

Merrill, Hannah

From: pearl hewett [REDACTED]
Sent: Tuesday, May 08, 2012 10:41 AM
To: zSMP; earnest spees; Lois Perry
Cc: Jay Petersen; harry bell; Jo Anne Estes
Subject: SCIENTIFIC PAPERS AND THE DUE PROCESS OF LAW

TO WHOM IT MAY CONCERN

I submit this as my SMP comment
With questions directed to
Clallam County DOE Shoreline Specialist Jefferee Stewart
Pearl Rains Hewett Trustee
George C. Rains Estate
Member SMP Advisory Committee

SCIENTIFIC PAPERS AND THE DUE PROCESS OF LAW

DOE has consistently ignored questions asked on SMP comments, posted on the Clallam County SMP Update website, and at SMP Advisory meetings.

I am requesting answers to the following questions to comply with the core principles of Due Process and the DOE SMP taking of private property in Clallam County.

Keep in mind, the recent Lawsuit filed against WA State Growth Management Board in Jefferson County,

Citing, **SCIENTIFIC PAPERS**, when used for **policy formulation**, are not self executing. Their findings must be parsed, measured for consistency, weighed for pertinence to the problem at hand, and applied to the situation the **policy maker** is trying to address. This demands a reasoned process that, if it is to comply with the core principles of **due process** – “openness and fair play” (*Swinomish Indian Tribal Comty. v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 161 Wn.2d 415, 442, 166 P.3d 1198 (2007) (Johnson, J.,

SCIENTIFIC PAPERS

1. Measured for consistency
2. Pertinence to the problem
3. Applied to the situation
4. Demands a reasoned process
5. To comply with due process

AND,

THE LITTLE WORD "DUE"

Andrew T. Hyman *

I. INTRODUCTION

(this is taken out of context the complete document is available on line)

The Fifth [1] and Fourteenth [2] Amendments bar the government from depriving anyone of "life, liberty, or property, without due process of law."

Justice Joseph Bradley once said that **"we are entitled, under the fourteenth amendment, not only to see that there is some process of law, but 'due process of law,' provided by the State law when a citizen is deprived...."** [72] Justice Bradley was correct, in the sense that a mere portion of legal process will not be allowed, when more is required by positive law. Failure to provide all process that is due may not normally be treated as harmless error, according to the Due Process Clause, and statutes may not normally treat it as such.

(this is taken out of context the complete document is available on line)

The Supreme Court has in recent decades added increasingly **stringent due process restraints on Congress and the states**, pursuant to its mistakes in *Hurtado*. With regard to procedural law, the Court has developed a test for determining what process is "due" by balancing three factors:

(1) the nature and weight of the private interest affected, [page 31]

(2) the risk of an erroneous deprivation of this interest using existing procedures compared with alternative or additional procedures, and

(3) the government's concern with both the interest involved and the procedures used to regulate it.

[73] Unfortunately, the rationale of a majority (or supermajority) of the people's representatives is not even a factor here, much less a determinative factor of what procedure is "due." Likewise for substantive law,

the general position of the Court is now that when a fundamental interest is at stake involving life, liberty, or property, then the state must have a "compelling" objective, and its statute must be narrowly tailored to achieve that objective.

In cases involving non-fundamental interests, the state must have a "legitimate" objective, and a statute must be rationally related to achieving that objective. The Court thus determines what powers of state government are legitimate or compelling, regardless of the enumeration of powers in a state's constitution. The Court also determines what rights are fundamental, notwithstanding rights that may be enumerated in a state's constitution. In this way, the Court now decides what laws are due or undue, and what the law of the land should be.

The WA State DOE SMP proposed Marine and freshwater setbacks in Clallam County include a significant taking of private property.

Can WA State DOE provide site specific **scientific papers** to definitively identify and prove the cause of the contaminated and temperature impaired marine and freshwater? Was this caused by people? development? industry? birds? ducks? wild mammals? deer? elk? raccoons? beaver? naturally present in the environment? climate change? global warming?.

Clallam County WRIA 17-19 Inventory and Characteristic report

DOE has failed to provide site specific scientific papers on the following,

DOE has failed to disclose, cause, location and owners of shoreline marine and freshwater contaminated sites.

DOE has failed to disclose, cause, location and owners of shoreline marine and freshwater temperature impaired sites.

Contaminated sites on the 18 Marine reaches (3)

Contaminated sites on the 64 Freshwater reaches (not provided)

Contaminated sites on R3 Dungeness River (1)

Contaminated sites on the R2 on the Hoko River (2).

Contaminated sites on the R1 Elwha River (Several)

Several, an unknown quantity that may affect the outcome of something.

Who owns and who is responsible for the **several (unidentified) contaminated sites/property in R1 Elwha River?**

Are the R1 Elwha River contaminated sites under the jurisdiction of the Clallam County SMP?

Who or what caused the **several contamination sites?**

**Who or what caused the impaired water temperature on (4) of the 18 Marine reaches?
Who or what caused the impaired water temperature on (34) of the 64 Freshwater reaches?**

Has the DOE Clallam County Shoreline Inventory and Characteristic report failed to provide contaminated and temperature impaired site specific **scientific papers?**

Have the DOE incomplete findings on the contaminated and temperature impaired sites been parsed and measured for consistency?

Have the DOE incomplete findings on the contaminated and temperature impaired sites been weighed for the pertinence of the problem at hand?

Have the **incomplete** findings on the contaminated and temperature impaired sites been applied to the situation DOE is trying to address?

Has the DOE **incomplete** compilation on the contaminated and temperature impaired sites used a demanded, reasoned process?

Has the DOE complied with the core principles of **due process** with **the incomplete** documents they have provided on Clallam County Shorelines contaminated and temperature impaired sites?

Please provide copies of the scientific papers that definitively identify, the cause of marine and freshwater contamination?

Please provide copies of the scientific papers that definitively identify what caused the marine and freshwater contamination? People, development or industry or by birds, wild mammals or naturally present in the environment?

I am requesting a copy of the scientific papers on the DNA testing for impairment and contamination at the mouth of the Dungeness River.

Were ANY of the contaminated or impaired sites caused by? or as a result of? Clallam County 1976-2012 SMP failure to protect NNL of ecological function?

Please provide scientific papers on how the Clallam County SMP from 1976-2012 has failed to protect NNL of ecological function?

Please provide scientific papers on why DOE is demanding wider setbacks and buffer zones to protect NNL of ecological function?

Please provide scientific papers on how many single family residence were destroyed on Clallam County marine and freshwater shorelines, by rivers or tidal action as a result of? or caused by? or a failure? of Clallam County 1976-2012 SMP?

Please provide scientific papers on how many ecological disasters occurred as a result of? or caused by? or failure of? Clallam County 1976-2012 SMP?

Please provide scientific papers on how many injuries or deaths occurred as a result of? or caused by? or failure of? Clallam County 1976-2012 SMP?

UNTIL the DOE can prove with site specific scientific papers that the Clallam County SMP 1976-2012 has caused any loss of ecological function, the current setbacks and buffer zones should remain in place or reduced.

Unanswered questions?

Sent: Tuesday, July 12, 2011 7:57 AM

SMP COMMENT ON CONTAMINATED SITES

WRIA 17-19 SHORELINE INVENTORY AND CHARACTERISTICS

On the 18 Marine reaches

Contaminated sites

they found (3)

On the 64 Freshwater reaches

(that I counted)

Contaminated sites

(1) contaminate site on the R3 Dungeness,

(Several) on R1 Elwha (how many is several?)

(2) on the R2 on the Hoko.

With all of the SMP concern about contaminated sites

These are the incomplete, censored scientific facts

Why is Green Crow the only contaminator mentioned by name?

As a member of the Clallam County SMP Advisory Committee I am asking for the exact location of every specific contaminated site and the full identity of EVERY contaminator.

Pearl Rains Hewett

Sent: Tuesday, July 12, 2011 7:30 AM

Subject: COMMENT ON WRIA 17-19 SHORELINE INVENTORY AND CHARACTERISTICS

COMMENT ON

WRIA 17-19 SHORELINE INVENTORY AND CHARACTERISTICS

On the 18 Marine reaches

Contaminated sites

they found (3)

Impaired water quality sites (12)

Impaired water caused **by temperature** (4)

On the 64 Freshwater reaches

Contaminated sites

(1) contaminate site on the R3 Dungeness,

Several on R1 Elwha (how many is several?)

(2) on the R2 on the Hoko.

(29) impaired water quality sites (based on how many factors?)

On the 64 Freshwater reaches

(34) sites are described as impaired water caused by temperature.