

BE AND IT HEREBY IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That this Court has jurisdiction of all of the parties to this action and of the subject matter thereof, and that the proper venue of the action is in Whatcom County.
2. That the waters flowing in and out of Edgemoor Lagoon at all times herein mentioned have been and now are classed as navigable waters and are under the control of the State of Washington.
3. That the construction of double trackage and the extension of the existing track was without authority of law and therefore by statute constituted a public nuisance subject to abatement.
4. That the noise of the reefer cars in an area zoned R-S by the City of Bellingham, and populated with single-family residences, was an annoyance constituting a public nuisance subject to abatement.
5. That plaintiffs have suffered special injury through the blocking of their right to navigation and by reason of the noise created by the reefers and thus are entitled to bring this action against defendant Railroad Company to abate the same.
6. That plaintiffs have the right of navigation over the navigable waters herein involved.
7. That the doctrines of adverse possession or estoppels are not applicable in this case.
8. It is hereby further ordered, adjudged and decreed that as to plaintiffs herein defendants shall abate the nuisance caused by (1) the obstruction to the flow of tidal waters through the causeway, and (2) the noise caused by the reefer cars: and after judgment herein and upon motion by plaintiffs a warrant shall issue to the Sheriff of Whatcom County to abate such nuisances unless it be made to appear at the hearing on said motion that the said nuisances have ceased or that such remedy of abatement is inadequate to abate or prevent the continuance of the nuisance, in which case the plaintiffs may have the defendant railroad company enjoined.

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9. The application and plans for leasing covering the matter of a railroad passing over and through tidal waters should be processed by the Land Commissioner of the State of Washington in the usual manner.

10. It is further ordered, adjudged and decreed that defendant railroad company shall make application to the Planning Commission of the City of Bellingham for processing in the usual manner, within a reasonable time, for the appropriate permit applicable to the situation in this case.

11. The burden will be strictly on the defendant railroad company to make such applications and to follow through on both in a timely manner.

12. It is further ordered, adjudged and decreed that defendant railroad abate the nuisance blocking Edgemoor Lagoon and obstructing navigation thereto and the free flow of tidal waters into said Lagoon.

DONE IN OPEN COURT THIS _____ day of June, 1971.

JUDGE PRO TEMPORE

Presented by:
SAM PEACH
of Attorneys for Plaintiffs
Judgment and Decree

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