

Krueger, Pamela (ATG)

From: Sytman, Dan (ATG)
Sent: Monday, June 21, 2010 1:57 PM
To: Krueger, Pamela (ATG)
Subject: RE: AGO Daily News Briefs - June 21, 2010

Pamela – Accuracy is always important. Thank you for your feedback.
Dan

From: Krueger, Pamela (ATG)
Sent: Monday, June 21, 2010 1:53 PM
To: Sytman, Dan (ATG)
Subject: FW: AGO Daily News Briefs - June 21, 2010

Dan,
I noticed your quotes today and just wanted to know the statements you made are not accurate, in case accuracy is important. The testimony on 6838 was not on point – DNR’s testimony on it had nothing to do with believing the PUD already had condemnation authority. That bill (which itself was not DNR request legislation and which we advised DNR about, by the way) would have exempted all state trust lands from condemnation, however, the arguments we made in the appeal below did not deny the express language existed – instead, the case below was about the fact that “state lands devoted to a public use” could not be condemned. So, the failure of the bill had no effect on the case because the bill did not alter existing condemnation law that lands devoted to a public use are protected from condemnation. Also, the law is not clear that a PUD can condemn state land “devoted to a public use” (you left out the last part) – your statement effectively is the opposite of what we argued below by leaving out the key substantive element. These statements, by the way, have broader implications that could negatively impact any state agency’s ability to defend against condemnation for lands that are already devoted to public use.

Pamela

From: ATG MI Public Affairs
Sent: Monday, June 21, 2010 1:14 PM
To: ATG DL All AGO Staff
Subject: AGO Daily News Briefs - June 21, 2010



Yakama warned on promise of Gulf cleanup jobs

(Seattle Times © 06/20/2010)

The Washington state Attorney General's Office says authorities have not been able to determine whether the jobs offered are legitimately tied to BP's cleanup efforts.

O'Brien, Patricia (ATG)

From: Guthrie, Janelle (ATG)
Sent: Thursday, June 10, 2010 10:09 AM
To: Goodman, Hunter (ATG); Moran, Brian (ATG); Pepple, Randy (ATG); Sytman, Dan (ATG); O'Brien, Patricia (ATG); Hart, Marnie (ATG); Costello, Rob (ATG)
Subject: FYI: Natural Resources legislation from 2010 session

SB 6838, sponsored by Sens. McAuliffe, Fraser, Tom and Prentice, prohibits political subdivisions of the state and other entities from condemning by eminent domain any property held in trust by the state.

This is helpful in our talking points as well because it demonstrates that the Dept. of Natural Resources recognized the law allows their trust land to be condemned and they tried to change the law but the Legislature did not move forward with it.

The bill had a hearing in Ways and Means on 2/5. The DNR was the only one to testify in favor and the following testified against:

- PUD Association
- Okanogan PUD
- IBEW Local 77
- Energy NW and
- Washington Public Ports Association.

Janelle Guthrie, APR

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O'Brien, Patricia (ATG)

From: O'Brien, Patricia (ATG)
Sent: Thursday, June 10, 2010 2:58 PM
To: Sytman, Dan (ATG)
Cc: Guthrie, Janelle (ATG); Moran, Brian (ATG); Hart, Marnie (ATG)
Subject: RE: Spokesman-Review questions on DNR case

The Petition and amended Petition have attachments with the legal description of the property. These are public documents.

Original Petition:



#1B - Petition for
Condemnatio...

Amended Petition:



#103 - Amended
Petition for Co...

Paddy

Patricia Hickey O'Brien

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From: Hart, Marnie (ATG)
Sent: Thursday, June 10, 2010 1:38 PM
To: Sytman, Dan (ATG); O'Brien, Patricia (ATG)
Cc: Guthrie, Janelle (ATG); Moran, Brian (ATG)
Subject: RE: Spokesman-Review questions on DNR case

Dan,

The judge's orders were entered May 11th. My understanding is that typically, when the AG appoints a Special AAG, the cost is charged to against the AG's spending authority with respect to the agency involved. I don't know the exact location of the land.

Thanks,
Marnie

From: Sytman, Dan (ATG)
Sent: Thursday, June 10, 2010 1:27 PM

O'Brien, Patricia (ATG)

From: O'Brien, Patricia (ATG)
Sent: Thursday, June 10, 2010 4:41 PM
To: Costello, Rob (ATG); Moran, Brian (ATG); Hart, Marnie (ATG)
Cc: Guthrie, Janelle (ATG)
Subject: Today's DNR news release

This is posted on DNR's public website:

[McKenna refuses to appoint a Special Assistant Attorney General to protect Common School Trust lands in Okanogan County](#)

Paddy

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DENSMORE, KARLEY (DNR)

From: Packard, Heath (DNR)
Sent: Thursday, August 06, 2009 4:21 PM
To: HERMAN, JED (DNR); Krueger, Pamela (ATG); SPRAGUE, CLAY (DNR); GILLISS, EDIE (DNR); GOLDMARK, PETER (DNR); YOUNG, LENNY (DNR); Rollinger, Michael (ATG); TORGERSON, LOREN (DNR)
Cc: KIHIA, SIMON (DNR)
Subject: Okanogan PUD
Attachments: Okanogon PUD Letters.pdf
Importance: High

Hi all,

I have been asked to summarize our deliberations, findings and to articulate our next steps in the ongoing evaluation of the Okanogan PUD's (OkPUD) utility easement request across nearly 12 miles of DNR trust lands in Okanogan County.

Background

Since April, most of us have been involved in as many as 9 formal meetings (and many informal meetings) regarding the OkPUD request. These meetings have been the touchstones in a process led by staff to evaluate the impacts of the proposed easement on the local environment and state trust lands, as well as to evaluate the economic impacts on the trust itself.

Findings

The OkPUD's final Environmental Impact Statement (FEIS) demonstrates that their preferred alternative is the least costly to the PUD. However, of all the alternatives considered by the PUD, their preferred alternative is definitely the most impactful to state trust lands, and most costly to the trust and the Department of Natural Resources. While difficult to quantify, it is arguable that the OkPUD's preferred alternative is also not the least impactful of alternatives with regard to the environment. This, in effect, distributes some of the intangible "costs" from the PUD and its customer base, to the state trust beneficiaries. The preferred alternative would have all the state's citizens subsidizing the costs of this project.

In addition to these concerns, we have begun to identify new information that could result in probable significant, adverse environmental impacts that were not adequately addressed in the PUD's Final Environmental Impact Statement (FEIS). If confirmed by the agency, this would warrant the agency requiring a supplemental EIS prior to taking action on the OkPUD's request.

Fire, public access, climate change, and invasive species

For the purposes of new impacts on state trust lands, the FEIS does not appear to adequately address the increased risks of fire danger. In a very short section of the FEIS dealing with

increased fire danger the FEIS essentially concludes that DNR would be able to adequately control recreation so as to limit fire potential (FEIS 3.13.2.5 at 3.13-22), and the assumed minor impacts on noise, public health, and safety associated with increased risk of fire are also based upon reliance on DNR as land management agency (FEIS at 3.14-10). The FEIS does not contain details about the access roads that would cross DNR lands in order for these risks to be understood as they relate to state trust lands. In order to assess recreation access management and fire risk, the agency requires detail regarding easement road access design, engineering, helipads, abandonment, and PUD plans for controlling access.

The OkPUD issued the FEIS in March 2006. In July 2008 DNR levied a fire claim against the OkPUD due to vegetation contacting an existing PUD line (see July 17, 2009 letter to OkPUD-attached). In September 2005, long after the EIS was scoped, DNR levied a fire claim against the OkPUD for a similar incident (attached). These incidents, and their investigations, provided new information about the PUD's vegetation management in existing utility corridor easements that relate to impacts on public lands that was not analyzed in the FEIS.

In the spring of 2009 the state Legislature passed a budget that significantly curtailed the agency's abilities to manage recreational access on state trust lands. In fact a number of recreation facilities have been closed (http://www.dnr.wa.gov/RecreationEducation/News/Pages/nr09_101.aspx). Regardless, the agency cannot prohibit access to state trust lands and has limited resources to manage public access on state trust lands. As the FEIS acknowledges, utility easements are frequently used for rogue recreational trail corridors. The new budgetary constraints limit DNR's ability to manage, and therefore, the easement imposes greater risk for fire starts and for the spreading of noxious and invasive species on trust lands spread by recreationists than was assumed in the FEIS. Because the FEIS assumes DNR's active management in concluding the project's impacts will be minor, these impacts were not analyzed in the FEIS in light of current limitations. In 2008, the Washington Invasive Species Council released a strategic plan with 22 goals (http://www.rco.wa.gov/documents/Invasive_Species/InvasiveSpeciesStrategicPlan.pdf). Weed control and management was not analyzed in the context of the information that was developed to identify the most effective weed management strategies in the FEIS.

In February 2009, new scientific analysis of the impacts of climate change on wildfire was reported in The Washington Climate Change Impacts Assessment by the University of Washington's Climate Impacts Group (<http://cses.washington.edu/cig/res/ia/waccia.shtml>). This study finds that "Due to increased summer temperature and decreased summer precipitation, the area burned by fire regionally is projected to double by the 2040s and triple by the 2080s. The probability that more than two million acres will burn in a given year is projected to increase from 5% to 335 by the 2080s." This new information, coupled with the likely increase in fire risk due to vegetation and recreation management along the proposed

utility corridor, indicates a need to better analyze the fire risks to the area in order to support DNR's action on the easement.

Endangered Species –Gray Wolves

The FEIS Table 3.8.3 states of Gray Wolves "Although no viable wolf populations are known to exist within the project area, remote habitats may likely to be used for travel and/or dispersal. Denning and rendezvous sites occur in remote areas. Due to the existing level of human disturbance within the project area, use of available habitat would be incidental."

In July, the Washington Department of Fish and Wildlife, collared and, through a genetic assessment, confirmed the presence of Gray Wolves in the region (<http://wdfw.wa.gov/do/newreal/release.php?id=jul2308a> & <http://wdfw.wa.gov/do/newreal/release-print.php?id=jul1108a>). The Gray Wolf is listed as endangered under the federal Endangered Species Act. Because the FEIS acknowledged that the preferred alternative bisects a part of the last remaining large areas of shrub steppe habitat used by wildlife such as the Gray Wolf, the impacts associated with new areas of human disturbance need to be carefully evaluated. The FEIS assessed the impacts as incidental partly because there was no confirmed presence of this particular species in the project area. DNR needs to evaluate whether its action in approving the easement would cause probable significant adverse impact on the Gray Wolf prior to agency action on the OkPUD request.

Other issues

In each of your reviews of the proposed easement, you may have identified other pertinent issues for which there is new information that would require a SEIS. Please make sure you have forwarded this information to Simon Kihia at the DNR SEPA Center and provide a copy to Edie and I. These are the major issues that I recall being raised in the last few months' discussions.

Next Steps

attorney client privilege

Edie is back from her family leave and will be taking the lead on this effort from here forward.

attorney client privilege

Please

continue to cc me in these correspondences.

Thanks.

Heath Packard
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