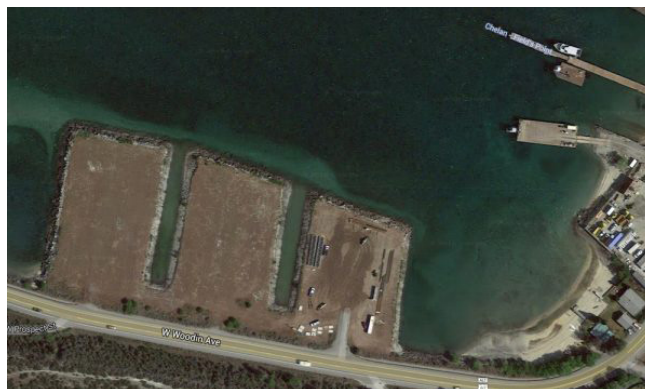


SUPREME COURT RULING CALLS INTO QUESTION OWNERSHIP OF FILLED LANDS

In a major decision last month, the State Supreme Court continued its recent trend of issuing decisions that are a sharp departure from decades of settled law. In this case, *Chelan Basin Conservancy v. GBI Holding Company*, the Court held that it is not clear if ownership of aquatic properties that were filled in between 1889 and 1969 is Constitutionally allowed.

From statehood, many beaches and tidelands of the state – including large sections of the state’s largest waterfront cities – were filled in to make dry land. The traditional practice of allowing landowners to fill adjacent waterways ended in 1969, with a famous case in Lake Chelan called *Wilbour v. Gallagher*. In that case, the Supreme Court ruled that a 1961 “three fingers fill” (shown in photo today) into Lake Chelan was prohibited because the public owned the beds of the waterways, under the Public Trust Doctrine.

After two years of significant disruption, in 1971 the Legislature passed the Shoreline Management Act (SMA), which was approved by the voters. At that time the legislature included a “savings clause” in the SMA which grandfathered in all of the land that had been filled between statehood and 1969. This remained a foundation of state shoreline regulation – until now.



The “three fingers” property that triggered all of this remained undeveloped, until a recent proposal to develop the fill caused the Chelan Basin Conservancy to petition to remove the fill, using a new argument that the “savings clause” mentioned above was unconstitutional. The Chelan County Superior Court Judge agreed, and the Court of Appeals reversed that decision.

In its ruling the Supreme Court decided that it is not clear whether the Savings Clause of the SMA is constitutional, and sent the whole issue back to the County judge to decide on a statewide basis if it was constitutional to allow any fill to occur from 1889 to 1969. Post-1969 fills have received SMA permits, which makes them legal.

WPPA has convened a small group of experienced attorneys to discuss this issue, and recommend whether we have a role to play in providing analysis and information to the Chelan County judge. We will continue to keep WPPA’s members informed of developments. ■

PORT SPOTLIGHT

PORT OF MOSES LAKE PROJECT GETS FEDERAL BOOST

The Port of Moses Lake recently received welcome news when federal officials announced that they will provide \$9.9 million to the Northern Columbia Basin Rail Project. This funding will complete the approximately \$30 million needed for the project, which will bring rail service to the major industrial area surrounding the Grant County International Airport.

Lack of rail service to its industrial properties has been a strategic problem for the port, which otherwise offers excellent air and highway linkages, as well as low power costs.



The project involves relocating existing rail lines within the City of Moses Lake to the Wheeler Corridor outside of downtown, upgrading and modernizing additional existing lines, and building three miles of new rail lines to access industrial properties adjacent to the airport.

These investments will connect the Columbia Basin Railroad to the port properties, and also link them to the BNSF Railway’s mainline rail network. This will help to retain existing manufacturing operations, encourage expansion of businesses, and allows the port to market rail-served industrial property to new businesses and manufacturers.

Washington State has already committed \$21.9 million to this project. “So many of the Port’s business development and job growth opportunities are tied to rail. We really appreciate the support of our federal delegation on this grant,” said Stroud Kunkle, Commission President of the Port of Moses Lake. “It is a win for central Washington.” ■



KNOWING THE WATERS

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

This month's column focuses on ports working with local towns,

cities or counties to enforce port rules and regulations. The idea for this column came from a port that was having trouble enforcing its boat launch parking rules, most notably having folks pay the trailer boat launch fee. Many, if not most, ports have a boat launch where a modest fee is assessed for launching a boat and/or parking a boat trailer. Most of these arrangements are "self-service" affairs. Enforcement can be difficult when a towing company is called or other actions taken.

But the issue is bigger than boat launches. There are other instances where port rules are sometimes difficult to enforce like port street parking restrictions, prohibitions against swimming in marinas, and rules against overnight camping in port parks. If your port has issues with enforcing its rules and regulations consider RCW 53.08.220. This statute, dating from 1961, allows ports to petition the appropriate town, city or county to add selected port rules and regulations to that jurisdiction's criminal or traffic code thereby allowing local law enforcement to issue citations and even make arrests.

First a little legal definition. A misdemeanor is the lowest level of criminal charge. In Washington, these crimes are punishable by up to 90 days in a county or city jail or a \$1,000 fine or both. Examples of common misdemeanor crimes are simple assault, vandalism and shoplifting. Civil infractions are not crimes, but rather violations of prohibitive civil laws, including traffic laws. Examples of civil infractions are speeding and street parking violations.

RCW 53.08.220 allows port districts, after holding a public hearing, to pass a resolution requesting that certain of its rules and regulations be adopted by the local jurisdiction as part of its criminal code or traffic code. Of course, before doing this a port would be well advised to coordinate with the local jurisdiction so that the port rules and regulations are in the proper format for adoption by the local jurisdiction. After adoption by the port commission, the resolution is transmitted to the local jurisdiction for consideration and possible adoption by the local jurisdiction's governing body. Once adopted the port rules and regulations become part of the local jurisdiction's code and can be enforced by local law enforcement.

Of course, one might ask what happens to the fine revenue? This would be a matter for discussion with the local jurisdiction and possibly an interlocal agreement. I suspect most local jurisdictions will want to keep the fine revenue to offset the costs of enforcement. Also, be careful about creating criminal misdemeanors because the local jurisdiction may ask the port to pay for the per diem jail fee to incarcerate the offender. At the end of the day, it probably is more about enforcing port rules and regulations as opposed to generating revenue.

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

UPCOMING EVENTS

Environmental Seminar
September 21 – 22, 2017
Heathman Lodge, Vancouver

Small Ports Seminar
October 26-27, 2017
Enzian Inn, Leavenworth

Annual Meeting
November 15-17, 2017
Motif Hotel, Seattle

EMPLOYMENT OPPORTUNITIES

Building Inspector / Plan Examiner
Port of Seattle

Marine Maintenance Senior Program Manager
Port of Seattle

Payroll/Lease Specialist
Port of Camas-Washougal

Resident Engineer III
Port of Seattle

Payroll Technician II
Port of Tacoma

Chief Commercial Officer
Port of Vancouver

Facilities Management Specialist
Port of Tacoma

Communications & Administrative Coordinator
Port of Grays Harbor

HR Manager, Labor & Employee Relations
Port of Tacoma

Accounting Manager
Port of Bremerton

Economic Development Coordinator
Port of Seattle

Project Manager II, Engineering
Port of Tacoma

Director, Port Operations
Northwest Seaport Alliance

Director of Marine Terminals
Port of Longview

Project Engineer
Port of Longview

Director of Economic Development
Port of Bellingham

Full-Time, Temporary (Seasonal) Port Maintenance
Port of Bremerton

If you would like information on any of these positions, visit washingtonports.org/washington-ports/employment-opportunities