

# Deposition of Fill Material to Increase Elevation of Property: Supreme Court of Washington Addresses Public Trust Doctrine



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The Supreme Court of Washington (“Court”) addressed the potential application of the public trust doctrine in a July 6th opinion. See *Chelan Basin Conservancy, v. GBI Holding Co., State Of Washington, & City Of Chelan, & Chelan County Public Utility District*. See No. 93381-2, 2017 WL 2876140, at \*1 (Wash. July 6, 2017).

The public trust doctrine is described by the Court as an “ancient common law doctrine that recognizes the public right to use navigable waters in place for navigation and fishing.”

The relevant facts involve Chelan Basin Conservancy (“Conservancy”) filing a judicial action against GBI Holding Co. (“GBI”) seeking the removal of six acres of fill material it added to its property. GBI added the fill to keep the formerly dry property permanently above the artificially raised seasonal water fluctuation of Lake Chelan.

The Conservancy’s judicial action invoked the public trust doctrine. The organization sought removal of the fill.

The opinion describes the key issue as whether the State of Washington consented to the fill’s impairment of that right. If such consent was given, the additional question was whether the public trust doctrine was violated.

Washington’s public trust doctrine recognizes a general right of the public to enjoy its State’s navigable waters. But this doctrine is not without limitation. Indeed, it is within the State’s purview to define the balance between public trusts and private rights. The Court discusses this balance.

According to the Court, states, as title owners, hold “full proprietary rights in tidelands and shorelands.” This fee simple ownership permits states to convey title in a manner consistent with state and federal law. When conveyance is proper, a grantee takes title “as absolutely as if the transaction were between private individuals.” Yet, similar to “a covenant running with the land,” insofar as the property sustains navigable bodies of water, the property also remains subservient to the public interest.

Accordingly, rights in such property are directly tied to the body of water’s navigability. Indeed, when water levels increase, navigability expands and the public’s interest follows. But when water levels reside, a private owner gains a greater exclusive interest. Thus, Washington law maintains that absent legislative

consent, a private landowner is prohibited from artificially elevating his or her property to eclipse the high-water mark.

With this legal framework in mind, the Court considered the predominating question of whether GBI received legislative consent to artificially elevate its shoreline property above the water fluctuations of Lake Chelan.

The Court concluded that the legislature expressed consent when it enacted, “and the people ratified,” the Savings Clause provision of the Shoreline Management Act of 1971. This clause “provides legislative consent and authorization to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of . . . fills . . . placed in navigable waters prior to December 4, 1969.” Because GBI elevated its property in 1961, its improvements fell well within this savings provision.

Since the legislature consented to GBI’s fill, the public has no claim against the obstruction of its navigable waters. Despite this holding, however, the Court also remanded this case for subsequent consideration of whether the relied upon legislation violates the public trust doctrine.

[A copy of the opinion can be downloaded here.](#)