

2. Defendant U.S. Army Corps of Engineers ("Defendant") claims some right, title or interest in the Subject Property, pursuant to a Spoil Disposal Easement granted to it by Clatsop County, in 1957, attached hereto as Exhibit D.

Jurisdiction

3. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 2409a.

Allegations

4. The State of Oregon owns a portion of the Subject Property, which real property was created in part from property that was originally below the surface of the Pacific Ocean, by the placement of dredged materials ("the Submerged Lands").

5. From the time of its statehood, the State of Oregon owned both all of the tidelands and all of the Submerged Lands in and around the Subject Property. By deed dated March 6, 1883, the State of Oregon conveyed 27.88 acres of tideland to D.K. Warren ("the Tidelands"). The State of Oregon did not thereby convey the Submerged Lands to D.K. Warren.

6. In 1916 the heirs and successors to D.K. Warren (and more particularly, to the ownership interest that he obtained in the property conveyed to him in 1888) created an "indenture," which purported to claim ownership to the Subject Property. That indenture, to which the State of Oregon was not a party, could not and did not have any binding effect or consequence with respect to the State of Oregon's ownership of the Subject Property.

7. By 1932, the Tidelands that had been conveyed to D.K. Warren in 1883 had been foreclosed for non-payment of taxes, and was owned by Clatsop County. Clatsop County did not own any of the Submerged Lands. In January 1957, Clatsop County granted an easement over the Tidelands to Defendant, under a "Spoils Easement," which easement is recorded in the Clatsop County real property records at Book 239, Page 181.

8. By 1980, a question was raised about ownership of the Submerged Lands, and Oregon's Attorney General concluded in his written opinion that the State of Oregon owned the Submerged Lands, thus giving notice to the public that the State of Oregon owned the

Submerged Lands, free of any claim by Clatsop County or any other person. Upon information and belief, Defendant did not dispute the Attorney General's opinion.

9. On November 1, 2004, the State of Oregon leased the Subject Property to the Port of Astoria, which lease is reflected in a Memorandum of Lease recorded in the Clatsop County real property records on February 14, 2005, as Instrument No. 200501898.

10. On November 5, 2004, the Port of Astoria sub-leased the Subject Property to Plaintiff, which sublease is reflected in a Memorandum of Lease recorded in the Clatsop County real property records on February 14, 2005 as Instrument No. 20001899.

11. After Plaintiff leased the Subject Property, it engaged in significant negotiations with a number of parties, including Defendant, about Plaintiff's intended uses of the Subject Property. With full knowledge of Plaintiff's intent and lease, Defendant did not claim that it had any rights in the Submerged Lands until 2009; Plaintiff did not know, and in the exercise of reasonable diligence could not have known of Defendant's asserted interest therein until 2009.

12. Pursuant to the terms of its tenancy, Plaintiff has exercised the right to extend its leasehold interest, and is the lawful tenant of the Subject Property.

13. The Defendant claims some right, title or interest in the Subject Property, pursuant to the Spoils Easement. But although the Spoils Easement granted an interest in the Tidelands to Defendant, it conveyed no right, title or interest in the Submerged Lands, because (1) Clatsop County did not have the power to convey an interest in the Submerged Lands, and (2) the Spoils Easement only purported to convey tideland, not to convey submerged lands.

14. Defendant did not assert any right, title or interest in the Submerged Lands until 2009.

15. Because Clatsop County did not own the Submerged Lands when it granted the Spoils Easement to the Defendant, the Spoils Easement did not provide constructive notice of any claim to the Submerged Lands, because under Oregon law, constructive notice of an interest in real property exists only if the owner of real property records some transfer of the property.

Because Clatsop County did not own the Submerged Lands, its apparent effort to lease the Submerged Lands would be outside of the chain of title, and not provide constructive notice of Defendant's purported interest.

16. Plaintiff has no adequate remedy at law.

FOR ITS FIRST CLAIM FOR RELIEF, PLAINTIFF ALLEGES:

(Quiet Title – Ownership)

17. This Court should quiet title of the Submerged Lands, in favor of Plaintiff, and reject Defendant's claim of any right, title or interest in the Submerged Lands.

FOR ITS SECOND CLAIM FOR RELIEF, PLAINTIFF ALLEGES:

(Quiet Title – Access)

18. In 1967, Clatsop County purported to create a public right-of-way across both the Tidelands and the Submerged Lands. That right-of-way is a valid and binding encumbrance of the Tidelands, which may be used by Plaintiff; but because Clatsop County had no right, title or interest in the Submerged Lands, the County's effort to extend the right-of-way across the Submerged Lands, to the Columbia River, was a nullity. Nonetheless, Plaintiff has a right to use the right-of-way across the Tidelands.

19. This Court should declare that Plaintiff has access to the Subject Property over and across the Tidelands, along the public right-of-way created by the County.

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor and against Defendants, as follows:

1. Declaring that Defendant has no right, title or interest in the Submerged Lands;
2. Declaring that Plaintiff has a right of ingress and egress to the Subject Property, over the Tidelands; and

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3. Awarding Plaintiff its costs and disbursements incurred herein.

DATED this 5th day of December, 2014.

McEWEN GISVOLD LLP

By: /s/ Jonathan M. Radmacher

Jonathan M. Radmacher, OSB No. 924314

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Of Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2014, I served the foregoing **FIRST AMENDED COMPLAINT** on the persons listed below by the methods indicated below.

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