

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

RESPONSIBLE GROWTH *NE WASHINGTON;
CITIZENS AGAINST NEWPORT SILICON
SMELTER; THEODORE & PHYLLIS KARDOS;
DENISE D. TEEPLES; GRETCHEN L. KOENIG;
SHERYL L. MILLER; JAMES W. &
ROSEMARY CHANDLER; AND PAMELA
BYERS LUBY,

Plaintiffs,

v.

PEND OREILLE PUBLIC UTILITY DISTRICT
NO. 1; PEND OREILLE COUNTY; and HITEST
SAND, INC.,

Defendants.

Case No. 18-2-02551-1

[PROPOSED]

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

THIS MATTER came before the Court on Plaintiffs' Cross-Motion for Summary Judgment in the above-captioned case. The Court has reviewed the records and files herein, including:

1. Public Utility District No. 1 of Pend Oreille County's Motion and Memorandum for Summary Judgment;
2. Declaration of F. Colin Willenbrock in Support of District's Motion for Summary Judgment;
3. Declaration of Amber Orr in Support of District's Motion for Summary Judgment;

- 1 4. Defendant Pend Oreille County's Joinder in Public Utility District No. 1 of Pend Oreille
2 County's Motion and Memorandum for Summary Judgment;
- 3 5. Defendant HiTest Sand, Inc.'s Joinder in Public Utility District No. 1 of Pend Oreille
4 County's Motion and Memorandum for Summary Judgment;
- 5 6. Defendant HiTest Sand, Inc.'s Motion for Summary Judgment;
- 6 7. Memorandum in Support of Defendant HiTest Sand, Inc.'s Motion for Summary
7 Judgment;
- 8 8. Plaintiffs' Motion and Memorandum in Support of Cross-Motion for Summary
9 Judgment and Response to Defendant's Motion for Summary Judgment;
- 10 9. Declaration of Rick Eichstaedt;
- 11 10. Declaration of Dallas Johnson;
- 12 11. Declaration of Citizens Against Newport Silicon Smelter;
- 13 12. Declaration of Phyllis Kardos;
- 14 13. Declaration of Denise D. Teeples;
- 15 14. Declaration of Gretchen Koenig;
- 16 15. Declaration of Sheryl L. Miller;
- 17 16. Declaration of James W. Chandler;
- 18 17. Declaration of Rosemary Chandler;
- 19 18. Declaration of Pamela Byers Luby;
- 20
21
22
23

1 19. Public Utility District No. 1 of Pend Oreille County's Reply Memorandum in Support of
2 its Motion for Summary Judgment and in Opposition to Plaintiffs' Cross-Motion for
3 Summary Judgment;

4 20. Defendant Pend Oreille County's Reply Brief in Support of Defendant Public Utility
5 District No. 1 of Pend Oreille County's Motion and Memorandum for Summary
6 Judgment;

7 21. Plaintiffs' Response to Defendant HiTest Sand, Inc.'s Motion for Summary Judgment;

8 22. Defendant HiTest Sand, Inc.'s Memorandum: (1) In Opposition to Plaintiffs' Cross-
9 Motion for Summary Judgment, and (2) In Support of Public Utility District No. 1 of
10 Pend Oreille County's Motion for Summary Judgment;

11 23. Plaintiffs' Reply Brief in Support of Cross-Motion for Summary Judgment;

12 24. Second Declaration of Rick Eichstaedt;

13 25. _____; and

14 26. _____.

15
16 After reviewing the foregoing pleadings and the entire file herein and considered the oral
17 argument presented by the parties on January 11, 2019, the Court finds there are no genuine
18 issues of material fact, and Plaintiffs are entitled to judgment against Defendants.

19 THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that judgment is
20 entered in favor of the Plaintiffs and against Defendants.

1 IT IS SO ORDERED.

2 Done in open Court this _____ day of January, 2019.

3
4 _____
5 Honorable Judge Julie M. McKay

6 **Presented by:**

7 UNIVERSITY LEGAL ASSISTANCE

8 By: _____
9 MELISSA M. MURDOCK, WSBA #9865787
10 *Licensed Legal Intern for Plaintiff Responsible Growth*
11 **NE Washington; Theodore & Phyllis Kardos;*
and Pamela Byers Luby

12 By: _____
13 RICK EICHSTAEDT, WSBA #36487
14 *Attorneys for Plaintiff Responsible Growth*
**NE Washington; Theodore & Phyllis Kardos;*
and Pamela Byers Luby

15 BARDEN & BARDEN

16 By: _____
17 JED W. BARDEN, WSBA # 38188
18 *Attorneys for Plaintiff Citizens Against*
Newport Silicon Smelter

19 PARSONS BEHLE & LATIMER

20 By: _____
21 NORMAN M. SEMANKO (*pro hac vice*)
22 *Attorneys for Plaintiff Citizens Against*
Newport Silicon Smelter

1 **Approved as to Form,**
2 **Notice of Presentment Waived:**

3 By: _____
4 JOHN RAY NELSON
5 FOSTER PEPPER PLLC
6 TYLER R. WHITNEY
7 PUBLIC UTILITY DISTRICT NO. 1
8 OF PEND OREILLE COUNTY

9 *Attorneys for Respondent-Defendant Pend Oreille*
10 *Public Utility District No. 1*

11 By: _____
12 NATHAN G. SMITH
13 BRIAN E. KISTLER
14 KUTAK ROCK, LLP

15 *Attorneys for Respondent-Defendant Pend Oreille County*

16 By: _____
17 PETER WITHERSPOON
18 JAMES A. MCPHEE
19 WITHERSPOON BRAJCICH MCPHEE, PLLC

20 JOSEPH A. REHBERGER
21 STEPHEN J. TAN
22 CASCADIA LAW GROUP PLLC

23 *Attorneys for Respondent-Defendant Hitest Sand, Inc.*