Foster Garvey

Legal Alerts

Court of Appeals Reaffirms Public Utility District Authority to Condemn State School Trust Lands

05.10.13

Foster Pepper attorneys assist Public Utility District No. 1 of Okanogan County in condemning easements needed for construction of new transmission line

In 1930, in the first-ever initiative to the people of the State of Washington, the voters authorized Public Utility Districts. At the same time, the people of the State authorized PUDs to condemn certain State lands that may be necessary for public purposes. More than 80 years later, Division III of the Washington Court of Appeals on May 7, 2013, affirmed the right of Public Utility District No. 1 of Okanogan County to condemn easements over state school trust lands needed for the PUD's Methow Transmission Project. In a published opinion, the Court reaffirmed long-held precedent establishing that school trust lands not dedicated to a public use are subject to condemnation. The Court held that the PUD could condemn easements over the school trust lands as a matter of law and observed that condemnation of the easements will not negatively impact the economic productivity of the lands, which are held in trust to benefit the state's common schools.

The decision is a critical step forward for the PUD, which has been trying to build the project for 17 years. The Okanogan County PUD began initial planning for the Methow Transmission Project in 1996. The project will construct a new 115 kV transmission line between Pateros and Twisp to improve electrical service to the citizens of the Methow Valley. After a decade of extensive environmental review and litigation, the PUD selected the project route, which was upheld by the Court of Appeals in 2008. In addition to crossing private lands, the new transmission line will cross a portion of school trust lands managed by the Washington State Department of Natural Resources (DNR). The trust lands are generally vacant and used for grazing. The PUD successfully negotiated the necessary easements with most property owners but were unable to secure easements from DNR. The PUD petitioned to condemn the easements pursuant to its statutory eminent domain authority.

After the Superior Court for Okanogan County approved the condemnation, the State and intervenor Conservation Northwest appealed. A separate dispute ensued in the Washington Supreme Court between Commissioner of Public Lands Peter Goldmark and then-Attorney General Rob McKenna, who did not want to proceed with a State appeal. Following resolution of that dispute, the Court of Appeals heard oral arguments in the case this February.

© 2026 Foster Garvey PC. All Rights Reserved.

In deciding in favor of the PUD, the Court of Appeals addressed several issues:

First, after reiterating the PUD's statutory authority to condemn school trust lands under chapter 54.16 RCW, the Court rejected the State's assertion that all school trust lands are dedicated to a public use and are therefore per se exempt from condemnation. The Court found that the State's argument would render meaningless several statutes specifically allowing local governments to condemn state and school trust lands and would ignore Washington Supreme Court precedent dating back more than 100 years. Because the school trust lands are not dedicated to a public use, they can be condemned by the PUD.

Second, the Court held that the school trust lands are not devoted to or reserved for a particular use by law, and therefore can be condemned. Specifically, the trust lands can be sold by the State and are not reserved for a particular use by the grazing leases DNR has issued for the lands.

Third, the Court rejected Conservation Northwest's argument that the lands could not be condemned because they are held in public trust. Although state trust lands are administered under trust management principles, this does not prevent their sale or condemnation. The legislature specifically granted the PUD authority to condemn trust lands.

Fourth, the Court observed that the PUD does not seek fee ownership of the trust lands, but only an easement. State law, in DNR's land management statutes at RCW 79.36.580, specifically recognizes the PUD's right to condemn easements.

Fifth, the Court reaffirmed that courts not only look at whether state lands are dedicated to a public use, but also at whether the proposed use in condemnation is compatible with an existing public use. It was undisputed by the State that the PUD's easements will not destroy the current use of the school trust lands for grazing, a use that generates less than $3,000 annually for schools (and this revenue does not account for DNR's administrative costs). The Court agreed that the PUD's condemnation of the easements will not negatively impact the economic productivity of the trust lands.

It is unknown whether the State will seek review by the Washington Supreme Court. The Supreme Court has already rejected direct review of the matter. If the Court's decision becomes final, the case will head back to the superior court for the determination of just compensation that will be paid to the State for the easements.

Contact Foster Garvey attorneys Steve DiJulio or Adrian Urquhart Winder for additional information about this important ruling.

Click here to view a pdf of the Court's Opinion. Click here to view Foster Garvey's Land Use, Planning & Zoning webpage.

Featured People

© 2026 Foster Garvey PC. All Rights Reserved.

P. Stephen DiJulio

Principal|Seattle

206.447.8971 steve.dijulio@foster.com

Adrian Urquhart Winder

Principal|Seattle

206.447.8972 adrian.winder@foster.com

Related Areas

- Land Use & Development Permitting
- Eminent Domain & Inverse Condemnation

© 2026 Foster Garvey PC. All Rights Reserved.