

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION

NORTH QUINAULT PROPERTIES, LLC, a  
Washington limited liability company;  
THOMAS LANDRETH, an individual, and  
BEATRICE LANDRETH,

Plaintiffs,

vs.

QUINAULT INDIAN NATION, a federally  
recognized Indian tribe, in its own capacity, as  
a class representative, and as parens patriae;  
STATE OF WASHINGTON DEPARTMENT  
OF NATURAL RESOURCES; ALL OTHER  
PERSONS OR PARTIES UNKNOWN  
CLAIMING ANY RIGHT, TITLE, ESTATE,  
LIEN, OR INTEREST IN THE LAKE AND  
LAKEBED KNOWN AS LAKE QUINAULT,

Defendants.

CIVIL ACTION NO.

VERIFIED COMPLAINT FOR  
DECLARATORY JUDGMENT,  
INJUNCTIVE RELIEF AND  
DAMAGES

COMES NOW the Plaintiffs, by and through their attorneys, Thomas L. Dickson and  
Elizabeth Thompson of the Dickson Law Group, P.S., and for claims against Defendants, allege  
and aver as follows:

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## I. INTRODUCTION

Under State and federal law Lake Quinault, a navigable waterway abutting the Quinault Indian Reservation and located in Washington State, should be open to the public for its use and recreation as well as to those non-tribal property owners with real property abutting the Lake shore such as the Plaintiffs. However for more than a decade the Quinault Indian Tribe has increasingly asserted “jurisdiction” and control over this navigable waterway, forcing out the public and non-tribal property owners in derogation of the Equal Footing Doctrine and the Public Trust Doctrine. Most recently, the Quinault Indian Tribe has restricted all use of the Lake for non-tribal members. Through this civil action, the Plaintiffs seek court determination as to the status of Lake Quinault and the property rights of non-tribal property owners abutting the Lake and court determination as to the public’s right to access of the Lake, its shore and lakebed.

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## II. JURISDICTION

2.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this pleading as though set forth in full.

2.2 This Court has jurisdiction pursuant to 28 U.S.C. § 1343, this being an action to redress the deprivation, under color of state law, of rights and privileges secured by the Constitution of the United States; pursuant to 28 U.S.C. § 1331, this being an action wherein the matter in controversy involves federal law; pursuant to 28 U.S.C. § 1353, this being an action involving the right of persons in whole or in part of Indian blood or descent to any allotment of land under any Act of Congress or treaty; pursuant to 28 U.S.C. § 1367, this being an action that includes state law claims over which this court has supplemental jurisdiction; pursuant to 5 U.S.C. § 702, this being an action that seeks declaratory relief in addition to money damages, and claims agency actions that violate standards set forth in 5 U.S.C. § 706; and pursuant to other

1 applicable laws relating to jurisdiction. Plaintiffs base their request for a declaration of rights on  
2 28 U.S.C. §§2201 and 2202.

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4 III. VENUE

5 3.1 Pursuant to 28 U.S.C. § 1391, this action is brought in the United States District  
6 Court for the Western District of Washington, which is where the Plaintiffs and one or more of  
7 the Defendants reside; where a substantial part of the events or omissions giving rise to the claim  
8 occurred; and where the property that is the subject of the action is situated. Pursuant to Local  
9 Rule 5e, this case has been filed in the Tacoma Division.

10 IV. PLAINTIFFS

11 4.1 Plaintiffs. Plaintiff North Quinault Properties LLC is a Washington limited  
12 liability company comprised of members who have property interests in property located on the  
13 north shore of Lake Quinault. Plaintiffs Thomas Landreth and Beatrice Landreth are a married  
14 couple and are both residents of the State of Washington and own an interest in real property  
15 situated in Grays Harbor County, which property abuts the northwest shore of Lake Quinault that  
16 forms the basis of the claims made herein. Pursuant to the common law, federal law, the Equal  
17 Footing Doctrine and the Public Trust Doctrine, the Plaintiffs have right, title and interest to the  
18 real property situated between the ordinary low water mark and the ordinary high water mark of  
19 Lake Quinault, which rights have been violated and infringed upon by the Defendants.

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21 V. DEFENDANTS

22 5.1 Defendant Quinault Indian Tribe. The Quinault Indian Tribe (the "Tribe") is a  
23 federally-recognized Indian tribe of Quinault, Queets, Quileute, Hoh, Chehalis, Chinook and  
24 Cowlitz people with a governing body recognized by the Secretary of the Interior. The Quinault  
25 Indian Reservation ("the Reservation") was founded in 1855 and is 208,150 acres, including 23

1 miles of Pacific coastline located on the southwestern corner of the Olympic Peninsula. The  
2 Reservation is in Grays Harbor and Jefferson Counties.

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4 5.2 Defendant State of Washington. Defendant State of Washington is a state of the  
5 United States of America. The Department of Natural Resources is an administrative  
6 subdivision of the State of Washington. The State of Washington has partial subject matter and  
7 geographic jurisdiction over Indian reservations within the state.

8 VI. BACKGROUND FACTS COMMON TO ALL CLAIMS FOR RELIEF

9 6.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
10 pleading as though set forth in full.

11 Sovereignty and jurisdictional issues

12 6.2 The policy of extinguishing Indian title only at the behest of the sovereign was  
13 one of the first policies set forth by the United State Congress after adoption of the Constitution.  
14 In 1790, Congress passed the first of many Indian Trade and Intercourse Acts. The first Trade  
15 and Intercourse Act declared that no sale of land made by any Indian or Indian tribe would be  
16 valid unless “made and duly executed at some public treaty, held under the authority of the  
17 United States.” (Act of July 22, 1790, Chapter 33, Section 4, 1 Stat. 137).

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19 6.3 In 1831, the United States Supreme Court introduced the concept of trust  
20 responsibility when, in Cherokee Nation v. Georgia, 30 U.S. (5 Pet. 1 (19831)), the Court  
21 refused original jurisdiction of the tribe finding that the tribe was not a state of the United States  
22 nor a foreign state. The Court concluded that the tribes were “domestic dependent nations” and  
23 that their relationship to the United States resembled “that of a ward to his guardian.” (*Id.* at 17).  
24 It is from this holding that the trust responsibility doctrine developed.  
25

1           6.4    The Supremacy Clause of the United States Constitution makes treaties with  
2 Indian tribes part of the Supreme Law of the land.

3           6.5    The Indian Commerce Clause, U.S. Const. art. I, Section 8, cl. 3, recognizes the  
4 supremacy of federal actions governing Indian affairs. The trust doctrine further dictates that  
5 the federal law will generally govern Indian rights.  
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7           6.6    Washington Territory was created out of Oregon Territory March 2, 1853, being  
8 all the land south of the 49<sup>th</sup> Parallel, North of the Columbia River and the 46<sup>th</sup> Parallel, from the  
9 Pacific to the Rockies.

10          6.7    The United States and the Quinault tribe entered into the Treaty of Olympia in  
11 1855 (“the Treaty”), which Treaty was ratified by Congress on March 8, 1859. In Article 1 of  
12 the Treaty, the Quinault tribe ceded, relinquished and conveyed to the United States all the  
13 tribe’s right, title and interest in and to the lands and country occupied by them.

14          6.8    Article 2 of the Treaty states, in pertinent part, that “[t]here shall be reserved, for  
15 *the use and occupation of the tribes, a tract of land sufficient for their wants . . . . to be*  
16 *selected by the President of the United States . . . and set apart for their exclusive use, and no*  
17 *white man shall be permitted to reside thereon without permission of the tribe.”*

18          6.9    Article 3 of the Treaty states, in pertinent part, that “[t]he right of taking fish at  
19 *all usual and accustomed grounds and stations is secured to said Indians in common with all*  
20 *citizens of the Territory . . . .”*

21          6.10   The territory reserved for the Quinault tribe through the Treaty was delineated as  
22 follows and did not include Lake Quinault or its vicinity:  
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6.11 To facilitate the distribution of land in the Northwest Territories, Congress passed “The Northwest Ordinance of 1787.” It provided for provisional territorial governments under federal control and a process leading to statehood. It also set fee simple title as the national policy of land ownership.

6.12 The Act of May 18, 1796 created the office of Surveyor General and allowed the Surveyor General to frame the regulations not spelled out by Congress. He defined the size of townships, created sections and their numbering systems, required bearing trees at corners, specified that detailed notes and land descriptions be taken, and that detailed markings be made at corners.

6.13 In 1812, Congress created the General Land Office, under the Treasury Department, which was to “superintend, execute, and perform all such acts and things, touching or respecting the public lands of the United States.”



1           6.14 The Act of July 17, 1854 extended the Donation Act to Washington and created a  
2 position of Surveyor General for Washington.

3           6.15 Soon thereafter, in 1858, Alleck Smith surveyed the Coast Guide Meridian North  
4 of Grays Harbor and then surveyed the first version of the Quinault Indian Reservation in 1861.  
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6           6.16 Townships were surveyed six miles by six miles. The townships were then  
7 surveyed into one mile by one mile square tracts called Sections, starting at the southeast corner  
8 and surveying north and west. The 40-acre tracts abutting the township lines were called  
9 Government Lots.

10           6.17 The Sections were numbered one to thirty-six beginning at the northeast corner of  
11 the township. The Deputy Surveyor set the four corners of the Section, called Section Corners,  
12 and the mid-point on the exterior lines of the Section, called Quarter Corners. Further  
13 subdivisions of the Sections would be done by local private or government surveyors by a  
14 federally prescribed method.

15           6.18 Large bodies of water and navigable rivers were to be surveyed on all sides, with  
16 the ownership of the beds to remain in the public. Where this subtracted from the normal size of  
17 the Sections, more Government Lots were created and their areas shown on the plats.  
18

19           6.19 Pursuant to the Manual of Surveying Instructions for the Survey of the Public  
20 Lands of the United States and Private Land Claims prepared in accordance with the direction of  
21 the General Land Office in 1890, all lakes with an area of twenty-five acres or more were to be  
22 meandered to determine the amount of land in that Township.

23                           Lake Quinault and the Quinault Reservation Boundaries

24           6.20 After the initial survey of the reservation, an issue arose with regard to delineating  
25 the boundaries of the reservation and its relation to Lake Quinault.

1           6.21 In 1873, the Reservation was expanded when President Grant issued an executive  
2 order establishing the newly expanded territory for the Quinault Reservation (“Executive  
3 Order”). The Executive Order describes that territory as: “[c]ommencing on the Pacific coast  
4 at the southwest corner of the present reservation, as established by Mr. Smith in his survey  
5 under contract with Superintendent Miller, dated September 16, 1861; thence due east, and  
6 with the line of said survey, 5 miles to the southeast corner of said reserve thus established;  
7 thence in a direct line to the most southerly end of Quinaielt Lake; thence northerly around  
8 the east shore of said lake to the northwest point thereof; thence in a direct line to a point a  
9 half mile north of the Queetshee River and 3 miles above its mouth; thence with the course of  
10 said river to a point on the Pacific coast, at low-water mark, a half mile above the mouth of  
11 said river; thence southerly, at low-water mark, along the Pacific to the place of beginning.”

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13           6.22 In 1873, it was not known that the Lake does not lie on a north/south axis, which  
14 therefore makes it difficult to determine a “northwest point” as required by the Executive Order.

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16           6.23 A contract for a survey of the boundary of the expanded Quinault Indian  
17 Reservation was awarded to Norton S. Taylor on August 26, 1891. He was to survey the south  
18 boundary of the Reservation and establish a permanent corner of the Reservation boundary line  
19 at the actual low water margin of Lake Quinault.

20           6.24 Taylor did not know how to complete the meander around the east shore of the  
21 Lake because the Lake was not on a north/south axis, but on more of an east/west axis. He was  
22 unable to survey only the east shore to the northwest point due to the position of the Lake.

23           6.25 Taylor requested instructions on how to complete the survey of the  
24 out-boundaries of the Reservation and the matter was referred to the Commissioner of Indian  
25 Affairs.

1           6.26 The Commissioner of Indian Affairs, by letter to the Secretary of the Interior  
2 dated February 23, 1892, made recommendations concerning the procedure to be followed in the  
3 survey of the northern boundary of the Reservation which were then concurred in by the  
4 Department.

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6           6.27 By letter dated April 5, 1892, the Commissioner of the General Land Office  
7 instructed the United States Surveyor General at Olympia to proceed with the survey as  
8 recommended. The contract for this survey was awarded to Henry L. Fitch on May 23, 1892.

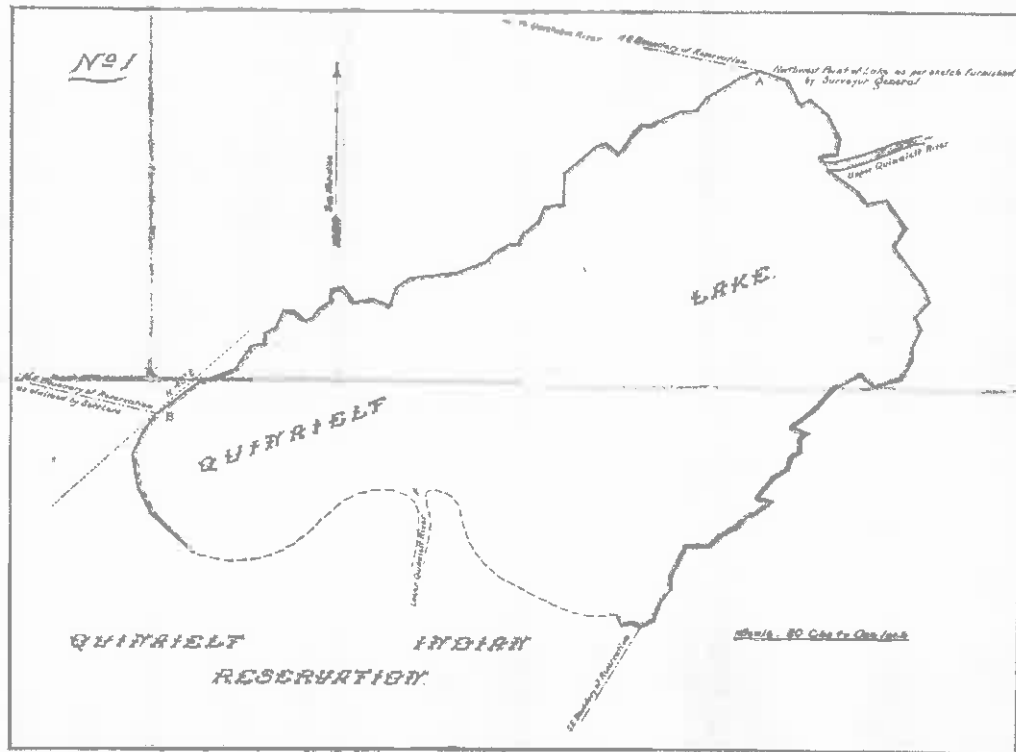
9           6.28 The first officially sanctioned survey of the Quinault Indian Reservation was  
10 performed by Deputy Surveyor Henry Fitch in 1892 and established a permanent corner at the  
11 most southerly point of Lake Quinault at the ordinary low water mark.

12           6.29 Fitch was instructed that his survey "must be executed in strict conformity with  
13 the Manual of Surveying Instructions for the survey of the Public Lands."

14           6.30 The instructions to Fitch state "*From the established southeast corner of the*  
15 *reservation run a random line to the most southerly end of Quinaielt Lake. At the point*  
16 *determined as the most southerly end of Quinaielt Lake, establish a permanent corner of the*  
17 *reservation at the ordinary low water mark of the actual margin of the lake. From the corner*  
18 *you will run the meanders around the east and north shores of Quinaielt Lake, establishing*  
19 *the permanent ½ mile and mile corners on the meander line, to a point accepted as the*  
20 *northwest point of the lake, as shown at "B" on diagram No. 1 (below) accompanying these*  
21 *instructions, at which point thus determined established a permanent corner of the*  
22 *reservation. "B" on the diagram is the agreed upon northwest point of the Quinault Indian*  
23 *Reservation.*"  
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1 6.31 Fitch was further instructed that *“a post or some other distinguishing monument*  
2 *must also be placed at the beginning and end of each course of the meanders around*  
3 *Quinaielt Lake and the course of boundary line along and ½ mile north of Queetshee River.”*  
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5 6.32 The diagram attached to the instructions given to Fitch is reprinted here:



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19 6.33 The survey used a point (marked as “B” on the diagram) more to the west and  
20 further south, thereby excluding the Lake’s northwest shore from the Reservation. At that time,  
21 settlers had already established settlements in this excluded area.

22 6.34 In 1893, Special Deputy Surveyor Ralph Ober examined the survey work of Fitch  
23 and determined it was correctly marked and surveyed. Ober was unable to locate each meander  
24 corner around the Lake due to the high water in November 1893; however, he used a rowboat to  
25 locate the meander corners visible from the boat. All meander corners were covered with 3 to 6

1 feet of water. The meander corners visited on the lake side were marked "M.C." ("Meander  
2 Corner") and the marks on the upland side of the Lake were marked "P.L. 1892" ("Public Land  
3 1892").

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5 6.35 In 1895 and 1897 the boundaries of the Quinault Indian Reservation and the area  
6 around Lake Quinault were re-surveyed with the same instruction to re-establish a permanent  
7 corner of the Quinault Indian Reservation at the most southerly end of Lake Quinault at the  
8 ordinary low water mark of the lake.

9 6.36 In 1897, President Cleveland issued a proclamation establishing the U.S. Forest  
10 Reserve which included Lake Quinault. Maps contemporary with the proclamation show the  
11 Lake as abutting the northeast and northerly boundary of the Quinault Indian Reservation.

12 6.37 In 1901 President McKinley issued a proclamation confirming the boundary of  
13 the U.S. Forest Reserve as including Lake Quinault.

14 6.38 In 1901, under survey work for the U.S. Forest Reserve, surveyors Dobbs and  
15 Rixon completed the geographical survey of the U.S. Forest Reserve and placed Lake Quinault  
16 within the boundary of the Forest Reserve.

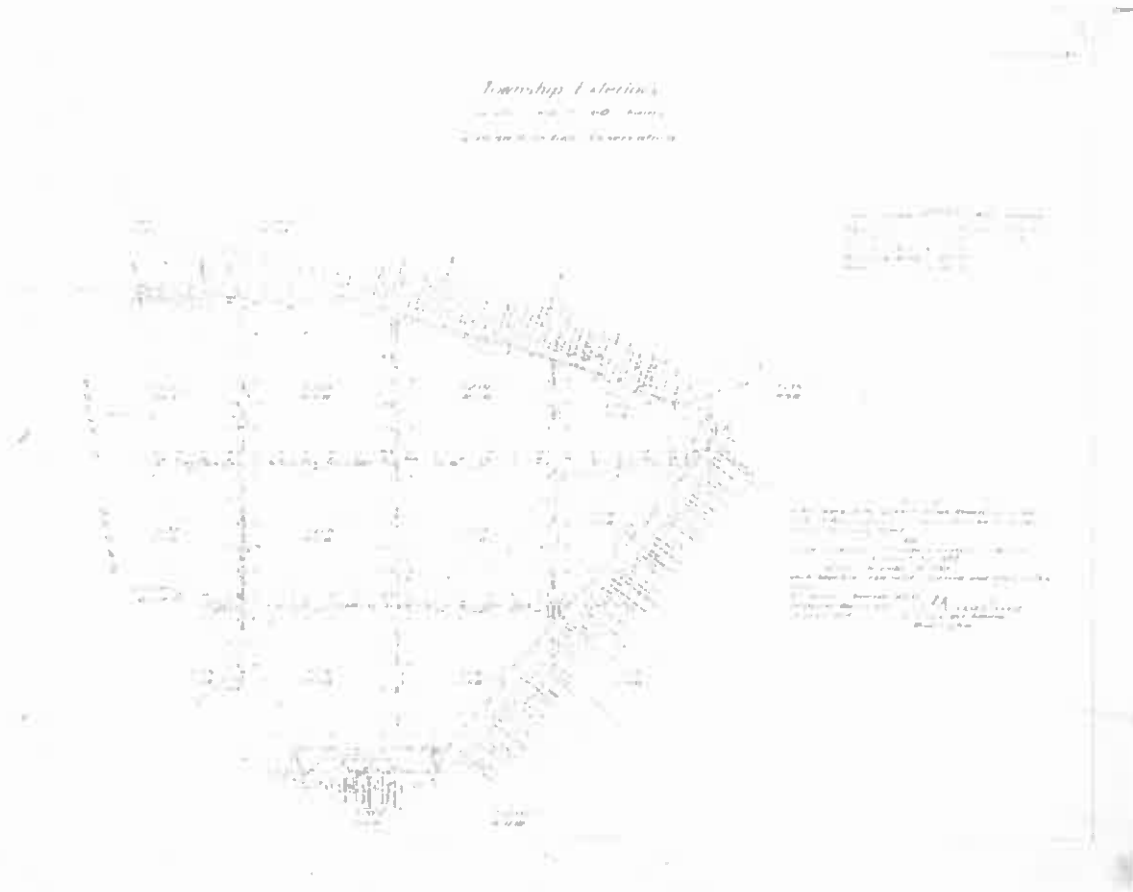
17 6.39 Also in 1901, the Department of the Interior opened the Quinault Indian  
18 Reservation to settlement and in December, Deputy Surveyor George Campbell was issued a  
19 contract to survey the Quinault Indian Reservation.

20 6.40 In 1901-1902, Campbell re-surveyed the boundaries of the Quinault Indian  
21 Reservation. The survey did not include the meander around Lake Quinault as being within the  
22 boundaries of the Reservation:  
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6.41 In 1904 Campbell's survey of the Quinault Indian Reservation, excluding the Lake, was accepted as official by the Surveyor General of Washington State.

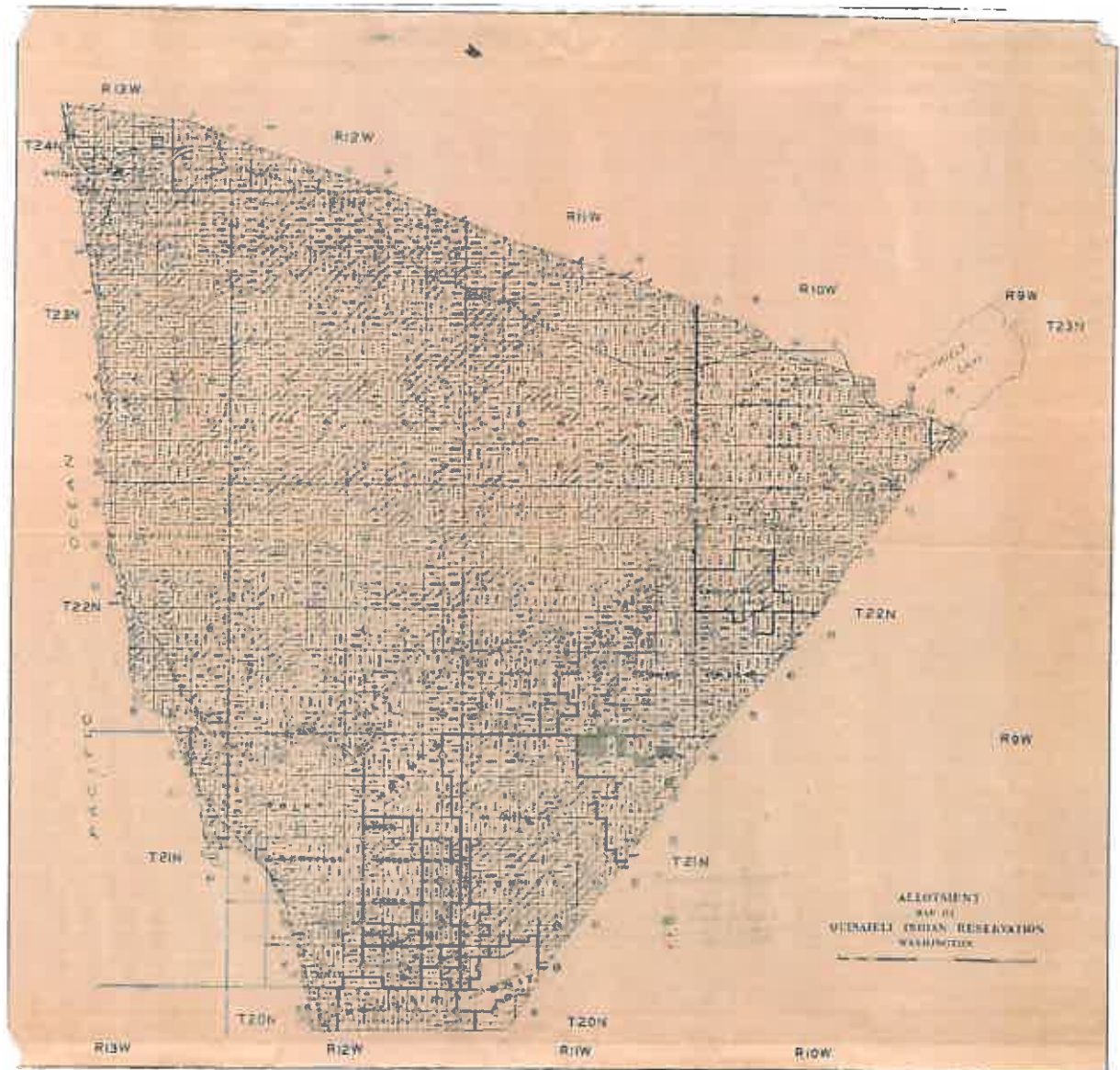
6.42 A proclamation from President Roosevelt in 1907 confirmed that Lake Quinault was situated within the U.S. Forest Reserve boundary and not within the Reservation.

6.43 The Lake Quinault Recreational Area surrounding Lake Quinault was established in 1923 as part of the Cleator Plan by the U.S. Forest Reserve and adopted by Congress. Maps by recreation planner for the U.S. Forest Service Northwest Region 6 Fred Cleator delineate the Lake as abutting but not included within the Reservation.



1           6.44 In 1887, Congress passed the General Allotment Act which divided tribal  
2 reservation land into allotments to be conveyed to tribal families and individuals, which land  
3 would be held in trust by the federal government for 25 years. After 25 years each individual  
4 would receive U.S. citizenship and fee simple title to their land.  
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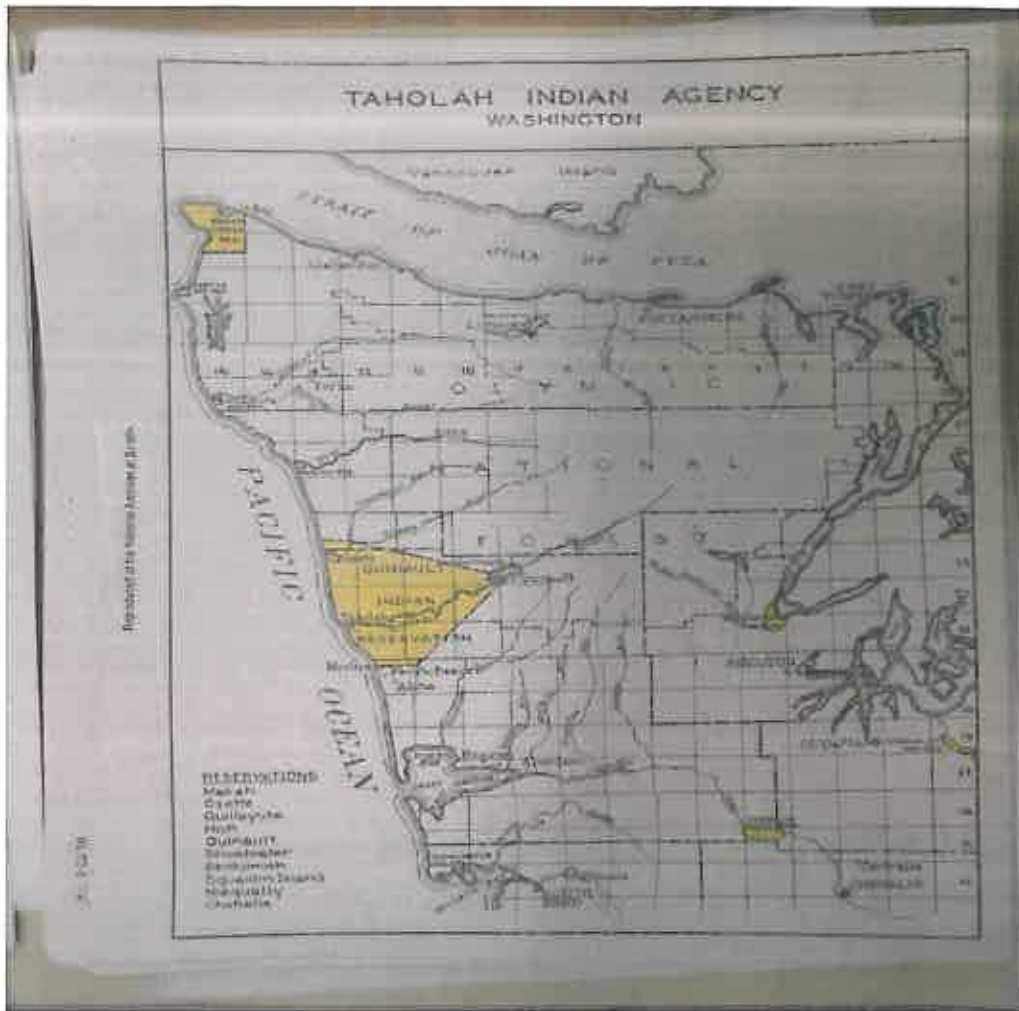
6           6.45 A 1938 map outlining the allotments associated with the Quinault Indian  
7 Reservation indicate that Lake Quinault abutted the Reservation but was not included therein:  
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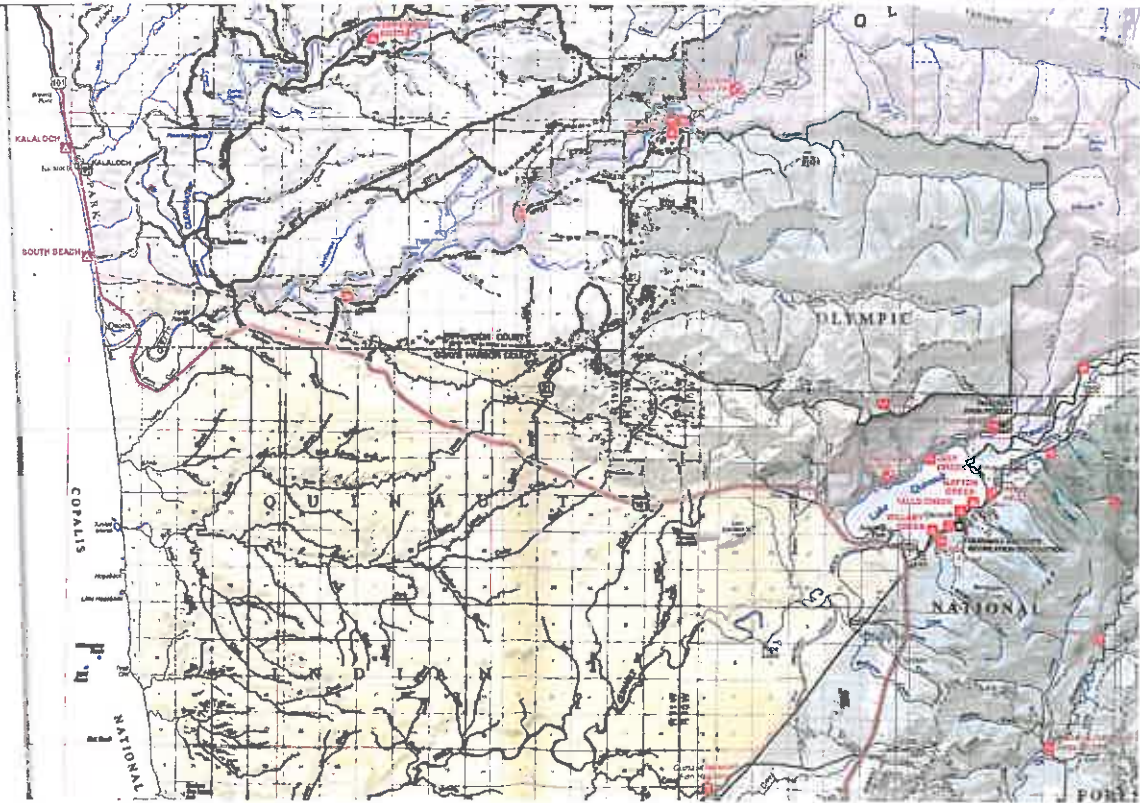


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6.46 A 1938 map produced by the Taholah Indian Agency shows the Lake as abutting the Reservation:



6.47 Recently, prior to August 2014, the map issued by the Bureau of Land Management for the Olympic Peninsula have stated that Lake Quinalt “is administered” by the Quinalt Indian Nation. However, a map issued by the Bureau of Land Management as recently as August 2014 unambiguously shows the Lake as abutting but being outside of the boundaries of the Quinalt Indian Reservation. The Bureau’s own maps have recently been updated to demonstrate that the QIN does not have jurisdiction to the Lake:



#### Title-Navigability of Waterways

6.48 Before achieving independence, the colonies were governed by the common law of England. By royal charter, the Duke of York was granted both propriety and dominion of the water of, and soils underlying, “navigable” waterways in the 13 colonies. (*Martin v. Waddell*, 41 U.S. 367, 412-414 and 418, 10 L. Ed. 997, 16 Peters 367 (1842); see also *Shively v. Bowlby*, 152 U.S. 1, 11 and 14, 14 S. Ct. 548, 38 L. Ed. 331 (1894). The primary common use of such waterways was “for highways of navigation and commerce.” (*Shively*, 152 U.S. at 11).

6.49 In 1842, the United State Supreme Court held that the people of the original 13 states received the absolute right to the “navigable” waterways within their borders for their own common use, subject only to the rights surrendered by the Constitution to the federal government. (*Martin*, 41 U.S. at 410). The Court based its decision on an analysis of the English common law regarding waterways and the Duke of York’s royal charter. (*Id.*, at

1 410-413). The Court held that the states received both the water and the land underlying the  
2 water.  
3

4 6.50 Three years later, in 1845, the Supreme Court extended the holding of *Martin* to  
5 all states. The Court determined that when Alabama was admitted into the Union it acquired  
6 title to the tidally-influenced waterways within its borders. (*Pollard's Lessee v. Hagan*, 44 U.S.  
7 212, 230, 11 L. Ed. 565, 3 How 212 (1845)). The Court held that all new states enter the Union  
8 on an equal basis with the original 13 states, meaning that a new state has the same “rights,  
9 sovereignty, and jurisdiction” over “[t]he shores of navigable waters, and the soils under them,”  
10 as well as the navigable waters themselves resting within its borders. (*Id.*, at 239-30). The early  
11 cases established jurisdiction of tidal waters, but did not address non-tidal waters.

12 6.51 Under English common law, the basis for the early U.S. Supreme Court decision,  
13 the sovereign’s ownership of “navigable” waterways was limited to waters influenced by the ebb  
14 and flow of the tide.  
15

16 6.52 In *Propeller Genesee Chief v. Fitzhugh et al*, 53 U.S. 443, 455-56, 13 L.Ed. 1058,  
17 12 How 443 (1852), the Supreme Court decided that federal admiralty jurisdiction extended to a  
18 non-tidal waterway, Lake Ontario. The Court rejected the English common law rule as  
19 inadequate for the United States.

20 6.53 In 1870, the Supreme Court held that a waterway’s “navigability” was to be  
21 determined by its “navigable capacity.” (*The Daniel Ball*, 77 U.S. 557, 19 L. Ed. 999, 10 Wall  
22 557 (1870)). The Court held that waterways are “navigable waters of the United States” if “they  
23 form in their ordinary condition by themselves, or by uniting with other waters, a continued  
24 highway over which commerce is or may be carried on with other States or foreign countries in  
25 the customary modes in which such commerce is conducted by water.” (*Id.* at 563).

1           6.54 In *The Montello*, 87 U.S. 430, 22 L. Ed. 391, 20 Wall 430 (1874), the Supreme  
2 Court determined that the pertinent question concerning “navigability” was whether the  
3 waterway was “capable in its natural state of being used for purposes of commerce, no matter in  
4 what mode the commerce may be conducted, [If it is,] it is navigable in fact, and becomes in law  
5 a public river or highway.” (*Id.* at 441-442). The Court noted that the waterway “must be  
6 generally and commonly useful to some purpose of trade or agriculture.” The Court further  
7 stated that a waterway may be title-navigable even though “its navigation may be encompassed  
8 with difficulties by reason of natural barriers, such as rapids and sand-bars.” (*Id.* at 443).

9           6.55 In 1877, the Supreme Court confirmed state ownership of non-tidal waterways as  
10 an aspect of sovereignty. (*Barney v. Keokuk*, 94 U.S. 324, 24 L. Ed. 224, 4 Otto 324 (1876)).

11           6.56 Between 1922 and 1935, the U.S. Supreme Court decided five cases involving the  
12 ownership of lands underlying various waterways and in each of the cases the pivotal issue was  
13 whether the United States, an Indian tribe for which the federal government had reserved land  
14 prior to statehood, or the subsequently formed state owned the bed of a particular water way.  
15

16           6.57 To resolve these issues, the Court had to determine whether the waterway was  
17 title-navigable. The Court stated that the title to beds of waterways within a state passed to that  
18 state when it was admitted to the Union if the waterways were then navigable and, if they were  
19 not then navigable, the title to the waterways remained in the United States. (*U.S. v. Utah*, 283  
20 U.S. 64, 75, 51 S. Ct. 438, 75 L. Ed. 844 (1931)).

21           6.58 In *U.S. v. Holt*, 270 U.S. 49, 46 S. Ct. 197, 70 L. Ed. 465 (1926), the Court held  
22 that a lake was title-navigable where the evidence showed that it was three to six feet deep in its  
23 natural state and there was evidence of actual use at statehood by small boats.  
24  
25

1           6.59    Navigability for title purposes is determined under federal not state law. (*U.S. v.*  
2           *Oregon*, 295 U.S. 1, 55 S. Ct. 610, 79 L. Ed. 1267 (1935)).

3  
4           6.60    More recent Court decisions have further illustrated the federal test for  
5           title-navigability. The Ninth Circuit states in *State of Oregon v. Riverfront Protection*  
6           *Association*, 672 F.2d 792 (1982), that the use of the waterway need not be without difficulty,  
7           extensive or long and continuous. The Court further held that the seasonal nature of log drives on  
8           the waterway did not destroy its navigability. (*Id.* at 795).

9           6.61    Recently, in *PPL Montana, LLC v. State of Montana*, the U.S. Supreme Court  
10           rejected a test for title-navigability that involved viewing the waterway as a whole in favor of a  
11           segment-by-segment analysis of the waterway. The Court further held that the assessment of  
12           title-navigability must be based upon the conditions existing at the time statehood was acquired.

13           6.62    The legal tests for determining what waterways the state owns by virtue of its  
14           statehood is established by federal law.

15  
16           6.63    As a fundamental aspect of sovereignty, at statehood the state of Washington  
17           acquired, with few exceptions, title to all waterways or portions of waterways that were  
18           tidally-influenced or that were non-tidal but that satisfied the federal test of title-navigability.

19           6.64    A non-tidal waterway is title-navigable under federal law if, at the time of  
20           statehood, it was used or was susceptible of use, in its ordinary condition, as a highway of  
21           commerce over which trade and travel was or could have been conducted in the customary  
22           modes of trade and travel on water.

23           6.65    Federal and state law limit the discretion of the state to alienate its ownership of  
24           navigable waterways to the extent that doing so would interfere with the public use of the  
25           waterway for navigation, commerce or fisheries.



1           6.66 Even if the bed of a waterway is privately owned the waterway may be used by  
2 the public for certain purposes if it meets the state test of navigable-for-public-use, in accordance  
3 with the Public Trust Doctrine.  
4

5           6.67 A waterway is navigable-for-public-use if it has the capacity, in terms of length,  
6 width and depth, to enable boats to make successful progress through its waters.

7           6.68 Public uses generally include but are not limited to navigation, commerce, or  
8 recreation.

9           6.69 Recreation includes use of small boats for pleasure and fishing as well as  
10 swimming.

11           6.70 The public may use the land adjacent to a waterway that is  
12 navigable-for-public-use as long as the use of the adjacent land is “necessary” to the lawful use  
13 of the waterway.  
14

15           6.71 Lake Quinault is a navigable waterway title to which passed to Washington State  
16 when it joined the Union and, as such, Washington State has an obligation pursuant to the Public  
17 Trust Doctrine to maintain the public’s access to Lake Quinault for navigation, commerce and  
18 recreation.

19           CAUSES OF ACTION AGAINST DEFENDANT QUINAULT INDIAN TRIBE

20                           VII. FIRST CAUSE OF ACTION: TRESPASS

21           7.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
22 pleading as though set forth in full.

23           7.2 The existing boundary of the Quinault Indian Reservation was established by the  
24 Executive Order of 1873 and executed in the surveys of Fitch (1892) and Campbell (1902),  
25

1 which establish that Lake Quinault abuts the Reservation but is not included within the  
2 Reservation boundaries.

3  
4 7.3 Lake Quinault has never been located within the Reservation boundaries. The  
5 initial boundaries of the Reservation abutted the coastal areas and were nowhere near the Lake or  
6 its vicinity. Nonetheless, the Tribe has *de facto* controlled and restricted all activity on the  
7 Lake, including the activities of those whose real property abuts the northern and northwestern  
8 shores of the Lake and who legally have right, title and interest to the ordinary low water mark of  
9 the Lake.

10 7.4 The actions taken by the Tribe with regard to Lake Quinault have resulted in the  
11 deprivation of property rights to the Plaintiff, to other nontribal property owners abutting the  
12 Lake, and to the public.

13 7.5 In 2009, without consent or permission from the Plaintiffs or other property  
14 owners with real property abutting the Lake, the Tribe conducted a re-survey of the meander  
15 lines on the Lake up to the ordinary high water mark with the intention of asserting further  
16 control and jurisdiction over the Lake.

17  
18 7.6 In performing that survey of the portions of the Lake abutting the Plaintiffs'  
19 property and the property of the other nontribal property owners along the north shore, the Tribe  
20 committed a trespassory invasion of the Plaintiffs' property rights and the property rights of the  
21 other property owners on the Lake.

22 7.7 Over the last decade, the Tribe has unilaterally directed and made demands upon  
23 the Plaintiffs and the other north shore property owners restricting and at times denying access to  
24 the Lake and to the fee simple land abutting the Lake, denying property owners recreational use  
25 rights to the Lake.



1           7.8    The Tribe has patrolled the Lake in power boats while carrying and displaying  
2 firearms as a deterrent to the Plaintiffs and the other nontribal north shore property owners  
3 against the use and enjoyment of their own property abutting the Lake.  
4

5           7.9    The Tribe has issued unilaterally edicts and “rules” as to what activities the  
6 Plaintiffs and the other nontribal north shore property owners may conduct on and near the Lake.

7           7.10   The Tribe has threatened, directly and indirectly, the Plaintiffs and the other  
8 nontribal north shore property owners with regard to any use or enjoyment of the Lake or that  
9 property between the ordinary low water mark and the ordinary high water mark on the Lake.

10          7.11   The Tribe’s actions and conduct in restricting and denying access to the Lake was  
11 wrongful and resulted in a trespassory invasion of the rights of the Plaintiffs and the other  
12 nontribal north shore property owners.

13          7.12   The trespass by the Tribe directly and proximately caused and continues to cause  
14 damages to the Plaintiffs and to the Plaintiffs’ property rights as shall be proven at trial.  
15

16                           VIII. SECOND CAUSE OF ACTION: CONVERSION

17          8.1    Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
18 pleading as though set forth in full.

19          8.2    To the extent that the Plaintiffs and other nontribal property owners have lawfully  
20 come into possession of their real property abutting Lake Quinault and other legal interests,  
21 Defendants Quinault Indian Nation, through actions and omissions described herein, wrongfully  
22 exercised dominion or otherwise assumed authority over the Plaintiffs’ property and other legal  
23 interests such as to constitute a deprivation of the Plaintiffs’ possession of property and other  
24 legal interest.  
25

1           8.3    The Plaintiffs have the right to immediate possession of such real property and  
2 interests. The Plaintiffs have demanded the return of their real property and real property legal  
3 interests, but has been refused by the Tribe.  
4

5           8.4    The Tribe's commission of conversion was committed through its actions in  
6 re-meandering the lake in 2009 and taking the real property situated between the ordinary low  
7 water mark and the ordinary high water mark and by restricting and denying the Plaintiffs the  
8 reasonable use of Lake Quinault, despite the fact that the Lake is not a part of the Reservation.  
9 The Tribe's conversion against the Plaintiffs is a continuing conversion in that the Tribe  
10 continually and unlawfully restricts and prevents the Plaintiffs from the use and enjoyment of the  
11 Lake, the lakebed and the real property situated between the ordinary low water mark and the  
12 ordinary high water mark.  
13

14           8.5    The Tribe's actions and omissions described herein directly, foreseeably and  
15 proximately caused, and continue to directly, foreseeably and proximately cause injury to the  
16 Plaintiffs and the Plaintiffs' property and other legal interests, in such sum as shall be proven at  
17 trial.

18           IX.    THIRD CAUSE OF ACTION: TORTIOUS INTERFERENCE WITH PROPERTY

19           9.1    Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
20 pleading as though set forth in full.

21           9.2    Defendants Quinault Indian Nation's actions of denying and restricting lawful  
22 access to Lake Quinault constitutes an act of detaining and exercising of dominion over the  
23 Plaintiffs' property without the Plaintiffs' consent.  
24

25           9.3    As such, the Plaintiffs were deprived of past, present and future possession of  
their lawfully obtained real property.

1           9.4    The Tribe's wrongful acts and omissions were done wilfully and in conscious  
2           disregard of the Plaintiffs' rights.

3  
4           9.5    As a direct, foreseeable and proximate result of the Tribe's wrongful acts, the  
5           Plaintiffs have suffered and continues to suffer injury and damages in such amounts as shall be  
6           proven at trial.

7                   X.     FOURTH CAUSE OF ACTION: PRIVATE NUISANCE

8           10.1   Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
9           pleading as though set forth in full.

10           10.2   It is a violation of Washington law to (1) annoy, injure or endanger Plaintiffs'  
11           comfort, repose, health or safety; (2) to offend Plaintiffs' decency; (3) to unlawfully interfere  
12           with, obstruct or tend to obstruct or render dangerous for passage any lake or navigable river; (4)  
13           to close the channel of any stream used for boating or rafting logs, lumber or timber; or (5) to  
14           render Plaintiffs insecure or to interfere with the free use of their Property. (RCW 7.48.120 and  
15           RCW 7.48.150). Additionally, the Washington Constitution prohibits the unlawful disturbance  
16           of a "person" in his private affairs or the invasion of his home. Art. I, § 7.

17  
18           10.3   The Tribe's actions and omissions related to the denial and restriction of the use  
19           and enjoyment by the Plaintiffs of Lake Quinault are the direct, foreseeable and proximate cause  
20           of continuing injury to the Plaintiffs' property and other legal interests as describe herein.  
21           Accordingly, the Tribe's actions constitute a private nuisance pursuant to RCW 7.48.010,  
22           7.48.020 and 7.48.150 and a violation of the constitutional prohibition against the unlawful  
23           invasion of a person's private affairs or home.  
24  
25

1           10.4 The Plaintiffs have repeatedly given notice to the Tribe to abate the nuisance  
2 created by the Tribe's actions and omissions, but the Tribe has failed and refused, and continue  
3 to fail and refuse to do so.  
4

5           10.5 As a result of the Tribe's actions and omissions, the Plaintiffs have been injured  
6 in an amount to be proven at trial.

7           XI. FIFTH CAUSE OF ACTION: VIOLATION OF RCW 4.24.630

8           11.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
9 pleading as though set forth in full.

10           11.2 RCW 4.24.630 prohibits persons from going onto the land of another and  
11 wrongfully causing waste or injury to the land, or wrongfully injuring personal property and  
12 provides that such person is liable to the injured party for treble damages and reasonable costs,  
13 including attorneys' fees. For purposes of this statute, "wrongfully" is defined as intentionally  
14 and unreasonably committing the act or acts while knowing, or having reason to know, that he or  
15 she lacks authorization to so act.  
16

17           11.3 The Plaintiffs, as owners of real and personal property injured by the Tribe's  
18 willful or unlawful obstruction of the Plaintiffs' rights to the use and enjoyment of the Lake, are  
19 members of the class of persons that the statute was intended to protect.

20           11.4 The Tribe's violations of the statute, through its willful and deliberate obstruction  
21 and denial of the Plaintiffs' property rights to the Lake is the direct, foreseeable and proximate  
22 cause of continuing waste of injury to the Plaintiffs' real and personal property.

23           11.5 As a result of the Tribe's acts and omissions, the Plaintiffs have been injured in an  
24 amount to be proven at trial.  
25

1 CAUSES OF ACTION AGAINST DEFENDANT STATE OF WASHINGTON

2 XII. SIXTH CAUSE OF ACTION: DECLARATORY RELIEF – PUBLIC TRUST  
3 DOCTRINE

4 12.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
5 pleading as though set forth in full.

6 12.2 Pursuant to the Public Trust Doctrine, navigable waterways are to be preserved  
7 for public use and the State of Washington is obligated to maintain all navigable waterways  
8 within its territory for the public's reasonable use.

9 12.3 Lake Quinault is navigable in fact and in title.

10 12.4 As a navigable waterway, title to Lake Quinault's waters, its lakebed and the  
11 shore to the ordinary high water mark was transferred to the State of Washington from the  
12 federal government when Washington joined the Union.

13 12.5 Defendant Washington State had an affirmative obligation to maintain and  
14 preserve Lake Quinault for the public's use, including for boating and recreation.

15 12.6 Defendant Washington State has failed to preserve and maintain Lake Quinault  
16 for the public's use, in direct derogation of its duties under the Public Trust Doctrine.

17 12.7 The Plaintiffs, as Washington State residents and members of the public, are  
18 entitled to a declaration that Defendant Washington State is required to maintain and preserve  
19 Lake Quinault for the public's reasonable use and has failed to do so.

20 12.8 Plaintiffs are entitled to a declaration that Lake Quinault shall be preserved and  
21 maintained for the public's use, including boating and recreation, as a navigable waterway within  
22 the State of Washington.  
23  
24  
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1           12.9 Plaintiffs are entitled to a declaration that, as members of the public and as  
2 landowners of real property abutting Lake Quinault, the Plaintiffs are entitled to unfettered,  
3 unrestricted reasonable use of the Lake.  
4

5 CAUSES OF ACTION AGAINST DEFENDANTS QUINAULT INDIAN TRIBE AND STATE  
6 OF WASHINGTON

7 XIII. SIXTH CAUSE OF ACTION: DECLARATORY RELIEF

8           13.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
9 pleading as though set forth in full.

10           13.2 Pursuant to the Equal Footing Doctrine, title to navigable waterways was  
11 transferred to each state as it joined the Union, on equal footing with all other states.

12           13.3 Lake Quinault is navigable in fact and in title.

13           13.4 As a navigable waterway, title to Lake Quinault's lakebed and the shore to the  
14 ordinary high water mark was transferred to the State of Washington from the United States  
15 when Washington joined the Union.

16           13.5 Despite the application of the Equal Footing Doctrine, the Tribe has undermined  
17 Washington State's jurisdictional rights to Lake Quinault by restricting and deterring any lawful  
18 use of the Lake by the public and by the Plaintiffs.

19           13.6 The Tribe has failed to recognize the State's rights to Lake Quinault and, by  
20 extension, the rights of the Plaintiffs and the public to the reasonable use and enjoyment of the  
21 Lake.  
22

23           13.7 Plaintiffs are entitled to a declaration that pursuant to the Equal Footing Doctrine,  
24 Lake Quinault was transferred to the State of Washington upon admission to the Union.

25           13.8 Plaintiffs are entitled to a declaration that pursuant to the Equal Footing Doctrine,  
the United States and the Tribe have no right, title or interest in Lake Quinault.

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XIV. SEVENTH CAUSE OF ACTION: INJUNCTIVE RELIEF: PUBLIC TRUST  
DOCTRINE

14.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this pleading as though set forth in full.

14.2 In furtherance of the Plaintiffs' request for Declaratory Relief, Plaintiffs also seeks permanent injunctive relief to protect Plaintiffs' rights as members of the public in Washington State and as a property owners abutting Lake Quinault.

14.3 Instead of preserving and maintaining use and access to Lake Quinault for the public and abutting property owners, Defendant Washington State has, without authority or legal basis, asserted on several occasions that Defendant Quinault Indian Nation has "jurisdiction" and "title" to Lake Quinault, in direct derogation to Defendant Washington State's obligation to maintain and preserve this navigable waterway for the public.

14.4 Instead of preserving and maintaining use and access to Lake Quinault for the public and abutting property owners, Defendants Quinault Indian Tribe has without authority or legal basis asserted that the Quinault Indian Nation has "jurisdiction" and "title" to Lake Quinault, in direct derogation of the Public Trust Doctrine and in direct derogation of the Plaintiffs' legitimate property interests.

14.5 As a direct and proximate result of Defendant Washington State's failure to uphold its obligation and requirements pursuant to the Public Trust Doctrine, the Tribe has been allowed, unhindered or unchallenged by Defendant Washington State, to restrict and deny use and access to Lake Quinault to the Plaintiffs, to other non-tribal property owners, and to the public.





1           15.5 Judgment declaring that the Quinault Indian Tribe has no right, title or interest in  
2 the real property between the ordinary low water mark and the ordinary high water mark of Lake  
3 Quinault;  
4

5           15.6 Judgment declaring that the Defendant State of Washington has violated the  
6 Public Trust Doctrine by failing to preserve and maintain Lake Quinault for the public's use, in  
7 direct derogation of its duties;

8           15.7 Judgment declaring that Lake Quinault shall be preserved and maintained for the  
9 public's reasonable use, including boating and recreation, as a navigable waterway within the  
10 State of Washington;

11           15.8 Judgment declaring that the Plaintiffs, as members of the public and as a  
12 landowners of real property abutting Lake Quinault, are entitled to unfettered, unrestricted  
13 reasonable use of the Lake Quinault waterways, shore and lakebed;

14           15.9 Judgment declaring that the Quinault Indian Tribe has violated the rights of the  
15 Plaintiffs and the public by restricting and preventing the Plaintiffs and the public from using and  
16 enjoying Lake Quinault, its shore and lakebed;

17           15.10 Enjoin Defendants from interfering with the Plaintiffs' reasonable use and  
18 enjoyment of Lake Quinault, its shore and lakebed;

19           15.11 Enjoin Defendants from interfering with the public's reasonable use and  
20 enjoyment of Lake Quinault, its shore and lakebed;

21           15.12 Enjoin the Quinault Indian Tribe from assessing fees or other forms of restriction  
22 on the public for the reasonable use and enjoyment of Lake Quinault, its shore and lakebed;  
23  
24  
25

1 15.13 Enjoin the Quinault Indian Tribe from patrolling Lake Quinault, its shore and  
2 lakebed, thereby restricting the Plaintiffs' and the public's reasonable use and enjoyment of the  
3 Lake;  
4

5 15.14 Award the Plaintiffs monetary damages related to the loss of use of legally  
6 obtained real property and the trespass by the Defendants;

7 15.15 Award the Plaintiffs their reasonable fees, costs, expenses and disbursements,  
8 including attorney's fees associated with this litigation pursuant to the Equal Access to Justice  
9 Act, 28 U.S.C. § 2412;

10 15.16 Award the Plaintiffs their reasonable fees, costs, expenses and disbursements,  
11 including attorney's fees, associated with this litigation; and

12 15.17 Grant the Plaintiffs such further and additional relief as the Court may deem just  
13 and proper.

14 DATED this 30th day of December, 2014.

15  
16 DICKSON LAW GROUP, P.S.

17 

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Attorneys for Plaintiffs

VERIFICATION

I, Thomas Landreth, certify and declare:

I am a plaintiff in this action. I have read the foregoing pleading, have personal knowledge regarding the facts contained therein, know the contents thereof and believe the same to be true and correct.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED in Tacoma (city), Washington, this 30th day of December 2014.

  
THOMAS LANDRETH