

6  
BF

1 Hon. David E. Gregerson

**FILED**

MAR 20 2018

Scott G. Weber, Clerk, Clark Co.

9:07AM

2  
3  
4  
5  
6  
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 FOR CLARK COUNTY

9 COLUMBIA RIVERKEEPER; SIERRA  
10 CLUB; and NORTHWEST  
11 ENVIRONMENTAL DEFENSE CENTER,

11 Plaintiffs,

12 vs.

13 PORT OF VANCOUVER USA; JERRY  
14 OLIVER, Port of Vancouver USA Board of  
15 Commissioners President; BRIAN WOLFE,  
16 Port of Vancouver USA Board of  
17 Commissioners Vice President; and NANCY  
I. BAKER, Port of Vancouver USA Board of  
Commissioners Secretary,

17 Defendants.

No. 13-2-03431-3

**STIPULATED DECLARATORY  
RELIEF ON PLAINTIFFS'  
FIRST CAUSE OF ACTION AND  
ORDER**

18 WHEREFORE, Plaintiffs Columbia Riverkeeper, Sierra Club, and Northwest Environmental  
19 Defense Center (collectively, "Riverkeeper") initiated this lawsuit on October 2, 2013, alleging  
20 violations of Washington State's Open Public Meetings Act ("OPMA"), RCW ch. 42.30, by  
21 Defendants the Port of Vancouver USA ("Port") and its Board of Commissions ("Board")  
22 (collectively, "Defendants");

23 WHEREFORE, the First Cause of Action asserted in Riverkeeper's Second Amended  
24 Complaint alleges that the Defendants violated OPMA by deliberating on a proposed lease for a  
25 petroleum products facility at the Port in meetings that were closed to the public;  
26

1 - **STIPULATED DECLARATORY RELIEF AND  
ORDER**

**HOLLAND & KNIGHT LLP**  
2300 US Bancorp Tower  
111 SW Fifth  
Portland, OR **157**  
Telephone: 503.243.2300

KRW

1           WHEREFORE, Riverkeeper moved for summary judgment on June 12, 2015, requesting,  
2 *inter alia*, that the Court determine that the Defendants violated OPMA by excluding the public from  
3 seven meetings at which the lease was discussed;

4           WHEREFORE, the Court denied Riverkeeper's motion for summary judgment by Order  
5 dated September 23, 2015, entered partial summary judgment for the Defendants in finding that five  
6 of the meetings at issue were permissible under OPMA's allowance for executive sessions to  
7 consider the minimum price at which real estate will be offered for sale or lease, RCW  
8 42.30.110(1)(c), and certified its ruling for interlocutory review under RAP 2.3(b)(4);

9           WHEREFORE, the Washington State Supreme Court issued a decision on June 8, 2017,  
10 interpreting for the first time the scope of OPMA's minimum price exception, RCW 42.30.110(1)(c).  
11 The Supreme Court held that the "plain language of the provision confines discussion in executive  
12 session to the lowest acceptable value to offer land for sale or lease, and does not permit discussion  
13 of all factors that influence price . . . ; [w]hile conversation in executive session may address how . . .  
14 factors impact the minimum price, these contextual references cannot themselves become the focus  
15 of the discussion." *Columbia Riverkeeper v. Port of Vancouver, USA*, 188 Wn.2d 421, 448, 395 P.3d  
16 1031, 1045 (2017). The Supreme Court further held that, before going into executive session to  
17 discuss how relevant factors impact the minimum price, the governing body must discuss the factors  
18 at an open public meeting. *Id.* at 433, 444. The Supreme Court's June 8, 2017, decision reversed this  
19 Court's entry of summary judgment for the Defendants as to the lawfulness of five meetings and  
20 remanded the case to this Court for further proceedings;

21           WHEREFORE, this Court entered orders dated March 26, 2014, and September 23, 2015,  
22 holding, *inter alia*, that Riverkeeper's claims for injunctive relief and to have the lease declared null  
23 and void for alleged OPMA violations were rendered moot by actions taken by the Defendants,  
24 including the public votes on July 23 and October 22, 2013, and adoption of a revised executive  
25 session announcement procedure beginning on August 12, 2013. Therefore, the relief that remains  
26

1 available in this Court on Riverkeeper's First Cause of Action includes declaratory relief and an  
2 award of attorneys' fees and costs under RCW 42.30.120(4);

3 WHEREFORE, Riverkeeper and the Defendants (collectively, the "Parties") have conferred  
4 and stipulate for purposes of resolving this litigation that declaratory relief should be entered for  
5 Riverkeeper on its First Cause of Action as described in the following Stipulated Declaratory Relief;

6 **STIPULATED DECLARATORY RELIEF ON FIRST CAUSE OF ACTION**

7 The Parties hereby stipulate to the following Declaratory Relief on Riverkeeper's First Cause  
8 of Action:

9 1. Defendants held around seven to thirteen executive sessions from February through  
10 July 2013, during which matters related to a proposed petroleum products facility at the Port may  
11 have been discussed. To the best of Defendants' recollection, these executive sessions included the  
12 following:

13 a. An executive session on March 26, 2013, that included discussions on  
14 entering into an agreement with Tesoro-Savage for exclusive negotiations on a lease for the project,  
15 including issues on the schedule and duration of such an agreement;

16 b. An executive session on April 9, 2013, that was attended by representatives  
17 from Tesoro-Savage and that included discussions on, *inter alia*, the facility design, the oil refineries  
18 to be served by the terminal, the number of unit trains and vessels expected at the terminal,  
19 expectations for job creation, impacts to other tenants during construction; this executive session  
20 also addressed questions asked by the Board on certain topics, including safety aspects, market  
21 variability and risk, the type of crude oil that would move through the facility, the expected level of  
22 investment and commitment from Tesoro-Savage, whether Tesoro and Savage had worked together  
23 before, whether the oil would be exported, and whether new rail cars will be used or older and  
24 potentially poorly-maintained rail cars;

1 c. An executive session on July 9, 2013, that included discussions on the  
2 formation of a new corporate entity—Tesoro-Savage—that would operate the proposed crude-by-rail  
3 terminal and the risks associated therewith;

4 d. Executive sessions on July 16–17, 2013, that included discussions on, *inter*  
5 *alia*, the type of crude oil that would be handled and the differences associated therewith, the layout  
6 of the facility, timelines for operation of the facility and the lease, construction deadlines and  
7 whether extensions would be allowed, insurance requirements (property, liability, and pollution  
8 insurance), and risks associated with any crude oil that could be handled through the facility; these  
9 executive sessions also addressed concerns raised by one of the Board members on certain topics,  
10 including on issues related to the size of the oil storage tanks, the risks associated with the storage  
11 tanks, and the Port’s ability to require later generation rail cars;

12 e. An executive session on July 22, 2013, that included discussions on whether  
13 the Board wanted to add or modify any terms of the proposed lease in light of public comments  
14 provided on issues such as safety, fossil fuels, and emissions before the Board votes on whether to  
15 approve the lease and the inclusion of a lease term providing that the Port must approve the safety  
16 and operations plan for the terminal before operations commence;

17 f. An executive session on July 23, 2013, that included discussions on a lease  
18 term that requires that the Port approve the facility’s safety and operations plan;

19 2. Defendants agree and the Court declares that, in some of the above meetings, matters  
20 relating to the proposed petroleum products facility were discussed in a manner that did not comply  
21 with the OPMA, RCW 42.30.110(1)(c), as later interpreted by the Supreme Court in *Columbia*  
22 *Riverkeeper v. Port of Vancouver, USA*, 188 Wn.2d 421, 395 P.3d 1031 (2017).

23 Except as expressly provided in this Stipulated Declaratory Relief on First Cause of Action,  
24 the Parties do not waive any claims, defenses, or arguments that they may have. Riverkeeper  
25 expressly reserves its right to seek attorneys’ fees and costs under RCW 42.30.120(4) and as  
26 otherwise allowed by law. The Port will not argue that Riverkeeper’s fees should be based on the

1 number of meetings that violated the OPMA, but expressly reserves its rights to make any other  
2 arguments.

3 The undersigned representatives of the Parties certify that they are fully authorized by the  
4 Parties they represent to enter into this Stipulated Declaratory Relief on First Cause of Action.

5 For Defendants Port of Vancouver USA and its Board of Commissioners:

6 DATED: March 19, 2018

By: s/ Kristin M. Asai

Kristin M. Asai, WSBA No. 49511  
HOLLAND & KNIGHT LLP  
Attorney for Defendants

9 For Plaintiffs Columbia Riverkeeper, Sierra Club, and Northwest Environmental  
10 Defense Center:

11 DATED: March 19, 2018

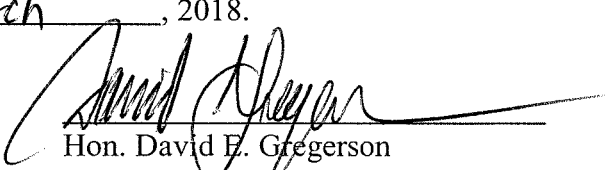
By: s/ Brian Knutsen

Brian Knutsen, WSBA No. 38806  
KAMPMEIER & KNUTSEN, PLLC.  
Attorney for Plaintiffs

14 **[PROPOSED] ORDER**

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16 DATED this 20 day of March, 2018.

17   
18 Hon. David E. Gregerson  
19 Superior Court Judge  
20 Clark County Superior Court

21 Presented by and stipulated to by:

22 s/ Kristin M. Asai

23 Kristin M. Asai, WSBA No. 49511  
24 HOLLAND & KNIGHT LLP  
Of Attorneys for Defendants

25 David B. Markowitz, *specialy admitted*  
26 Anna M. Joyce, WSBA No. 51572  
MARKOWITZ HERBOLD PC  
Of Attorney for Defendants

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Agreed as to form, notice of presentation waived, and stipulated to by:

s/ Brian Knutsen  
Brian Knutsen, WSBA No. 38806  
KAMPMEIER & KNUTSEN, PLLC.  
Miles Johnson, WSBA No. 50741  
COLUMBIA RIVERKEEPER  
Of Attorneys for Plaintiffs