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BEFORE THE STATE OF WASHINGTON BOUNDARY REVIEW BOARD
FOR LEWIS COUNTY

In re: THE CITY OF WINLOCK NOTICE
OF INTENTION

No. MSC22-1027

**LEWIS COUNTY'S LIMITED
REPLY TO WINLOCK'S RESPONSE
TO MOTION TO DETERMINE
WINLOCK'S NOTICE OF
INTENTION VOID AND TO
CANCEL HEARING**

COMES NOW Movant, LEWIS COUNTY, WASHINGTON, a political subdivision of the State of Washington, by and through its attorneys, JONATHAN L. MEYER, Lewis County Prosecuting Attorney, by David E. Bailey, Chief Civil Deputy Prosecuting Attorney, and hereby submits its Limited Reply to Winlock's Response to Motion to Determine Winlock's Notice of Intention Void and to Cancel Hearing (hereinafter "**Motion**"). Lewis County reserves the right to more fully reply to Winlock's Response brief orally at the hearing on this matter.

ARGUMENT

Winlock argues in its Response brief, pages 3 through 5, that County's arguments concerning the Winlock Notice of Intention being void and improperly filed have already been rejected by the Court. Winlock then includes an alleged verbatim transcription of the Court's oral ruling. Unfortunately for Winlock's argument, pursuant to the legal authority below, the

1 Court's oral statements have no legal or binding effect. Rather, the Court's written Order
2 encompasses the Court's decision, and notably it did not include anything about whether
3 Winlock's Notice of Intention was void or improperly filed.

4 Attached hereto as Exhibit "1" is the Lewis County Superior Court's May 5, 2023,
5 Order Denying Petitioner Winlock's Application and Petition for Issuance of Alternative Writ
6 of Mandamus, Permanent Writ of Mandamus, Alternative Writ of Prohibition and Permanent
7 Writ of Prohibition (hereinafter "**Order**") concerning the same annexation that is at issue
8 before this Boundary Review Board. The Order fully encompasses the Court's actual decision
9 and ruling.

10 Any oral decision that the Court made:

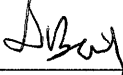
11 is no more than a verbal expression of his informal opinion at that time. It
12 is necessarily subject to further study and consideration, and may be
13 altered, modified, or completely abandoned. It has no final or binding
effect, unless formally incorporated into the findings, conclusions, and
judgment.

14 *In re Marriage of Harshman*, 18 Wn. App. 116, 120, 567 P.2d 667 (1977).

15 In this case, the Court did not include in its Order any of the Court's prior oral
16 statements about the County's arguments concerning the Winlock Notice of Intention being
17 void and not properly submitted. So, all of Winlock's arguments based upon the Court's oral
18 statements should be disregarded because said statements do not constitute the Court's
19 decision.

20 DATED this 31st day of May, 2023

21 JONATHAN L. MEYER
22 Lewis County Prosecuting Attorney

23 
24 _____
25 David E. Bailey, WSBA #26070
26 Chief Civil Deputy Prosecuting Attorney
Attorneys for Respondent Lewis County

1 **DECLARATION OF DAVID E. BAILEY IN SUPPORT OF LEWIS COUNTY'S**
2 **LIMITED REPLY TO WINLOCK'S RESPONSE TO MOTION TO DETERMINE**
3 **WINLOCK'S NOTICE OF INTENTION VOID AND TO CANCEL HEARING**

4 I, DAVID E. BAILEY, hereby declare under penalty of perjury of the laws of the State
5 of Washington that the following is true and accurate to the best of my knowledge and belief:

6 1. I am an attorney of record for Respondent Lewis County in the above-captioned
7 action, over the age of 18 years, a resident of Lewis County, Washington, and competent to be
8 a witness herein.

9 2. Attached hereto as Exhibit "1" is a true and correct copy of the Lewis County
10 Superior Court's May 5, 2023, Order Denying Petitioner Winlock's Application and Petition
11 for Issuance of Alternative Writ of Mandamus, Permanent Writ of Mandamus, Alternative
12 Writ of Prohibition and Permanent Writ of Prohibition (hereinafter "**Order**") concerning the
13 same annexation that is at issue before this Boundary Review Board.

14 DATED this 31st day of May, 2023, in the County of Lewis, Washington.

15 
16 _____
17 DAVID E. BAILEY

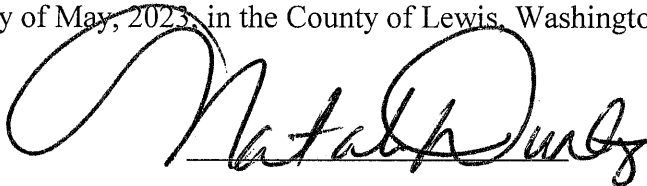
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DECLARATION OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the date set forth below, the undersigned mailed with postage prepaid, a true copy of the foregoing document to and at the following and also sent a copy via email:

James M.B. Buzzard
Attorneys for City of Winlock
Buzzard O'Rourke
P.O. Box 59
Centralia, WA 98511

DATED this 31st day of May, 2023, in the County of Lewis, Washington.



Lewis County Prosecutor's Office

Exhibit 1
MSC22-1027

Order 23-2-00253-21

Two (2) pages



FILED
Lewis County Superior Court
Clerk's Office

MAY 05 2023

Scott Tinney, Clerk

By _____, Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LEWIS

CITY OF WINLOCK, a Washington
Municipal Corporation,

Petitioner,

vs.

STATE OF WASHINGTON BOUNDARY
REVIEW BOARD FOR LEWIS COUNTY,
et al.,

Respondent.

) Cause No. 23-2-00253-21
)
) ORDER DENYING PETITIONER
) WINLOCK'S APPLICATION AND
) PETITION FOR ISSUANCE OF
) ALTERNATIVE WRIT OF MANDAMUS,
) PERMANENT WRIT OF MANDAMUS,
) ALTERNATIVE WRIT OF PROHIBITION
) AND PERMANENT WRIT OF
) PROHIBITION

THIS MATTER, having come before the undersigned on April 14, 2023, for a hearing on the City's Petition for Issuance of: 1. Alternative Writ of Mandamus; and 2. Permanent Writ of Mandamus; and 3. Alternative Writ of Prohibition; and 4. Permanent Writ of Prohibition; the court having considered the pleadings filed in support and in opposition thereof; and having considered the argument of counsel;

The court, having found that, according to the Rules of Practice and Procedure, the Chief Clerk files the notice of intention and issues a file number. The rules are silent on when this occurs. The correspondence on which the City relies for its calculation of the start date for the 45 days in which to invoke the Boundary Review Board came from an administrative clerk—not the Chief Clerk—so it is unclear whether the 45 day start began on the date the file number was


ORDER DENYING PETITION
FOR WRITS

1 issued, or on the date the Chief Clerk issued the notice of intention. This issue is best determined
2
3 by the Boundary Review Board, and the City must exhaust this administrative remedy prior to
4 seeking mandamus or any other extraordinary judicial relief.

5 Further, the Boundary Review Board process is an administrative remedy of which the City may
6
7 still avail itself. The failure to exhaust this administrative remedy precludes the issuance of an
8 extraordinary writ.

9 Based upon the foregoing, the court DENIES the Petition.
10

11
12 Signed this 5th day of May, 2023

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16 J. Andrew Toynbee, Judge