

The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

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

Plaintiffs,

v.

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.

NO. 3:14-cv-06025-RBL

**MOTION TO DISMISS (FED. R.
CIV. P. 12(b)(6))**

**NOTE ON MOTION
CALENDAR:
Friday, February 20, 2015**

I. MOTION

The STATE OF WASHINGTON and its DEPARTMENT OF NATURAL
RESOURCES (“State Defendants”), by and through their attorneys, ROBERT W.
FERGUSON, Attorney General, and EDWARD D. CALLOW and TERENCE A. PRUIT,

Assistant Attorneys General, move under Rule 12(b)(6) to dismiss all of Plaintiffs' claims against the State Defendants. These claims should be dismissed because the State Defendants enjoy sovereign immunity under the Eleventh Amendment of the United States Constitution.

II. INTRODUCTION

This lawsuit arises out of a dispute between the Plaintiffs and the Quinault Indian Nation (Nation) over the Nation's assertion of jurisdiction over the bedlands of Lake Quinault.¹ Plaintiffs have also brought this action against State Defendants, alleging that State Defendants have violated the Public Trust Doctrine.² Plaintiffs seek declaratory and injunctive relief, as well as \$5,000,000 in damages, against State Defendants.³ Because all of the Plaintiffs' claims against State Defendants are barred under the Eleventh Amendment, these claims should be dismissed.

III. STANDARD OF REVIEW

Dismissal under Rule 12(b)(6) is appropriate when a complaint lacks sufficient facts to support a cognizable legal theory. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

On a motion to dismiss, factual allegations of the complaint are taken as admitted, but legal conclusions couched as factual allegations are not. *Id.* A motion under Rule 12(b)(6)

¹ Dkt. 1 at p. 2.

² Dkt. 1 at pp. 25-30.

³ *Id.*; Dkt. 1.1 at p. 1.

1 should be granted if an affirmative defense, such as a state's Eleventh Amendment immunity, is
 2 apparent from the face of the complaint. Indeed, "[a]n absolute immunity defeats a suit at the
 3 outset" *Imbler v. Pachtman*, 424 U.S. 409, 419 n.13, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976).
 4 Because State Defendants' Eleventh Amendment immunity is apparent on the face of Plaintiffs'
 5 complaint, the Court should grant this motion and dismiss all claims against State Defendants.

6 IV. ARGUMENT

7 A. The Eleventh Amendment Bars This Suit Against the State Defendants.

8 Under the Eleventh Amendment, "[t]he judicial power of the United States shall not be
 9 construed to extend to any suit in law or equity, commenced or prosecuted against one of the
 10 United States by citizens of another state, or by citizens or subjects of any foreign state." The
 11 Eleventh Amendment immunizes states from suit in federal court regardless of the relief sought,
 12 barring suits for equitable relief as well as suits for damages. *E.g., Seminole Tribe v. Florida*,
 13 517 U.S. 44, 58, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996); *Puerto Rico Aqueduct & Sewer Auth.*
 14 *v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146, 113 S. Ct. 684, 121 L. Ed. 2d 605 (1993); *Cory v.*
 15 *White*, 457 U.S. 85, 90-91, 102 S. Ct. 2325, 72 L. Ed. 2d 694 (1982); *see also Hess v. Port Auth.*
 16 *Trans-Hudson Corp.*, 513 U.S. 30, 48 n.19, 115 S. Ct. 394, 130 L. Ed. 2d 245 (1994). The bar
 17 also applies to state agencies. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100,
 18 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984) ("It is clear, of course, that in the absence of consent a
 19 suit in which the State or *one of its agencies or departments* is named as the defendant is
 20 proscribed by the Eleventh Amendment.") (emphasis added).

21 A federal court may entertain a suit against a state only if: (1) the state has waived its
 22 Eleventh Amendment immunity; *Blatchford v. Native Vill. of Noatak & Circle Vill.*, 501 U.S. 775,
 23 778-779, 111 S. Ct. 2578, 115 L. Ed. 2d 686 (1991); *Atascadero State Hosp. v. Scanlon*, 473 U.S.
 24 234, 241, 105 S. Ct. 3142, 87 L. Ed. 2d 171 (1985); (2) Congress has abrogated states' immunity
 25 *Dellmuth v. Muth*, 491 U.S. 223, 227-28, 109 S. Ct. 2397, 105 L. Ed. 2d 181 (1989); or (3) the
 26

United States is the plaintiff; *United States v. Mississippi*, 380 U.S. 128, 140, 85 S. Ct. 808, 13 L. Ed. 2d 717 (1965). None of these exceptions apply in this case.

1. The State of Washington Has Not Waived Its Eleventh Amendment Immunity.

The test for whether a state has waived its immunity from federal court jurisdiction is a “stringent” one. *College Sav. Bank v. Fla. Prepaid Postsec. Educ. Expense Bd.*, 527 U.S. 666, 675, 119 S. Ct. 2219, 144 L. Ed. 2d 605 (1999). A state’s waiver must be “unequivocally expressed” and is only effective “where stated by the most express language.” *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 305, 110 S. Ct. 1868, 109 L. Ed. 2d 264 (1990); *College Sav. Bank*, 527 U.S. at 675.

Here, the State has not waived its sovereign immunity. While the Washington State Constitution permits the Legislature to waive sovereign immunity by “direct[ing] by law, in what manner, and in what courts, suits may be brought against the state” Wash. Const. art. II, § 26, the Legislature has directed that suits may *only* be brought against the State in Washington State courts. *See* Wash. Rev. Code § 4.92.010. This statute is not a consent for the State to be sued in federal court, much less an “unequivocal” one. *E.g.*, *Skokomish Indian Tribe v. France*, 269 F.2d 555, 561 (9th Cir. 1959); *Title Guar. & Surety Co. v. Guernsey*, 205 F. 94, 95 (W.D. Wash. 1913).

2. Congress Has Not Abrogated Washington’s Eleventh Amendment Immunity.

Congress has the power, under Section 5 of the Fourteenth Amendment, to abrogate states’ Eleventh Amendment immunity. *Atascadero*, 473 U.S. at 238. However, Congress must make its intent to do so “unmistakably clear.” *Atascadero*, 473 U.S. at 238, 242. In this case, Plaintiffs have not sued the State Defendants under any law that purports to waive the State Defendants’ sovereign immunity.

1 First, Plaintiffs have brought claims pursuant to this Court's jurisdiction under
 2 28 U.S.C. §§ 1331, 1343, 1353, and 1367.⁴ None of these statutes contain an abrogation of the
 3 State Defendants' sovereign immunity. Indeed, the closest Plaintiffs come to citing such a
 4 statute is attempting to invoke this Court's jurisdiction to hear a civil rights claim under
 5 28 U.S.C. § 1343, which is the jurisdictional counterpart to 42 U.S.C. § 1983. Plaintiffs have
 6 not alleged a cause of action under section 1983, but even if they had Congress did not abrogate
 7 states' Eleventh Amendment immunity in enacting 42 U.S.C. § 1983. *See Quern v. Jordan*,
 8 440 U.S. 332, 341-45, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979); *McConnell v. Critchlow*, 661 F.2d
 9 116, 117 (9th Cir. 1981); *see also Edgar v. State*, 595 P.2d 534, 538 (Wash. 1979) ("the State is
 10 not suable under section 1983").

11 Second, the Plaintiffs assert claims against the State Defendants under 5 U.S.C. §§ 702
 12 and 706 of the federal Administrative Procedure Act (APA).⁵ However, the federal APA does
 13 not apply to the State of Washington or its agencies; it applies *only* to actions of an authority of
 14 the government of the United States. *See City of Rohnert Park v. Harris*, 601 F.2d 1040, 1048
 15 (9th Cir. 1979). *See also Big Country Foods, Inc. v. Bd. of Educ. of Anchorage Sch. Dist.,*
 16 *Anchorage, Alaska*, 952 F.2d 1173, 1176 (9th Cir. 1992) ("the Administrative Procedure Act
 17 does not provide a basis for review of a claim against a state agency, because such an agency is
 18 not an 'authority of the Government of the United States'"); *Hill v. Richardson*, 7 F.3d 656,
 19 658 (7th Cir. 1993) ("[t]he Administrative Procedure Act does not apply to state
 20 governments"); *Resident Council of Allen Parkway Vill. v. U.S. Dept. of Hous. & Urban Dev.*,
 21 980 F.2d 1043, 1055 (5th Cir. 1993) (District Court lacks power to enjoin nonfederal entities
 22 under the federal APA).

23
24
25
26
⁴ Dkt. 1 at p. 2, ¶ 2.2.

⁵ Dkt. 1 at p. 2, ¶ 2.2.

1 Finally, Plaintiffs assert claims under the Declaratory Judgment Act, 28 U.S.C. §§ 2201
 2 and 2202.⁶ The Declaratory Judgment Act does not contain any waiver of state sovereign
 3 immunity, let alone an “unmistakably clear” one. *See* 28 U.S.C. §§ 2201, 2202; *Yakama*
 4 *Indian Nation v. Washington Dep’t of Revenue*, 176 F.3d 1241,1245 (9th Cir. 1999)
 5 (dismissing the plaintiff tribe’s Declaratory Judgment Act claims against the State on the basis
 6 of the State’s Eleventh Amendment immunity). Because none of the Plaintiffs’ claims against
 7 State Defendants fit within any of the limited exceptions to the State Defendants’ sovereign
 8 immunity, all of these claims should be dismissed.⁷

9 V. CONCLUSION

10 The Eleventh Amendment bars all of the Plaintiffs’ claims against State Defendants.
 11 Accordingly, the Court should grant this motion and enter an order dismissing all such claims.

12 DATED this 29th day of January, 2015.

13 ROBERT W. FERGUSON
 14 Attorney General

15 s/ Edward D. Callow
 16 EDWARD D. CALLOW, WSBA #30484
 17 Assistant Attorney General
 18 Natural Resources Division

19 s/ Terence A. Pruit
 20 TERENCE A. PRUIT, WSBA #34156
 21 Assistant Attorney General
 22 Natural Resources Division

23 *Attorneys for Defendants State of Washington and*
 24 *its Department of Natural Resources*

25 ⁶ Dkt. 1 at pp. 2-3, ¶ 2.2.

26 ⁷ The third exception to Eleventh Amendment immunity does not apply because the United States is not
 a plaintiff in this case. *See United States v. Mississippi*, 380 U.S. 128, 140 (1965).