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No. 90973-3

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SUPREME COURT OF THE STATE OF WASHINGTON

PORT OF OLYMPIA, a municipal corporation of the State of
Washington,

Petitioner,

v.

ARTHUR WEST and JERRY DIERKER,

Respondents.

**ANSWER TO JERRY DIERKER'S
MOTION FOR EXTENSION OF TIME**

HEATHER L. BURGESS, WSBA #28477
KELLY T. WOOD, WSBA #40067
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(360) 742-3500
Attorneys for Petitioner

 ORIGINAL

A. Identity of Replying Party

The Port of Olympia (the “Port”) is a municipal corporation of the State of Washington, Defendant below, Respondent at the Court of Appeals, and now Petitioner before this Court.

B. Facts Relevant to Answer

Respondent, Mr. Jerry Dierker, moves this Court to grant a *third* extension of time to answer the Port’s now voluntarily withdrawn Petition for Review. In support, Mr. Dierker attaches two Department of Ecology Environmental Report Tracking System (ERTS) reports regarding his own claims of alleged contamination at a property near his home. *See* Dierker Motion. Mr. Dierker also attaches a voluminous public records request submitted to the Port on January 27, 2015. *See id.* A Department of this Court is set to consider both the Port’s motion for voluntary withdrawal, the Port’s Petition for Review, and the current motion on March 3, 2015.

C. Argument

While the Port has not previously opposed Mr. Dierker’s prior requests for additional time, the Port respectfully requests that the Court deny Mr. Dierker’s current extension request. Mr. Dierker’s motion fails to identify or justify why an extension of almost two months, on top of the existing two months of extensions already received, is necessary in this case. Although Mr. Dierker claims injuries allegedly sustained while on a neighboring property prohibit him from taking any action in this case, Mr. Dierker provides no evidence or support for this claim. In addition, Mr. Dierker’s actions indicate that he is clearly capable of putting forth

an answer to the Port's Petition. Indeed, and as noted above, Mr. Dierker's alleged injuries have not prevented him from submitting lengthy and detailed requests for public records to the Port.

Finally, it is actually unnecessary in this case for Mr. Dierker to respond to the Port's Petition for Review. The primary matter before the Court at this time is Mr. Dierker's opposition to the Port's voluntary withdrawal of its Petition for Review. Mr. Dierker has already fully responded to this motion, and, as is indicated by his response, Mr. Dierker's goal in opposing the withdrawal is to conjure an appeal of the Court of Appeals' decision that he himself neglected to file. As noted in the Port's January 27, 2015 reply on its motion for voluntary withdrawal, Mr. Dierker utterly fails to meet the extremely high bar for obtaining such relief under RAP 18.8(b).¹ This court need not cure Mr. Dierker's deliberate failure to file his own Petition for Review simply because he intended to piggyback on any subsequent Petitions filed by other parties.

D. Conclusion

The Port respectfully requests that the Court deny Mr. Dierker's request for an extension.

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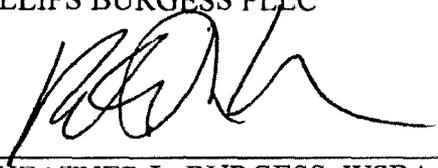
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¹ Under RAP 18.8(b), courts grant requests to extend the time to seek appellate review "only in extraordinary circumstances and to prevent a gross miscarriage of justice... ." This test is rigorously applied, and there are "very few instances in which Washington appellate courts have found that this test was satisfied." *State v. Moon*, 130 Wn. App. 256, 260, 122 P.3d 192, 194 (2005); *see also, Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998) (Stating that RAP 18.8(b) "is rarely satisfied").

RESPECTFULLY SUBMITTED this 4th day of February, 2015.

PHILLIPS BURGESS PLLC

By: 

HEATHER L. BURGESS, WSBA #28477
KELLY T. WOOD, WSBA #40067
Attorneys for Petitioner, Port of Olympia

DECLARATION OF SERVICE

I, Deanna L. Gonzalez, declare as follows:

I am a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Phillips Burgess PLLC, whose address is 724 Columbia Street NW, Suite 140, Olympia, Washington 98501.

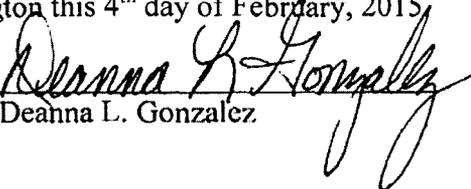
On February 4, 2015, I sent out for service upon the below-listed parties at the addresses and in the manners described below, the following document appended hereto:

- Answer to Jerry Dierker's Motion for Extension of Time

Arthur West 120 State Avenue NE, #1497 Olympia, Washington 98501	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
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	<input type="checkbox"/>	Facsimile
Jerry L. Dierker, Jr. 2826 Cooper Point Road NW Olympia, Washington 98502	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court Efile
	<input type="checkbox"/>	Electronically via email:
	<input type="checkbox"/>	Facsimile
Kimberly A. Hughes Senior Legal Counsel Weyerhaeuser Post Office Box 9777 Federal Way, WA 98063	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court Efile
	<input checked="" type="checkbox"/>	Electronically via email: <u><i>kim.hughes@weyerhaeuser.com</i></u>
	<input type="checkbox"/>	Facsimile

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

DATED at Olympia, Washington this 4th day of February, 2015.


Deanna L. Gonzalez

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To: Deanna Gonzalez
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Greetings,

On behalf of Heather Burgess and Kelly Wood, attorneys for Petitioner, Port of Olympia, attached please find our Answer to Jerry Dierker's Motion for Extension of Time in the above-entitled matter.

Thank you,
Deanna

Deanna Gonzalez
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