

MAR 24 2023

Scott G. Weber, Clerk, Clark Co.

8 pages

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

ZP#5, LLC, a Washington Limited Liability
Corporation,

Petitioner,

v.

COLUMBIA RIVER GORGE
COMMISSION,

Respondent,

and

FRIENDS OF THE COLUMBIA GORGE,

Intervenor-Respondent.

Clark County Superior Court No.
20-2-02402-06

No CRGC Number

**FINAL ORDER AND
JUDGMENT**

JUDGMENT SUMMARY

Judgment Creditor:	Friends of the Columbia Gorge
Judgment Creditor's Attorneys:	Nathan J. Baker, Brian A. Knutsen, and Emma Bruden
Judgment Debtor:	ZP#5, LLC
Judgment Amount (principal):	\$0
Costs:	\$200.00
Attorney's Fees:	\$0

1 Pre-Judgment Interest: \$0
2 Post-Judgment Interest: 12% per annum
3 Total Judgment: \$200.00
4

5 THIS MATTER came before the Court on the parties' motions for summary judgment.
6 The Court heard oral argument on November 18, 2022. The Court considered the oral and
7 written arguments of the parties, accompanying declarations, and the administrative record,
8 and being fully advised, on March 6, 2023,¹ entered its Order Granting Columbia River Gorge
9 Commission's and Friends of the Columbia Gorge's Motions for Summary Judgment and
10 Denying ZP#5, LLC's Cross Motion for Summary Judgment ("March 6, 2023, Order"). The
11 Court held:

12 "The revisions to the 2020 Management Plan for the Columbia River Gorge
13 National Scenic Area adopted by the Gorge Commission were implemented
14 within the lawful authority afforded the Columbia River Gorge Commission,
15 the action was consistent with applicable law, and the 2020 Management Plan is
valid." [footnote omitted]

16 The Court additionally clarifies its March 6, 2023, Order to conclude that the
17 Commission's April and May 2020 meetings² did not violate the Washington Open Public
18 Meetings Act (RCW 42.30)³ or Governor Jay Inslee's Proclamation 20-28 and that the
19 Washington Open Public Meetings Act and Washington Administrative Procedures Act do not
20 directly apply to the Gorge Commission.⁴
21

22 ¹ The Court signed its order on March 3, 2023 and filed its order on March 6, 2023.

23 ² The Court's March 6, 2023, Order mentioned only "the Commission's April 2020 Meeting." The Gorge
24 Commission's Motion for Summary Judgment noted the Gorge Commission held five meetings in April and May
2020.

25 ³ The Court's March 6, 2023, Order contained a scrivener's error, citing the Open Public Meetings Act as "(RCW
26 43.30)" instead of "(RCW 42.30)."

⁴ This clarification that the Washington Open Public Meetings Act and Washington Administrative Procedures Act
do not directly apply to the Gorge Commission reflects the Gorge Commission's Motion for Summary Judgment
which argued that the OPMA and APA do not directly apply to the Gorge Commission.

1 **JUDGMENT**

2 Based on the Court's March 6, 2023, Order and the clarification above, and the Court
3 being fully advised, NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
4 DECREED as follows:

5 1. There is no genuine issue of material fact. The Court grants the Columbia River
6 Gorge Commission's and Friends of the Columbia Gorge's motions for summary judgment
7 and denies ZP#5, LLC's cross motion for summary judgment.
8

9 2. This Final Order and Judgment incorporates the Court's March 6, 2023, Order,
10 a copy of which is attached hereto.

11 3. The Commission's April and May 2020 meetings did not violate the
12 Washington Open Public Meetings Act (RCW 42.30) or Governor Jay Inslee's Proclamation
13 20-28 and the Washington Open Public Meetings Act and Washington Administrative
14 Procedures Act do not directly apply to the Gorge Commission.
15

16 4. All claims, motions, and objections brought by Petitioner ZP#5, LLC not
17 specifically granted or denied are hereby denied.

18 5. Costs in the amount of \$200.00 as "costs to be called the attorney fee," RCW
19 4.84.080(1), are hereby awarded to Intervenor-Respondent Friends of the Columbia Gorge
20 against Petitioner ZP#5, LLC. Accordingly, Friends of the Columbia Gorge shall have
21 JUDGMENT against ZP#5, LLC, in the total amount of \$200.00, that amount to bear interest
22

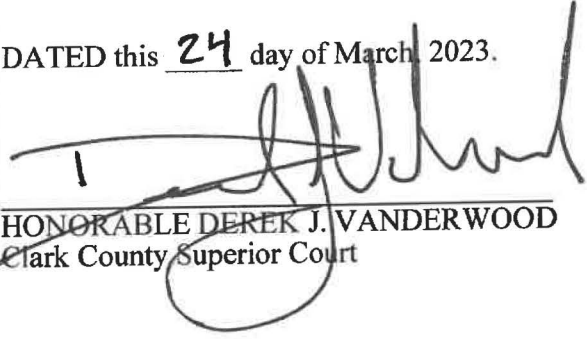
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1 at a rate of 12% per annum from the date of this Judgment in accordance with RCW
2 4.56.110(6) and 19.52.020(1).
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4 DATED this 24 day of March, 2023.

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7 HONORABLE DEREK J. VANDERWOOD
8 Clark County Superior Court
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14 **PRESENTED BY:**

15 s/ Jeffrey B. Litwak
16 Jeffrey B. Litwak, WSBA No. 31119
17 jeff.litwak@gorgecommission.org
18 Attorney for Respondent Columbia River Gorge Commission

19 s/ Nathan J. Baker
20 Nathan J. Baker, WSBA No. 35195
21 nathan@gorgefriends.org
22 Attorney for Respondent Friends of the Columbia Gorge

23 s/ Brian A. Knutsen
24 Brian A. Knutsen, WSBA No. 38806
25 Emma Bruden, WSBA No. 53280
26 brian@kampmeierknutsen.com
emma@kampmeierknutsen.com
Attorneys for Respondent Friends of the Columbia Gorge

FILED

MAR 06 2023

Scott G. Weber, Clerk, Clark Co.

1:45

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

ZP#5, LLC, a Washington limited liability
company,

Petitioner,

v.

COLUMBIA RIVER GORGE COMMISSION,

Respondent,

and

FRIENDS OF THE COLUMBIA GORGE,

Intervenor-Respondent.

Case No. 20-2-02402-06

**ORDER GRANTING COLUMBIA
RIVER GORGE COMMISSION'S AND
FRIENDS OF THE COLUMBIA
GORGE'S MOTIONS FOR SUMMARY
JUDGMENT AND DENYING ZP#5,
LLC'S CROSS-MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER having come before the Court on the Respondent Columbia River Gorge Commission's Motion for Summary Judgment, Intervenor-Respondent Friends of the Columbia Gorge's Motion for Summary Judgment, and Petitioner ZP#5, LLC's Cross-Motion for Summary Judgment, the Court having heard argument from the parties at a hearing on November

1 18, 2022, having reviewed the administrative record,¹ and having reviewed the following
2 pleadings:

3 Columbia River Gorge Commission's Motion for Summary Judgment filed September
4 22, 2022;

5 Declaration of Jeffrey B. Litwak in Support of Columbia River Gorge Commission's
6 Motion for Summary Judgment filed on September 22, 2022;

7 Friends of the Columbia Gorge's Motion for Summary Judgment filed on September 22,
8 2022;

9 Declaration of Nathan J. Baker in Support of Friends of the Columbia Gorge's Motion
10 for Summary Judgment filed on September 22, 2022;

11 Petitioner's Cross-Motion for Summary Judgment filed on September 22, 2022;

12 Petitioner's Combined Response to Columbia River Gorge Commission's Motion for
13 Summary Judgment and Friends of the Columbia Gorge's Motion for Summary Judgment filed
14 on October 20, 2022;

15 Friends of the Columbia Gorge's Response to Petitioner's Motion for Summary
16 Judgment filed on October 20, 2022;

17 Declaration of Rachel Grice in Support of Friends of the Columbia Gorge's Response to
18 Petitioner's Motion for Summary Judgment filed on October 20, 2022;

19 Declaration of Nathan Baker in Support of Friends of the Columbia Gorge's Response to
20 Petitioner's Motion for Summary Judgment filed on October 20, 2022;

21 Columbia River Gorge Commission's Response to ZP#5's Motion for Summary
22 Judgment filed on October 20, 2022;

23 Second Declaration of Nathan J. Baker in Support of Friends of the Columbia Gorge's
24 Motion for Summary Judgment filed on November 3, 2022;

Friends of the Columbia Gorge's Reply in Support of Motion for Summary Judgment
filed on November 3, 2022;

Declaration of Bryan J. Telegin in Support of Friends of the Columbia Gorge's Motion
for Summary Judgment filed on November 3, 2022;

¹ The administrative record was filed as sub number 6 in the court file.

1 Declaration of Ross Tilghman in Support of Friends of the Columbia Gorge's Motion for
2 Summary Judgment filed on November 3, 2022;

3 Columbia River Gorge Commission's Reply to ZP#5's Combined Response to
4 Respondents' Motion for Summary Judgment filed on November 3, 2022;

5 Petitioner's Consolidated Reply in Support of Petitioner's Cross-Motion for Summary
6 Judgment filed on November 3, 2022; and

7 Petitioner's Combined Sur-Reply filed on November 10, 2022.

8 **IT IS HEREBY ORDERED, ADJUDGED and DECREED** as follows:

9 The revisions to the 2020 Management Plan for the Columbia River Gorge National
10 Scenic Area adopted by the Columbia River Gorge Commission were implemented within the
11 lawful authority afforded the Columbia River Gorge Commission,² the action was consistent
12 with applicable law, and the 2020 Management Plan is valid.

13 The Commission's April 2020 meeting did not violate the Washington Open Public
14 Meeting Act (RCW 43.30) or Governor Jay Inslee's Proclamation 20-28.

15 The Commission's procedure in addressing public comment on the 2020 Management
16 Plan was lawful.

17 The Commission has discretion regarding the consultation requirement in 16 U.S.C. §
18 544d(e) and was not required to consult with the Washington Department of Natural Resources
19 prior to clarifying the Management Plan's definition of mining activity. The Commission
20 properly consulted with federal, state, and tribal governments and agencies.

21 The Commission lawfully included the transportation of mineral resources within the
22 definition of mining activity in the Management Plan, the revised language is consistent with the
23 Scenic Area Act, and adoption of the clarified definition was not arbitrary and capricious.
24

1 The Petitioner's equal protection rights were not violated during the process utilized by
2 the Commission. The Commission did not create classes of persons or treat protected classes
3 differently.

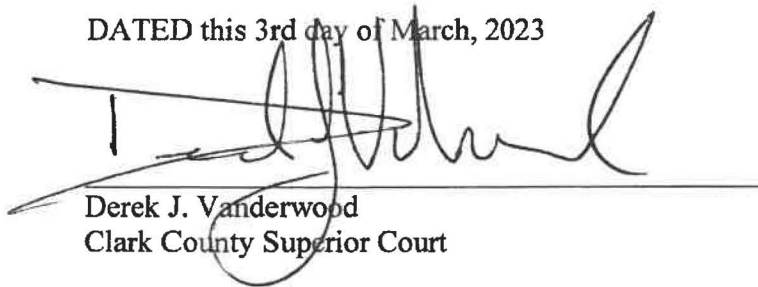
4 The revisions of the Management Plan did not create a de facto prohibition of mining and
5 did not violate the National Scenic Area Act (16 U.S.C. § 544a).

6 The Commission's revision of the 2020 Management Plan did not violate the Washington
7 Growth Management Act. The Growth Management Act does not apply to the Commission and
8 does not govern land use in the Management Plan.

9 The Columbia River Gorge Commission's and Friends of the Columbia Gorge's Motions
10 for Summary Judgment are GRANTED.

11 ZP#5, LLC's Cross-Motion for Summary Judgment, corresponding request to set aside or
12 remand the Commission's adoption of the 2020 Management Plan, and request for an award of
13 attorney fees are DENIED.

14 DATED this 3rd day of March, 2023

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Derek J. Vanderwood
Clark County Superior Court

² The revision included a modified definition for the "[e]xploration, development (extraction and excavation), and production of mineral resources" that added "transportation of mineral resources from the site." Record p. 469.