

Merrill, Hannah

From: Katie Krueger [katie.krueger@quileutenation.org]
Sent: Friday, July 13, 2012 10:23 AM
To: 'pearl hewett'; 'Stewart, Jeff R. (ECY)'; zSMP; 'Ehlers, Paula (ECY)'; 'Skowlund, Peter (ECY)'; 'White, Gordon (ECY)'
Cc: 'Karl Spees'; 'Jay Petersen'; 'harry bell'; 'robert crittendend'; 'Lois Perry'; 'Sue Forde'; frank.geyer@quileutenation.org; 'Mel Moon'
Subject: RE: What part of the Due Process of LAW does DOE not understand?
Importance: High

Please, Pearl, with summarization and generalization of what someone says in a meeting, there is a risk of unintended mischaracterization. All I said was that guidance documents and guidance for the agencies do not evolve following due process (opportunity for the public to have notice, opportunity for comment and hearing), only those things that go through the state or federal registers, which provide such notice/comment/hearing. So guidance documents should not be used by Clallam or Ecology to plan "taking" in the SMP where otherwise lawful. One must use the regulations and statutes, or ordinances. I would not say, "The DOE SMP is taking private property without the DUE PROCESS OF LAW". That would be quite an overstatement .

I do appreciate that I was copied and thus able to clarify.

I hope that closes the door on this particular legal nuance, from my standpoint.

Li/qtskal/ax2

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to check out our programs and more.

From: pearl hewett [REDACTED]
Sent: Friday, July 13, 2012 10:01 AM
To: Stewart, Jeff R. (ECY); zSMP; Ehlers, Paula (ECY); Skowlund, Peter (ECY); White, Gordon (ECY)
Cc: Karl Spees; Jay Petersen; harry bell; Katie Krueger; robert crittendend; Lois Perry; Sue Forde
Subject: What part of the Due Process of LAW does DOE not understand?

TO WHOM IT MAY CONCERN

DOE SMP taking of private property without Due Process Of Law.

Katie Krueger's (an attorney) comment at the July 10, 2012, pointed out to you, and the DOE SMP Advisory Committee members.

"The DOE SMP is taking private property without the DUE PROCESS OF LAW".

What part of the **"Due Process of LAW"** does WA State DOE not understand?

Your comment, "We (DOE) see **our proper role** as helping and encouraging the County in doing that work".

We the private property owners see **DOES' LEGAL ROLE**, If DOE is going to **TAKE OUR PROPERTY**, it shall be **done legally, using the DUE PROCESS of law**.

With Great power comes great responsibility. It is the legal responsibility of WA State DOE to comply with the DUE PROCESS of LAW, prior to the TAKING of our private property.

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.

I am AGAIN requesting answers from WA State DOE, to the following questions, to **comply** with the core principles of Due Process of law, the DOE SMP TAKING of private property in Clallam County.

Your comment, writing back and forth on "details best addressed in other venues", What other venues are you specifically suggesting would best address this issue?

Pearl Rains Hewett Trustee

George C. Rains Estate

Member SMP Advisory Committee

----- Original Message -----

From: [Stewart, Jeff R. \(ECY\)](#)

To: ['pearl hewett'](#) ; [zSMP](#) ; [Ehlers, Paula \(ECY\)](#) ; [Skowlund, Peter \(ECY\)](#) ; [White, Gordon \(ECY\)](#)

Cc: [Karl Spees](#) ; [Jay Petersen](#) ; [harry bell](#) ; [Katie Krueger](#) ; [robert crittendend](#) ; [Lois Perry](#) ; [Sue Forde](#)

Sent: Thursday, July 12, 2012 5:05 PM

Subject: RE: JEFEREE STEWARD legal WRITTEN request for DOE WRITTEN answers

Dear Ms. Hewett:

Thanks for your reminder about several questions raised via email which are in the message below. As I indicated during Tuesday's (7/10/12) Advisory Group meeting, in an effort to understand concerns you and others have expressed, Ecology representatives drove to Port Angeles in June, meeting with you and several Clallam County concerned citizens whom you had invited. That meeting was meant to address some of your concerns directly, and I thought we had a pretty good and frank exchange. Evidently, based on statements made since, **you found our meeting somewhat less satisfactory.**

You have raised a number of pointed questions and asked for written responses. **You have asked for "scientific papers"** on a variety of subjects. You say my agency (and me specifically) has been **"ignoring" your request.** That is not my intent. Please understand, my job is to help Clallam County as well as several other jurisdictions to make progress in meeting legislatively required comprehensive updates to their Shoreline Master Programs. This various and complex work has to be done within limited timelines and budgets.

I do appreciate the passionate engagement you demonstrate by active participation in the Advisory Committee.

Ecology has limited resources and lots of responsibilities- we have to make choices that keep our focus on the work we have to do. Please remember that Ecology's SEA Program leadership team did make an extra effort, driving to and from Port Angeles, listening to you and your colleagues, and sharing perspectives directly, face to face. We found that exchange helpful. We hope you and your colleagues also gained some understanding about **the state's perspective.** At least that was our intention-and we had hoped it would be better received than **just writing back and forth on details best addressed in other venues.**

I understand that you believe **ecological functions have "improved" in Clallam County since 1976.** And it is clear you believe the **Department of Ecology is required to prove otherwise,** point by point as noted. I did forward your message to Paula Ehlers. She and I discussed the request, and we both agree that, from what we have seen, Clallam County and their consultants are doing very competent and conscientious work in **addressing the necessary scientific underpinnings** that a shoreline program has to be based on. We also recognize the County has been actively listening to and recording the concerns of all interested citizens and organizations, yours among them, and working those concerns in as the SMP update proceeds. **We see our proper role as helping and encouraging the County in doing that work.** We will proceed in doing that work.

Again, thanks for your focus and engagement with Clallam County shoreline master program concerns. I hope we can continue to communicate as the work proceeds, showing mutual respect, and allowing for differences in perspective about what needs to be done.

Sincerely,

Jeffree Stewart
Shoreline Specialist
Washington Department of Ecology
360-407-6521

From: pearl hewett [REDACTED]
Sent: Wednesday, July 11, 2012 2:30 PM
To: zSMP; Stewart, Jeff R. (ECY)
Cc: Karl Spees; Jay Petersen; harry bell; Katie Krueger; robert crittendend; Lois Perry; Sue Forde
Subject: JEFEREE STEWARD legal WRITTEN request for DOE WRITTEN answers

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

This email is my legal WRITTEN request for WRITTEN answers to my questions from DOE Jeffree Stewart and/or, Paula Ehlers and/or Gordon White.

DOE representatives have consistently ignored written questions, on WRIA 17-19 SHORELINE INVENTORY AND CHARACTERISTICS REPORT, and The Clallam County SMP Update, asked and requested on the SMP public comment section on the Clallam County SMP Update website.

Jeffree Stewart informed me yesterday 7/10/12 (in front of Steve Gray) that if I want answers to questions I would have to send him a letter of request. Emails are a legal form of communication.

My other option is DEPARTMENT OF ECOLOGY **REQUEST FOR PUBLIC RECORD I have the form filled out and ready to email.**

I am requesting answers to the following questions to comply with the core principles of Due Process.

DOE SMP taking of private property in Clallam County.

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

(2) 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?

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

(4) 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?

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

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

(7) 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?

(8) 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?

(9) 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?

(10) 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.

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?

(10) 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.