

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

JAMES D. DICKGIESER,)
a single man; **MILO A.**)
DICKGIESER and M. JOAN)
DICKGIESER, husband and wife;)
and **SHERRIE M. SHOLD, a**)
married woman;)
)
)
Plaintiffs,)
)
vs.)
)
STATE OF WASHINGTON;)
)
Defendant.)

No.
**COMPLAINT FOR
DAMAGES**

COME NOW the Plaintiffs, JAMES D. DICKGIESER, MILO A. DICKGIESER and M. JOAN DICKGIESER, and SHERRIE M. SHOLD, by and through their attorney of record, Jay A. Goldstein, and allege as follows:

I. PARTIES

1.1 JAMES D. DICKGIESER is a single man residing in Jefferson County, Washington. JAMES D. DICKGIESER owns the real property that is the subject of this lawsuit, the legal description and map of which property is attached as Exhibit A1 and A2. Mr. Dickgieser holds title as a tenant in common with Mr. Dickgieser's

JAY A. GOLDSTEIN • LAW OFFICE
1800 Cooper Point Road SW, No. 8 • Olympia, WA 98502
FAX 360-357-0844 • VOICE 360-352-1970
E-MAIL: jaglaw@uswest.net

niece, plaintiff Sherrie Shold.

1.2 MILO A. DICKGIESER and M. JOAN DICKGIESER are husband and wife residing in Jefferson County, Washington. Mr. and Mrs. Dickgieser resided in the home on the real property which is the subject of this lawsuit, legally described on Exhibit A1. Milo A. Dickgieser is the brother of James D. Dickgieser.

1.3 SHERRIE M. SHOLD is a married woman residing in Jefferson County, Washington. Ms. Shold is the daughter of Mr. and Mrs. Milo A. Dickgieser. Ms. Shold holds title to the subject property as tenant in common with her uncle, plaintiff James D. Dickgieser.

1.4 Defendant State of Washington (the state) is now and at all relative times to this action was a state bound by its own laws, charged in its official capacity, through the State Department of Natural Resources (hereafter DNR). The legal description of Defendant's real property, adjacent to the subject property, is attached hereto as Exhibit B1, B2, B3, and B4.

II. JURISDICTION AND VENUE

2.1 This court has jurisdiction over this matter pursuant to RCW 2.08.010 because the damages requested exceed \$300.00.

2.2 Venue in this Court is proper pursuant to RCW 4.92.010, which permits a party to commence an action against the state in Thurston County.

III. FACTUAL ALLEGATIONS

3.1 Plaintiffs are, and for the last nine years have been, the owners and residents of a home and real property (the subject property) totaling approximately 12 acres in the town of Quilcene, Jefferson County, Washington. The subject property includes three structures: the house in which Mr. and Mrs. Milo Dickgieser resided, another house, and one mobile home.

JAY A. GOLDSTEIN • LAW OFFICE
1800 Cooper Point Road SW, No. 8 • Olympia, WA 98502
FAX 360-357-0844 • VOICE 360-352-1970
E-MAIL: jaglaw@uswest.net

3.2 Defendant state of Washington is engaged in the forest land management business in the state's proprietary capacity; on diverse days between 1995 and January 1, 2000, defendant state logged or caused to be logged state property legally described on Exhibit B1-4 on the hill adjacent to and above the subject property legally described on Exhibit A1.

3.3 On defendant's property, in its natural state, runs a creek (hereafter referred to as the creek or stream) that extended down the steep slope of defendant's property and continued in part on plaintiffs' property; the creek was the natural watercourse for rain waters commencing on defendant's property and flowing over the property from contiguous lands and across plaintiffs' property into the valley below.

3.4 Plaintiffs had several meetings with DNR staff in an attempt to discourage DNR from logging the timber near this stream. Family members also met with DNR staff regarding the possible consequences to the stream if the watershed were logged, including the sensitivity of the watershed and the potential of bank failures (land slides) if the area were logged. The DNR staff disregarded Plaintiffs' concerns. DNR staff voiced their contention that the logging would have minimal impact on the stream; nonetheless, DNR staff agreed to construct some safeguards in and near the stream (the stream work). However, DNR never completed the stream work.

3.5 Before logging the area, known as Flat Top U-1, Flat Top U-2, and Flat Top Pole, the DNR requested and received permission from plaintiffs to alter the creek bed to prevent potential flooding and scouring that the proposed logging might cause. DNR replaced a culvert with a larger one on the right of way road behind the house that was eventually destroyed; tapered the bank back on both sides of the creek within the vicinity of the Dickgieser residence, house, and the mobile home on the subject property (The three houses are collectively referred to herein as "the houses");

JAY A. GOLDSTEIN • LAW OFFICE
1800 Cooper Point Road SW, No. 8 • Olympia, WA 98502
FAX 360-357-0844 • VOICE 360-352-1970
E-MAIL: jaglaw@uswest.net

installed several log weirs just upstream of the houses; and dug settling ponds at several locations behind and upstream from the houses.

3.6 Prior to the logging, plaintiffs noted to DNR that the bank protection was improperly located and of insufficient size and nature for effective protection of the houses. Plaintiffs warned DNR that logging the hillside without proper protections was likely to cause a catastrophic event and was likely to cause such an event anyway: The streambed would fill with sediment and gravel, raising the streambed and flooding would occur. This is exactly what happened. See, correspondence between the parties attached as Exhibit C1, C2, and C3.

3.7 Defendant knew, or should have known, that the alteration of the creek bed and drainage improvement on defendant's property constituted an unreasonable risk and hazard of causing injury to plaintiffs in that increased water run off, flooding, soil and logging debris would slide down the steep hillside onto plaintiffs' lot and the residences and improvements constructed on plaintiffs' property. Defendant, in wanton and reckless disregard of the consequences of the unreasonable risk and hazard created thereby, negligently and carelessly failed to provide adequate retaining walls or bulkheads for the soil and debris; failed to employ adequate methods to drain the increased water runoff which defendants knew, or should have known, would flood onto plaintiffs' subject property; and negligently and carelessly left the debris in its loose state without taking any precautions to prevent it from sliding down the steep hillside onto plaintiffs' property and the residences and improvements on the property.

3.8 During the winter following the logging in 1995 et seq., flood waters overflowed the banks, flooding the older house and covering the floors to a depth of several inches. The house foundation was irreparably destroyed; several inches of

JAY A. GOLDSTEIN • LAW OFFICE
1800 Cooper Point Road SW, No. 8 • Olympia, WA 98502
FAX 360-357-0844 • VOICE 360-352-1970
E-MAIL: jaglaw@uswest.net

water covered the floors; many of the household furnishings and personal property were destroyed. The foundation of the second house (mobile home) was also damaged. The septic system of the first house was destroyed, and the second house septic system was damaged, requiring repair. The koi fish pond on the subject property was filled with sediment, and fish died because of the sediment. The streambed was filled with scoured gravel and sediment from landslides upstream due to excessive water flow, caused by the logging and the rapid water run-off. The newly dug sediment ponds constructed by DNR filled in, and the culvert filled with scoured gravel causing flood waters to back up and flood the house. The inadequately constructed log weirs were covered with sediment and gravel, and the log deflection installed by DNR was buried. The gravity water system, which provided domestic water to both houses, was destroyed, and a new well needs to be drilled.

3.9 The stream that had been stable for over 70 years and was 3 to 4 feet wide was now filled with gravel and is 15 to 20 feet wide in some locations. Since the DNR logging, the stream has become a chronic annual problem with flooding and gravel scouring. DNR's preventative work failed.

3.10 In the 30-plus years that plaintiffs lived in the house, the creek never overtopped its banks, and the water quality was high, not turbid even during the highest flows. Because of the high quality of water in this stream, plaintiffs used it for domestic water supply for both homes located on the property. This water system supplied domestic water for over 70 years with no problems

3.11 Plaintiff owners and tenants of the subject property filed a risk management claim with the state, claim number DRM 49050029, on January 3, 2000.

3.12 Plaintiffs' home cannot be repaired or rebuilt without great expense,

JAY A. GOLDSTEIN • LAW OFFICE
1800 Cooper Point Road SW, No. 8 • Olympia, WA 98502
FAX 360-357-0844 • VOICE 360-352-1970
E-MAIL: jaglaw@uswest.net

disproportionate to all benefit to be derived from the home were the home to be repaired. The fair market value of plaintiff's home and property has decreased significantly caused solely by defendant's negligence, in an amount to be determined at trial. Because of the flooding problems, the Milo Dickgieser family has had to move and relocate. Mr. and Mrs. Milo Dickgieser were compelled to pay funds in procuring another residence; for removing and replacing the furniture, fixtures, and other items; plaintiff owners and or were compelled to pay funds for removing the ruins of the house; all to plaintiff's damage in an amount to be determined at trial.

IV. CAUSES OF ACTION

A. Inverse Condemnation

The above alleged actions amount to a deliberate physical invasion of Plaintiffs' property, tantamount to the continuous physical taking of the damaged portions of the property for public use.

B. Nuisance

Defendant's conduct constitutes a nuisance under RCW 7.48.010 and common law.

C. Damage to Land and Property

Defendant's conduct violates RCW 4.24.630.

D. Negligence

Defendants owed a duty to Plaintiffs of reasonable care, which the defendant breached by its actions. These actions proximately caused damage to Plaintiffs' property and constitutes negligence under common law.

V. PRAYER FOR RELIEF

Wherefore, plaintiffs prays that judgment be entered against Defendant State of Washington as follows:

JAY A. GOLDSTEIN • LAW OFFICE
1800 Cooper Point Road SW, No. 8 • Olympia, WA 98502
FAX 360-357-0844 • VOICE 360-352-1970
E-MAIL: jaglaw@uswest.net

1. Requiring Defendant to pay damages in an amount to be proved at trial, under Art 1 §16 of the Washington Constitution; RCW 7.48.010; RCW 4.24.630; and common law nuisance;

2. Awarding actual costs including expert witness fees and litigation expenses, and reasonable attorney's fees incurred under this action, pursuant to RCW 8.25 and RCW 4.24.630;

3. Awarding interest at the rate of 12% percent per annum from the date of first damage to plaintiffs' property; and

4. Awarding any other additional or further relief which the Court deems appropriate or just.

DATED this ____ day of _____, 2000.

Jay A. Goldstein, WSBA 21492
Attorney for Plaintiffs DICKGIESER and SHOLD

JAY A. GOLDSTEIN • LAW OFFICE
1800 Cooper Point Road SW, No. 8 • Olympia, WA 98502
FAX 360-357-0844 • VOICE 360-352-1970
E-MAIL: jaglaw@uswest.net