

Message

From: Wormmeester, Justin T [Justin.Wormmeester@BNSF.com]
Sent: 12/8/2017 7:52:05 PM
To: Forsgren, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a055d7329d5b470fbaa9920ce1b68a7d-Forsgren, D]
Subject: Follow up from discussion this morning
Attachments: deptEcology401denial.pdf; Millennium401.pdf

Lee –

I wanted to follow up with you on a few of the items we discussed this morning. Attached you will find:

1. WA Dept of Ecology 401 Cert Denial
2. Millennium Bulk Terminal letter to Army Corps

You might also be interested in *PUD No. 1 of Jefferson County v. Washington Dep't of Ecology*, 511 U.S. 700 (1994). The U.S. Supreme Court has indicated that states may base their conditions on other laws that protect water quality, but has not adopted a standard that says states may base conditions on laws that have no impact on water quality. In that case, one Justice concurred in the opinion and stated that he believed that the state's ability to condition its 401 permits was unlimited. No other justice joined in that concurrence, so the law as it stands does not allow conditions for other than water quality-related laws, such as laws that require a certain flow rate.

Thanks.

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