

The Real Significance of the Maury Island Legal Decision

Federal Judge Ricardo Martinez's ruling stopped construction of the gravel-loading dock in an aquatic reserve-- but the real significance for Puget Sound goes far beyond that.

The following commentary was written for the Vashon Beachcomber by Kathy Fletcher, executive director of People For Puget Sound:



All of us who worked for nearly a decade to protect Maury Island's waters from Glacier's proposed industrial dock were relieved, jubilant and thankful for Judge Ricardo Martinez's careful ruling that halted construction. Judge Martinez grasped that Puget Sound, its orcas and salmon are dying because of the failure to take a "hard look" at specific projects. It's great to want a healthy Sound, but the decision makes clear that this depends on preventing many, cumulative, damaging actions.

Judge Martinez ruled in favor of island and statewide citizen groups—Preserve Our Islands, Washington Environmental Council and People For Puget Sound—finding that the Endangered Species Act and the National Environmental Policy Act (NEPA) had not been followed by the Corps of Engineers and the National Oceanic and Atmospheric Administration (NOAA). In permitting the project in the Aquatic Reserve, these federal agencies had not paid attention to the scientific evidence.

"What's missing here is science," wrote the judge. The agencies relied on hope rather than science when they concluded that endangered salmon and orcas would not be harmed by the dock. In layman's language, science trumped political power. And so does the law.

In the short term, Glacier can't construct their dock in the aquatic reserve. We assume the state and county will revoke their permits and lease as well.

Of course, the project should not have been allowed in the first place. The science behind establishing the aquatic reserve should have precluded the project, and every permitting step along the way should have

found in favor of the science rather than the power of special interests. It finally took a federal judge at the 11th hour to set the matter straight.

Over the longer term, this court decision should reverberate strongly.

The court determined that the cumulative impacts of the proposed dock, combined with other stresses on Puget Sound as a whole, must be scientifically studied and prevented. This restores the burden of proof to where it belongs: on the proponents of projects that may cause harm. It returns to the basis of both NEPA and the Endangered Species Act—using science and caution to prevent damage, and to turn around the decline of fish and wildlife populations.

The decision is relevant way beyond Maury Island. Leaders of the Puget Sound recovery effort should start today to advance the many opportunities to leverage this decision to achieve the recovery of Puget Sound. Local, state and federal agencies need to take note of several additional aspects of the Martinez decision:

His decision clarifies the importance of the state's aquatic reserves to the health of Puget Sound. It supports protective management plans for these Department of Natural Resources marine areas. It sets up the opportunity to strengthen the whole reserve program, through both statutory authority and funding.

His decision is based in part on the Brennan Report, which shows the presence of juvenile salmon along the Maury Island shoreline after August 15, the current date when the state's so-called "fish window" opens and in-water work can occur. Data from other areas of the Sound also show the presence of juvenile salmon after August 15. The state should quickly respond by using science to determine the dates when the fish window should be closed throughout Puget Sound. Obviously, August 15 is outdated and scientifically unsound.

Puget Sound is suffering from a death of a thousand cuts, or as the opinion observes, "which raindrop caused the flood?" Individual projects and activities are permitted individually. This piecemeal approach has been largely ineffective in preventing impacts, and projects are often not held accountable for the success of mitigation, which is promised to avoid or offset damage to ecological functions.

Basing the protection and recovery of Puget Sound on science is a message that, with the Martinez decision, should resonate loudly with the state legislature. Although a difficult budget climate continues to prevail, the state agencies responsible for saving Puget Sound should be working on a unified legislative agenda of policy improvements and serious funding for the Sound.

In protecting the Maury Island Aquatic Reserve, Judge Martinez has opened a door to saving Puget Sound. NOAA, the Corps of Engineers, the Puget Sound Partnership, the governor and all of us should boldly step through.

-Kathy Fletcher

[8/13/09 Associated Press: "Federal judge halts Maury Island gravel mine work"](#)

[Read Judge Ricardo Martinez's summary judgment here.](#)

[8/14/09 KING-5 NEWS "Maury Is. mine decision sends legal ripples across Sound"](#)

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