

WPPA SENDS DELEGATES TO WASHINGTON, D.C.



Two weeks ago WPPA sent a delegation of its Executive Committee to Washington, D.C. to meet with our Congressional representatives and go over some key issues affecting Washington's ports. The group consisted of Karen Moore, Vice President, Port of Ephrata; Past-President Tom Albro, Port of Seattle; Patsy Martin, Treasurer, Port of Skagit; and WPPA Executive Director Eric Johnson.

The purpose of the trip was to highlight a select group of issues that are of collective importance, and which have not been emphasized by others. These included port broadband infrastructure authority, the Great Northern Corridor Coalition effort stretching from the PNW to

Chicago, Puget Sound dredging regulatory issues, and the importance of airport funding programs.

"We were very well received, and our Congressional members were happy to see us" reported Eric Johnson. "We felt that a small group focusing on a small number of important issues was the way to begin this effort."

The Executive Committee will assess whether to continue this effort next year, and continues to coordinate federal issues with other partners such as the Pacific Northwest Waterways Association.

KNOWING THE WATERS

By Frank Chmelik of Chmelik Sitkin & Davis P.S. - WPPA Counsel



The national debate on crude oil exports has hit Washington State with a vengeance resulting in three Washington Supreme Court

cases involving ports. The results of these cases could reach far beyond oil shipments and effect the way port

districts in Washington conduct leasing activities. The WPPA has or will file amicus curie briefs (literally "friend of the court") in each of these cases to provide the statewide perspective. Now that I have your attention let's take a brief look.

Columbia Riverkeeper v. Port of Vancouver, USA – Phase I. Last year we spoke about the favorable

(Continued page 2)

PORT SPOTLIGHT

PORT OPENS NEW PARK IN WASHOUGAL



The Port of Camas-Washougal just completed the opening of a new 7-acre park on the Washougal waterfront, adjacent to the Columbia River. The newly-opened facility sits on a portion of the former Hamberlin Lumber Co mill, which closed in 2010.

The park includes picnic shelters, public art, a non-motorized boat launch, and scenic views from a 0.7 mile long trail that can be lengthened in the future. The port began construction last year, and funding for the project came from a combination of port funds and monies from the Washington Recreation and Conservation Office (RCO).

The project provides much-needed recreational public space for the area, and complements future plans by the port to build out a mixed use development in the former industrial area.

"We are thrilled to provide this new facility for our community, and we could not have done this without our key partners" said port director Dave Ripp. "Waterfront access is a key part of our tourism and recreation needs."

KNOWING THE WATERS

Continued from page 1

decision issued by Division II of the Court of Appeals on a challenge of the Port of Vancouver's (the "Port") lease of undeveloped land for construction of a crude oil transportation facility. Like many ports, the Port of Vancouver's lease was contingent on the tenant obtaining "all permits" and like most ports, the Port of Vancouver did not conduct a State Environmental Policy Act ("SEPA") review before its vote on the lease, instead deferring to the shoreline and construction permit granting authority to conduct the SEPA review. Columbia Riverkeeper claimed that the Port should have conducted a SEPA review prior to signing the lease – something few, if any, ports currently do. In a 3-0 decision, Division II of the Court of Appeals held for the Port. The Supreme Court took the case on appeal. The WPPA filed an amicus brief noting that (i) at the time of a lease of undeveloped property the tenant has not typically developed plans detailed enough for comprehensive SEPA review, (ii) that in the normal course of commerce a tenant will typically want to secure the leases rights to undeveloped property before investing the significant resources necessary to develop the specific plans necessary for permit and SEPA review, (iii) that these undeveloped property leases issued by ports typically are conditioned on obtaining all necessary permits and environmental reviews and (iv) that to hold that a complete SEPA analysis be done before leasing would greatly disadvantage port property compared to other property and therefore harm ports statutorily mandated economic development mission. We await the final word of the Washington Supreme Court.

Quinault Indian Nation et al v. City of Hoquiam et al. Here the Quinault Indian Nation, the Sierra Club and others sued the Department of Ecology, the City of Hoquiam and the proponents of an oil shipment terminal at the Port of Grays Harbor.

The central focus of the appeal is the application of the Ocean Resources Management Act ("ORMA"), chapter 43.143 RCW. ORMA was passed in 1997 largely to preclude oil drilling off the Washington coast. The Act creates a stringent review process for on-shore facilities that support certain uses within these off-shore waters. After the project gained state and local approval, the petitioners asked the Supreme Court to require that the stringent ORMA standards be applied to the project review. The WPPA filed an amicus brief in support of the Department of Ecology and other respondents arguing (i) that the plain language of ORMA did not apply and (ii) that to hold otherwise would subject many maritime shipping projects (without regard to the cargo) throughout Washington to the more stringent ORMA review standard. And here again, our Supreme Court will issue the final word.

Columbia Riverkeeper v. Port of Vancouver, USA – Phase II. In another offshoot of the Port of Vancouver oil terminal litigation, the Supreme Court has accepted review of a claim that the Port of Vancouver, USA violated the Open Public Meetings Act when it discussed the terms of the proposed lease in executive session. Here the Columbia Riverkeeper asks the court to hold

that RCW 42.30.110(1)(c) be strictly read to say the only thing that can be discussed about a proposed lease in executive session is the "minimum price at which real estate will be offered for sale or lease." Like many ports, the Port of Vancouver discussed the entire lease in executive session to give context to the discussion of "price." We have yet to see the opening briefs on this issue but I expect some very heated arguments over the use of executive sessions to discuss potential lease transactions. The WPPA is planning on providing the Court with the public ports statewide perspective.

No doubt there are strong opinions about oil exports and transport – the debate can be seen everywhere especially in these lawsuits. It will now be up to our Supreme Court to add some careful and reasoned clarity to the debate – stand by.

As always, please contact your port counsel with any questions regarding this topic. And, if you have a particular question for a *Knowing the Waters* please email me at fchmelik@chmelik.com.

EMPLOYMENT OPPORTUNITIES

Director, Engineering
Port of Tacoma

Senior Real Estate Manager
Port of Tacoma

Assistant Director, Facilities
Port of Tacoma

Executive Director
Port of Chelan County

**Records Officer/
Administrative Assistant**
Port of Longview

Communications Associate
Port of Longview

Veteran Fellowship Opportunities
Port of Seattle

Real Estate Development Manager
Port of Seattle

Chief Operating Officer
Port of Longview

**Financial Reporting & Controls
Analyst**
Port of Seattle

**Accounts Receivable Specialist –
Airport and Industrial**
Port of Bremerton

Port Attorney
Port of Walla Walla

If you would like information on any of these positions, visit www.washingtonports.org/employmentopportunities/