be the duty of such board to provide polling places for holding elections under this act, to appoint the election officers, to provide their compensation, to provide ballot boxes, and ballots or voting machines, poll books and tally sheets, and deliver them to the election officers at the polling places, to publish and post notices of calling such elections in the manner provided by law, and to apportion to the public utility district its share of the expense of holding such election.

Election officers.

The election officers appointed by the election board of the county shall conduct such elections and shall receive and deposit ballots cast thereat in a separate ballot box, and shall count said ballots and make returns thereof to the election board of the county, which board shall constitute a canvassing board for all elections held under the provisions of this act. The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act.

Conduct of elections.

Offices to be filled.

The public utility district commission shall certify to the election board a list of offices to be filled at any election to be held under the provisions of this act, and such commission, if it desires to submit to the voters of such public utility district any proposition for their approval or adoption, or rejection, at any election held under the provisions of this

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act, shall require the secretary of such commission to certify the same to the election board at the time and in the manner and form now provided by law for certifying propositions to said board by the governing boards of cities, towns and port districts.

Powers of districts.

SEC. 6. All public utility districts organized under the provisions of this act shall have power:

Hydro-electric, water supply, irrigation.

(a) To make a survey of hydro-electric power, irrigation and domestic water supply resources within or without the district, and to compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and co-ordinated to make a complete and systematic whole;

Purchase, condemn, lease property.

(b) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate all lands, property, property rights, water, water rights, dams, ditches, flumes, aqueducts, pipes and pipe lines, water power, leases, easements, rights of way, franchises, plants, plant facilities and systems for generating electric energy by water power, steam or other methods, plant, plant facilities and systems for developing, conserving and distributing water for domestic use and irrigation, buildings, structures, poles and pole lines, and cables and conduits and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and for the purpose of acquiring the right to make physical connection with plants and plant facilities of any and all persons, corporations and municipalities, and such right of eminent domain shall be exercised and instituted pursuant to resolution of the commission and conducted in

Eminent domain.

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Procedure.

the same manner and by the same procedure as is or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the State of Washington in the acquisition of like property and property rights. It shall be no defense to a condemnation proceeding hereunder that a portion of the electric current generated or sold by such public utility district will be applied to private purposes provided the principal uses intended are public; *Provided,* That no public utility owned by a city or town shall be condemned hereunder, and none shall be purchased without submission of the question to the voters of the utility district. In any condemnation proceeding under this act, the court shall submit to the jury the values placed upon such property by the county assessor or other taxing authority, for taxation purposes, and in respect to property, plants and facilities of persons and corporations using public highways for the furnishing of public service without franchises, shall consider in determining the value thereof the fact that such property, plants and facilities are subject to be removed from such highways by reason of being so operated without such franchises.

Condemnation submitted to vote.

(c) To construct, purchase, condemn and purchase, acquire, add to, maintain, conduct and operate water works and irrigation plants and systems, within or without its limits, for the purpose of furnishing such public utility district, and the inhabitants thereof, and any other persons, including public and private corporations within or without its limits, with an ample supply of water for all uses and purposes, public and private, including water power, domestic use and irrigation, with full and exclusive authority to sell and regulate and control the use, distribution and price thereof.

Acquisition of water works and irrigation systems.

(d) To purchase, within or without its limits, electric current for sale and distribution within or

Electric current.

without its limits, and to construct, condemn and purchase, purchase, acquire, add to, maintain, conduct and operate works, plants, transmission and distribution lines and facilities for generating electric current, operated either by water power, steam or other methods, within or without its limits, for the purpose of furnishing said public utility district, and the inhabitants thereof and any other person, including public and private corporations, within or without its limits, with electric current for all uses, with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges and price thereof, free from the jurisdiction and control of the director of public works and division of public utilities, in all things, together with the right to purchase, handle, sell or lease motors, lamps, transformers and any and all other kinds of equipment and accessories of every nature and kind whatsoever necessary and convenient for the use, distribution and sale thereof; *Provided,* That the commission shall not supply water to a privately owned utility for the production of electric energy, and may supply, directly or indirectly, to privately owned public utilities which sell electric energy or water to the public, any of the surplus electric energy or water under its control, and contracts therefor shall not extend over a longer period than three (3) years: *Provided,* That it must at all times first make adequate provision for the needs of the district, both actual and prospective.

Rates.

Water supplied to privately owned utility.

(e) And for the purposes aforesaid, it shall be lawful for any public utility district so organized to take, condemn and purchase, purchase, and acquire any and all public and private property, franchises and property rights, including state, county and school lands, and property and littoral and water rights, for any of the purposes aforesaid, and for railroads, tunnels, pipe lines, aqueducts, transmis-

Condemnation of public and private property.

sion lines, and any and all other facilities necessary or convenient, and, in connection with the construction, maintenance or operation, of any such utility or utilities, to acquire by purchase or condemnation and purchase the right to divert, take, retain and impound and use water from or in any lake or watercourse, regardless of whether such lake or watercourse or the water therein be public or private, navigable or non-navigable, or held, owned or used by the state, or any subdivision thereof, or by any person or corporation for any public or private use, proprietary or governmental, or any underflowing water within the state; and such public utility district is hereby authorized and empowered to erect and build, within or without its limits, dams or other works across any river or watercourse, or across or at the outlet of any lake, up to and above high water mark; and, for the purpose of constructing or laying aqueducts or pipe lines, dams or waterworks or other necessary structures in storing, retaining and distributing water as above provided, or for any of the purposes provided for by this act, such public utility district shall have the right to occupy and use the beds and shores up to the high water mark of any such lake, river or watercourse and to acquire by purchase or by condemnation and purchase, or otherwise, any water, water rights, easements or privileges named in this act or necessary for any of said purposes, and any such public utility district shall have the right to acquire by purchase or condemnation and purchase, or otherwise, any lands, property or privileges necessary to be had to protect the water supply of such public utility district from pollution; *Provided,* That should private property be necessary for any such purposes, or for storing water above high water mark, such public utility district may condemn and purchase or purchase and acquire such private prop-

Purchase and condemnation of water.

Build dams.

Occupation of beds and shores of waters.

erty. Such public utility district shall have power to build and maintain inter-tie lines connecting its power plant and distribution system with the power plant and distribution system owned by any other public utility district, or municipal corporation, or to connect with the power plants and distribution systems owned by any municipal corporation in the district, and from any such inter-tie line to sell electric energy to any individual, or public utility district, or any city or town, or other corporations, public or private, and, by means of transmission or pole lines, to conduct electric energy from the place of production to the point of distribution, and to construct and lay said aqueducts, pipe or pole lines, and transmission lines along and upon public highways, roads and streets, and to condemn and purchase, purchase or acquire, lands, franchises and rights of way necessary for the same.

(*f*) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the public utilities thereof, and to issue general obligation or utility bonds therefor, bearing interest at a rate not exceeding six per cent per annum, payable semi-annually, said bonds not to be sold for less than par and accrued interest; to purchase with surplus funds, local utility district bonds of districts created by the commission and sell the same giving preference to residents of the district, and to create a revolving fund to insure the prompt payment of all local utility district bonds.

Indebtedness.

Bonds.

(g) To raise revenue by the levy of an annual tax on all taxable property within such public utility district not exceeding two mills in any one year, exclusive of interest and redemption for general obligation bonds. The commission shall prepare a proposed budget of the contemplated financial transactions for the ensuing year, and file the same in the

Revenue.

Tax levy.

Budget.

records of the commission on or before the first Monday in September. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in said county. On the first Monday in October, the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined, and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public utility district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate of not to exceed six per cent per annum.

Notice of filing.

Public hearing.

Adoption.

Money borrowed. Warrants issued.

(h) To enter into any contract with the United States Government, or any state, municipality or other utility district, or any department of those governing bodies, for carrying out any of the powers authorized by this act.

Contracts with U. S., state, municipalities.

(i) To acquire by gift, devise, bequest, lease or purchase, real and personal property necessary or convenient for the purposes of the district or any local district therein.

Acquisition of property.

(j) To make contracts, employ engineers, attorneys and other technical or professional assistance; to print and publish information or literature and to do all other things necessary to carry out the provisions of this act.

Contracts. Employes.

The public utility district commission shall appoint a manager, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. He shall receive such salary as the commission shall fix by resolution.

Manager.

Salary.

The manager shall be the chief administrative officer of the public utility district, and shall have control of administrative functions of the district, and shall be responsible to the commission for the efficient administration of all the affairs of the district placed in his charge. He shall be an experienced executive with administrative ability. In case of the absence or temporary disability of the manager, he shall, with the approval of the president of the commission, designate some competent person as acting manager.

Duties.

Qualifications.

The manager shall be entitled to attend all meetings of the commission and its committees, and to take part in the discussion of any matters pertaining to the duties of his department, but shall have no vote.

The public utility district manager shall have power, and it shall be his duty:

Powers

To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of his department are duly enforced.

To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal

year of the probable expenses of his department, and to recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission salaries of the employes of his office, and a scale of salaries or wages to be paid for the different classes of service required by the district. To hire and discharge clerks, laborers and other employees under his direction. To perform such other duties as may be imposed upon him by resolution of the commission. It shall be unlawful for him to make any contribution of money in aid of or in opposition to the election of any candidate for public utility commissioner or to advocate or oppose any such election.

Hire clerks, laborers, employes.

(k) To sue and be sued in any court of competent jurisdiction; *Provided,* That all suits against the public utility district shall be brought in the county in which the public utility district is located. No suit for damages shall be maintained against such public utility district except on the basis of a claim therefor filed with the commission of such district complying in all respects with the terms and requirements for claims for damages filed pursuant to general law against cities of the second class.

Suits by and against.

(l) By resolution to establish and define the boundaries of local assessment districts to be known as Local Utility District No. —— for the distribution, under the general supervision and control of the commission, of water for domestic use and (or) irrigation and (or) electric energy, and in like manner to provide for the purchasing, or otherwise acquiring, or constructing and equipping distribution systems for said purposes and for extensions and

Local assessment districts.

betterments thereof, and to levy and collect in accordance with the special benefits conferred thereon, special assessments and re-assessments on property specially benefited thereby, for paying the cost and expense of the same, or any portions thereof, as herein provided, and to issue local improvement bonds and (or) warrants to be repaid wholly or in part by collection of local improvement assessments.

Special assessments.

The commission shall, by resolution, establish the method of procedure in all matters relating to local utility districts. Any public utility district may determine by resolution what work shall be done or improvements made at the expense, in whole or in part, of the property specially benefited thereby; and to adopt and provide the manner, machinery and proceedings in any way relating to the making and collecting assessments therefor in pursuance of this act. Except as herein otherwise provided, or as may hereafter be set forth by resolution, all matters and proceedings relating to the local utility district, the levying and collection of assessments, the issuance and redemption of local improvement warrants and bonds, and the enforcement of local assessment liens hereunder, shall be governed, as nearly as may be, by the laws relating to local improvements for cities of the first class: *Provided,* That no protest against a local utility district improvement shall be received by the commission after twelve o'clock noon of the day set for hearing.

Procedure.

Protests.

Any improvement authorized by this act may be ordered only by resolution of the commission either upon petition or resolution therefor. Whenever a petition, signed by ten per cent of the owners of land in the district to be therein described, shall be filed with the commission, asking that the plan or improvement therein set forth be adopted and ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the

Improvement ordered.

Petition.

Boundaries.

cost thereof, it shall be the duty of the commission to fix the date of hearing on such petition, and give not less than two (2) weeks notice thereof by publication. The commission may, in its discretion, deny such petition or order the improvement unless a majority of the owners of lands in said district shall file prior to 12:00 o'clock noon of the day of said hearing with secretary thereof a petition protesting against said improvement; and if the commission shall order the improvement, then it may alter the boundaries of such proposed district and prepare and adopt detail plans of any such local improvement, declare the estimated cost thereof, what proportion of such cost shall be borne by such local improvement district, and what proportion of the cost, if any, shall be borne by the entire public utility district. Whenever such a petition signed by a majority of the landowners in such a proposed local improvement district shall be filed with the commission, asking that the improvement therein described be ordered, the commission shall forthwith fix a date for hearing on said petition, after which the commission must, by resolution, order such improvement, and may alter the boundaries of such proposed district, prepare and adopt such improvement, prepare and adopt detail plans thereof, declare the estimated cost thereof, what proportion of such cost shall be borne by such proposed local improvement district, and what proportion of the cost, if any, shall be borne by the entire public utility district, and provide the general funds thereof to be applied thereto, if any, acquire all lands and other properties therefor, pay all damages caused thereby, and commence in the name of the public utility district such eminent domain proceedings and supplemental assessments or re-assessment proceedings to pay all eminent domain awards as may be necessary to entitle said district to proceed with such work,

Hearing, notice.

Boundaries changed.

Eminent domain proceedings.

and shall thereafter proceed with such work, and shall make and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within such local improvement district in proportion to the special benefits to be derived by the property in such local improvement district from such improvement. Before the approval of such roll, a notice shall be published ten (10) days stating that such roll is on file and open to inspection in the office of secretary of the district, and fixing a time not less than fifteen (15) nor more than thirty (30) days from the date of the first publication of such notice, within which protests must be filed with secretary of said district against any assessments shown thereon, and fixing a time when a hearing shall be held by said commission on said protests. After such hearing the commission may alter any and all assessments shown on such roll and may then, by resolution, approve the same, but if any assessment be raised, a new notice, similar to such first notice, shall be given, and a hearing had thereon, after which final approval of such roll may be made by the commission. Any person feeling aggrieved by such assessments shall perfect an appeal to the Superior Court of such county within ten (10) days after such approval in the manner now provided by law for appeals from assessments levied by cities of the first class in this state. Engineering, office and other expenses necessary or incident to said improvement shall be borne by the public utility district: *Provided,* That where any municipal corporation included within such public utility district already owns or operates a utility of like character for which such assessments are levied hereunder, then all such engineering and other expenses mentioned above shall be borne by the local assessment district.

Assessment roll.

Notice published.

Protests.

Hearing.

Approval.

Court appeals.

Engineering expenses.

Payments for improvements.

Whenever any improvement shall be ordered hereunder, payment for which shall be made in part from assessments against property specially benefited, not more than fifty per cent (50%) of the cost thereof shall ever be borne by the entire public utility district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed such amount, unless a majority of the electors of such district shall consent to or ratify the making of such expenditure.

Sale of plants.

(m) It is, and shall be lawful for any public utility district organized hereunder to sell and convey all the works, plants, systems, utilities and properties authorized by this act and owned by it after proceedings had as required by sections 9512, 9513 and 9514 of Remington's Compiled Statutes of Washington: *Provided,* That three-fifths (3/5) of the voters voting for such sale, in lieu of a majority shall be necessary. Public utility districts shall be held to be municipal corporations within the meaning of said sections and the commission of such public utility district shall be held to be the legislative body within the meaning of said sections, and the president and secretary of such district shall have the same powers and perform the same duties as the mayor and city clerk referred to in said sections, and the resolutions of the public utility districts shall be held to mean ordinance within the meaning of said sections.

General resolutions of commission.

(n) The commission of each public utility district may adopt general resolutions to carry out the purposes, objects and provisions of this act.

Acquisition of property.

SEC. 7. Whenever the commission shall deem it advisable that the public utility district purchase, purchase and condemn, acquire, or construct any such public utility, or make any additions or betterments thereto, or extensions thereof, the commission shall provide therefor by resolution, which shall

Plan.

specify and adopt the system or plan proposed, and declare the estimated cost thereof, as near as may be, and specify whether general or utility indebtedness is to be incurred, the amount of such indebtedness, the amount of interest and the time in which all general bonds (if any) shall be paid, not to exceed thirty years. In the event the proposed general indebtedness to be incurred will bring the indebtedness of the public utility district to an amount exceeding one and one-half per cent (1½%) of the taxable property of the public utility district, the proposition of incurring such indebtedness and the proposed plan or system shall be submitted to the qualified electors of said public utility district for their assent at the next general election held in such public utility district.

Bonds. Indebtedness. Election.

Whenever the commission (or a majority of the qualified voters of such public utility district, voting at said election, when it is necessary to submit the same to said voters) shall have adopted a system or plan for any such public utility, as aforesaid, and shall have authorized indebtedness therefor by a three-fifths vote of the qualified voters of such district, voting at said election, general or public utility bonds may be used as hereinafter provided. Said general bonds shall be serial in form and maturity and numbered from one upwards consecutively. The various annual maturities shall commence not later than the tenth year after the date of issue of such bonds. The resolution authorizing the issuance of the bonds shall fix the rate of interest the bonds shall bear, said interest not to exceed six per cent (6%), and the place and date of the payment of both principal and interest. The bonds shall be signed by the president of the commission, attested by the secretary of the commission, and the seal of the public utility district shall be affixed to each bond but not to the coupon; *Provided, however,* That said

Bonds issued. Form. Interest rate. Execution.

A-11

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coupon, in lieu of being so signed, may have printed thereon a facsimile of the signature of such officers. The principal and interest of such general bonds shall be paid from the revenue of such public utility district after deducting costs of maintenance, operation, and expenses of the public utility district, and any deficit in the payment of principal and interest of said general bonds shall be paid by levying each year a tax upon the taxable property within said district sufficient to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. Said bonds shall be sold in such manner as the commission shall deem for the best interest of the district. All bonds and warrants issued under the authority of this act shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. When the commission shall not desire to incur a general indebtedness in the purchase, condemnation and purchase, acquisition, or construction of any such public utility, or addition or betterment thereto, or extension thereof, it shall have the power to create a special fund or funds for the sole purpose of defraying the cost of such public utility, or addition or betterment thereto, or extension thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, or any fixed amount out of, and not exceeding a fixed proportion of, such revenues, or a fixed amount without regard to any fixed proportion, and to issue and sell bonds or warrants bearing interest not exceeding six per cent (6%) per annum, payable semi-annually, executed in such manner, and payable at such times and places as the commission shall determine, but such bonds or warrants and the interest thereon, shall be payable only out of such special fund or funds. In creating any such special fund or funds, the commission shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenues previously pledged as a fund for the payment of bonds or warrants, and shall not set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than, in its judgment, will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenues so previously pledged. Any such bonds or warrants, and interest thereon, issued against any such fund, as herein provided, shall be a valid claim of the holder thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such district within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state on its face that it is payable from a special fund, naming such fund and the resolution creating it. Said bonds and warrants shall be sold in such manner as the commission shall deem for the best interests of the district, and the commission may provide in any contract for the construction and acquisition of a proposed improvement or utility that payment therefor shall be made only in such bonds or warrants at the par value thereof. In all other respects, the issuance of such utility bonds or warrants and payment therefor shall be governed by the public utility laws for cities and towns.

Paid.

Sale.

Special funds.

Bond or warrant payable from special fund.

SEC. 8. The commissioners shall serve without compensation. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by the election of its own members of a president and secretary, shall by reso-

Commissioners, no pay.

Adoption of resolutions.

Organize.

County treasurer.

SEC. 9. The county treasurer of the county in which is located any public utility district shall be ex-officio treasurer of any public utility district in such county, and he shall create a fund for any public utility district to be known as public utility district fund, into which shall be paid all money received by him from the collection of taxes in behalf of such public utility district, and he shall also maintain such other special funds as may be created by the public utility commission, into which shall be placed such moneys as the public utility commission may by its resolution direct.

Public utility district fund.

Depositories.

All such public utility district funds shall be deposited with the county depositories under the same restrictions, contracts and security as is provided by statute for county depositories, and all interest collected on such public utility funds shall belong to such public utility district and be deposited to its credit in the proper public utility district funds.

Consolidation.

SEC. 10. Two or more contiguous public utility districts may become consolidated into one public utility district after proceedings had as required by sections 8909, 8910 and 8911, of Remington's Compiled Statutes of Washington, *Provided,* That a ten (10) per cent petition shall be sufficient; and public utility districts shall be held to be municipal corporations within the meaning of said sections, and the commission shall be held to be the legislative body of the public utility district as the term legislative body is used in said sections: *Provided,* That any such consolidation shall in no wise affect or impair the title to any property owned or held by any such public utility district, or in trust therefor, or any debts, demands, liabilities or obligations existing in favor of or against either of the districts so consolidated, or any proceeding then pending: *Provided, further,* That no property within either of the former public utility districts shall ever be taxed

Property taxed.

to pay any of the indebtedness of either of the other such former districts.

Boundaries enlarged.

The boundaries of any public utility district may be enlarged and new territory included therein, after proceedings had as required by section 8894 of Remington's Compiled Statutes of Washington: *Provided,* That a ten per cent (10%) petition shall be sufficient; and public utility districts shall be held to be municipal corporations within the meaning of said section, and the commission shall be held to be the legislative body of the public utility district: *Provided,* That no property within such territory so annexed shall ever be taxed to pay any portion of any indebtedness of such public utility district contracted prior to or existing at the date of such annexation.

District of less area than entire county.

In all cases wherein public utility districts of less area than an entire county desire to be consolidated with a public utility district including an entire county, and in all cases wherein it is desired to enlarge a public utility district including an entire county, by annexing a lesser area than an entire county, no election shall be required to be held in the district including an entire county.

Invalidity of part not to affect balance.

SEC. 11. Adjudication of invalidity of any section, clause or part of a section of this act shall not impair or othersie [otherwise] affect the validity of the act as a whole or any other part thereof.

Rule of construction.

The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended.

Conflict with other law.

When this act comes in conflict with any provision, limitation or restriction in any other law, this act shall govern and control.

Not deemed as repeal of other acts.

SEC. 12. This act shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation

Appendix B

CHAPTER 255.

[S. B. 85.]

PUBLIC LANDS.

AN ACT relating to the selection, control, management, sale, lease and disposition of lands and areas belonging to or held in trust by the state, defining the powers and duties of certain officers in relation thereto, providing for appeals, prohibiting certain acts in relation thereto and providing penalties for violations thereof.

Be it enacted by the Legislature of the State of Washington:

Public lands.

State, tide, and shore lands. Harbor areas. Beds of navigable waters.

SECTION 1. Public lands of the State of Washington are lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tide lands, shore lands and harbor areas as hereinafter defined, and the beds of navigable waters belonging to the state.

State lands classified:

Whenever used in this act the term "state lands" shall mean and include:

School lands.

School lands, that is, lands held in trust for the support of the common schools;

University lands.

University lands, that is, lands held in trust for university purposes;

Agricultural college lands.

Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

Scientific school lands.

Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

Normal school lands.

Normal school lands, that is, lands held in trust for state normal schools;

Capitol building lands.

Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive and judicial purposes;

Institutional lands.

Institutional lands, that is, lands held in trust for state charitable, educational, penal and reformatory institutions; and

Public lands.

All public lands of the state, except tide lands, shore lands, harbor areas and the beds of navigable waters.

Outer harbor line.

SEC. 2. Whenever used in this act the term "outer harbor line" shall mean a line located and established in navigable waters as provided in section 1 of article XV of the state constitution, beyond which the state shall never sell or lease any rights whatever.

May not sell or lease rights beyond.

Harbor area.

SEC. 3. Whenever used in this act the term "harbor area" shall mean the area of navigable tidal waters determined as provided in section 1 of article XV of the state constitution, which shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce.

Reserved for navigation and commerce.

Inner harbor line.

SEC. 4. Whenever used in this act the term "inner harbor line" shall mean a line located and established in navigable tidal waters between the line of ordinary high tide and the outer harbor line and constituting the inner boundary of the harbor area.

First class tide lands.

SEC. 5. Whenever used in this act the term "first class tide lands" shall mean the beds and shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line, and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.

Second class tide lands.

SEC. 6. Whenever used in this act the term "second class tide lands" shall mean public lands belonging to the state over which the tide ebbs and

No. 29123-5-III

IN THE COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, a municipal corporation, Respondent/Cross-Appellant,

v.

STATE OF WASHINGTON, PETER GOLDMARK, Commissioner of Public Lands, and CONSERVATION NORTHWEST, a non-profit corporation, Appellants/Cross-Respondents,

and

CHRISTINE DAVIS, a single person, TREVOR KELPMAN, a single person, DAN GEBBERS and REBA GEBBERS, husband and wife, and WILLIAM C. WEAVER, custodian for Christopher C. Weaver, a minor, Respondents.

DECLARATION OF SERVICE

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STATE OF WASHINGTON
2012 MAY 23 PM 4:46

ORIGINAL

The undersigned declares that on May 23, 2012, I caused to be served:

1. Brief Of Respondent Public Utility District No. 1 Of Okanogan County – PUD Statutory Condemnation Authority; and this

2. Declaration of Service as follows:

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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.

Executed in Seattle, Washington this 23rd day of May, 2012.

Elizabeth Whitney