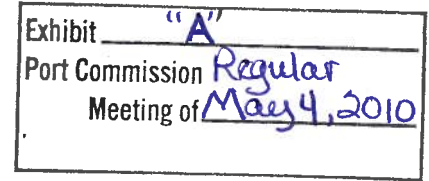


10002 Aurora Ave. N., #5546  
Seattle, WA 98133  
May 18, 2009

Port of Seattle Commissioners  
Port Headquarters  
Seattle, Wa



Dear Commissioner

As promised at my testimony at the May 15, 2009 Port meeting, I am contacting you regarding the Port's property line. I believe you own to mean high water only.

Enclosed herewith are relevant parts of the law that authorized Commercial Waterway districts in Washington State. The law itself is 35 pages long, consisting mostly of how to organize such a district; how to vote for commissioners of the District; what would be the term of office; and a long section regarding eminent domain procedures. If by chance you want to read the complete law, I can send it to you.

Also enclosed herewith are two pages of a map of the Duwamish Waterway completed by the Army corps of engineers in 1925, which I obtained from the City Archives in City Hall. I chose this map because it is the easiest one to copy. If you wish to obtain a copy of the original survey, which is very long, you can do so by contacting the State Archives in Bellevue. At the same location there are very large and bulky maps but all of them show the lines as "Baseline". Baselines are measuring lines, not property lines. I grew up in the Chesapeake Bay area where the shoreline is so irregular that if a baseline were not used, the middle of the river could never be straight. Once the middle of a river is ascertained from measuring from the straight baseline, a specific number of feet is measured on each side, which is the straight channel. I do not know when the city maps stopped using the baseline indication on the maps. It could have been when the Port of Seattle acquired the riverbed and did not understand the significance of a baseline. It could have been before by someone who did not know what a baseline was, and simply deleted it. However, that does not change the original character of that line.

Please refer to the map enclosed and you will see that the baseline is clearly delineated as is the mean high water line. Had the waterway needed beyond mean high water, it would have taken that land initially.

The original law is found in the Session Laws of 1911, Chapter 11, beginning on page 11 and ending on page 46. On page 19, Sec. 7(b) states that the board of commissioners shall have the right, power and authority to straighten, widen, and deepen any and all rivers, watercourses, streams. Sec. 7(d) gives the commissioners the right to acquire all property for the straightening, deepening or widening, to accomplish Sec. 7(b)'s mission.

The law did not give authorization for the district to acquire property it did not need for these purposes. The Commercial Waterway District, and the Port as its successor, did not and does not

need any land past mean high water. That land is excluded from your ownership, as it was from the District's.

On page 21, Sec. 8 giving the right to the riverbed to the District stated:

Sec. 8. All the right, title and interest of the State of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any commercial waterway district up to and including the line of ordinary high tide in waters where the tide ebbs and flows and up to and including the line of ordinary high water within the banks of any navigable rivers and lakes...

The interest given was specifically stated to be to mean high water. The Commercial District, and the Port as the district's successor, cannot take a right you were not granted. Consequently, ownership beyond mean high water cannot be claimed.

Article XVII of the Washington State Constitution states:

ARTICLE XVII  
TIDE LANDS

SECTION 1 DECLARATION OF STATE OWNERSHIP. The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes...

Under the Washington State Constitution, the ownership of a river or lake bed and shore is limited to ordinary high water and the Port of Seattle is bound by that instrument. You cannot act unconstitutionally; therefore your ownership of the bed of the river is limited to ordinary high tide.

Additionally, there is the Washington State Supreme Court case, "Austin v. Bellingham," 69 Wash. 677, 126 Pac. 59 (1912). This case not only affirms that the beds and shores of navigable lakes and streams, at p. 680:

Faith is put in the grant of a right to occupy and use the beds and shores of navigable lakes and streams up "to high water mark"...High water mark has been defined to be "the upland boundary of tide and shore lands."

But also states at p. 679:

...we have not held in any case that the owner of tide and shore lands can so use his property as to injure or destroy the use of abutting property, without meeting the consequential damages.

I mentioned at that May 5 Meeting that I was surprised that you claimed that the Port of Seattle owned the streetend at South Southern, which adjoins one of my properties, and that in any dealings I have had with the streetend, King County thought it owned that end. On page 20, (e) of Sec. 7, of the original law allowing Commercial Waterway Districts to be formed, essentially gives the city or county any use it would normally have with the provision that such city or county use would not "materially impair the efficiency of said commercial waterway..." The Port owns to mean high water but the city or county owns up to that high tide mark.

As it stands now, the runoff at these streetends into the Duwamish River is not treated or controlled. Industry is required to install catch basins along its property, but the streetends are not governed by any law. One way the Port of Seattle could help to reduce and eliminate pollution in the Duwamish River would be to install catch basins at the streetends such as the ones industry has had to install.

I have not completed a search of the U.S. Supreme Court cases regarding mean high water. However, I do know that the U.S. Congress has legislated that federal waterways extend to mean high water. Every commercial waterway in the country adheres to that standard and I do not believe the Port of Seattle is an exception. I will contact the Port further when I do so complete.

Thank you for your attention to this matter.

Very truly yours,

M. C. Halvorsen

cc: Tay Yoshitani, Port CEO  
Joseph Gellings  
Boyer Towing  
Pacific Pile and Marine  
Delta Marine  
Jim Gilmour  
Lisa De Alva  
Hal Hurlen

corporated city or town, shall apply to the extension or enlargement of any commercial waterway or commercial waterways already existing upon, over and across any street, avenue, alley or public place of any city or town, as well as the original construction thereof. [See note to title.]

SEC. 8. All the right, title and interest of the State of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any commercial waterway district up to and including the line of ordinary high tide in waters where the tide ebbs and flows and up to and including the line of ordinary high water within the banks of any navigable rivers and lakes, to the extent that the same, under any proceedings to be had under this act, shall cease to become part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given and granted and vested in the respective commercial waterway districts now existing, or hereafter to be formed, and the commissioners of such respective commercial waterway districts are hereby given the right, power and authority to sell such beds and shores in such manner and upon such notice and proceedings as govern, under the existing laws of the state, the board of county commissioners in the sale and disposition of any real estate belonging to the counties of this state. The proceeds of such sales are to be used for the benefit of such commercial waterway districts, and the payment of any expenses connected with the construction of such commercial waterways or maintenance thereof: *Provided, however,* That the commissioners of such commercial waterway district may, in their discretion, exchange such abandoned beds and shores, for other property needed in the straightening, deepening or widening of such rivers, watercourses or streams, and which exchange may be made upon such terms and conditions and in such areas as, in the discretion of such commissioners, they may deem advisable and

Right to  
sell beds  
and shores.

May ex-  
change for  
other  
property.

[See note  
to title.]

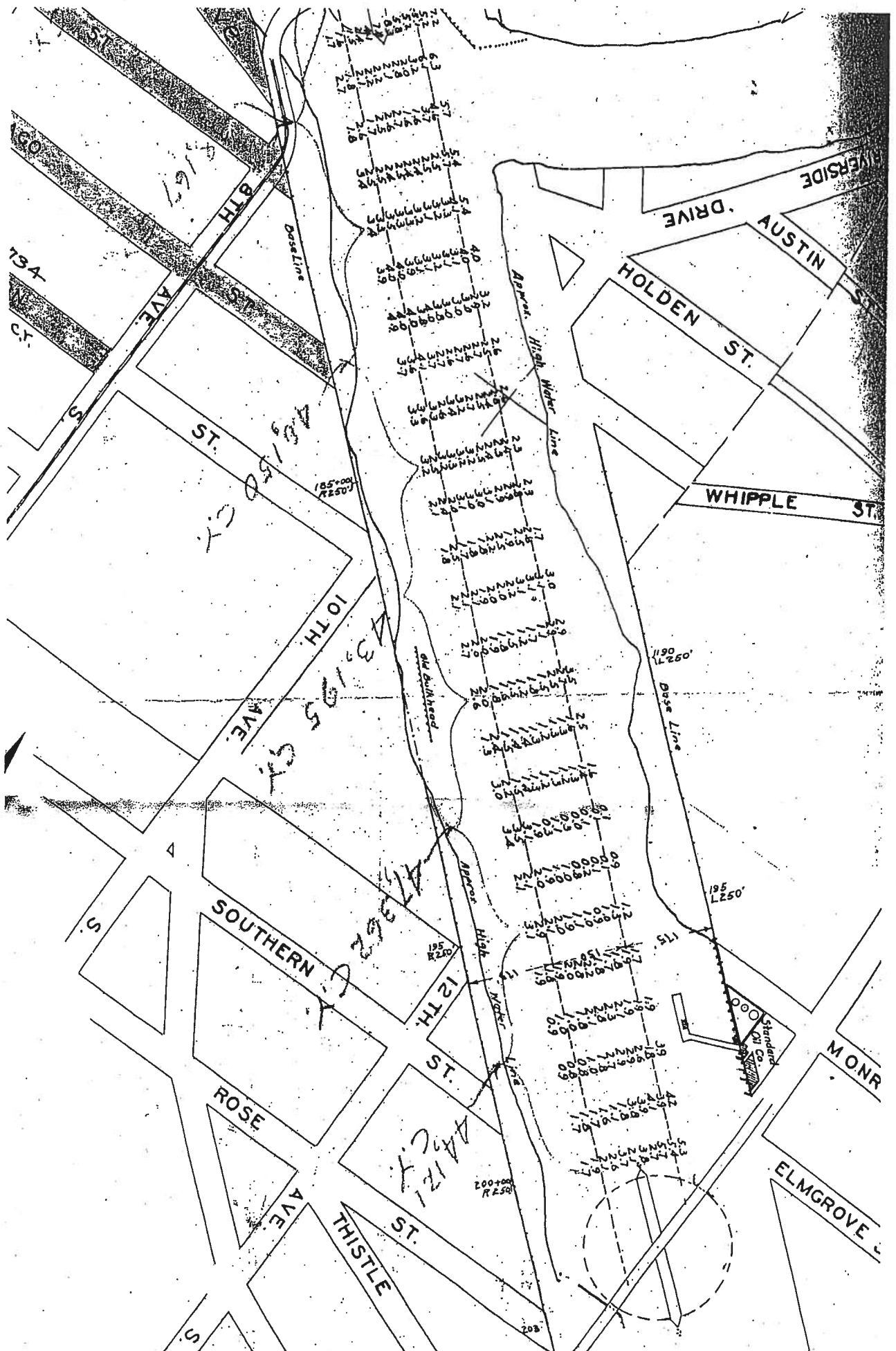
Compensa-  
tion to be  
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Shall not  
conflict with  
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authority.

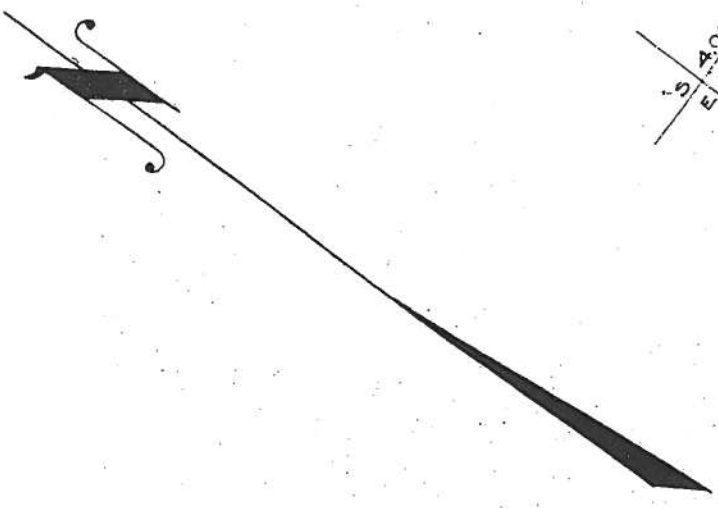
Provisions  
inside of  
corporate  
limits.

mentioned, and when so acquired shall have and are hereby given the right, power and authority by and with the consent and approval of the United States government in cases where such consent is necessary, to divert, alter and change the bed or course of or otherwise improve any such river, water course or stream aforesaid, or to deepen, widen and straighten the same: *Provided*, That such diversion, alteration or change shall not be had without payment of compensation or damages for any property rights, riparian or otherwise, that may be taken or damaged thereby.

(e) The right, power and authority to acquire the necessary and needed rights-of-way for any and all purposes created by this act may be acquired by the commissioners of any waterway district over and across or upon any land or interest therein of the State of Washington, or any county of this state, and streets, alleys, and avenues, or public places of any city, town or municipal corporation of this state: *Provided, however*, That the construction of such commercial waterway or commercial waterways shall not have the effect of impairing any right, power or authority now existing on the part of any city or town to construct in, upon, underneath, above or across such commercial waterway or commercial waterways, sewers, water pipes, mains, the granting of any franchise thereon, or improve by the way of planking, replanking, paving, repaving or any other power, right and authority which, but for this act, such city or town would have in or to such street, avenue, alley or public place, except, however, that such right, power and authority on behalf of such city or town shall not be exercised either by such city or town or by any person or persons, firms or corporations, to whom it might grant any right or franchise which will materially impair the efficiency of said commercial waterway or commercial waterways. The provisions of this section as regards such system of commercial waterway or commercial waterways, to be constructed within the boundaries of any in-



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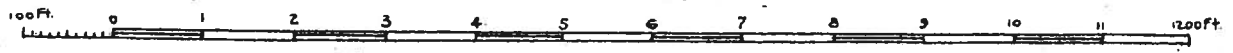
[1044]

# DUWAMISH WATERWAY SEATTLE HARBOR, WASH.

IN 3 SHEETS

SHEET NO. 3

SCALE: 1 INCH = 200 FT.



U. S. ENGINEER OFFICE, SEATTLE, WASH.

Submitted:

*H. M. Baker*  
Civil Engineer

Approved:

*J. S. Butler*  
Major Corps of Engineers  
Transmitted with letter dated

Map referred to in paragraph  
of Specifications for Dredging.

Surveyed by F.S.G.  
Drawn by W.B.  
TREC.

File No. E/12/2/25

E/12/2/25



10002 Aurora Ave. N., #5546  
Seattle, WA 98133  
February 14, 2010

Port of Seattle commissioners  
Port of Seattle Headquarters  
Seattle, Washington

Dear Port of Seattle Commissioners:

As promised in my letter to you of May 18, 2009, wherein I said that I would contact you when I completed a search of United States Supreme Court cases including Federal Court cases regarding "mean high water", I am writing this letter. I have completed my research on the subject and the following is what I have found.

Chief Justice John Marshall (and I assume you all know who he is) defined rivers in the United States in "Handley's Lessee v. Anthony" 5 Wheat 374 (1820) saying at p. 385

The shores of a river border on the water's edge.

In "Howard v. Ingersoll" 54 U.S. 381 (1851) said at p. 391

A river consists of water, a bed and banks. The bed or channel is the space over which the water flows...

[The riverbed] neither takes in overflowed land beyond the bank, nor includes swamps or low grounds...

The Court went on to say the right of the state to the riverbed was limited to line of ordinary high water and not to the line of the highest water. See also "Montano v. United States" 450 U.S. 544 (1981), "Harkins v. Del Pozzi" 50 Wash. 2d 337 (1957).

In "Governor of Georgia v. Madrazo" 26 U.S. 110, the Court stated at p. 115:

The original grant of jurisdiction, in such cases, to the Courts of the United States is ample, 2d section 3d art. Cons. U.S. The admiralty jurisdiction is 'of all cases of admiralty a maritime jurisdiction' generally, without restriction; whether they arise under the Constitution, law, and treaties of the United States, or the law of nations.

See also "Scranton v. Wheeler" 179 U.S. 144, "Borax Consolidated v. City of Los Angeles, 296 U.S. 10.

"Escanabaa and Lake Michigan Transportation Co. v. City of Chicago" 107 U.S. 678 (1881) stated:

If the power of a State with respect to a navigable river and that of the Federal Government come in conflict, the power of the Federal Government must control in view of the fact that the constitution gives the right to legislate in reference to navigable waters.

See also "United States v. California" 332 U.S. 19.

In "Austin v. Bellingham" 69 Wash 677, (1912), the Washington State Supreme Court said at p. 680:

Faith is put in the grant of a right to occupy and use the beds and shores of navigable lakes and streams up 'to high water mark...



And at p. 681, it says:

Its rights are limited to the line of ordinary high water.

Thus, the United States Supreme court has uniformly held that all rivers are to mean high water; that navigable waters of the United States are under U.S. jurisdiction (*United States v. Texas* 143 U.S. 621, *United States v. Rio Grande Irrigation Co.* 174 U.S. 690) that the adjudication of rights to the use of water of a river system is under the United States jurisdiction; if a State law conflicts with a Federal law, Federal law prevails (*Escanabaa and Lake Michigan v. City of Chicago* 107 U.S. 678, *United States v. California* 332 U.S. 19)

In addition the Washington State Constitution, Article XVII, which I quoted verbatim in my letter to you of May 18, 2009 states clearly that the waters of the State of Washington are to mean high water. The State Constitution has not been amended. It is in full force and effect and is the supreme law in Washington State.

I next traced the Port's claim to have a "right of way" of 500 feet. I have never found anywhere that there is such a thing as a right of way in a federal waterway because the waters are open to everyone free of charge. It seems that in 1937 one John Nelson anchored a houseboat in the Duwamish River and claimed he owned the adjoining property. The Commercial Waterway District No. 1 sued. In "*Commercial Waterway District No. 1 v. Nelson*" from reading the opinion one can tell that the Judges of the court were under the impression that the Duwamish River was 500 feet its whole length and so ruled that the District had a 500 foot right of way. This is a deception and a fraud upon the Court. There is no statute of limitations for fraud. The following two cases, "*State of Washington v Commercial Waterway District No 1*" and "*Commercial Waterway District No. 1 v. Permanente*" only repeated that opinion obtained by fraud.

In "*Union Pacific Railroad Co. v. Snow*" 231 U.S. 204 the United States Supreme Court stated at p. 211

... a judgment though not erroneous when rendered, may become so by a subsequent law."

I believe it was erroneous, obtained through fraud, but the principle remains the same. A subsequent law can confirm it is erroneous, thus void and not binding. The Washington State Supreme Court decisions are void anyway with regard to the borders of the Duwamish river because they had no jurisdiction to hear these cases as the jurisdiction rested with the admiralty court of the federal government. However, the "subsequent law" of the federal court was expressed in the following case.

In "*United States v. Pend Oreille Public Utility District No. 1*" 28 F.3d 154 (1991) (this is the Ninth Circuit Court of Appeals, a federal court higher than the Washington State Supreme Court.) ruled that in Washington State "*Austin v. Bellingham*" 69 Wash. 677, 126 P. 59 (1912) is controlling. "*Austin v. Bellingham*" states that the waters of Washington State are to mean high water and that is controlling. Thus, the Port of Seattle owns to mean high water which, according to the Coast and Geodetic Survey, is 8 feet.

As a law abiding organization, the Port of Seattle has the duty to petition the Washington State Supreme Court to modify its rulings in the three cases of the Commercial Waterway District from 500 feet to mean high water so that no state government agency can misunderstand.

Of course, failing that, there can be a lawsuit filed in Federal Court wherein the Port of Seattle will have to explain why the Port is defying the Ninth Circuit Court Appeals ruling, ignoring the Washington State Constitution and why the Port of Seattle wants to continue the fraud perpetrated on the Washington State Supreme Court with the result of the taking of property of the owners along the Duwamish River, which is unconstitutional violating the 5<sup>th</sup> Amendment to the United States Constitution.

Letter to Port of Seattle commissioners  
Dated February 15, 2010  
Page 3

Awaiting your reply, I remain

Very truly yours,

M. C. Halvorsen

cc: Tay Yoshitani CEO, Port of Seattle  
Thomas Tanaka, Port of Seattle  
Boyer Towing  
Pacific Pile and Marine  
Delta Marine  
Jim Gilmour  
Lisa De Alva  
Hal Hurlen

10002 Aurora Ave. N., #5546  
Seattle, Wa 98110  
February 22, 2010

Port of Seattle Commissioners  
Port of Seattle Headquarters  
Seattle, Washington

Dear Port of Seattle Commissioners:

I see that on page 2 of my letter to you of February 14-15, 2010 that with regard to the Washington State Supreme Court cases, I neglected to give you the citations. On the first one, I mistyped Nelson instead of Larson.

The citations are as follows:

Commercial Waterway District No. 1 v. Larson, 26 Wash.2d 219, 173 p.2d 531

Commercial Waterway District No. 1 v. State of Washington, 50 Wash.2d 335,  
311, p.2d 680

Commercial Waterway District No. 1 v. Permanente, 61 Wash.2d 509, 379 P.2d 178.

I am still awaiting your reply.

Very truly yours,


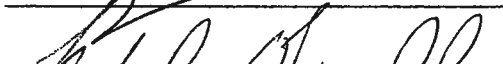
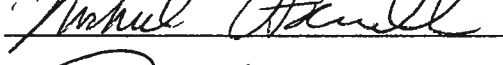


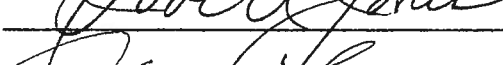
M. C. Halvorsen

cc: Tay Yoshitani, CEO, Port of Seattle  
Thomas Tanaka, Port of Seattle  
Boyer Towing  
Pacific Pile and Marine  
Delta Marine  
Jim Gilmour  
Lisa De Alva  
Hal Hurlen

There has been a difference of opinion regarding just where the property line is in the Duwamish Waterway between the Port of Seattle and the owners of the property. The Port of Seattle maintains that the Port owns a width of 500 feet regardless of where the water stops. The property owners maintain that the correct line of Port ownership is to mean high water, which according to the U.S. Coast and Geodetic Survey, is 8 feet. In researching the matter, M. C. Halvorsen found that the U.S. Supreme Court, the final arbiter of what is the law in this country, has ruled that the shores of a river border on the water's edge; that the right of the state to the riverbed was limited to line of ordinary (mean) high water; the jurisdiction of navigable rivers rests with the federal government; that if there is a conflict between the state law and the federal law, the federal law prevails. Citations furnished upon request.

Therefore, we, the undersigned, request that the Port of Seattle take the necessary action to resolve the issue of the property line in the Duwamish Waterway in accordance with the State and Federal Law, and designate M. C. Halvorsen as our spokesperson.

DATED this 7<sup>th</sup> day of March, 2010

<u></u> <u>Michael Hull</u>	<u>BOYER TOWING INC</u>
<u></u> <u>Steve Jones</u>	<u>INDEPENDENT METALS</u>
<u></u> <u>James W. Gilmur</u>	<u>PACIFIC PILE &amp; MARINE, L.P.</u>
<u></u> <u>Guy M. Crow</u>	<u>DIELYA MARINE INTL INC</u>
<u></u> <u>David Windhausen</u>	<u>DUWAMISH MARINE CENTER</u>
<u></u> <u>M. C. Halvorsen</u>	<u>South Park Marina</u> <small>crow45@aol.com</small>
	<u>River View Marina</u>
	<u>Property Owner</u>



P.O. Box 1209  
Seattle, WA 98111-1209  
Tel: (206) 787-3000  
[www.portseattle.org](http://www.portseattle.org)

April 20, 2010

Mrs. M.C. Halvorsen  
10002 Aurora Avenue North, # 5546  
Seattle, WA 98133

**Re: *Questions Regarding Duwamish Waterway***

Dear Mrs. Halvorsen:

At our March 17 meeting, you asked for responses on two issues. The first was an interpretation of Section 8 of the original laws regarding the powers of commercial waterway districts and second, what ownership rights the Port of Seattle ("Port") possessed in the Duwamish Waterway ("Waterway").

With respect to your first question: Chapter 11 of the Session Laws of 1911 established the powers of commercial waterway districts. Section 7, in particular, set forth the general waterway district powers to acquire property to carry out the purposes of the district, whether by eminent domain or by purchase (see subsection (a)).

You called our attention to Section 8 of the Session Laws, which states as follows:

All the right, title and interest of the State of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any commercial waterway district up to and including the line of ordinary high tide in waters where the tide ebbs and flows and up to and including the line of ordinary high water within the banks of any navigable rivers and lakes, to the extent that the same, under any proceedings to be had under this act, shall cease to become part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given and granted and vested in the respective commercial waterway districts now existing, or hereafter to be formed....

It is your position that this section controls and defines the ownership of the Port, as successor in interest to the Commercial Waterway District No. 1 of King County ("District"), in the current channel of the Duwamish. I disagree. This section describes what happens to the state of Washington's title to river beds when a waterway district diverts a river's waters during the creation of a new waterway channel. The language is difficult to follow, but a careful reading

shows it was addressing abandoned channels. Perhaps it may be easier to understand by reading the most relevant portions:

All the right, title and interest of the State of Washington...to...the beds and shores of any navigable river,... up to and including the line of ordinary high water...to the extent the same...shall cease to become part of such river, stream, waterway or watercourse by reason of the diversion of such river...are hereby given [to] the...commercial water districts....

The key is that this section says that the District obtained the title to river beds that “shall cease to become part of such river...by reason of diversion of such river...” This does not apply to the situation of the existing channel of the Duwamish Waterway.

You may be under the impression that property owners abutting the current channel of the Waterway have their waterside property line established at the Waterway’s mean high water line. I don’t believe that is the case. The waterside property boundaries were likely set by a surveyed line established by the District over 90 years ago. The mean high water line might be relevant if there were no specific survey or plat line demarcating the waterside boundary. It would be important to verify the legal description of the lots abutting the Waterway, but I believe they will show a surveyed line and not refer to the meander line or the Waterway’s mean high water line as the waterside boundary.

Your second question asked about the Port’s ownership of the 500 foot width of the Waterway. The District obtained title to the Waterway channel through direct purchase and eminent domain of numerous parcels after 1911. We currently do not have copies of those deeds or court orders in our files. Those files should be on record at the King County Courthouse. The Port acquired its title to the District’s assets through the procedures under Chapter 97 of the 1963 Session Laws. We have no reason to question the title to these properties and we feel no need at this time to verify our status. There have been a number of cases before the Washington State Supreme Court (some of which you have cited in your earlier letters) regarding the ownership status of the Waterway channel and no one has raised a challenge to the underlying title to the channel. We are satisfied regarding our status as owner of the Waterway.

Sincerely,



Thomas H. Tanaka  
Senior Port Counsel

10002 Aurora Ave. N., #5546  
Seattle, WA 98133  
April 28, 2010

Thomas H. Tanaka  
Senior Port Counsel  
Port of Seattle  
P. O. Box 1209  
Seattle, WA 98111-1209

Dear Tom:

I am in receipt of your letter of April 20, 2010 wherein it is apparent that we are not communicating on the same frequency. You do remember that I wanted to record the meeting because it has been my experience that people remember meetings differently. You refused. This is exactly why I wanted a record.

I was not asking you for an interpretation of Section 8 of the original laws regarding the creation of the Commercial Waterway Districts, nor an interpretation of the Port's ownership of the bed of the Duwamish River. I was not asking questions. I was stating facts. The other issues involved federal law which you did not address in your letter at all.

The first issue regarding Section 8 of Chapter 11 of the Session Laws of 1911 states clearly that the boundary of the commercial waterway district is up to and including the line of ordinary high tide in waters where the tide ebbs and flows. I don't find it difficult to follow. It is in plain English. Your reply that this applies only to the property acquired by eminent domain is convoluted thinking. Such an assertion, then, leaves a strip of land between ordinary high water and high, high water, which presumably the original owner would own. That is unthinkable. Your statement that it does not apply to the situation of the existing channel of the Duwamish Waterway is untenable.

Your assertion that the waterside property boundaries were likely set by a surveyed line borders on the absurd. It is a great surprise to me that you do not know what a baseline is. As I have said in the past, I grew up in the Chesapeake Bay area and everyone knew what a baseline was. It is a measuring line established by survey whereby it measures how to straighten the river or straighten a seacoast. It has nothing to do with the property line. It is a mistake by the Port to so assert. Admiralty law states that in areas where the border of a river or the coastline of a bay are irregular two straight lines are drawn on both sides of the area to measure to the middle of the body of water; thus enabling the measurement of a certain number of feet on either side of the middle to obtain the straight channel. I repeat it has nothing to do with the property lines.

With regard to the federal issues, there were three. The first issue involved Chief Justice John Marshall who in the case of "Handley's Lessee v. Anthony" 5 Wheat 374 (1820) defined that the shores of a river border on the water's edge. In "Howard v. Ingersoll" the United States Supreme Court said that the right of the state to the riverbed was limited to line of ordinary high water and not to the line of highest water (i.e. high, high tide). You stated to me verbally that a state can do anything it pleases within its borders and does not need to pay attention to federal law. You did not address these issues in the letter.

In "Ascanabaa and Lake Michigan Transportation Co. v. City of Chicago" 107 U.S. 678 (1881) the United States Supreme Court said that if the power of a state with respect to a navigable river, in this case the Duwamish river, and that of the Federal government come in conflict, the power of the Federal government, the power of the Federal government must control. The Port of Seattle assertion that it owns



Ltr to Thomas Tanaka, Port of Seattle  
Dated Aril 28, 2010  
Page 2

beyond ordinary high water is in direct conflict with the findings of the United States Supreme Court. ( By the way, I have the court case that says that ordinary high water has come to mean "mean high water" according to the Coast and Geodetic Survey Charts.) You probably know ordinary high water is a little higher than mean high water but it is not as high as high, high water. Again, you verbally told me that states can do as they please within their borders and do not need to heed the federal government.

The last federal issue involved the Ninth Circuit Court of Appeals and its finding regarding what case is controlling in Washington State. In 1991, in "United States v. Pend Oreille Public Utility District No. 1" 28 F.3d 154 (1991) the Ninth Circuit ruled that "Austin v. Bellingham" 69 Wash. 677, 126 P.2d 59 (1912) was the case that was controlling in Washington State. "Austin v. Bellingham" states that the waters of the state of Washington are limited to the line of ordinary high water. I can't see where you answered that issue at all as you had dismissed all federal court cases at the meeting. This means that if the Port had land beyond the ordinary high water mark, which the Port does not, but if it did, it would have to comply with the ruling of "Austin b. Bellingham"; i.e. ordinary high water.

I don't believe that the Port wants to find itself in the Court of the Ninth Circuit Court of Appeals explaining why it is defying that Court's ruling, with the untenable excuse that states can do as they please within their borders. Somehow, I don't think the Ninth Circuit will agree with you.

I had thought that I was meeting with the highest legal authority of the Port but I was mistaken. I was told that Craig Watson was the General Counsel but that you were the Senior Port Counsel and you would be handling this matter. I realize now that the person that I should be meeting with is Craig Watson. After all, Craig Watson would be the one who would be defending the Port of Seattle and its Commissioners on the issue in the Ninth Circuit Court and he is the Port's highest legal counsel.

Therefore, I assume you or Mary Gin Kennedy will arrange a convenient time for a meeting with Craig Watson and me and whomever else should be there. I will be accompanied by one person as a witness.

Awaiting your reply to arrange the meeting, I remain

Very truly yours,

M. C. Halvorsen

cc: Port of Seattle Commissioners  
Craig Watson  
Tay Yoshhitani  
Mary Gin Kennedy  
Boyer Towing, Inc.  
Independent Metals  
Pacific Pile and Marine  
Delta Marine Center  
Duwamish Marine Center  
South Park Marina  
Riverview Marina