

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 JUN 21 PM 3:28

IN THE SUPREME COURT OF THE STATE OF WASHINGTON BY RONALD R. CARPENTER

CLERK *R/h*

NO. 84704-5

PETER GOLDMARK, AS CHIEF EXECUTIVE OFFICER OF THE
DEPARTMENT OF NATURAL RESOURCES AND COMMISSIONER
OF PUBLIC LANDS,

Petitioner,

v.

ROBERT M. McKENNA, ATTORNEY GENERAL,

Respondent.

DECLARATION OF PETER GOLDMARK,
CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT
OF NATURAL RESOURCES AND
COMMISSIONER OF PUBLIC LANDS

David A. Bricklin
WSBA No. 7583
BRICKLIN & NEWMAN, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
(206) 264-8600
Attorneys for Peter Goldmark

i

FILED AS
ATTACHMENT TO EMAIL

ORIGINAL

I, PETER GOLDMARK, declare as follows:

1. I am the Commissioner of Public Lands and make this statement in that capacity and for the benefit of the Department of Natural Resources which I lead.

2. On or about November 30, 2009, the Public Utility District No. 1 of Okanogan County filed an action in Okanogan County Superior Court seeking to condemn various parcels of land for a power line, including some parcels owned by the State of Washington and managed by me in my capacity as the Commissioner of Public Lands and the head of the Department of Natural Resources. A copy of the Complaint and the Amended Complaint filed in that action (without attachments) are attached hereto as Exhibits A and B. The Complaint included as respondents the State of Washington and me, in my capacity as Commissioner of Public Lands.

3. One of the issues in the Superior Court proceeding was whether the Okanogan PUD has the legal authority to condemn State trust lands. The Superior Court ruled that the Okanogan PUD does have authority to condemn State trust lands that I manage. *See Exhibits C and D.*

4. The Superior Court entered an Order Adjudicating Public Use and Necessity on May 11, 2010. *See Exhibit E.* That Order explicitly

incorporated by reference the summary judgment orders relating to the PUD's condemnation authority.

5. On June 1, 2010, I wrote Attorney General, Rob McKenna, requesting that the Attorney General's Office file an appeal of the summary judgment decision. I requested a response by June 4, 2010. When I had not received one by that date, I wrote another letter requesting a response by Monday, June 7, 2010 "at the latest."

6. On June 8, 2010, two days before the appeal deadline, the Attorney General wrote me a letter advising that his office would not file the appeal.

7. On June 8, 2010, the Attorney General's Office released a press release which stated that the Attorney General's decision not to appeal is based on "whether legal error was made by the trial court judge, consideration of the trial court record, and the likelihood of the appeal's success." Exhibit F. I question whether the Attorney General violated his ethical obligations to me and my agency by publicly disparaging the merits of our legal position when the matter is still pending in the courts.

8. The next day, on June 9, 2010, I requested the Attorney General to appoint a "Special Assistant Attorney General" to represent my

agency. I emphasized the urgency of the situation and requested a response from the Attorney General by 5:00 p.m. that day.

9. Later that day, the Attorney General responded in writing, but again declined to file an appeal and, now, also declined to appoint a Special Assistant Attorney General to do so.

10. The next day, on June 10, 2010, another party to the Superior Court proceeding, Conservation Northwest, filed a Notice of Appeal. *See* Exhibit G. I understand that had the effect of extending by 14 days the period of time for my agency to file its appeal. I understand the new appeal deadline is June 24, 2010, *i.e.*, this coming Thursday.

11. On June 15, 2010, I again wrote to the Attorney General, pleading with him to reconsider his decision not to file the appeal and not to appoint a Special Assistant Attorney General to file the appeal. I added a request that if he did not change his mind with regard to either of those matters, that at least he appoint a Special Assistant Attorney General to advise me on how to proceed in light of those decisions. I requested a decision by 5:00 p.m. the next day.

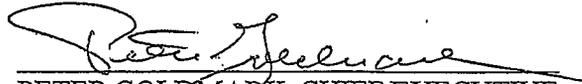
12. The Attorney General responded in a letter the next day. But the Attorney General continued his refusal to appeal or to appoint a Special

Assistant Attorney General to file an appeal. Further, he now also stated he would not appoint a Special Assistant Attorney General simply for the purpose of advising me on how to proceed. On June 18, 2010, I wrote the Attorney General another letter correcting several erroneous statements that were contained in his June 16, 2010 letter.

13. At this juncture, with no ability to obtain legal assistance from the Attorney General's Office, I was forced to turn to attorneys outside of the Office of the Attorney General. I contacted David Bricklin, a lawyer with experience in administrative, constitutional, and environmental law, to provide me with advice and represent me, if necessary, in my capacity as Commissioner of Public Lands. I requested that he initiate an action to obtain a writ of mandamus ordering the Attorney General to file the appeal by this Thursday, or to take such other action as might be necessary to preserve the rights of my agency to prosecute the appeal.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of June, 2010, at Seattle, Washington.



PETER GOLDMARK, CHIEF EXECUTIVE
OFFICE OF THE DEPARTMENT OF
NATURAL RESOURCES AND
COMMISSIONER OF PUBLIC LANDS

Goldmark\Dec of Goldmark

CNW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,
Petitioner,

No. 09-2-00679-4

-vs-

**PETITION FOR
CONDEMNATION**

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and **REBA GEBBERS**,
Husband and wife; and **WILLIAM C. WEAVER**,
Custodian for Christopher C. Weaver, a minor;
and **STATE OF WASHINGTON**, and **PETER**
GOLDMARK, Commissioner of Public Lands,
Respondents.)

COMES NOW, the above named Petitioner, Public Utility District No. 1 of Okanogan County, by and through its attorney of record; Michael D. Howe, Omak, Washington, and states and alleges as follows:

1. The above named Petitioner is a municipal corporation of the State of Washington located in Okanogan County, State of Washington.
2. The above named Respondents are the record owners or have an interest in certain parcels or real property located in the County of Okanogan, State of Washington, as more particularly detailed and described in **Exhibit A** attached hereto and incorporated herein as though fully set forth.

PETITION FOR CONDEMNATION
026,199

1

LAW OFFICE OF MICHAEL D. HOWE
10 Valley View Park Drive
Omak, WA 98841
Tele. 509.826.0532
Fax 509.826.4543

Exhibit A

1 3. Pursuant to RCW 54.16.020 and RCW 8.12.040, Petitioner has
2 passed and adopted Resolution No. 1489 expressing the Petitioner's desire to
3 acquire by eminent domain certain property interests required for the installation
4 and maintenance of structures and other improvements necessary for the
5 transmission and distribution of electrical power to the public. A certified copy of
6 said resolution is attached hereto as Exhibit B and incorporated herein as though
7 fully set forth.

8 4. An easement over and across said properties is necessary for the
9 installation and maintenance of the said facilities. It is not the desire of the
10 Petitioner to obtain ownership of any of the subject parcels. All of the subject
11 parcels are located within the corridor designated by the Petitioner for the
12 installation and maintenance of the Methow Transmission Project. The location of
13 necessary easements for installation of electrical lines and structures and the
14 location of necessary access easements is more particularly shown in Exhibit C
attached hereto and incorporated herein as though fully set forth.

15 5. The proposed acquisition of said property interests by eminent
16 domain is for a public use and purpose, i.e., for the development, construction,
17 and maintenance of facilities and infrastructure to support the implementation of
18 Petitioner's Methow Transmission Project for the transmission and distribution of
19 electrical power to the public. The public interest requires the acquisition of
20 easements over the subject property to accomplish the above said public purpose.
21 The property sought to be condemned is necessary for said public use and
improvement.

22 WHEREFORE, the Petitioner, Public Utility District No. 1 of Okanogan
23 County, prays as follows:

24 1. That a preliminary hearing on this Petition be held for purposes of
obtaining an order adjudicating public use and necessity.

 2. That compensation be paid by the Petitioner to the Respondents in
an amount to be determined by a jury, unless a jury be waived.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

3. That the Court award an easement over the subject properties to the
Petitioner.

4. For such other and further relief as the Court deems just and
equitable.

Dated this 30th day of November, 2009.

LAW OFFICE OF MICHAEL D. HOWE:

By 
Michael D. Howe, WSBA #5895
Attorney for Petitioner Public Utility District
No. 1 of Okanogan County

1
2
3
4
5
6
7 SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

8 PUBLIC UTILITY DISTRICT NO. 1 OF
9 Okanogan County, a municipal corporation,
10 of the State of Washington,

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Petitioner,

No. 09-2-00679-4

AMENDED PETITION FOR
CONDEMNATION

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

By this action, the Public Utility District No. 1 of Okanogan County ("PUD") is acquiring easements over certain property necessary for the Methow Transmission Project. The PUD, for its Petition, submits as follows:

1. PARTIES

1.1. The Petitioner PUD is a municipal corporation of the State of Washington located in Okanogan County, Washington, duly organized and existing under Title 54 RCW.

1.2. The above-named Respondents are the record owners or have an interest in certain parcels or real property located in Okanogan County, Washington, as more particularly

AMENDED PETITION FOR CONDEMNATION - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

Exhibit B

1 detailed and described in Exhibits A, B, and C, attached hereto and incorporated herein as though
2 fully set forth.

3 **2. AUTHORITY TO CONDEMN**

4 The PUD is statutorily authorized to pursue this condemnation action, including
5 RCW 54.16.020 and RCW 54.16.050.

6 **3. RESOLUTION NO. 1489**

7 3.1. The PUD timely caused notice of its planned condemnation to be mailed and
8 published pursuant to Chapter 8.12 RCW and RCW 8.25.290.

9 3.2. The PUD Board of Commissioners adopted Resolution No. 1489 on August 18,
10 2009, expressing the PUD's desire to acquire by eminent domain certain property interests
11 necessary for the Methow Transmission Project. A certified copy of Resolution No. 1489 is
12 attached hereto as Exhibit A and incorporated herein by reference. Resolution 1489 authorizes
13 and directs the PUD's legal counsel to begin and prosecute the necessary proceedings provided
14 by law to condemn, take, damage, and appropriate the real property interests necessary to carry
15 out the provisions of the Resolution.

16 **4. RESOLUTION NO. 1502**

17 4.1. The PUD timely caused notice of its planned final action to be mailed and
18 published pursuant to Chapter 8.12 RCW and RCW 8.25.290.

19 4.2. The PUD Board of Commissioners adopted Resolution No. 1502 on March 23,
20 2010. A certified copy of Resolution No. 1502 is attached hereto as Exhibit B and incorporated
21 herein by reference. Resolution 1502 further describes the real property interests of the State of
22 Washington that are the subject of the Resolution, and attaches a record of survey showing the
23 exact location of the proposed easements over the land owned by the State of Washington. It
24 further authorizes and directs the PUD's legal counsel to prosecute the necessary proceedings
25
26

1 provided by law to condemn, take, damage, and appropriate the real property interests necessary
2 to carry out the provisions of the Resolution.

3 **5. PUBLIC USE**

4 The object and use for which the property and property rights described in Exhibits A
5 through C are sought to be taken or damaged is a public object and a public use, *i.e.*, acquisition
6 of easements to construct and maintain transmission line and support structures and
7 infrastructure necessary for the Methow Transmission Project, in order to allow for the safe and
8 reliable transmission and distribution of electrical power to the PUD's customers.

9 **6. NECESSITY**

10 Easements over Respondents' properties must be acquired in order to construct and
11 maintain a new transmission line to transmit and distribute electrical power to the Methow
12 Valley. All of the subject parcels are located within the corridor designated by the PUD for the
13 installation and maintenance of the Methow Transmission Project. The location of necessary
14 easements for installation of electrical lines and structures and the location of necessary access
15 easements are more particularly shown in Exhibit C, attached hereto and incorporated by
16 reference. The easements sought in this condemnation action are being acquired in the public
17 interest, are reasonably necessary, and are required for the transmission line project.

18 **7. RELIEF REQUESTED**

19 Wherefore, the PUD prays that the Court enter an order:

20 7.1. Adjudicating that the use for which the property interests are sought is a public
21 use; that the public interest requires the prosecution of this action; and that the acquisition of the
22 property interests described in this Amended Petition is for a public use;

23 7.2. Directing that a jury be summoned and called in the manner provided by law to
24 ascertain the just compensation to be paid for the property and property rights described herein,
25
26

1 unless a jury be waived, in which case the same determination shall be made by the Court, sitting
2 without a jury;

3 7.3. Assigning the first reasonably available trial date for the ascertaining of such
4 compensation as required by RCW 8.12.090; and

5 7.4. For such other and further relief as the Court deems just and equitable.

6 DATED this 6th day of April, 2010.

7
8 LAW OFFICE OF MICHAEL D. HOWE

9
10

Michael D. Howe, WSBA #5895, and
11 FOSTER PEPPER PLLC
12 P. Stephen DiJulio, WSBA No. 7139
13 Adrian Urquhart Winder, WSBA No. 38071

14 Attorneys for Petitioner Okanogan County
15 PUD No. 1
16
17
18
19
20
21
22
23
24
25
26

FILED
11.05.2010 13:48
CLERK OF COURT
JACOB ST. JOHN

SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON; and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

NO. 09-2-00679-4

ORDER DENYING STATE'S MOTION
FOR SUMMARY JUDGMENT AND
GRANTING SUMMARY JUDGMENT IN
FAVOR OF PETITIONER

THIS MATTER came before the Court on the Motion for Summary Judgment filed by Respondents State of Washington and Peter Goldmark, Commissioner of Public Lands (collectively, "State"). The Court has considered the following documents in connection with that motion:

1. State's Motion for Summary Judgment and Memorandum in Support (April 1, 2010);
2. Declaration of Pamela Krueger (April 1, 2010);
3. Declaration of Stephen Saunders (April 1, 2010);

ORDER DENYING STATE'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING SUMMARY JUDGMENT IN FAVOR
OF PETITIONER - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

51065177.3

ORIGINAL

SCANNED
Exhibit C

121

1 4. Petitioner's Opposition to State of Washington and Peter Goldmark's Motion for
2 Summary Judgment (April 19, 2010);

3 5. Declaration of Derek Miller in Support of Petitioner's Oppositions to Motions for
4 Summary Judgment (April 19, 2010);

5 6. Declaration of Michael D. Howe in Support of Petitioner's Oppositions to State and
6 Intervenor Motions for Summary Judgment (April 19, 2010);

7 7. State's Reply in Support of Motion for Summary Judgment and Memorandum in
8 Support (April 23, 2010);

9 8. Declaration of Stephen Saunders (April 23, 2010);

10 9. Intervenor Conservation Northwest's Motion for Summary Judgment (April 1,
11 2010);

12 10. Petitioner's Opposition to Intervenor Conservation Northwest's Motion for
13 Summary Judgment (April 19, 2010);

14 11. Intervenor Conservation Northwest's Reply to Petitioner's Opposition to
15 Conservation Northwest's Motion for Summary Judgment (April 23, 2010); and

16 12. The pleadings and records on file in this matter.

17 The Court, deeming itself fully advised, and having determined that the State's Motion for
18 Summary Judgment should be denied and that summary judgment in favor of Petitioner is
19 warranted, it is hereby

20 ORDERED, ADJUDGED AND DECREED that the State's Motion for Summary Judgment
21 is DENIED; and it is further

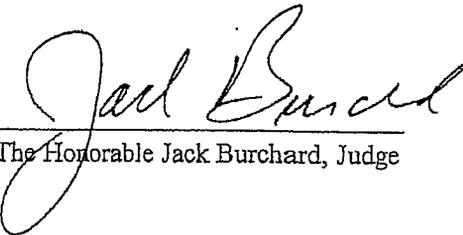
22 ORDERED, ADJUDGED AND DECREED that Petitioner's request for summary
23 judgment is GRANTED. ~~There are no material facts in dispute. Petitioner, as a Washington public~~
24 ~~utility district, is authorized as a matter of law to condemn school lands held in trust by the State.~~
25 ~~The lands subject to this action are not dedicated to a public purpose or otherwise set aside by law~~
26

ORDER DENYING STATE'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING SUMMARY JUDGMENT IN FAVOR
OF PETITIONER - 2

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 ~~for a purpose inconsistent with the PUD's acquisition and use for a transmission line corridor.~~
2 ~~Summary judgment is hereby entered for the Petitioner, as Petitioner has the legal authority to~~
3 ~~condemn the State-owned trust lands at issue in this case.~~

4 SO ORDERED this 11th day of May, 2010.

5 
6
7 The Honorable Jack Burchard, Judge

8 Presented by:

9
10 FOSTER PEPPER PLLC

11 
12 P. Stephen DiJulio, WSBA No. 7139
13 Adrian Urquhart Winder, WSBA No. 38071, and
14 LAW OFFICE OF MICHAEL D. HOWE
Michael D. Howe, WSBA No. 5895

15 Attorneys for Petitioner Okanogan County
16 PUD No. 1
17
18
19
20
21
22
23
24
25
26

ORDER DENYING STATE'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING SUMMARY JUDGMENT IN FAVOR
OF PETITIONER - 3

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

FILED
11.05.2010 15:48
OKANOGAN COUNTY
JACKSON, WASHINGTON

SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

NO. 09-2-00679-4

ORDER DENYING CONSERVATION
NORTHWEST'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING SUMMARY JUDGMENT IN
FAVOR OF PETITIONER

THIS MATTER came before the Court on the Motion for Summary Judgment filed by
Intervenor Conservation Northwest. The Court has considered the following documents in
connection with that motion:

1. Intervenor Conservation Northwest's Motion for Summary Judgment (April 1,
2010);
2. Petitioner's Opposition to Intervenor Conservation Northwest's Motion for
Summary Judgment (April 19, 2010);

ORDER DENYING CONSERVATION NORTHWEST'S MOTION
FOR SUMMARY JUDGMENT AND GRANTING SUMMARY
JUDGMENT IN FAVOR OF PETITIONER - I

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

51065170.3

ORIGINAL

SCANNED

Exhibit D

182

1 3. Declaration of Derek Miller in Support of Petitioner's Oppositions to Motions for
2 Summary Judgment (April 19, 2010);

3 4. Declaration of Michael D. Howe in Support of Petitioner's Oppositions to State and
4 Intervenor Motions for Summary Judgment (April 19, 2010);

5 5. Intervenor Conservation Northwest's Reply to Petitioner's Opposition to
6 Conservation Northwest's Motion for Summary Judgment (April 23, 2010);

7 6. Respondents State of Washington and Peter Goldmark's ("State") Motion for
8 Summary Judgment and Memorandum in Support (April 1, 2010);

9 7. Declaration of Pamela Krueger (April 1, 2010);

10 8. Declaration of Stephen Saunders (April 1, 2010);

11 9. Petitioner's Opposition to State of Washington and Peter Goldmark's Motion for
12 Summary Judgment (April 19, 2010);

13 10. State's Reply in Support of Motion for Summary Judgment and Memorandum in
14 Support (April 23, 2010);

15 11. Declaration of Stephen Saunders (April 23, 2010); and

16 12. The pleadings and records on file in this matter.

17 The Court, deeming itself fully advised, and having determined that Conservation
18 Northwest's Motion for Summary Judgment should be denied and that summary judgment in favor
19 of Petitioner is warranted, it is hereby

20 ORDERED, ADJUDGED AND DECREED that Conservation Northwest's Motion for
21 Summary Judgment is DENIED; and it is further

22 ORDERED, ADJUDGED AND DECREED that Petitioner's request for summary
23 judgment is GRANTED. ~~There are no material facts in dispute. Petitioner, as a Washington public~~
24 ~~utility district, is authorized as a matter of law to condemn school lands held in trust by the State.~~

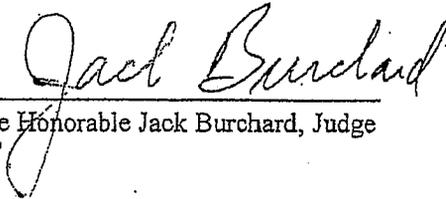
25 ~~The lands subject to this action are not dedicated to a public purpose or otherwise set aside by law~~
26

ORDER DENYING CONSERVATION NORTHWEST'S MOTION
FOR SUMMARY JUDGMENT AND GRANTING SUMMARY
JUDGMENT IN FAVOR OF PETITIONER - 2

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4300 FAX (206) 447-9700

1 ~~for a purpose inconsistent with the PUD's acquisition and use for a transmission line corridor.~~
2 ~~Summary judgment is hereby entered for the Petitioner as Petitioner has the legal authority to~~
3 ~~condemn the State-owned trust lands at issue in this case. Costs and statutory attorney fees are~~
4 ~~awarded to Petitioner, subject to the filing of a cost bill and entry of a judgment summary consistent~~
5 ~~with law.~~

6 SO ORDERED this 11th day of May, 2010.

7
8 
9 The Honorable Jack Burchard, Judge

10 Presented by:

11 FOSTER PEPPER PLLC

12
13 
14 P. Stephen DiJulio, WSBA No. 7139
15 Adrian Urquhart Winder, WSBA No. 38071, and
16 LAW OFFICE OF MICHAEL D. HOWE
Michael D. Howe, WSBA No. 5895

17 Attorneys for Petitioner Okanogan County
18 PUD No. 1
19
20
21
22
23
24
25
26

ORDER DENYING CONSERVATION NORTHWEST'S MOTION
FOR SUMMARY JUDGMENT AND GRANTING SUMMARY
JUDGMENT IN FAVOR OF PETITIONER - 3

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

11.03.2013 10:48

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

NO. 09-2-00679-4

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER ON PUBLIC USE
AND NECESSITY - RESPONDENTS
STATE OF WASHINGTON AND PETER
GOLDMARK

1. INTRODUCTION

This matter came on before the undersigned Judge of the above-entitled court on the
Petition of Public Utility District No. 1 of Okanogan County ("PUD") and the request for an
Order declaring that the object and use for which the PUD is acquiring easements over State-
owned properties in this case is a public object and a public use and that the acquisition of the
easements sought by the PUD is necessary to that public use, i.e., acquisition of easements to
enable the PUD to construct and maintain a new transmission line to supply electrical power to
the Methow Valley. Subject to their motion for summary judgment on the PUD's condemnation

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER ON PUBLIC USE AND NECESSITY - STATE OF
WASHINGTON AND PETER GOLDMARK - I

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

51066656 4

ORIGINAL

SCANNED

Exhibit E

K23

1 authority, Respondents State of Washington and Peter Goldmark (collectively, "State") have
2 stated they will not oppose entry of the order on public use and necessity.

3 Having considered the record before it and the prior proceedings in this action, the Court
4 enters the following Findings of Fact, Conclusions of Law, and Order on Public Use and
5 Necessity.

6 **2. FINDINGS OF FACT**

7 **2.1. Identity of Condemnor**

8 The condemnor is Public Utility District No. 1 of Okanogan County, a Washington
9 municipal corporation, duly organized and existing under Title 54 RCW. The PUD is
10 represented by Michael D. Howe of the Law Office of Michael D. Howe and P. Stephen DiJulio
11 of Foster Pepper PLLC.

12 **2.2. Identity of Condemnees**

13 The condemnees subject to this Order are Respondents State of Washington and Peter
14 Goldmark, Commissioner of Public Lands. The State is represented by Pamela L. Krueger,
15 Assistant Attorney General. The State either owns or has an interest in the land, property, and
16 property rights that are the subject of this condemnation action commenced pursuant to chapter
17 54.16 RCW and RCW 8.12.040.

18 **2.3. Background of Transmission Line Project**

19 The Court hereby incorporates the facts set forth in *Gebbers v. Okanogan County PUD*
20 *No. 1*, 144 Wn. App. 371, 183 P.3d 324, *rev. denied*, 165 Wn.2d 1004 (2008).

21 **2.4. Resolution 1489**

22 On August 18, 2009, the PUD Board of Commissioners adopted Resolution No. 1489. A
23 certified copy of the Resolution is attached as Exhibit A to the Amended Petition for
24 Condemnation filed in the present action. By adoption of Resolution No. 1489, the PUD Board
25 of Commissioners resolved that the public's use and necessity require the acquisition of
26 easements over the State's properties for possession, ownership, development, construction, and

1 maintenance of structures and infrastructure necessary to construct and maintain transmission
2 line and support structures and infrastructure necessary for the transmission line project. It
3 further resolved that this acquisition is necessary to allow the safe and reliable transmission and
4 distribution of electrical power to the PUD's customers in the Methow Valley.

5 2.5. Resolution No. 1502

6 The PUD Board of Commissioners adopted Resolution No. 1502 on March 23, 2010. A
7 certified copy of Resolution No. 1502 is attached as Exhibit B to the Amended Petition for
8 Condemnation. Resolution 1502 further described the real property interests of the State that are
9 the subject of the Resolution, and attached a record of survey showing the exact location of the
10 proposed easements over the land owned by the State.

11 2.6. Proper Notice Given to the State

12 The PUD gave the State at least 15 days' notice by mail and publication as required under
13 RCW 8.25.290 prior to the PUD's consideration and adoption of Resolution No. 1489 and
14 Resolution No. 1502. Declaration of Tina DeLap (Jan. 20, 2010), Exs. A-D; Declaration of Tina
15 DeLap Regarding Resolution 1502 (Apr. 23, 2010), Exs. A-C.

16 2.7. The Methow Transmission Project is a Public Use

17 The State stipulates, and the Court independently finds, that the transmission line project
18 for which the easements over the Properties are being condemned constitutes a public use.

19 2.8. The State's Properties are Necessary for the Transmission Line Project

20 The State does not oppose entry of an order of public use and necessity. And, the Court
21 independently finds that easements over the State's properties must be acquired in order to
22 construct and maintain a new transmission line to transmit and distribute electrical power to the
23 Methow Valley. Resolution No. 1489 and Resolution No. 1502 authorize the acquisition by
24 condemnation of easements over the State's properties, which are legally described in Exhibits A
25 and B to the Amended Petition for Condemnation (collectively, the "Properties"). A record of
26 survey is also attached as Exhibit C to the Amended Petition. The PUD seeks to acquire a

1 permanent easement across the Properties. The easements sought in this condemnation action
2 are reasonably necessary and required for the transmission line project.

3 2.9. Lands are "School Lands"

4 The State has admitted that the lands subject to this action are school trust lands, or
5 "school lands." See RCW 54.16.050.

6 2.10. General

7 Any Conclusion in Section 3 that is more properly characterized as a Finding of Fact is
8 incorporated herein.

9 3. CONCLUSIONS OF LAW

10 3.1. This Court has jurisdiction over the parties and the subject matter of this action.

11 3.2. The PUD is statutorily authorized to pursue this condemnation by
12 RCW 54.16.020 and .050. The Court incorporates herein by reference its rulings on the motions
13 for summary judgment on condemnation authority.

14 3.3. The notice provided to the State prior to the PUD's consideration and adoption of
15 Resolution No. 1489 and Resolution No. 1502 conformed to the requirements of RCW 8.25.290.

16 3.4. The Properties have been adequately described under Washington law. See *State*
17 *ex rel. Willapa Elec. Co. v. Superior Court*, 196 Wn. 523, 529, 83 P.2d 742 (1938) (requiring
18 only reasonable certainty).

19 3.5. The transmission line project for which the easements over the Properties are
20 being condemned constitutes a public use.

21 3.6. Easements over the Properties described in the Amended Petition for
22 Condemnation are acquired in the public interest, and necessity requires the acquisition of such
23 easements.

24 3.7. Any Finding in Section 2 that is more properly characterized as a Conclusion of
25 Law is incorporated herein.

26

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER ON PUBLIC USE AND NECESSITY - STATE OF
WASHINGTON AND PETER GOLDMARK - 4

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 4. ORDER ON PUBLIC USE AND NECESSITY

2 4.1. HAVING CONSIDERED the pleadings and declarations submitted by Petitioner,
3 the stipulation to public use and necessity by the State, the other pleadings and records on file,
4 and deeming itself otherwise fully advised, the Court enters the following ORDER:

5 4.2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
6 contemplated use for which the Properties described in the Amended Petition for Condemnation
7 are sought to be taken is a public use.

8 4.3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that easements
9 over the Properties described in the Amended Petition for Condemnation are acquired in the
10 public interest, and necessity requires the acquisition of such easements.

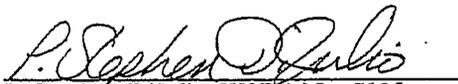
11 4.4. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that trial on the
12 issue of just compensation shall be set by further order of the Court.

13 DATED this 11th day of May, 2010.

14 
15 _____
16 The Honorable Jack Burchard, Judge

17 Presented by:

18 FOSTER PEPPER PLLC

19 
20 _____
21 P. Stephen DiJulio, WSBA No. 7139
22 Adrian Urquhart Winder, WSBA No. 38071, and
23 LAW OFFICE OF MICHAEL D. HOWE
24 Michael D. Howe, WSBA No. 5895

25 Attorneys for Petitioner Okanogan County
26 PUD No. 1

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER ON PUBLIC USE AND NECESSITY – STATE OF
WASHINGTON AND PETER GOLDMARK - 5

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

[News](#) > [News Releases](#) > 2010

FOR IMMEDIATE RELEASE

[back](#)

June 08, 2010

OLYMPIA – Washington State Attorney General Rob McKenna issued the following statement today regarding his determination not to appeal a decision of the Okanogan County Superior Court. After considering all of the arguments presented, the superior court ruled that the Okanogan Public Utility District has authority to acquire through condemnation an easement over school trust lands for a transmission line.

“It’s unfortunate that the Lands Commissioner has inserted politics into a purely legal decision by the Attorney General’s Office. The assertion that politics played any part in our decision is wrong, and frankly, insulting.

This decision was thoroughly processed in the manner in which we handle all appeal decisions. The legal underpinnings of an appeal were researched and analyzed by attorneys assigned to DNR and by our Solicitor General’s Office, staffed by some of the finest appellate lawyers in the nation.

The decision not to appeal the Okanogan County Superior Court decision was based, as all of our appellate decisions are, on whether legal error was made by the trial court judge, consideration of the trial court record, and the likelihood of the appeal’s success. This process for handling appeals has been in place for many years.

It is regrettable that Commissioner Goldmark seeks to undermine the integrity of the Attorney General’s Office.”

-30-

Contacts:

[Dan Sytman](#), AGO Media Relations Manager, (360) 586-7842

Janelle Guthrie, AGO Communications Director, (360) 586-0725

Exhibit F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal
corporation of the State of Washington,

NO. 09-2-00679-4

Petitioner,

NOTICE OF APPEAL

v.

CHRISTINE DAVIS, a single person;
and TREVOR KELPMAN, a single
person; and DAN GEBBERS and REBA
GEBBERS, Husband and wife; and
WILLIAM C. WEAVER, Custodian for
Christopher C. Weaver, a minor; and
STATE OF WASHINGTON, and
PETER GOLDMARK, Commissioner of
Public Lands,

Respondents,

And,

CONSERVATION NORTHWEST, a
Washington Non-Profit Corporation,

Respondent-Intervenor.

Respondent-Intervenor Conservation Northwest seeks review by the Washington
State Court of Appeals, Division 3, of the following Orders entered on May 11, 2010 by
Okanogan County Superior Court Judge Jack Burchard:

Exhibit G

