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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

TRACY NEIGHBORS AND BARBARA
NEIGHBORS; ARUL MENEZES AND
LUCRETIA VANDERWENDE; LAKE
SAMMAMISH 4257 LLC; HERBERT
MOORE AND ELYNNE MOORE; TED
DAVIS AND ELAINE DAVIS; REID
BROWN AND TERESA BROWN; SHAWN
HUARTE AND TRINA HUARTE;
ANNETTE MCNABB; EUGENE MOREL
AND ELIZABETH MOREL; VOLKER
ELSTE AND GAIL UREEL; JOHN R. WARD
AND JOANNA WARD, AS CO-TRUSTEES
OF THE WARD HALES LIVING TRUST;
YORK HUTTON; L. LARS KNUDSEN AND
LISE SHDO,

Plaintiffs,

v.

KING COUNTY, a municipal corporation and
political subdivision of the State of
Washington,

Defendant.

No. 15-2-20483-1 SEA

**DEFENDANT KING COUNTY'S
MOTION TO STAY PROCEEDINGS**

1 **I. RELIEF REQUESTED**

2 King County asks the Court to stay this litigation pursuant to the priority of action doctrine
3 and this Court’s inherent authority to manage its docket. Plaintiffs’ claims in this case are the
4 same as the claims in *Hornish v. King County*, No. 2:15-cv-00284-MJP, which has been pending
5 for over a year and is close to resolution. In the *Hornish* case, like this case, plaintiffs seek a
6 declaration that King County does not have a right to use or build in the East Lake Sammamish
7 Rail Corridor (the “Corridor”), which is “railbanked” under the Trails Act, 16 U.S.C. § 1247(d)
8 (the “Trails Act”), except for those portions between the former railroad tracks, ties and ballast.
9 The federal court is also considering King County’s long filed counterclaims, which also overlap
10 the current action.

11 Not only are the claims the same, but 18 out of the 23 plaintiffs in this case are or have
12 been plaintiffs in *Hornish* and the related federal litigation, *Neighbors v. King County*, No. C15-
13 970 MJP. In addition, one of plaintiffs’ counsel, Thomas Hornish, in this case is also a plaintiff in
14 *Hornish*¹ and the other plaintiffs’ counsel here also represent the *Hornish* plaintiffs.

15 King County has filed a motion for summary judgment that will resolve all claims in
16 *Hornish* (except for King County’s counterclaim for ejectment) and therefore give rise to res
17 judicata against Plaintiffs in this litigation. A stay is necessary, pursuant to Washington’s priority
18 of action doctrine, to avoid “unseemly, expensive, and dangerous conflicts of jurisdiction and of
19 process” between the two cases. *See Sherwin v. Arveson*, 96 Wn.2d 77, 80 (1981). The Court
20 should apply the priority of action doctrine and also exercise its inherent authority to stay this
21 litigation until the resolution of the wholly-duplicative claims in *Hornish*.

22 **II. STATEMENT OF FACTS**

23 Plaintiffs in this action have filed claims for quiet title and a declaratory judgment
24

25 ¹ Mr. Hornish and Suzanne J. Hornish appear as trustees of the “Thomas E. Hornish and Suzanne J. Hornish Joint Living Trust.”

1 challenging King County’s rights to use the Corridor. With respect to the Plaintiffs in this action,
2 King County’s rights in the Corridor are the same – in each case it is uncontested that King County
3 acquired its interest in the Corridor through a Quit Claim Deed from Burlington Northern Railroad
4 (“BNSF”). Plfs. Compl. For Dec. Relief and Quiet Title, ¶ 18. And, in each case, the Corridor
5 adjacent to the Plaintiffs’ property is shown as “adverse possession” on BNSF’s 1917 ICC
6 Valuation Maps, meaning that there is no deed to reflect how the railroad acquired its original
7 interest in the property. Harris Decl. Ex. A. As such and by example, any ruling as to the interests
8 that may exist for the Corridor adjacent to Tracy Neighbor’s property will also apply to John
9 Ward’s property.

10 **The Federal Court Litigation.** On February 25, 2015, nine of the plaintiffs in this case
11 (hereinafter “Overlapping Plaintiffs”) along with Sammamish Homeowners and Thomas Hornish²
12 filed suit against King County in the Western District of Washington seeking declaratory relief and
13 quiet title. Compl., *Sammamish Homeowners et al. v. King County*, No. 2:15-cv-00284-MJP,
14 Harris Decl. Ex. B. After King County filed a motion to dismiss the claims based on plaintiffs’
15 lack of standing because their deeds fail to include the Corridor, Overlapping Plaintiffs—joined by
16 another nine plaintiffs (“Additional Federal Plaintiffs”) in this action as well as other
17 landowners—moved for leave to file an Amended Complaint on April 13, 2015. Am. Compl.,
18 *Hornish*, Harris Decl. Ex. C.³ As such, at one time, 18 of the 23 plaintiffs in this state court action
19 were, or sought to be, plaintiffs in the federal court action.

20 On June 5, 2015, Judge Pechman granted King County’s motion to dismiss, holding that
21

22 ² Mr. Hornish is one of the attorneys for plaintiffs in this state court action. Mr. Hornish attempted to become
23 local counsel for plaintiffs in the federal action where he is also a plaintiff, but Judge Pechman denied the request
24 for substitution because of Mr. Hornish’s potential conflict of interest in the matter. Order on Motion to
25 Withdraw, (Jan. 27, 2016), *Hornish*, Harris Decl. Ex. D.

³ In addition to Sammamish Homeowners and other homeowners along the Corridor, Lake Sammamish 4257
LLC and the Brown, Davis, Elste and Ureel, Huarte, McNabb, Menezes and Vanderwende, Moore, Morel, and
Neighbors Plaintiffs were parties to this proposed Amended Complaint.

1 plaintiffs had failed to meet the requirements for the centerline presumption and Sammamish
2 Homeowners failed to satisfy representational standing. Order Re: Motion to Dismiss for Lack of
3 Standing, *Sammamish Homeowners*, Harris Decl. Ex. E. In that same order, Judge Pechman found
4 that the proposed *Sammamish Homeowners* Amended Complaint did not address the concerns
5 raised in her order, denied the pending motion for leave to amend, and ordered plaintiffs to file a
6 new amended complaint. *Id.* (“Plaintiffs are ordered to file an amended complaint which
7 addresses the issues raised herein within 14 days of the filing of this order.”)⁴

8 Instead of complying with Judge Pechman’s order to file an amended complaint, on June
9 16, 2015, the 18 Overlapping and Additional Federal Plaintiffs filed a separate, second case in
10 federal court, *Neighbors v. King Cty.*, No. C15-970 MJP, 2015 WL 3949245, at *1 (W.D. Wash.
11 June 26, 2015) (“*Neighbors I*”).⁵ In the *Neighbors I* case, plaintiffs alleged claims for inverse
12 condemnation, injunctive relief, and declaratory relief that the width of King County’s easement
13 interest was “limited to that which is necessary to operate a railroad and that King County has no
14 right to utilize any width of the Corridor beyond the width necessary for railroad purposes.”
15 *Neighbors I*, Compl., ¶¶ 44-48 (June 16, 2015). After the 18 Overlapping and Additional Federal
16 Plaintiffs moved for a temporary restraining order and preliminary injunction, the court dismissed
17 *Neighbors I* because their “inverse condemnation action is not ripe . . . , the declaratory judgment
18 action provides no basis for injunctive relief, and the federal court lacks jurisdiction over a
19 declaratory judgment action based solely on disputes over state law.” *Neighbors*, 2015 WL
20 3949245, at *2 (W.D. Wash. June 26, 2015). In essence, federal jurisdiction was unavailable in
21 *Neighbors I* because the Overlapping and Additional Federal Plaintiffs had attempted a duplicative
22 filing of some of their state law claims, but without including the federal question underlying the

23 ⁴ Some of the Overlapping Plaintiffs and Additional Federal Plaintiffs sought and received extensions from the
24 Court to comply with this deadline.

25 ⁵ Lake Sammamish 4257 LLC and the Brown, Davis, Elste and Ureel, Huarte, McNabb, Menezes and
Vanderwende, Moore, Morel, and Neighbors Plaintiffs were parties to this litigation.

1 *Sammamish Homeowners* lawsuit. On August 14, 2015, after dismissal of the *Neighbors I* case,
2 some of the original plaintiffs and Additional Federal Plaintiffs in *Sammamish Homeowners*
3 avoided dismissal by complying with the federal court’s order to file an amended complaint filed
4 by new lead plaintiff Thomas Hornish. Am. Compl., *Hornish*, Harris Decl. Ex. C.⁶ The remaining
5 plaintiffs, including those who sought to join the lawsuit through the amended complaint, did not
6 comply with the federal court deadline, nor did they appeal from the order of dismissal.

7 In the *Hornish* Amended Complaint, the Overlapping Plaintiffs and Thomas Hornish seek a
8 declaration that “the railroad only acquired an easement for railroad purposes over and through
9 Plaintiffs’ land and King County, by the Quit Claim Deed from BNSF, only acquired a surface
10 easement for a hiking and biking trail with the possible reactivation of a railroad by and through
11 the Trails Act.” *Hornish* Amended Complaint ¶ 39. Overlapping Plaintiffs and Thomas Hornish
12 also claim that they “are the fee owners of the railroad right-of-way at issue.” Am. Compl. ¶ 39,
13 Dkt. No. 31 (Aug. 14, 2015). King County filed an Answer and Counterclaim asserting claims for
14 quiet title, ejectment and declaratory relief. King County’s counterclaims explicitly state that
15 “Plaintiffs . . . have interfered with King County’s property rights in the ELSRC by erecting and
16 maintaining various unauthorized improvements that impede King County’s access to its property,
17 its exclusive control, and prevent public enjoyment.” Answer, Dkt. No. 32, at Counterclaim ¶ 3,
18 Harris Decl. Ex. F. As a result, King County asserted that “[u]nder RCW 7.28, title to any
19 disputed portions of the corridor should be quieted in King County.” *Id.* ¶ 4.

20 The parties have engaged in discovery in *Hornish*. In answering King County’s
21 interrogatories, Overlapping Plaintiffs and Thomas Hornish asserted “the width of the corridor is

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23 ⁶ Because the Sammamish Homeowners Association was no longer a plaintiff, the case was re-captioned as
24 *Hornish v. King County*. The other surviving plaintiffs were/are Lake Sammamish 4257 LLC and the Menezes
25 and Vanderwende, Moore, Morel, and Neighbors Plaintiffs who are parties to this Amended Complaint. Lake
Sammamish 4257 LLC was the only plaintiff, out of the 57 in the proposed amended complaint, that was able to
make the prima facie ownership claims required in order to avoid dismissal under the June 5, 2015 order of
dismissal.

1 limited to the former railroad’s footprint width dictated by the historical use by the railroad as a
2 matter of law.”⁷ Neighbors Plaintiffs’ Answers and Objections, Rog. 8, *Hornish*, Harris Decl. Ex.
3 G. They further asserted that there were no encroachments in the Corridor because of the limited
4 width they assert, and that they had the right to construct improvements up to the former railroad’s
5 footprint width. *Id.* [Rogs 6-7.]

6 On January 28, 2016, King County filed a motion for summary judgment. King County’s
7 Mot. for Sum. Judg., *Hornish*, Harris Decl. Ex. H. King County’s motion seeks complete
8 dismissal of the *Hornish* Amended Complaint and entry of Judgment in favor of King County on
9 its counterclaim for declaratory judgment and quiet title. Specifically, King County’s motion
10 seeks a comprehensive order holding that:

- 11 (1) railbanking the Corridor under the Trails Act preserved all property rights formerly held
12 by the Burlington Northern and Santa Fe Railroad (“BNSF”) and authorized trail use;
- 13 (2) King County currently holds all of BNSF’s property rights in the Corridor, as well as
14 the trail rights created by the Trails Act;
- 15 (3) in the portions of the Corridor where it holds a “railroad easement,” King County is
16 entitled to the exclusive use and possession of the area on, above, and below the surface
17 of the Corridor for railroad purposes and incidental uses permitted by Washington law,
18 including use as a recreational trail;⁸
- 19 (4) King County owns the portion of the Corridor next to the Hornish Plaintiffs in fee;
- 20 (5) except where narrowed by prior transactions, King County owns a one hundred foot
21 railroad easement next to the overlapping plaintiffs as reflected in 1895 assessor
22 records, 1908 probate deeds, 1917 ICC Valuation Maps (“1917 Val Maps”) and over
23 125 years of consistent practice;

21 ⁷ All of Overlapping Plaintiffs and Thomas Hornish’s discovery responses were identical on these points.

22 ⁸ Plaintiffs’ counsel has also sued King County and others for claims relating to the railbanked corridor along the
23 eastern shore of Lake Washington. In that case, *Kaseburg v. Port of Seattle et al.*, Judge Coughenour has issued
24 a series of opinions holding that railbanking under the Trails Act preserved all of BNSF’s property rights in that
25 corridor, that King County holds all of BNSF’s property rights in the corridor, as well as the trail rights created
by the Trails Act, and that King County has exclusive use and possession of the area on, above, and below the
surface of the corridor for railroad purposes and incidental uses permitted by Washington law, including use as a
recreational trail. See *Kaseburg v. Port of Seattle*, No. C14-0784-JCC, 2015 WL 4508790, at *2 (W.D. Wash.
July 24, 2015); *Kaseburg v. Port of Seattle*, 2015 WL 6449305, at *5 (W.D. Wash. Oct. 23, 2015).

1 (6) even if King County had not already acquired a one hundred foot Corridor from BNSF,
it acquired the same through operation of RCW 7.28.070; and

2 (7) plaintiffs lack standing under Washington's centerline presumption doctrine to
3 challenge King County's ownership interests in the Corridor.

4 The Overlapping Plaintiffs and Thomas Hornish filed an opposition and a cross-motion for
5 summary judgment on February 16, 2016. Plfs. Opp. to Sum. Judg., *Hornish*, Harris Decl. Ex. I;
6 Plfs. Cross Mot. for Sum. Judg., *Hornish*, Harris Decl. Ex. J. King County filed a reply in support
7 of its summary judgment on February 19, 2016 and an opposition to the cross-motion on March 7,
8 2016. King County's Reply in Support of Mot. For Sum. Judg., *Hornish*, Harris Decl. Ex. K; King
9 County's Opp. to Plfs. Cross Mot. for Sum. Judg., *Hornish*, Harris Decl. Ex. L.

10 Judge Pechman has set oral argument on the pending motions for April 8, 2016. The
11 pending motions have the potential to resolve all issues between the parties, including the width of
12 the Corridor adjoining the Overlapping Plaintiffs' land, except for King County's counterclaim
13 seeking ejectment.

14 **The State Litigation.** On August 20, 2015, shortly after the filing of the *Hornish*
15 Amended Complaint, the Overlapping Plaintiffs, the Additional Federal Plaintiffs and three other
16 landowners filed this third case against King County ("*Neighbors II*") in state court, with Thomas
17 Hornish as one of their attorneys. Compl., *Neighbors II*, [dkt 1] (Aug. 20, 2015). The *Neighbors*
18 *II* Complaint in this case has two counts. Count I is for a declaratory judgment that the railroad
19 never acquired an interest in the railway Corridor adjacent to Plaintiffs' properties; King County
20 did not obtain any interest in the Corridor adjacent to Plaintiffs properties; and, King County and
21 the public do not have any right to use or build in the Corridor adjacent to Plaintiffs' properties.
22 *Neighbors II* Compl. ¶ 26. Alternatively, Count I seeks a declaratory judgment that King County
23 and the public only acquired a prescriptive easement for the Corridor that would have been
24 between the margins of the railroad tracks, ties and ballast and King County and the public do not
25 have any right to use portions of the railway Corridor that have been adversely possessed by

1 Plaintiffs. *Id.* Count II is for quiet title and seeks entry of an order that approves modified legal
2 descriptions for Plaintiffs’ properties; establishes the margins of the East Lake Sammamish Trail
3 and extinguishes any interest King County may have in property outside the margins of the East
4 Lake Sammamish Trail. *Id.* at ¶ 27.

5 King County removed the case to the Western District of Washington on August 24, 2015,
6 and filed an answer and counterclaim at the same time. Notice of Removal, *Neighbors II*, [dkt 7]
7 (Aug. 24, 2015); Ans. to Compl. and Counterclaim, 2:15-cv-01358-MJP [dkt 3] (Aug. 24, 2015).
8 In moving to remand the case to avoid federal court jurisdiction, the *Neighbors II* plaintiffs
9 recharacterized their Complaint, asserting that “Plaintiffs do not dispute and affirmatively
10 acknowledge that King County received a surface easement for hiking and biking trail from BNSF
11 adjacent to Plaintiffs’ property but the width and location of that easement is at issue because the
12 width and location is determined by the railroad’s footprint of actual usage under Washington
13 law.” Plfs. Mot. to Remand, *Neighbors II*, Harris Decl. Ex. M. On December 16, 2015, Judge
14 Pechman granted a motion to remand this action to the Superior Court, noting that Plaintiffs’
15 remand briefing indicated that “issues involving the Trails Act do not appear to be ‘actually
16 disputed’” by plaintiffs.⁹ Order on Plfs. Mot. to Remand, *Neighbors II*, Harris Decl. Ex. N. The
17 Notice of Remand from the U.S. District Court was filed in the Superior Court on January 7, 2016.
18 While the original case schedule remains in effect, with a trial date of August 24, 2016,¹⁰ this case
19 is still in its very early stages.

20 **III. STATEMENT OF ISSUES**

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22 ⁹The court also recognized that Plaintiffs’ claims are “subject to the primary or exclusive jurisdiction of the
23 STB,” but remanded rather than dismiss the litigation because “[t]he Ninth Circuit has made clear that remand
24 rather than dismissal is appropriate where state court claims may be subject to the primary jurisdiction of a
25 federal agency.” *Id.* at 6-7 (citing *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1245 (9th Cir. 2009);
Ethridge v. Harbor House Rest., 861 F.2d 1389, 1400 (9th Cir. 1988)).

¹⁰ If a stay is not entered, King County will file a motion to amend the case schedule and continue the trial date
to a date in early 2017.

1 case by the court in which it first became pending would, as res judicata, be a bar to further
2 proceedings in a court of concurrent jurisdiction.” *Bunch*, 179 Wn. App. at 48-49.

3 There are numerous ways to enforce the priority of action rule, which include “the first
4 court enjoining its parties from further action in the second court, or [] the second court dismissing
5 or staying the proceedings pending in the second court.” *Am. Mobile Homes*, 115 Wn.2d at 317.
6 “[T]he means of enforcing the rule are not without limitation.” *Id.* But, the doctrine is mandatory,
7 rather than permissive, and trial courts must enforce the doctrine where it applies. *Bunch*, 179 Wn.
8 App. at 1021 (“[B]ecause the priority of action rule, a legal doctrine, underlies the trial court’s
9 decision . . . we need not defer . . . to the trial court’s general broad exercise of discretion.”).¹¹ The
10 Court should apply the priority of action doctrine and stay this litigation.

11 **1. The Subject Matter in this Case is the Same as the Subject Matter in *Hornish*.**

12 The priority of action rule applies here because this state court litigation, *Neighbors II*,
13 concerns the same subject matter as the federal court *Hornish* litigation. In both cases, persons
14 who claim to own land adjacent to the East Lake Sammamish Corridor assert the width of the
15 Corridor is limited to the former railroad’s footprint and that King County only received a surface
16 easement for hiking and biking trail from BNSF. *Cf. Compl., Neighbors II*, [dkt 1] (Aug. 20,
17 2015) and Plfs. Mot. to Remand, *Neighbors II*, Harris Decl. Ex. M, with King County’s Mot. for
18 Sum. Judg., *Hornish*, Harris Decl. Ex. H. All or most of the issues in this case will be decided in
19 the *Hornish* case. Despite the *Neighbors II* Plaintiffs’ efforts to recast their claims, the subject
20 matter remains the same and supports a stay of this case under the priority of action doctrine.

21 **2. The Parties in this Case are Duplicative to Those in *Hornish*.**

22 The priority of action rule applies to this litigation, because there is substantial overlap
23 between plaintiffs in this litigation and the plaintiffs in *Hornish*. Nine of the plaintiffs in this case

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25 ¹¹ The priority of action rule applies regardless of whether the first litigation is filed in state or federal court. *See*
Bunch v. Nationwide Mut. Ins. Co., 179 Wn. App. 1021 (2014).

1 (the Overlapping Plaintiffs), along with Tom Hornish (one of their attorneys who is a plaintiff) are
2 currently litigating their claims against King County in the *Hornish* action in federal court. There
3 is precise identicality with respect to the Overlapping Plaintiffs. The Additional Federal Plaintiffs
4 were included among the 57 who sought to join *Sammamish Homeowners* and were subject to the
5 amended complaint deadline in the June 2015 order of dismissal. By failing to meet this deadline,
6 their action was dismissed.¹² The decision by overlapping counsel to include some non-
7 overlapping plaintiffs in the current action does not defeat application of the priority of action
8 doctrine. Even “[i]f the identity of the parties is not exact, the trial court may consider various
9 equitable factors, such as the convenience of witnesses, the interests of justice, the parties’ possible
10 motivations for their filing decisions, and the presence of venue agreements.”¹³ *Atl. Cas. Ins. Co.*
11 *v. Oregon Mut. Ins. Co.*, 137 Wn. App. 296, 302 (2007). Given the common and continuing
12 representation by the same counsel in the present suit, these non-overlapping plaintiffs were
13 certainly able to join the federal *Hornish* action. There is no prejudice to staying this case for all
14 plaintiffs pending resolution of the priority, first-in-time federal action. Otherwise, the court risks
15 duplicative litigation between the same parties and the risk of different outcomes in different fora.

16 ¹² By seeking to intervene through an amended complaint, the additional 57 plaintiffs were parties to the
17 *Sammamish Homeowners* action. *Lejeune v. Clallam Cty.*, 64 Wn. App. 257, 267 (1992)(“A party is one who
18 appears and participates in the proceeding.”); *Kunkel's Estate v. U.S.*, 689 F.2d 408, 421 (3d Cir. 1982) (same).
19 Their strategic decision not to comply with the deadline to file an amended complaint, or seek appeal has
20 consequences: “It is axiomatic that ‘claim preclusion doctrine requires [a party] to live with [its strategic]
21 choices.’ . . . When a party chooses to move for leave to amend its complaint and then not to appeal denial of
22 that motion, the party ‘is not entitled to a second opportunity [in a later action] to litigate [the] claim’ that the
23 party sought to add.” *Hatch v. Trail King Indus., Inc.*, 699 F.3d 38, 45-46 (1st Cir. 2012) (citations omitted;
24 brackets in original).

25 ¹³ The federal version of the priority of action doctrine is in full accord. *See Microchip Tech, Inc. v.*
United Module Corp., 2011 WL 2669627, *3-5 (N.D. Cal. July 7, 2011) (the same parties requirement is
satisfied if there is “substantial similarity” such as when additional parties in the second action could have been
plaintiffs in the first action and had a close relationship with the plaintiffs in the first action); *Kohn Law Grp.,*
Inc. v. Auto Parts Mfg. Mississippi, Inc., 787 F.3d 1237, 1240 (9th Cir. 2015) (“the first-to-file rule does not
require exact identity of the parties . . . [the] rule requires only substantial similarity of parties”).

1 **3. The Relief In This Case is the Same as the Relief in *Hornish*.**

2 Determining whether there is identity between the “relief” available in each case “requires
3 consideration of res judicata principles, which can include collateral estoppel.” *Bunch*, 180 Wash.
4 App. at 49. “Res judicata, or claim preclusion, prohibits the relitigation of claims and *issues that*
5 *were litigated, or could have been litigated*, in a prior action.” *Sloan v. Horizon Credit Union*, 157
6 Wn. App. 1016 (2010) (citation omitted). “It is sufficient that the parties might have had their
7 lawsuits disposed of if they had properly presented and managed their respective lawsuits.” *Id.*
8 Thus, the priority of action doctrine applies to any claims that the *Neighbors II* Plaintiffs could
9 have brought in *Hornish*, even if they were not actually litigated in that case.

10 So long as the relief available in each action is sufficient to allow res judicata, the priority
11 of action rule requires staying the second case. In *Bunch*, for example, the priority of action rule
12 applied to the plaintiff’s claims even though she first filed suit for monetary damages in federal
13 court, and then sought injunctive relief in state court. 179 Wn. App. at 44. This was because
14 “under collateral estoppel principles, th[e first] court’s determination of liability will bar
15 relitigation of this issue in the other court, assuming that the other collateral estoppel requirements
16 are met.” *Id.* at 46. The doctrine looks beyond whether plaintiffs requested identical relief in each
17 case, because “the underlying purpose of the three elements is to determine whether the ‘identity’
18 of the actions is ‘such that a decision in one tribunal would bar proceedings in the other tribunal
19 because of res judicata.’” *Bunch*, 179 Wn. App. at 44 (citing *State ex rel. Evergreen Freedom*
20 *Found. v. Washington Educ. Ass’n*, 111 Wn. App. 586, 598 (2002)).

21 Here, the *Neighbors II* Plaintiffs seek declaratory relief and quiet title. Compl., *Neighbors*
22 *II*, [dkt 1] (Aug. 20, 2015). The *Hornish* Amended Complaint seeks declaratory relief, but in
23 earlier iterations of the Complaint, the plaintiffs sought both declaratory relief and quiet title. Am.
24 Compl., *Hornish*, Harris Decl. Ex. C; Compl., *Sammamish Homeowners*, Harris Decl. Ex. B.
25 Fundamentally, the subject matter is the same.

1 The quiet title question actually will be litigated in *Hornish* under both plaintiffs’ request
2 for a declaratory judgment that “plaintiffs own the underlying fee in the railroad right-of-way” and
3 King County’s counterclaim to quiet title. Even so, there is no dispute that plaintiffs had the
4 ability to include any of their current claims in the *Hornish* amended complaint. Any quiet title
5 claim in this action will be subject to res judicata based on the ruling in *Hornish* because the two
6 cases seek the same relief for purposes of the priority of action doctrine. This court should stay
7 this case until the *Hornish* case has concluded under the priority of action doctrine.

8 **B. This Action Should be Stayed Under the Court’s Inherent Authority**

9 “Trial courts have the inherent authority to control and manage their calendars,
10 proceedings, and parties.” *State v. Gassman*, 175 Wn.2d 208, 211 (2012); *see also Wagner v.*
11 *McDonald*, 10 Wn. App. 213, 217 (1973) (noting “the inherent power of the courts to manage their
12 own affairs so as to achieve the orderly and expeditious disposition of cases”). The power to issue
13 a stay is part of the Court’s inherent authority to control the proceedings on its docket. RCW
14 2.28.010.

15 The question of the rights held and the width of the Corridor will be the same for each
16 Plaintiff in this action, except where the Corridor was narrowed by prior transactions. These same
17 claims have been pending in the *Hornish* case in federal court for over a year and are close to
18 being resolved. Eighteen out of 23 Plaintiffs in this case have been directly involved as plaintiffs
19 in the federal court litigation, *Hornish* and *Neighbors I*, and all Plaintiffs in this case are
20 represented by the same counsel as in *Hornish* and *Neighbors I*. And, as discussed above, *Hornish*
21 will have res judicata effect on the claims in this case. To the extent, if any, that there is not direct
22 res judicata effect on a few of the Plaintiffs in this action, the long-pending proceedings in the
23 federal court will help to enlighten those claims and create an efficient path forward to resolve any
24 remaining claims. This Court should exercise its inherent authority, in addition to the priority of
25 action doctrine, to stay this case pending resolution of the *Hornish* case.

1 **VI. CONCLUSION**

2 For all these reasons, King County respectfully asks the Court to stay this litigation pending
3 the final resolution of the duplicative litigation in *Hornish*.

4 DATED this 15th day of March, 2016.

5 DANIEL T. SATTERBERG
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1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies as follows:

3 1. I am employed at Corr Cronin Michelson Baumgardner Fogg & Moore LLP,
4 attorneys for Defendant herein.

5 2. On March 15, 2016, I caused a true and correct copy of the foregoing document to
6 be served on the following parties in the manner indicated below:

7
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16 I declare under penalty of perjury under the laws of the state of Washington that the
17 foregoing is true and correct.

18 DATED this 15th day of March, 2016.

19
20 *s/ Christy A. Nelson*
21 Christy A. Nelson