THE SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

STANLEY MARCUS, HARLAN JACKSON, and SAM PEACH, and others in the same situation, Plaintiffs, VS. GREAT NORTHERN RAILWAY, NO. 4 3 5 6 1 Defendant, JUDGEMENT AND DECREE and BERT COLE, Commissioner of Public Lands of the State of Washington, and THE STATE OF WASHINGTON, and THE CITY OF BELLINGHAM, Additional Plaintiffs,

THIS MATTER coming on for hearing on the 21st day of December, 1970, before the above-entitled Court, plaintiffs being present and represented by ROBERT BURKS, Attorney at Law, and defendant Great Northern Railway being present and represented by LAWRENCE SILVERNALE, Attorney at Law, Bert Cole, Commissioner of Public Lands and the State of Washington being represented by THOEDORE O. TORVE, and the City of Bellingham being represented by City Attorney Richard Busse, and witnesses being sworn, evidence being adduced, exhibits being introduced and admitted, and the Court having visited the scene accompanied by respective counsel, and briefs of authority being introduced herein, and after argument of counsel the Court duly considered the matter, and all parties thereafter agreeing that upon the Honorable Boone Hardin retiring from the Superior Court bench on May 1, 1971, that the parties then agreed in writing that the said Boone Hardin could continue to act in the above entitled case as Judge Pro Tempore, and the Court having taken the oath of office of Judge Pro Tempore, said written consent and oath being on file herein, and the Court having previously entered its Findings of Fact and Conclusions of Law, separately stated, now, therefore,

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Judgment and Decree -1.

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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