R. Bruce Johnston, WSBA # 4646
Johnston Lawyers, P.S.
2701 First Avenue, Suite 340
Seattle, WA 98121
(206) 866-3230; Fax: (206) 842-8554
bruce@rbrucejohnston.com

Dale M. Foreman, WSBA #6507
P. O. Box 3125
Wenatchee, WA 98807
(509) 662-9602 - (509) 662-9606 fax
dale@daleforeman.com

HON. JUSTIN L. QUACKENBUSH
November 14, 2011
6:30 pm
Without Oral Argument

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

PAUL GRONDAL, a Washington resident and THE MILL BAY MEMBERS ASSOCIATION, INC., a Washington Non-Profit Corporation, Plaintiffs, v. UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF THE INTERIOR; THE BUREAU OF INDIAN AFFAIRS, and FRANCIS ABRAHAM, CATHERINE GARRISON,	**Case No. CV-09-0018-JLQ** **MEMORANDUM OF POINTS AND AUTHORITIES OF WAPATO HERITAGE, LLC IN RESPONSE TO CONFEDERATED TRIBES OF THE COLVILLE RESERVATION'S MOTION TO DISMISS CROSS-CLAIMS**

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

MAUREEN MARCELLAY, MIKE PALMER, JAMES ABRAHAM, NAOMI DICK, ANNIE WAPATO, ENID MARCHAND, GARY REYES, PAUL WAPATO, JR., LYNN BENSON, DARLENE HYLAND, RANDY MARCELLAY, FRANCIS REYES, LYDIA W. ARMEECHER, MARY JO GARRISON, MARLENE MARCELLAY, LUCINDA O'DELL, MOSE SAM, SHERMAN T. WAPATO, SANDRA COVINGTON, GABRIEL MARCELLAY, LINDA MILLS, LINDA SAINT, JEFF M. CONDON, DENA JACKSON, MIKE MARCELLAY, VIVIAN PIERRE, SOMA VANWOERKON, WAPATO HERITAGE, LLC, LEONARD WAPATO, JR, DERRICK D. ZUNIE, II, DEBORAH L. BACKWELL, JUDY ZUNIE, JAQUELINE WHITE PLUME, DENISE N. ZUNIE and CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, Allottees of MA-8 (known as Moses Allotment 8),

Defendants.

I. INTRODUCTION

The issue before the Court is nominally whether the Colville Tribes ("CCT") can be sued without its consent. But the far more important question raised by CCT's

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

motion is whether this Court can determine the rights of all the MA-8 Owners, including CCT, in MA-8, in CCT's absence. Defendant Wapato Heritage, LLC ("Wapato Heritage") brings cross-claims against CCT and the other co-Defendants for a declaration that all titles to MA-8[1] have been, at all times from May 20, 1924, "in fee, discharged of said trust and free of all charge or encumbrance whatsoever"[2] and freely alienable,[3] and it cannot be considered Indian Country or trust property. (ECF No. 170 at 24-30). As a claimant to an interest in the land, CCT was appropriately notified of these claims and named as a party, but if CCT now chooses to hold itself aloof from the proceedings, and the Court agrees it may do so, the Court may still determine the status of the land as against CCT or any other party who may challenge those rights.

As to that issue, the facts as set forth below, are clear. Wapato Heritage

[1] "All titles" includes the title of all Owners, including Wapato Heritage, LLC, CCT, and all of the individual Owners.

[2] This is the language of both the Patents issued to Wapato John, and included in, and required by, the Act of March 8, 1906, 34 Stat. 55. ECF-175-1, Exhibits D and E.

[3] This is required by the express language of the Act of May 20, 1924, 43 Stat. 133, ECF-175, Exhibit G.

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

therefore respectfully requests that the Court determine that fundamental issue; or provide a briefing and consideration schedule for doing so. In this connection, it is respectfully submitted, that while CCT contends its participation in the above entitled action for the last two years is not a sufficiently unequivocal waiver of its sovereign immunity to justify denying its Motion, if it elects to remain in the action to defend against the contentions of Wapato Heritage, that MA-8 is not allotment property, and is not Indian Country, its election to do so ***would*** constitute an unequivocal waiver of its sovereign immunity, because it would be specifically invoking the jurisdiction of the Court to act upon its claimed rights or interest in the *res*, MA-8, at issue in this case. It can't have it both ways, and it cannot remain in the case as a "legal mutant" of a "litigating amicus curiae." *United States v. State of Mich.*, 940 F.2d 143, 164 (6th Cir. 1991).

II. STATEMENT OF FACTS

Wapato John was a member of the Moses Band of Indians, a federally recognized Indian tribe, the recognized status of which was later terminated by the United States. Moses Allotment 8 ("MA-8") was originally designated as part of the Columbia (or Moses) Reservation created by Executive Order of United States President Ulysses S. Grant on April 9, 1872. Subsequently the Columbia (or Moses) Reservation was disestablished and all un-allotted land therein was to be restored to

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

the public domain as a consequence of the Moses Agreement of July 7, 1883 as ratified by 23 Stat. 79-80, July 4, 1884 (Moses Agreement), which provided for allotments of approximately one (1) square mile of land within the boundaries of the former Columbia Reservation, to each head of a family or adult male Indian then living on the Columbia Reservation, who elected not to remove to the Colville Reservation and to relinquish all claims to lands elsewhere. See ECF No. 175 at 11-15.

Wapato John and his family chose to remain on land within the boundaries of the former Columbia Reservation, and chose land therein of approximately one (1) square mile under the Moses Agreement. By Act of March 8, 1906, 34 Stat. 55, the Secretary of the Interior was "authorized and directed" to issue a patent to Wapato John, among others, to be held in a restricted status for a period of ten (10) years, and thereafter to be conveyed to Wapato John by patent, "in fee, discharged of said trust and free of all charge or encumbrance whatsoever." See ECF No. 175 at 21-22.

On March 20, 1907, the Department of Interior allotted lands to Wapato John by two patents. Patent Number 151-1599 was issued by United States President Theodore Roosevelt to Wapato John. ECF No. 175 at 25. Patent Number 151-1555 dated December 28, 1908 was issued by United States President Theodore Roosevelt to Wapato John. ECF No. 175 at 27-28. Each of those Patents indicate the land

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

would be held in a restricted status for ten (10) years, and thereafter would be conveyed to Wapato John by patent, "in fee, discharged of said trust and free of all charge or encumbrance whatsoever." The ten (10) year restricted status was extended for a further period of ten (10) years by Order of United States President Woodrow Wilson on December 23, 1914. ECF No. 175 at 30.

All restrictions on alienation of all allotments in the area of the former Columbia reservation issued under the Moses Agreement were lifted by 43 Stat. 133, on May 20, 1924, and no restrictions thereon have been applicable from and after the effective date of that statute. ECF No. 175 at 32, Exhibit G.

Wapato John and all other allottees and any and all of his heirs or devisees, as to any lands of the former Columbia Reservation, had held freely alienable lands since the Act of May 20, 1924 which by its language specifically converted the Patents "heretofor . . . Issued" into freely alienable Patents. Consistent with, and confirming, the applicability of the Act of May 20, 1924, the Bureau of Land Management has issued fully alienable, fully unrestricted, fee Patents to some owners of MA-8. See Patents 46-85-0009, 46-85-0007 and 46-85-0011, attached hereto as Exhibit-1, of which the Court may take judicial notice under ER-201. Likewise, all other patents at issue in this case are freely alienable, and each holder of any such patent has the immediate right to have a patent issued for their interest in land which

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

is equally: "in fee, discharged of said trust and free of all charge or encumbrance whatsoever."

To this end, Wapato Heritage, LLC has asserted claims related to this property, seeking, among other things, a declaration that MA-8 is not trust property, the interests of all holders in MA-8 are currently freely alienable and free of any restrictions on alien ability whatsoever, and that the owners are entitled to fee deeds, free of any trust or encumbrance, to quiet title, and for partition of the property. ECF No. 170 at 24-28. For these claims, the Court has *in rem* jurisdiction over the MA-8 property regardless of the Tribes' sovereign immunity.

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure Rule 12(b)(1) provides for motions to dismiss for lack of subject matter jurisdiction. The burden of proof is on the party asserting jurisdiction. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). On a Rule 12(b)(1) motion, the Court is not "restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." McCarthy v. United States, 850 F.2d 558, 560 (9th Cir.1988).

IV. ARGUMENT

A. Sovereign Immunity.

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

The Confederated Colville Tribes argues that as a sovereign Indian entity, it cannot be sued against its consent absent an Act of Congress, and has given no consent to suit on the claims before this Court. This position is at least overstated. The CCT consented to suit and waived its sovereign immunity, for actions brought in the Colville Tribal Court to enforce any terms of its MA-8 sublease, including the imposition of money damages and ejection. *See* ECF-90-4, Exhibit 4, (LR-10e Page 111 *et seq*) p. 19 § 36. The CCT also specified in the Joint Status Certificate that it intended to file before discovery only a motion as to subject matter jurisdiction, not a motion asserting lack of personal jurisdiction, which should be understood as a waiver of exclusive jurisdiction in the Colville Tribal Court for surviving claims. ECF No. 209. Therefore, at least the Cross-Claims for ejectment and recovery of rent are properly before this Court.

Apart from the explicit waiver of sovereign immunity in the sublease, Wapato Heritage, LLC recognizes and respects the sovereign immunity of CCT and recognizes the established case law regarding that sovereign right. See, e.g. *Ingrassia v. Chicken Ranch Bingo & Casino*, 676 F. Supp. 2d 953, 957 (E.D. Cal. 2009). By unequivocally seeking a ruling from the District Court, however, such a waiver would be explicit. Accordingly, CCT has to decide whether it wants to be a part of this action, or not. In its response to inquiries from the court, ECF-187, CCT asserts

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

beginning at page 2, that MA-8 is, and remains, in trust status. Wapato Heritage interprets that as a direct request by CCT for the Court to find contrary to the cross-claims of Wapato Heritage set forth in its Answer, etc., ECF-170. The Answer, etc. of CCT to the cross-claims of Wapato Heritage, ECF-184, may also be interpreted the same way, that is, as a direct request for the Court to exercise its jurisdiction on behalf of CCT. CCT now, however, makes it clear that it was being ambiguous at best – it was requesting affirmative relief while objecting to jurisdiction. CCT now contends that it's waiver of sovereign immunity must be "unequivocal." We will leave it to the Court to decide whether prior acts meet that standard, but the point here is that if CCT responds hereto by specifically asking the Court to now find that MA-8 is currently in trust status, contrary to the explicit request of Wapato Heritage to the contrary, it is submitted that that act would be an unequivocal waiver of sovereign immunity and an unequivocal imploration of the Court to exercise its jurisdiction on behalf of CCT.

B. *In Rem* Jurisdiction.

As to Wapato Heritage's remaining claims, CCT implies that without its presence, the nature of its interests in the land at issue cannot be adjudicated. That is incorrect.

This Court may be guided by two dispositions of similar issues in the

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

Washington State appellate courts. First, in *Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 130 Wn. 2d 862, 873, 929 P.2d 379 (1996), the Washington Supreme Court was confronted by a claim of tribal sovereign immunity by a tribe as owner of a one-sixth undivided interest in certain fee patented reservation land, which was the subject of an action to quiet title and for partition. As here, one part-owner sought to determine rights in the land, and one owner, an Indian tribe, insisted that it could not. The Washington Court held that jurisdiction *in rem* existed even if jurisdiction as to the Tribe did not: the plaintiff's "action in this case involves no taking of property. It merely seeks a judicial determination of the cotenants' relative interests in real property and a division of that property according to those interests." *Anderson & Middleton Lumber Co.*, 130 Wn. 2d at 872-73. Here, *a fortiori*, Wapato Heritage seeks to confirm that the land is in fee rather than in trust -- Wapato Heritage is not seeking to challenge the percentage interest in MA-8 which is claimed by CCT. Thus, CCT may not allege any taking, and no reason not to determine the issue of the status is present. CCT may choose not to participate, but it cannot end the action.

Again, in *Smale v. Noretep*, 150 Wn. App. 476, 480, 208 P.3d 1180 (2009), the Stillaguamish Tribe of Indians claimed it had acquired land, to which the plaintiff claimed possession by adverse possession, and the tribe contended that ownership could not be determined unless the tribe voluntarily waived its sovereign immunity.

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

The Court of Appeals held, however, that if the land had indeed been adversely possessed, the tribe had never acquired an interest, so it had no property rights at issue, and the case could be decided. *Id.* at 481.

The common-sense result of this doctrine, is that an Indian tribe cannot put the title to land in doubt indefinitely by claiming to acquire some sort of interest and then refusing to come into court and litigate. Many of the other Allottee Defendants have also chosen not to participate in this action; however wise or unwise that decision, their absence does not foreclose relief for Wapato Heritage. Like any other landowner, CCT can refuse to participate – but if so, a default may be entered and its co-tenants can get their rights determined. CCT has been provided sufficient notice for the court to act *in rem* -- CCT cannot assert it was not given notice of the action, it can only assert it chose to stay home.

The Tribe might argue that the land in question here is Indian Country – allotment land – over which it has historically exercised sovereign powers,[4] as a basis for exercising its strategy to stalemate the issue. But that would be to put the cart

[4] Such a contention would be false, because CCT did not exercise sovereign powers over MA-8 -- certainly not before establishing the casino as required by IGRA, the Indian Gaming Regulation Act, 25 U.S.C. §2703(4)(B).

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

before the horse, asking this Court to presume an ultimate issue in the action. Instead, the Court should take the opportunity to determine that very issue now.

C. MA-8 is Not Trust or Restricted Land.

The Allotment of MA-8 was ***not*** created under the General Allotment Act of 1887, as has been contended by the US Parties and CCT. It was created under special legislation emanating from the Moses Agreement of July 7, 1883 as ratified by 23 Stat. 79-80, July 4, 1884. The Moses Allotments proceeded on an independent path from the "General" Allotment Act of 1887.

As noted in the Cross-Claims, ¶ 232:

> By Act of March 8, 1906, 34 Stat. 55, the Secretary of the Interior was "authorized and directed" to issue a patent to Wapato John, among others, to be held in a restricted status for a period of ten (10) years, and thereafter to be conveyed to Wapato John by patent, "in fee, discharged of said trust and free of all charge or encumbrance whatsoever."[5]

[5] The details of this process, and its complete separateness from "general" allotments or the General Allotment Act, are further discussed extensively in the answers to the Court's questions submitted on behalf of Paul Wapato and others, ECF-195. That submission is incorporated herein.

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

This was not done pursuant to the General Allotment Act, and was done nearly contemporaneous with, but separate from, the "general" statute of June 21, 2006 Act, 34 Stat 325, referred to by the U. S. Parties.

It is noteworthy that as of March of 1907, the history of the Moses Allotments was preserved and well described by Judge Whitson of the above entitled Court in *United States v. Moore*, 154 F. 712 (E. D. Wash. 1907),[6] and from that history is more than clear that the Moses Allotments proceeded on a path fully independent of any other allotments and in particular separate from "general" allotments.

In the 1908 case of *United States v. Moore*, 161 F. 513 (9th Cir. 1908) the 9th Circuit observed:

> That the acts of July 4, 1884 (23 Stat. 79, 80), of March 3, 1905 (33 Stat. 1064, c. 1479),3 and of March 8, 1906 (34 Stat. 55, c. 629), above referred to, are *in pari materia*, is perfectly plain, for they relate to the same subject-matter and are parts of the same legislative purpose.

[6] While this decision was reversed, the history set forth in the case is accurate and undisturbed by the reversal. *United States v. Moore*, 161 F. 513 (9th Cir. 1908).

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

This is particularly important, in that the General Allotment Act of 1887 is not mentioned by the Court. In fact, a close reading of the General Allotment Act of 1887 discloses that it could not apply to the Moses Allotments. For further history regarding the Moses Allotments, see, also, *Starr v. Long Jim*, 227 U.S. 613 (1913), wherein the Supreme Court discusses the Act of March 8, 1906, c. 629; 34 Stat. 55, and to emphasize the different nature of the Moses Agreement:

> The Moses Agreement is quite informal, and it has been and should be construed in such manner as to confer upon the Indians the full measure of benefit that it was intended to secure to them.

Like the Ninth Circuit in *Moore*, the Supreme Court made no mention of the General Allotment Act of 1887, or its June 1906 Amendment, in analyzing the rights of an Allottee of the Moses Allotments.

The General Allotment Act only applies to (1) Allotments in severalty within the boundaries of Indian reservations, and (2) homestead type allotments issued to Indians not residing on reservations, under the specific terms of § 4 of the General Allotment Act. Because MA-8 is governed by the specific statutes discussed and interpreted (*in pari materia*) by the United States Supreme Court, the inconsistent General Allotment Act has no bearing upon MA-8. Likewise the Act of June 21, 2006, is also limited to Allotments granted under the General Allottment Act, and, therefore, has no substantive application to MA-8.

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

Moving forward from the March 1906 Act providing for issuance of Moses Allotment patents, and the issue of the two Moses Allotment Attachments to Wapato John in 1908, unique ten-year restrictions imposed by the March, 2006 Act were completely removed on May 20, 1924. As further stated in the Cross-Claims, at ¶ 235:

> ***All restrictions on alienation of all allotments in the area of the former Columbia reservation issued under the Moses Agreement of July 7, 1883 as ratified by 23 Stat. 79-80, July 4, 1884, were lifted by 43 Stat. 133, on May 20, 1924, and no restrictions thereon have been applicable from and after the effective date of 43 Stat. 133.*** [Emphasis Added].

That statute is not ambiguous, and makes MA-8 immediately and fully freely alienable, and reads:

> *CHAP. 160.—An Act To authorize the sale of lands allotted to Indians under the Moses agreement of July 7, 1883.*
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any allottee to whom a trust patent has heretofore been or shall hereafter be issued by virtue of the agreement concluded on July 7, 1883, with Chief Moses and other Indians of the Columbia and Colville Reservations, ratified by Congress in the Act of July 4, 1884 (Twenty-third Statutes at Large, pages 79 and 80), may sell and convey any or all the land covered by such patents*

That statute is a specific statute governing MA-8 and other properties in the former Columbia Reservation, and it is fundamental that the specific governs and

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

is not compromised or over-ridden by the general. In this particular area, see, *Bartlett v. U. S. 203 F. 410 (1913) aff'd. 35 S. Ct 14, 235 U. S. 72.* Congress may not impose restrictions after prior restrictions have expired, and statutes of general application will not override specific statutes.

V. CONCLUSION

CCT has been fairly active in participating in this case. Whether its actions amount to a waiver of sovereign immunity at this point is perhaps debatable, but if it continues to request the Court in this case to exercise jurisdiction on its behalf, it's waiver will be unequivocal -- it cannot be both in the case, and out of the case at the same time. Is respectfully submitted that CCT's response to this motion will be indicative of whether it is in the case, or not.

However, the real issue in this case is whether or not the court may proceed in rem, to decide the issues requested by Wapato Heritage and the Grondal Parties. It is respectfully submitted that the answer to that question is unequivocally yes.

And, the answer is unequivocally yes that the court may proceed, because it is absolutely clear, as a matter of law, that MA-8 is not restricted or trust property, and that CCT's interest in MA-8 is no more Indian Country than would be a fractional interest in a condominium in Spokane.

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

DATED this 7th day of October, 2010.

JOHNSTON LAWYERS, P.S.

/s/ R. Bruce Johnston
R. Bruce Johnston, WSBA # 4646
2701 First Street, Suite 340
Seattle, WA 98121
(206) 866-3230 Fax: (206) 866-3234
bruce@rbrucejohnston.com
Attorneys for Plaintiffs

LAW OFFICES OF DALE M. FOREMAN, P.S.

/s/ Dale M. Foreman
Dale M. Foreman, WSBA #6507
P. O. Box 3125
Wenatchee, WA 98807
(509) 662-9602 - (509) 662-9606 fax
E-mail: dale@daleforeman.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing document to be electronically filed with the Clerk of the above entitled Court using the CM/ECF system, which will send notification of such filing to all registered recipients of that system as of the date hereof.

DATED this 7th day of October, 2011.

___/s/ R. Bruce Johnston_____
R. Bruce Johnston, WSBA #4646

JOHNSTON LAWYERS, P. S.
2701 First Avenue, Ste 340
Seattle, Washington 98121
(206) 866-3230 Fax (206) 866-3234
(206) 842-1542 Fax (206) 842-8554

(March 1965)
(formerly 4-1043)
OR 22417 WA
Colville P.D. 151-MA8

The United States of America 151 2488

To all to whom these presents shall come, Greeting:

8905190072

WHEREAS, an Order of the authorized officer of the Bureau of Indian Affairs is now deposited in the Bureau of Land Management, directing that, in accordance with 25 Code of Federal Regulations 152.6, a fee simple patent issue to Annie Edwards for an undivided 13/2160 interest in the following described lands:

Willamette Meridian, Washington

T. 27 N., R. 21 E.,
Sec. 1, that portion of Allotment MA8 lying east of the north and south one-quarter line, excepting a .75-acre parcel included within Allotment MA9, lying along the east boundary of said Sec. 1, and further excepting a .14-acre parcel bounded on the north by the easterly prolongation of the northerly line of Tract R of plat of Low Land Division No. 2 as recorded in Volume 3 at page 11, Plats of Chelan County, Washington, on the east by a line parallel to and 15 feet distant from, when measured at right angles to, the east line of said Tract R extended into Lake Chelan, on the south by Lake Chelan and on the west by the east line of said Tract R.

FEE 6.00
FILED FOR RECORD
Louise S. Wapato
MAY 19 PM 2 27
Order
BOOK 858 PAGE 245-AU
KENNETH C. HOUSTEN
CHELAN COUNTY AUDITOR
WENATCHEE, WASH.

T. 28 N., R. 21 E.,
Sec. 36, Lots 9 and 10 and W½SE¼

The areas described aggregate approximately 174.26 acres, more or less after the above exceptions.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant, and to her heirs the said undivided 13/2160 interest in the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant, and to her heirs and assigns forever.

SUBJECT TO:

1. Such rights as Chelan Electric Company may have for flowage purposes under the Acts of March 8, 1906 (34 Stat. 55-56), and May 20, 1924 (43 Stat. 133), pursuant to an easement for perpetual flowage approved February 28, 1928, as more particularly described in Document on file in the Portland Land Titles and Records Office under numbers 151-153, 151-154, and 151-155; and

BOOK 858 PAGE 245

Patent Number 46-85-0007

GPO 847 - 946

Form 1860-10
(July 1975)
OR 22417 WA
Colville P.D. 151-MA8

2. Such rights as the State of Washington may have for highway and stockpile purposes under the Act of March 3, 1901 (31 Stat. 1084), pursuant to an easement for highway and stockpile site within section 36, approved August 3, 1938, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-297; and

3. Such rights as Lake Chelan Irrigation District may have for water pipeline purposes under the Act of March 3, 1891 (26 Stat. 1095) as amended, pursuant to a right-of-way for water pipeline, approved January 24, 1941, over and across the northwest corner of this allotment in section 36, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-298; and

4. Such rights as the Bureau of Reclamation may have for drainage line purposes under the Act of February 5, 1948 (62 Stat. 17), pursuant to an easement for drainage line 50 feet in width approved April 29, 1975, over and across the W½SE¼ of section 36, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-2194; and

5. A non-exclusive, perpetual easement for ingress and egress, utility and road purposes, 20 feet in width, lying along a portion of the west boundary of this tract located within fractional section 1, as described above, and as set forth in deeds on file in the Portland Land Titles and Records Office under numbers 151-2357 and 151-2358.

151 2488
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IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Portland, Oregon the TWENTY-EIGHTH day of DECEMBER in the year of our Lord one thousand nine hundred and EIGHTY-FOUR and of the Independence of the United States the two hundred and NINTH.

[SEAL]

By _____
Acting Chief, Branch of Lands and Minerals Operations

Patent Number 46-85-0007

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GPO 854-245

Form 1860-9
(March 1965)
(formerly 4-1043)
OR 22896 WA
Colville P.D. 151-MA8

151 2432

The United States of America

To all to whom these presents shall come, Greeting:

8605190075

WHEREAS, an Order of the authorized officer of the Bureau of Indian Affairs is now deposited in the Bureau of Land Management, directing that, in accordance with 25 Code of Federal Regulations 152.6, a fee simple patent issue to John Edwards for an undivided 13/1080 interest in the following described lands:

Willamette Meridian, Washington

T. 27 N., R. 21 E.,
Sec. 1, that portion of Allotment MA8 lying east of the north and south one-quarter line, excepting a .75-acre parcel included within Allotment MA9, lying along the east boundary of said Sec. 1, and further excepting a .14-acre parcel bounded on the north by the easterly prolongation of the northerly line of Tract R of plat of Low Land Division No. 2 as recorded in Volume 3 at page 11, Plats of Chelan County, Washington, on the east by a line parallel to and 15 feet distant from, when measured at right angles to, the east line of said Tract R extended into Lake Chelan, on the south by Lake Chelan and on the west by the east line of said Tract R.

FEE 6.00
FILED FOR RECORD
Louise S. Wapato
'85 MAY 19 PM 2 27
Order
BK 858 PAGE 251-52
KENNETH O. HOUSDEN
CHELAN COUNTY AUDITOR
WENATCHEE, WASH.

T. 28 N., R. 21 E .,
Sec. 36, Lots 9 and 10 and W½SE¼

The areas described aggregate approximately 174.26 acres, more or less after the above exceptions.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant, and to his heirs the said undivided 13/1080 interest in the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant, and to his heirs and assigns forever;

SUBJECT TO:

1. Such rights as Chelan Electric Company may have for flowage purposes under the Acts of March 8, 1906 (34 Stat. 55-56), and May 20, 1924 (43 Stat. 133), pursuant to an easement for perpetual flowage approved February 28, 1928, as more particularly described in Document on file in the Portland Land Titles and Records Office under numbers 151-153, 151-154, and 151-155; and

BOOK 858 PAGE 251

Patent Number 46-85-0011

GPO 847-946

Form 1860–10
(July 1975)
OR 22896 WA
Colville P.D. 151-MA8

2. Such rights as the State of Washington may have for highway and stockpile purposes under the Act of March 3, 1901 (31 Stat. 1084), pursuant to an easement for highway and stockpile site within section 36, approved August 3, 1938, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-297; and

3. Such rights as Lake Chelan Irrigation District may have for water pipeline purposes under the Act of March 3, 1891 (26 Stat. 1095) as amended, pursuant to a right-of-way for water pipeline, approved January 24, 1941, over and across the northwest corner of this allotment in section 36, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-298; and

4. Such rights as the Bureau of Reclamation may have for drainage line purposes under the Act of February 5, 1948 (62 Stat. 17), pursuant to an easement for drainage line 50 feet in width approved April 29, 1975, over and across the W½SE¼ of section 36, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-2194; and

5. A non-exclusive, perpetual easement for ingress and egress, utility and road purposes, 20 feet in width, lying along a portion of the west boundary of this tract located within fractional section 1, as described above, and as set forth in deeds on file in the Portland Land Titles and Records Office under numbers 151-2357 and 151-2358.

151 2492
05 JAN 15 A10:18

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Portland, Oregon the TWENTY-EIGHTH day of DECEMBER in the year of our Lord one thousand nine hundred and EIGHTY-FOUR and of the Independence of the United States the two hundred and NINTH.

SEAL

By _____
Acting Chief, Branch of Lwnds and Minerals Operations

Appendix 1, LR-10e-Page 22

Patent Number 46-85-0011

BOOK 858 PAGE 252

GPO 837-812

Form 1860-2
(March 1965)
(formerly 4-1043)
OR 22872 WA
Colville P.D. 151-MA8

151 2490

The United States of America

To all to whom these presents shall come, Greeting:

8605190073

WHEREAS, an Order of the authorized officer of the Bureau of Indian Affairs is now deposited in the Bureau of Land Management, directing that, in accordance with 25 Code of Federal Regulations 152.6, a fee simple patent issue to Mose Nehumpchin for an undivided 13/2160 interest in the following described lands:

Willamette Meridian, Washington

T. 27 N., R. 21 E.,
Sec. 1, that portion of Allotment MA8 lying east of the north and south one-quarter line, excepting a .75-acre parcel included within Allotment MA9, lying along the east boundary of said Sec. 1, and further excepting a .14-acre parcel bounded on the north by the easterly prolongation of the northerly line of Tract R of plat of Low Land Division No. 2 as recorded in Volume 3 at page 11, Plats of Chelan County, Washington, on the east by a line parallel to and 15 feet distant from, when measured at right angles to, the east line of said Tract R extended into Lake Chelan, on the south by Lake Chelan and on the west by the east line of said Tract R.

FEE 6.00
FILED FOR RECORD
Louise S. Wapato
1986 MAY 19 PM 2 27
Order
BOOK 858 PAGE 247-48
KENNETH S. ROUSSEY
CHELAN COUNTY AUDITOR
WENATCHEE, WASH.

T. 28 N., R. 21 E.,
Sec. 36, Lots 9 and 10 and W½SE¼

The areas described aggregate approximately 174.26 acres, more or less after the above exceptions.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant, and to his heirs the said undivided 13/2160 interest in the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant, and to his heirs and assigns forever;

SUBJECT TO:

1. Such rights as Chelan Electric Company may have for flowage purposes under the Acts of March 8, 1906 (34 Stat. 55-56), and May 20, 1924 (43 Stat. 133), pursuant to an easement for perpetual flowage approved February 28, 1928, as more particularly described in Document on file in the Portland Land Titles and Records Office under numbers 151-153, 151-154, and 151-155; and

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Patent Number 46-85-0009

GPO 847-946

Form 1860-10
(July 1975)
OR 22872 WA
Colville P.D. 151-MA8

2. Such rights as the State of Washington may have for highway and stockpile purposes under the Act of March 3, 1901 (31 Stat. 1084), pursuant to an easement for highway and stockpile site within section 36, approved August 3, 1938, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-297; and

3. Such rights as Lake Chelan Irrigation District may have for water pipeline purposes under the Act of March 3, 1891 (26 Stat. 1095) as amended, pursuant to a right-of-way for water pipeline, approved January 24, 1941, over and across the northwest corner of this allotment in section 36, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-298; and

4. Such rights as the Bureau of Reclamation may have for drainage line purposes under the Act of February 5, 1948 (62 Stat. 17), pursuant to an easement for drainage line 50 feet in width approved April 29, 1975, over and across the W½SE¼ of section 36, as more particularly described in Document on file in the Portland Land Titles and Records Office under number 151-2194; and

5. A non-exclusive, perpetual easement for ingress and egress, utility and road purposes, 20 feet in width, lying along a portion of the west boundary of this tract located within fractional section 1, as described above, and as set forth in deeds on file in the Portland Land Titles and Records Office under numbers 151-2357 and 151-2358.

151 2490
85 JAN 15 A10:17

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Portland, Oregon the TWENTY-EIGHTH day of DECEMBER in the year of our Lord one thousand nine hundred and EIGHTY-FOUR and of the Independence of the United States the two hundred and NINTH.

SEAL

By _____
Acting Chief, Branch of Lands
and Minerals Operations

Patent Number 46-85-0009

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GPO 837-812