



Totten Inlet Federal Lawsuit Q&A

Q: Who's involved in this lawsuit?

A: The federal lawsuit related to Totten Inlet is between Taylor Shellfish, Helen Senff and the Washington Department of Natural Resources.

Q: What is this lawsuit about?

A: Taylor filed suit in Federal Court seeking to establish the validity of a substitution clause in their deed to the disputed property. Under Taylor's deed, if the lands are not actually suitable for growing oysters, Taylor has the right to obtain substitute tidelands from the state that are suitable for that purpose. The State's intent in this sale was to transfer lands suitable for oyster growing. The federal action seeks to confirm that the substitution right in the deed remains valid.

In 1971, the state passed a law (the Gissburg Amendment) that outlawed the sale of state-owned tidelands. In 1981, the state attorney general opined that, under the Gissburg amendment, the state can no longer substitute lands for oyster cultivation.

Commissioner Goldmark's actions will bring about a test of the attorney general's opinion and of the state law on substitution that could have far-reaching consequences for shellfish growers.

Q: Why is a lawsuit necessary?

A: Commissioner Goldmark announced on February 5th, 2009 that he would not honor a settlement agreement signed by DNR and Taylor Shellfish breaching the contract that had been agreed upon to settle the Totten Inlet dispute.

Q: Why is this complaint being filed in federal court?

A: Any interpretation of the Gissberg Amendment that invalidates a Bush Act tideland owner's contractual right to purchase substitute tidelands would violate the contract clause of the Washington Constitution, Article I, Section 23, and the U.S. Constitution, Article I, Section 10, which prohibits states from passing any laws that impair the obligation of contracts. Federal District court is the appropriate jurisdiction for such complaints.

Q: What is the settlement agreement?

A: After 9 months of investigation by DNR, with oversight from the State Auditor, lawyers and others considering the facts around the issue, a settlement was agreed to that would have avoided litigation.

Under the settlement signed by Commissioner Sutherland on January 12th Taylor agreed to forfeit its ownership claims to the property, and its substitution rights under the Totten Inlet deed, if DNR agreed to lease 21 acres to Taylor for five years to allow them to harvest the crops Taylor had planted on the land. In addition, Taylor agreed to:

- Pay \$480,838 back rent plus leasehold excise tax, interest and \$53,241 of staff time reimbursement totaling \$629,762;
- Pay \$200,000 to the Geoduck Aquaculture Research Account for Washington Sea Grant to conduct research of geoduck aquaculture practices at the site bringing the total to \$829,762.
- Pay an estimated \$500,000 in additional rent over the course of the next five years.

This settlement fully compensated DNR for all back rent allowable under the law, plus interest, plus staff time, plus \$200,000 toward continued geoduck research by Sea Grant.

Q: Why doesn't Taylor accept Commissioner Goldmark's request for a 6-month delay in legal action?

A: On February 26th DNR Commissioner Goldmark requested that Taylor delay pending litigation for six months so that DNR can "evaluate and possibly renegotiate" the Settlement Agreement Taylor and DNR entered into on January 12, 2009. The company is unable to accept the Commissioner's request that we delay pursuing our legal remedies.

Taylor has oyster and geoduck crops on the land that are overdue for harvest. The area is prone to high oyster mortality and the longer we delay resolving this matter, the fewer oysters will be to harvest. In addition, Taylor has already missed one planting season on the farm. Taylor has suffered significant damages in the nine months it took to reach the January 12, 2009 Settlement Agreement, and the company need's to move

forward with a legal resolution of this dispute as expeditiously as possible to reduce future losses.

The settlement agreement resulted from nine months of thorough research, analysis, and negotiation. The agreement was fair to all parties and Commissioner Goldmark has chosen to repudiate this agreement and put the state at risk of losing a costly legal battle. Further, Commissioner Goldmark has exacerbated the situation by communicating his decision through the press rather than directly to the Taylors.

Q: What are the next steps?

A: Taylor will be moving forward shortly with an administrative claim for damages that it has suffered as a result of DNR's assertion of ownership to these tidelands. These damages are the result of DNR's restriction of Taylor's use of these tidelands, which has been ongoing since spring of 2008 and continues today.

Q: How has Taylor Shellfish been damaged?

A: Since the spring of 2008, Taylor Shellfish has been restricted from planting or harvesting crops on land that the company asserts that it owns. This restriction has resulted in loss of current and future income to the company.

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