

1-1-1999

## Wedden II v. San Juan County, 958 P.2d 273 (Wash. 1998)

Jennifer Lee

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

---

### Custom Citation

Jennifer Lee, Court Report, *Wedden II v. San Juan County*, 958 P.2d 273 (Wash. 1998), 2 U. Denv. Water L. Rev. 351 (1999).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

Wedden II v. San Juan County, 958 P.2d 273 (Wash. 1998)

water channel, raising the level of water covering the stumps, and failing to place buoys where the stumps remained. The court reasoned that human effort creates an "artificial" condition.

"Latent," as defined by Washington case law, means "not readily apparent to the recreational user." An additional inquiry is whether the injury-causing condition is "readily apparent to the general class of recreational users, not whether one user might fail to discover it." The court held the record inconclusive about the latency of the tree stumps; thus, the issue was a matter of fact precluding summary judgment.

The dissent disagreed with the court's interpretation of "artificial." The dissent stated that the purpose of the statute combined with the statutory language and previous case law dictate that "artificial" should be construed narrowly; thus, the majority's definition was overbroad and contrary to the purpose of the statute. The dissent also attacked the majority's latency analysis.

Against the second defendant, the County of Spokane, the plaintiff challenged the public duty doctrine's barring of his claim that he was a third party beneficiary of a funding agreement between the County and the State Parks and Recreation Commission. In Washington, the public duty doctrine bars negligence claims by individuals against a governmental entity absent clear statutory legislative intent to identify and protect a "particular and circumscribed class of persons"— the "legislative intent exception." The intent to protect a specific group must be clearly expressed; it will not be implied. The exception allows a plaintiff to bring a claim against the governmental entity for statute violation if the plaintiff can show his or her membership in the clearly identified class.

Here, the plaintiff argued that an agreement between State Parks and the County made pursuant to the state boating safety grants and contracts program defined the duty of the County toward recreational boaters thereby creating a specific class apart from the public at large. The court held that the County, in the agreement, did not assume responsibilities beyond those existing in statutory and tort law; therefore, the public duty doctrine barred the plaintiff's claim.

*Amy Beatie*

**Wedden II v. San Juan County, 958 P.2d 273 (Wash. 1998)** (holding that an ordinance banning personal watercraft is not in conflict with other state law, and does not violate county's police powers or substantive due process).

After reviewing the negative effects of motorized personal watercraft (essentially "jet skis" or "PWCs") on marine life and tourism, San Juan County passed an ordinance banning the use of them "on all

waters of San Juan County" and "on Sportsman Lake" in the county. This case presented an appeal from the decision by the trial court that held the ordinance void. The standard under which the Washington Supreme Court reviewed the case was *de novo*. The court made its decision in response to three issues: whether the ordinance was in conflict with other state law; "[wa]s an unreasonable exercise of [the county's] police power," therefore violating the Washington State Constitution; and whether it violated substantive due process.

In analyzing whether the ordinance violated the Washington Constitution, the court first considered whether the ordinance conflicted with other state law. The respondents claimed the ordinance conflicted with the state boat permitting law and public trust doctrine, specifically the Shoreline Management Act ("SMA") and the Marine Recreation Land Act. The court held that the permit law merely stated a "precondition to operating a boat" in Washington by requiring a permit, and did not create "an unabridged right to operate PWC in all waters throughout the state." Next, the court found the ordinance consistent with the policy of the SMA since it "favors 'the resources and ecology of the shoreline; over recreational interests.'"

Finally, respondents claimed a violation of the Marine Recreation Land Act ("Act") because as a recipient of funds created by the Act through fuel taxing on boats, San Juan County "must keep [their] facilities open to 'all motorized vessels.'" The court dismissed this claim based on findings that while the language of the county's agreement with the interagency committee for outdoor recreation (established by the Act to distribute funds) provided that facilities will "be kept open for public use," there was no language prohibiting the county from "restrict[ing] the manner in which the public uses the facilities."

A two-part test determined "the validity of a statute passed pursuant to police power." The court looked at whether the ordinance "promote[d] the health, safety, peace, education, or welfare of the people" and if it bore "some reasonable relationship to accomplishing" the statute's underlying purpose. Since the ordinance's language conveyed an intent to protect the safety of other boats, swimmers and wildlife of the area, the court concluded the first part of the test met. Respondents took issue with the ban as an inappropriate means to the ordinance's end. They claimed mere public displeasure with PWC might not dictate the county's action, and that the ordinance extended beyond local boundaries, affecting PWC users and retailers outside of San Juan County.

The court responded to these points by looking at the inadequacy of existing noise regulations, the evidence of aquatic damage unique to PWCs, and bans on PWCs in other jurisdictions "held reasonable." In finding the ordinance "purely local," the court utilized a hunting analogy: "[a] ban on hunting within a city is a valid exercise of the police power." Since the ordinance only affects PWC activity within San Juan County, and does not "preclude [county] residents from

using PWC outside the County, nor does it regulate activities beyond geographical limits," the court found the ordinance within county police powers.

An "unduly oppressive" test determined violations of substantive due process, and the court balanced the "public's interest against those . . . regulated." The court held that "[i]t defies logic to suggest an ordinance is unduly oppressive when it only regulates the activity which is directly responsible for the harm." Since PWCs directly caused the harm to the public and environmental problems cited in the evidence presented at trial, and their owners "are not being forced to bear a financial burden or solve a societal problem not created by PWC," the ordinance cannot be found unduly oppressive.

*Jennifer Lee*

**DiBlasi v. City of Seattle, 969 P.2d 10 (Wash. 1998)** (holding a municipality liable for damages to adjacent landowner's property caused by surface water that collected, channeled, and thrust onto the property from a public street).

In 1924, a real estate developer dedicated certain roadways to the City of Seattle ("City") for public use. The dedication also granted the City the right to slope the original grading of the streets for cut or fills. In 1975, Patricia DiBlasi, the plaintiff, built her house on the downhill slope of 38<sup>th</sup> Street near the edge of a ravine. The developer allegedly filled the ravine to extend 38<sup>th</sup> Street. Consequently, the City installed a berm to stop surface water from running onto 38<sup>th</sup> Street. However, in the spring of 1991, the City removed the berm when it resurfaced at nearby Barton Street. Local residents and hydrology experts stated that the removal doubled the amount of water flowing over 38<sup>th</sup> Street. This tore the street apart. After several complaints, the City reinstalled the berm, but this failed to control water runoff during heavy rains. The removal of the berm created a tension crack that extended 40 feet east, across the south end of 38<sup>th</sup> Street and onto the plaintiff's property. The City did not act to remedy the situation. In early April 1991, water pressure in the tension crack caused a landslide, which destroyed a portion of the plaintiff's property. A landslide and hydrology expert opined that the City could have prevented the severe damage if it acted sooner and that the impermeable nature of the street caused the collection of the surface waters.

The plaintiff asserted three theories for the City's liability. First, Plaintiff claimed that the City failed to maintain its prescriptive easement. Second, Plaintiff asserted the street collected and channeled surface waters in a manner different than the natural flow of the water thrust onto the property of the plaintiff causing damage to her property. Third, Plaintiff averred that she was entitled to inverse