

1 Sandlin Law Firm  
2 P.O. Box 1005  
3 Zillah, Washington 98953  
4 (509) 829-3111/fax: 3100  
5 e-mail: [Sandlin@nwinfo.net](mailto:Sandlin@nwinfo.net)  
6

The Honorable Barbara J. Rothstein

7 J.J. Sandlin, Attorney for Defendants Rasmussen  
8  
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11

12 UNITED STATES DISTRICT COURT  
13 WESTERN DISTRICT OF WASHINGTON  
14 AT SEATTLE  
15  
16

17 KING COUNTY, a political subdivision ) No. C00-1637R  
18 of the State of Washington; )  
19 )

20 Plaintiff; )

21 )  
22 vs. ) Declaration of John O.  
23 ) Rasmussen, Opposing  
24 JOHN RASMUSSEN and NANCY ) SJM and FRCP 12(b)  
25 RASMUSSEN, husband and wife, and ) Motions to Dismiss  
26 their marital community; )

27 )  
28 Defendants. )  
29

30  
31 JOHN RASMUSSEN hereby declares under penalty of perjury as follows:

32 Since the attack on my civil rights and property ownership by King County  
33 began several years ago, I have read and studied to understand its actions and my  
34 rights. From that effort I have come to the conclusion that King County has acted  
35 fraudulently against me in their claims to ownership of my property and their claim

Declaration of John Rasmussen Opposing Dismissal - 1

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Cottage Square  
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e-mail: [sandlin@nwinfo.net](mailto:sandlin@nwinfo.net)

1 to an easement for trail purposes. Further their actions have violated the law and  
2 my rights in a most mean-spirited and ugly manner.

3 There are multiple issues that need to be resolved in this case before the Federal  
4 District Court. The first issue is to determine who owns the land under the railroad  
5 right of way that crossed my property. If it is determined that King County has fee  
6 simple title, the case is over, and all the issues are resolved its favor. If I have fee  
7 title, it must then be decided if the county has a right to enter my land and build a  
8 trail without compensating me. Further, it must be decided if I am due damages  
9 for the King County's actions against my family and me.

10 Bill Hilchkanum and his wife, Mary, granted a right of way deed to the Seattle  
11 Lake Shore and Eastern Railway Company (SLS&E) on May 9, 1887. My wife  
12 and I are successors in interest to a portion of the Hilchkanum property, and  
13 burdened, in turn, by that right of way deed.<sup>1</sup>

14 SLS&E was formed in 1885 for the purpose of linking Seattle to the outside  
15 world by rail. A spur line that connected Woodinville and the present city of  
16 Issaquah required SLS&E to obtain the Hilchkanum deed.

17 **Ownership:** King County has claimed that all the right of way deeds on the  
18 Redmond to Issaquah spur granted fee simple title to SLS&E, and that King  
19 County now holds that title as successor in interest. However, in my research, I  
20 have found two Washington State decisions that held right of way deeds granted to  
21 SLS&E were easements, not fee. Thomas and Carrie Burke, and Watson and Ida  
22 Squire granted those deeds. Further, in the *Lawson* decision, the Washington State  
23 Supreme Court made the following observation: "There is a strong argument to be

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<sup>1</sup> Declaration of Steve Graddon dated April 6, 2001

1 made that Burlington Northern had no interest to convey to the County..." *Lawson*  
2 *v. State*, 107 Wn.2d 444, 458, 730 P.2d 1308 (1986). The *Lawson* properties had  
3 also been deeded to SLS&E.

4 With the recorded decisions finding SLS&E obtained only easements, King  
5 County claims that *all*, or *most*, of the SLS&E right of way deeds along East Lake  
6 Sammamish conveyed fee simple title.

7 After more than a year of asking King County to explain its right to enter my  
8 property to build a trail, I finally found out that the county was claiming fee simple  
9 ownership when the county filed suit to quiet title. As a tax paying, law abiding,  
10 citizen of this county, I find it very offensive that King County would file this suit  
11 without ever communicating with me, especially in light of my many attempts to  
12 communicate with it.

13 The county bases its claim of ownership of the land under the right of way on a  
14 favorable comparison of the Hilchkanum deed with the Simpson deed in *Brown*<sup>2</sup>  
15 and two deeds described in *Roeder III*<sup>3</sup>. These deeds flunk the comparison test  
16 because Hilchkanum has the grant of *a right of way for railroad purposes in its*  
17 *granting clause*, and the deeds the county chooses to compare do not.<sup>4</sup> The  
18 importance of the words "right of way" in the granting clause of railroad deeds has  
19 been emphasized repeatedly in Washington State decisions. There are a number of

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<sup>2</sup> *Brown v. State*, 130 Wn.2d 430, 924 P.2d 908 (1996)

<sup>3</sup> *Roeder Co. v. K&E Moving*, 102 Wn. App. 49, 54-55, 4 P.3d 839 (2000)

<sup>4</sup> I have studied the Washington State decisions on the easement-fee issue, and have made a comparison of the Hilchkanum, Simpson and Squire deeds. See my notes in Exhibit 1.

Declaration of John Rasmussen Opposing Dismissal - 3

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1 other considerations that are factored into the construing of a deed, but this one  
2 single factor stands out to differentiate the deeds considered here.

3 It would be better to compare Hilchkanum with the Squire deed. The Squire  
4 deed was granted to SLS&E a few months before the Hilchkanum deed. The  
5 established factors used to construe these deeds compare well because these two  
6 deeds use almost identical language.<sup>5</sup> The Squire deed was found to be an  
7 easement.<sup>6</sup>

8 **Wrongdoing:** Several years ago King County believed that *almost all of the*  
9 *land under the ELS right of way was **not owned** by the railroad.* This position was  
10 reflected in a memorandum by John Couch, Director of Parks and Recreation, to  
11 Mayor, Council, Park Board and Trails Committee of the City of Redmond on  
12 January 13, 1997. That memorandum had an attachment provided by King County  
13 explaining issues relating to ELST. The last paragraph of that attachment  
14 consisted of the following:

15 "Currently we believe the Railroad owns one 1500 lineal foot section of the trail.  
16 \*\*\* The rest of the route is held by the Railroad in a right of way easement."  
17

18 When this document was released by the county under the Freedom of Information  
19 Act by King County, that paragraph was *removed*.<sup>7</sup> This was discovered by chance  
20 when two of my neighbors compared notes after obtaining the memo from the two  
21 different sources. The "1,500 lineal" feet described in the attachment would be only  
22 2.3% of the length of the Redmond-Issaquah right of way. It is suspicious that this

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<sup>5</sup> The significant parts of the Hilchkanum and Squire deeds are shown in Exhibit 1, pp. 27.

<sup>6</sup> King County v. Squire Investment Co., 59 Wn. App. 888, 801 P.2d 1022 (1990)

<sup>7</sup> John Couch ELST Progress Report, Altered and Unaltered versions, See Exhibit 2.

1 document was altered because King County now claims all, or almost all, of the right of  
2 way land is owned by the county.

3  
4 Further, King County ordered a title report on the right of way from Commonwealth  
5 Land Title Insurance Company in mid 1996. In December 1996 King County Office of  
6 Open Space produced a "Title Officer's Review of Title Report". I have looked through  
7 that report and identified the section that applies to my property. The report for my  
8 section of the right of way, and every other section that I read, contains this exception:

9 "Vesting: \*\*\*The particular deed under which this property was acquired was  
10 entitled "right of way deed" which would probably be deemed to be an easement  
11 interest only.\*\*\*"<sup>8</sup>

12  
13 In April 1999, I began writing letters demanding that the county explain its right to  
14 enter my property for purposes of a trail.<sup>9</sup> For the next fifteen months, I wrote letter  
15 after letter to every official who could possibly help resolve my questions. In those  
16 fifteen months I received no reply that adequately addressed my concerns. However I  
17 did get a vague and non-specific reply from Mr. David Eldred (King County Deputy  
18 Prosecutor) on April 26, 1999.<sup>10</sup> He stated that "... King County's position with respect  
19 to this right of way is clear" and went on to indicate the county had the right to establish  
20 a trail without compensating me, due to federal law. If Mr. Eldred was explaining his  
21 "clear" view of the county's rights, why didn't he just tell me that the county owned my

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<sup>8</sup> King County Office of Open Space, Title Officer's Review of Title Report, See Exhibit 3.

<sup>9</sup> John Rasmussen declaration to King County Superior Court dated September 2, 2000, includes 57 documents and is provided to this Court as Exhibit 7 to Scott Johnson declaration dated February 15, 2001

<sup>10</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, at pp. 32.

1 land and could enjoy its full rights of ownership? I have to assume he didn't make that  
2 statement because he didn't believe that the county owned the land at that time. Yet a  
3 few months later Mr. Eldred was claiming that the county owned all the right of way  
4 land.

5 My first indication that the county was claiming ownership to my land was from  
6 reading these words in the Seattle Post-Intelligencer September 28, 1999.

7 "...David Eldred, a county attorney, said he has no doubt  
8 the county owns the entire right of way."  
9

10 After reading the article, I wrote Mr. Eldred and asked: " Did you make that  
11 statement? Do you stand by that statement?"<sup>11</sup> Mr. Eldred did not reply or acknowledge  
12 that e-mail. I wrote him and asked again in late December, 1999. Again, with no reply.  
13 So, on January 10, 2000, I wrote the County Prosecutor, Mr. Norm Maleng<sup>12</sup> and asked  
14 if he would confirm that the county was claiming ownership of my property. He  
15 refused to answer. The next day, I made a last attempt with Mr. Eldred and made this  
16 statement:<sup>13</sup>

17 "It appears that you are making decisions about the East lake Sammamish  
18 Trail that are illegal, and are hurting me and my family. We need to  
19 meet, and you need to explain directly to me exactly what you are doing  
20 and what justification you have for your actions."  
21

22 True to form, Mr. Eldred did not answer that request, either. While the lawyer for  
23 ELST would not tell me if the county was claiming ownership of my land, the county

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<sup>11</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 59.

<sup>12</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 60.

<sup>13</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 60.

1 leadership repeatedly released statements to the public that the county owned all, or "the  
2 great extent", or 80 %, of the land under the right of way. Here are several instances:

3  
4 "David Eldred, an attorney with the civil division of the King County  
5 Prosecutor's Office, says homeowners' hopes are ill-placed. 'I don't think there's  
6 any doubt the county owns the property," Eldred said. 'Our determination of  
7 ownership is based on a thorough review of the records and the law.' (Eastside  
8 Journal 10-1-1999)

9  
10 "Elaine Kraft, spokeswoman for King County Executive Ron Sims, says the  
11 county's claim on the land is solid. "'Our attorneys have gone to great lengths to  
12 determine that the great extent of the trail is owned by King County,' Kraft said.  
13 (Eastside Journal 6-3-2000)

14  
15  
16 "Councilman David Irons Jr., R-Sammamish, said he'll vote against Sims' plan. "I  
17 think it's premature and we're still ignoring the issues of safety and ... ownership  
18 of the land, which the Parks Department and Ron Sims agree that we only own  
19 up to a maximum of 80 percent, that 20 percent of the trail is owned by the local  
20 residents." (The Issaquah Press 9-13-2000)

21  
22  
23 King County has claimed that it owns 2.3%, then 100%, then "the great extent", then  
24 80% of the land under the ELS right of way. Which is it? The ownership issue was  
25 essentially decided over one hundred years ago at the time of the grant of the deeds.  
26 Why does King County keep changing its mind, while maintaining it has made "...a  
27 thorough review of the records and the law."? One logical explanation is that the King  
28 County Prosecutor's Office is trying to avoid the county's involvement in federal tax  
29 fraud and is making the claim of ownership to hide its complicity with BNSF.

30 There is evidence that, as a condition of railbanking the East Lake Sammamish spur,  
31 Burlington Northern required The Land Conservancy of Seattle and King County (TLC)

Declaration of John Rasmussen Opposing Dismissal - 7

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Cottage Square  
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e-mail: sandlin@nwinfo.net

1 and King County to certify a phony donation of land the railroad didn't own. This  
2 would have allowed BNSF to take a fraudulent tax write-off of \$40.2 million.

3 BNSF hired Arthur Andersen LLP to appraise the East Lake Sammamish right-of-  
4 way, and instructed the appraiser to assume that Burlington Northern owned all the  
5 right of way land, fee simple. This can be verified by looking at page eight of the  
6 Arthur Andersen appraisal dated December 10, 1996. "...we assumed fee simple title at  
7 the clients request." The client is BNSF.<sup>14</sup>

8 Then, BNSF drew up papers of sale that showed TLC accepting the phony donation,  
9 and agreeing to certify the donation to the IRS. King County followed, and  
10 acknowledged the same phony donation when TLC sold to King County.

11 The Prosecutor's office and TLC have made attempts to hide the fraud, it appears.  
12 The draft copy of the agreement between BNSF and TLC was released to the public  
13 with the incriminating paragraph on page six distorted to the point it cannot be  
14 accurately read, while the remainder of the document is perfectly readable.<sup>15</sup> When  
15 TLC provided a copy of the final agreement to the City of Issaquah, the incriminating  
16 page was *omitted*.<sup>16</sup> The missing page six of the BNSF-TLC final sale agreement was  
17 later obtained and is now included. The page deals with the phony donation, and TLC's  
18 commitment to verify the donation with the IRS.

19 The false claim to ownership of my land under the right of way serves the county's  
20 interests in several ways. If the county owns the land, it avoids the issue of its  
21 responsibility to pay for the establishment of a trail easement. It allows the county to

---

<sup>14</sup> Arthur Andersen LLP Market Value Appraisal December 10, 1996, See Exhibit 4.

<sup>15</sup> Draft BNSF-TLC Sale Agreement: See Exhibit 5.

<sup>16</sup> Final BNSF-TLC Sale Agreement, with missing page 6 included: See Exhibit 6.

1 charge bisected property owners a crossing fee to cross the trail from one side of their  
2 property to the other. An Eastside Journal article on January 6, 2000 reported that the  
3 county was considering a charge of up to \$7,000 on some properties to cover a five-year  
4 crossing permit.

5 The false claim of ownership protects the county from complicity in federal tax  
6 fraud claims for accepting a donation of land that the county knew BNSF did not own.  
7 There are irregularities in the amount that King County paid to TLC for the right of  
8 way. It appears the county paid several times the value of what it received from TLC.  
9 TLC paid \$1.5 million for the right of way, and then sold a large portion to King  
10 County for \$2.9 million within hours.<sup>17</sup> Essentially all of the remaining portion was  
11 then sold to the City of Issaquah for about \$1 million. Several other suspicious  
12 transactions are rumored and should be investigated in discovery. By falsely claiming  
13 ownership of all the right of way land, the high price paid by the county appears to be a  
14 bargain. It is obvious to me that TLC made millions from this transaction. Was this  
15 obscene profit a payoff for TLC to shield the county from a direct connection to BNSF  
16 and the federal tax fraud?

17 The false claim of ownership could also allow the county to claim the right of way  
18 land by adverse possession. The county has publicly claimed ownership, and will  
19 occupy the property by establishing the trail. After the legal waiting period the county  
20 will be eligible to file an adverse possession claim. The county executive, council  
21 members and prosecutor should confirm or deny this tactic under oath.

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<sup>17</sup> TLC-King County Sale Agreement, See Exhibit 7.

1 King County's claim to ownership of my land is without merit, violates my rights,  
2 and is intended to hide the county's wrongdoing. There is a need to call for a full,  
3 independent, federal investigation of every aspect of these transactions.

4 **Events leading to this suit:** On April 8, 1999 my wife and I attended an open  
5 meeting of the ELST Citizen Advisory Group (CAG) moderated by Ms. Jennifer  
6 Knauer. Near the end of that meeting Ms. Knauer stated her intention to tour the CAG  
7 the length of the right of way. I saw that act as a clear violation of my rights. After the  
8 meeting I approached Ms. Knauer, identified myself, and told her where I lived. I then  
9 explained that she would be trespassing if she brought the CAG across my property. I  
10 told her that the only easement that the county had was for railroad use and that she had  
11 no right to enter my property for trail purposes because the county didn't have an  
12 easement for that purpose. I then told Ms. Knauer that I would have her arrested for  
13 trespassing if she brought the CAG onto my property.

14 The next day I wrote an e-mail to Mr. Ron Sims, the county executive.<sup>18</sup> I described  
15 the meeting with Ms. Knauer, and explained that the county was violating my rights and  
16 the law by establishing the trail without first obtaining a trail easement and paying  
17 compensation. Mr. Sims did not reply to my questions or concerns that day, nor did he  
18 reply to similar and repeated concerns expressed in the e-mails I sent to him over the  
19 following fifteen months. Those e-mails and the other correspondence that I had with  
20 government officials are documented in my declaration to King County Superior Court,  
21 dated September 2, 2000.<sup>19</sup> There are copies of 57 letters attached to that declaration.

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<sup>18</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 15.

<sup>19</sup> The Declaration of John Rasmussen to King County Superior Court dated September 2, 2000  
is supplied to this Court as Exhibit 7 to Scott Johnson declaration dated February 15, 2001.

1 The letters detail unethical conduct, trespassing, unlawful activities, illegal takings,  
2 harassment, civil rights violations, denial of due process, federal tax fraud, and more.  
3 The letters were sent to officials at the federal, state, county, and city level. Not one of  
4 those officials answered my concerns in any significant way, and in almost every case,  
5 did not even acknowledge my correspondence. I have been cut off from my government  
6 by the stonewalling I received from these officials. My requests for redress of  
7 grievances have gone unanswered. As I show below, I was also ignored when I took  
8 my concerns to the county trail manager at a public meeting. Further, my right to speak  
9 to trespassing county employees has been taken away. The only remaining avenue  
10 available for me to communicate with King County government is through this Court.  
11 Now, King County attempts to block this *last* channel of communication by moving to  
12 dismiss the claims, and limit discovery. My right to free speech has been violated by  
13 these county actions. Even my own King County Council representative, Mr. David  
14 Irons, has not answered the questions I posed over a year ago. This, after Mr. Irons  
15 promised to answer my concerns in two to three weeks. If I am not allowed "my day in  
16 court", my questions will never be answered and the county officials will have  
17 completely blocked my right to communicate with them.

18  
19 Ms. Knauer and the CAG did trespass and entered my property for trail purposes on  
20 April 11, 1999. I wasn't home but my wife went to the right of way and expressed her  
21 wish that they leave. My wife's request was ignored.

22  
23 As King County continued to ignore my claims of illegal trespassing and sent a  
24 continual flow of county employees across my reversionary property, I met and  
25 challenged these employees at every opportunity. In each instance I would first ask

Declaration of John Rasmussen Opposing Dismissal - 11

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1 why they were on my property. If the employee explained they were there for railroad  
2 purposes, such as rail salvage or weed control, I did not interfere. If the employee  
3 described a purpose to do with establishing the trail, my reaction varied over time.  
4 Early on, I would explain that they had no right to enter for trail purposes and let them  
5 pass that one time. Much later, I instructed them to leave my property from the side  
6 they entered. Many of these employees simply ignored my request and trespassed  
7 anyway. I took this approach because I felt an adjustment period was needed while  
8 folks got used to the idea of the property being recognized as private. Also, that would  
9 allow time for King County to review the deeds and the law, come to an understanding  
10 of my rights, and begin a dialogue to resolve our differences. Unfortunately, the county  
11 showed no interest in recognizing my rights, or obeying the law. This intentional  
12 trespassing by county employees at the direction of King County government is a  
13 violation of my privacy and 14th Amendment rights, and is a civil rights violation,  
14 under color of law, under 42 U.S.C. §1983. King County has violated its own policies  
15 while it continues to violate my civil rights.

16 On August 11, 1999 I wrote Sheriff Reichert, explained that the county was illegally  
17 entering my property, and asked him to become familiar with the situation and the law.  
18 I asked him if he was going to enforce the law when I called for his assistance in  
19 removing trespassing county employees. Two days later, Sheriff Reichert wrote back  
20 explaining that it was not his responsibility to enter into civil disputes<sup>20</sup>. Sheriff Reichert  
21 then sent deputies to *enforce the county's trespass*. Sheriff Reichert decided on that day  
22 to deny me police protection from trespassers on my property, and to enforce the illegal  
23 activities of the County.

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<sup>20</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 45-50.

1 An incident in the spring of 2000 significantly changed the emotional and legal  
2 environment. I was put into a position of endangering my life to defend my property  
3 rights. The incident began when I noticed a county employee driving a jeep type  
4 vehicle onto my right of way property from the south. I walked down to the right of  
5 way, stopped her about a third of the way across my property, and asked her what she  
6 was doing. She explained she was mapping utility crossings for the trail. I then  
7 explained that she was trespassing and demanded that she remove herself and her  
8 vehicle to the south. I expressed my frustration and anger that the county had continued  
9 to send trespassers after I had reminded it many times of its illegal actions. She stated  
10 her intention to cross my property and refused my demand for her to back out her  
11 vehicle. Finally in frustration I walked a few feet in front of her intended path and sat  
12 in the middle of the right of way with my back to her car. The right of way is mounded  
13 on my property and it would have been necessary for her to run over me to continue  
14 across my property. She didn't move her vehicle for several minutes. When she  
15 increased the rpm of the engine to move her vehicle, I was concerned she was intending  
16 to run over me. The full significance of this incident did not truly sink in for me until  
17 some time later. The sheriff had withdrawn the support of the law, and now I was  
18 forced to risk my life to defend my property against trespassing.

19 In frustration, on the Fourth of July, 2000 (Independence Day) I wrote to David  
20 Irons, my King County representative.<sup>21</sup> I detailed the many irregularities with ELST:  
21 the tax fraud, the refusal of the county to address my concerns, and the continued  
22 trespassing and harassment. Mr. Irons promised to respond to these concerns five

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<sup>21</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 88.

1 months earlier, but did not.<sup>22</sup> In the July 4, 2000 letter, I gave Mr. Irons another  
2 opportunity to keep his commitment to deal with the county's wrongdoing, and  
3 suggested that I was seriously considering meeting county trespassers with a loaded  
4 shotgun. Here is a quote from that letter.

5 "I'll give adequate notice to Sims, Maleng, Reichert, the Council and Parks  
6 before I get out the shotgun. I've got to find it first, it's tucked away somewhere  
7 in the house. I last shot it hunting ducks and pheasants as a kid growing up in  
8 Eastern Washington. I never thought in those innocent days that the gun would be  
9 used to defend my property and my life. In the correspondence to the County I  
10 will spell out, explicitly, how I intend to defend myself and how they can ensure  
11 the safety of County employees that accidentally wander onto my property. I'm  
12 writing now to give you a small window of time to begin representing my rights  
13 and the rule of law in this County. I believe you and the Council have no right to  
14 ignore the corruption and illegal activities by officials of this County. The time  
15 you promised to respond passed months ago."  
16

17 Considering the withdrawal of police protection, the fact that I had risked my life  
18 once already, and the obvious intention by the county to continue to send trespassers  
19 that could threaten my life again, I felt justified in defending myself. I had warned the  
20 county for over a year that it was in violation of the law and demanded it explain its  
21 actions. The county had deliberately ignored my legitimate concerns and deliberately  
22 harassed me by continuing to send trespassers.

23 Mr. Irons called me two days later. His only concern was that *he* might get into  
24 trouble for not reporting the possibility I might use a gun to defend my life. He didn't  
25 ask if my life was in danger, or if I had concerns for my safety. He showed no concern  
26 that there was evidence that the county was acting illegally. His only concern was that  
27 *he might get in trouble*. I told him I would rewrite the letter and be more explicit about

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<sup>22</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 61.

1 certain aspects. The second letter again expressed my frustration with the corruption of  
2 the county, the harassment, trespassing, and the fact that I felt I needed a gun to defend  
3 my life if I attempted to stand up to this lawlessness. That letter was sent to David  
4 Irons, but also to the sheriff, and several others.<sup>23</sup> The letter prompted the first response  
5 by Ron Sims after fifteen months of receiving my letters.<sup>24</sup> He admitted that he had  
6 received my correspondence. He wasn't concerned about any of the county  
7 wrongdoing or my intention to defend my life and property. His only concern was to  
8 mischaracterize my intentions by stating that I intended to *shoot innocent county*  
9 *employees*. Of course, I had **never** written that, and certainly would **never** harm  
10 someone except in self-defense. This intentional mischaracterization by Mr. Sims  
11 allowed him to also threaten me with a felony. If he were successful with false felony  
12 prosecution, I would lose my livelihood. I'm a commercial pilot and cannot hold an  
13 airman's certificate with a felony conviction. Power corrupts, and Mr. Sims had  
14 misused his power for fifteen months to harass me and ignore my rightful concerns.  
15 Furthermore, his intentional misrepresentation of the facts *threatened the safety of my*  
16 *family*. Sims established an air of uncertainty and mistrust that prompted the police to  
17 react to an unfounded fear when serving papers<sup>25</sup>. Mr. Sims twisted my words into a  
18 meaning that threatened my family and me. He did this when I had already expressed  
19 my concern for the county employees, and made a commitment that they not be  
20 harmed. My intent was to stop the continual, intentional harassment from the county,

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<sup>23</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 96.

<sup>24</sup> Ron Sims Letter dated 8-24-00, See Exhibit 8.

<sup>25</sup> When my son was approached, the deputy placed his hand on his sidearm in a threatening manner.

1 and I was *justified* in using a gun to *defend* myself, because the sheriff had withdrawn  
2 the protection of the police.

3 When the county sued me I finally found out the answer to questions I had been  
4 asking for fifteen months. The prosecutor's office finally notified me the county was  
5 claiming fee simple title to the land under the railroad right-of-way. Also, the  
6 prosecutor successfully moved for a preliminary injunction prohibiting my wife and me  
7 from interfering with, or contacting, trespassing county employees, through false  
8 statements to the court. The county successfully moved to have my Second  
9 Amendment right to possess a gun taken away from me, with false statements to the  
10 court. If the prosecutor had checked my background, he would have found nothing of  
11 concern, because I have never done anything violent to another person in all my life. I  
12 have never threatened to unlawfully harm another person. I have never brandished a  
13 gun before another person. I have always been peaceful, lawful and respectful of  
14 others' rights. Being characterized as dangerous by the prosecutor is defamatory, and  
15 injures me.

16 I began writing letters to the county on April 9, 1999, after I had *warned* Ms.  
17 Jennifer Knauer not to trespass on my property.<sup>26</sup> That brief warning to Ms. Knauer is  
18 the only direct contact that I have ever had with her. Ms. Knauer made no mention of  
19 this direct confrontation with me in her declaration to Judge Haley, but instead gave  
20 hearsay evidence about a statement her co-worker claims my wife made. In her  
21 declaration to superior court, my wife directly refutes the Knauer statement. When  
22 Knauer and the CAG trespassed on my property, she ignored my wife's request that she  
23 leave. In further hearsay evidence, Ms. Knauer claimed I had "confronted" the rail

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<sup>26</sup> Exhibit 7 to Scott Johnson declaration dated February 15, 2001, pp. 15.

1 salvage crew. I had a friendly relationship with Mr. Spence and his crew. Ms. Knauer  
2 defamed me in her declaration.

3 Judge Haley imposed a preliminary injunction prohibiting my wife and me from  
4 interfering with or contacting trespassing county employees. Further, the judge  
5 imposed an injunction denying me the right to possess a gun. These injunctions were  
6 granted because the judge was not presented a full and accurate set of facts. The denial  
7 of my right to bear arms, combined with the fact the county refused to provide police  
8 protection against trespassers constitutes a violation of my Second Amendment Right to  
9 Bear Arms, and a violation of my civil rights, under color of law. Further, the denial of  
10 my right to approach trespassing county employees and speak to them denies me my  
11 First Amendment Right of Free Speech, also a civil rights violation, under color of law.

12 After graduation from the U.S. Naval Academy in 1967, I attended flight training,  
13 and then flew Navy P-3 Anti-submarine aircraft for the next ten years. In the capacity  
14 of Patrol Plane Commander I was sent to Nuclear Weapons School. The P-3's primary  
15 mission was to counter the threat of Soviet submarine based nuclear ballistic missiles.  
16 This would require the P-3 to carry nuclear torpedoes. Before the Navy certified me to  
17 carry nuclear weapons on my airplane, I was very carefully screened. *I was found*  
18 *stable, responsible and eligible to deploy nuclear weapons to defend my country.*  
19 Without doing any screening, *King County has decided that I'm not safe to have a gun*  
20 *in my home to defend my family.* There is no indication that the county ever talked to  
21 my neighbors, did a background check, or took any steps that would show any  
22 investigation was made. King County intentionally mischaracterized my intentions in  
23 order to silence me after months of me pointing out facts that indicated its wrongdoing.

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Declaration of John Rasmussen Opposing Dismissal - 17

SANDLIN LAW FIRM  
Cottage Square  
P.O. Box 1005  
Zillah, Washington 98953  
(509) 829-3111/fax: 3100  
e-mail: [sandlin@nwinfo.net](mailto:sandlin@nwinfo.net)

1 I have filed a \$6 million claim against King County for the many damages in this  
2 dispute. I am confident that I can show a devaluation in my residential property of *at*  
3 *least* several hundred thousand dollars, due to King County's actions.

4 **Spur Line:** If it is found by this Court that Hilchkanum granted an easement, I ask  
5 the Court to then find that the railroad segment between Redmond and Issaquah is a  
6 *spur line*, thus exempt from STB control, and fully abandoned.

7 I've studied to determine if the Redmond-Issaquah segment is a spur. A spur is  
8 determined by how the track is *used*. My notes from that study are attached as Exhibit  
9 9. Applying the criteria, I found that the use of now discontinued track along East Lake  
10 Sammamish met the considerations necessary to be a spur line.

11 BNSF served only one customer with less than daily service at the time of  
12 abandonment. There was no passenger, telephone, telegraph, or station at the terminus.  
13 The length abandoned was consistent with the length of spur lines. (In one decision the  
14 spur line was 14.5 miles long. The Redmond-Issaquah spur was 12.45 miles in length.)  
15 The track was not part of a main line, and was located completely within Washington  
16 State. These are elements necessary to designate the railroad a spur line, and are  
17 documented in the petitions and decisions of the USSTB.<sup>27</sup>

18 When this spur line was abandoned, I should have been notified and given me a  
19 chance to represent my interests. This is a violation of my right to Due Process, and a  
20 violation of my civil rights.

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<sup>27</sup> See *TLC Petition for Exemption* for spur description of ELS right of way, Exhibit 11.  
See *STB Decision Summary July 1, 1997* for spur description of ELS right of way, Exhibit 12.  
See *STB Decision, In the Matter of OFA, August 5, 1998*, for general information, Exhibit 14

1 **Takings:**<sup>28</sup> Even if it is found that the rail line is not a spur, and that the STB has  
2 authority, I will still have a claim against King County for a taking.

3 Since the Hilchkanum deed to SLS&E granted only an easement limited to railroad  
4 purposes, and my deed is burdened by that same easement, the establishment of a trail  
5 across my property raises the question of what right exists for that trail to be built. The  
6 creation of a trail on the right of way establishes a new and different easement for a new  
7 purpose that is separate from a railroad easement. Since I own the underlying property  
8 and the railroad easement is limited to railroad use, a taking has occurred if King  
9 County is establishing a trail on my property. The question is: Who is responsible for  
10 the taking that allows establishment of the trail?

11 The county states that I must take any claim associated with this taking to the United  
12 States Court of Federal Claims.<sup>29</sup> If the county is correct with its assumption the federal  
13 government is liable, then the county should be able to identify some source of  
14 authority that grants the STB the right to establish a trail easement. I cannot find that  
15 authority. The STB's authority to railbank rights of way is described in 16 USC  
16 §1247(d). The Act authorizes the STB only to "...encourage State and local agencies  
17 and private interests to establish appropriate trails..." Congress did not *direct* the STB  
18 to establish trail easements with those words, rather it only *encouraged* the  
19 establishment of trail easements. It is not within the power of the STB or the courts to  
20 change the effect of the Rails to Trails Act by redefining the meaning of the word  
21 "*encourage*" to mean "*require*". Because the Rails to Trails Act only *encourages* trail

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<sup>28</sup> I have attached an expanded study of the takings issue as Exhibit 10.

<sup>29</sup> See GAO report "*Issues related to Preserving Inactive Rail Lines as Trails*" October 1999, for general information. Exhibit 13.

1 establishment, I would have no claim under the Tucker Act for the damages due for the  
2 taking of a *trail easement*. Yet King County claims the Tucker Act is the only avenue  
3 for *all* compensation arising from railbanking. 28 U.S.C §1491(a) grants the United  
4 States Court of Federal Claims jurisdiction over five defined situations. Since the Rails  
5 to Trails Act does not *direct* the establishment of trails, and only "*encourages*" their  
6 establishment, Tucker Act compensation is not available for the taking of the trail  
7 easement because the United States Court of Federal Claims lacks jurisdiction under the  
8 five possibilities.

9 Since there is no jurisdiction in the United States Court of Federal Claims to  
10 compensate me for the taking of a trail easement by the county, the State Constitution  
11 and RCW 64.04.180 & 190 define my right to compensation. Also, the county's actions  
12 constitute a violation of my right to due process under the 14th Amendment, due to the  
13 failure of King County to give notice.

14 The county claims I am seeking relief pursuant to the Rails to Trails Act. My claim  
15 for a trail easement is separate from that Act, and not available for compensation under  
16 the Tucker Act.

17 King County has treated my family in an arrogant, mean-spirited manner. The facts  
18 indicate there is a need to investigate the county's participation in Federal Tax Fraud.  
19 The county has violated the law and my rights.

20 Respectfully submitted this 9<sup>th</sup> day of April, 2001.

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23 \_\_\_\_\_  
24 JOHN O. RASMUSSEN, defendant & counterclaimant