

IN THE UNITED STATES FEDERAL COURT OF CLAIMS

NO. 18-476C

HONORABLE JUDGE CAMPBELL-SMITH

THOMAS G. LANDRETH

V.

UNITED STATES

RESPONSE TO DEFENDANT'S MOTION TO DISMISS AMDENDED COMPLAINT

Pursuant to Rule 9 of the United States Court of Federal Claims, Plaintiff, Thomas G. Landreth respectfully moves to deny the Defendant, United States motion to dismiss.

Rule 9 Pleading Special Matters (k) Contract or Treaty.

In pleading a claim founded on a contract or treaty, a party must identify the substantive provisions of the contract or treaty on which the party relies.

Articles of the express contract (Constitution) with the people of the United States are the 14th amendment and the 5th amendment as well as the Bill of Rights and the commerce clause regarding navigable waters of the United States.

Under the Tucker Act of 1887, the United States waived its sovereign immunity as to certain kinds of claims. Although the government is immune to lawsuits as a general rule, the Tucker Act exposes the government to liability for certain claims. Specifically, the Act extended the original Court of Claims' jurisdiction to include claims for liquidated or unliquidated damages arising from the Constitution (including takings claims under the Fifth Amendment), a federal

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statute or regulation, and claims in cases not arising in tort. The relevant text of the Act is codified in 28 U.S.C. §§ 1346(a) and 1491.

Articles of the 1856 Treaty of Olympia with the Quinault, Quileute, Hohs and Queets Indian Tribes, Article 8 and Article 13.

The 1856 Treaty of Olympia is a treaty/contract between the citizens of the United States and the signatory of the Treaty of Olympia (contract) to use and occupy the public land reserved for them for their exclusive use with restrictions on the use and occupancy of that land as REQUIRED in the treaty.

March 23, 1965 in a letter to Area Director, Portland, Oregon from the Bureau of Indian Affairs states the Quinault Indian Tribe is not the sole owner of the Quinault Indian Reservation as noted by the Court of Claims in 1945.

The Constitution of the United States establishes our form of government to be of the people, for the people, by the people. Under our form of government, the people, elect representatives from our locality and hire them to be a part of the governance of the people and provide the rule making that all the people must abide by.

When the elected Congress (representatives of the people) agree to establish a treaty with a foreign nation or an Indian Tribe it makes the citizens of the United States the other half of that treaty/contract and place their trust in the two partners to abide by the language on or in the document . (Trust Relationship)

Congress acts on behalf of all the people to make decisions that the citizens agree to be governed by. The citizens place their trust in the party's signatory to all treaties/contracts.

The actions by the Quinault Indian Nation in 2013, is a **breach of trust by the Quinault Indian Nation. (Mitchell v. United States) (E-2)**

The General Allotment Act of 1887 expressly declared the existence of a fiduciary relationship. Employing the key phrase from *Testan*, the court held that this explicit congressional declaration of trust status "(could) fairly be interpreted as mandating compensation by the Federal Government for the damage sustained'" The court relied on its earlier decision in *Eastport Steamship Corp. v. United States*, a case also relied upon the *Testan* court, in support of its conclusion that it is not required that Congress state that a damage action for breach of trust will lie. It is enough that a statute, fairly interpreted, grants a right to monetary recovery by implication. The court thus concluded that the General Allotment Act should be interpreted as implying a right to monetary recover for breach of a trust established pursuant to its terms. To hold otherwise would permit the government to waste allotted Indian Land without providing the wronged party the right to recover in the Court of Claims. But for the Tucker Act remedy, the plaintiffs, though wronged, would be without a remedy.

My amended complaint annexed the Treaty of Olympia to the amended complaint.

STATEMENT OF REQUEST FOR DENIAL OF MOTION TO DISMISS

STATEMENT OF THE ISSUES

1. The United States Court of Federal Claims has subject-matter jurisdiction under RCFC 9 (H) Pleading Special Matters.
2. 28 U.S. Code>Title 28> Part 91> @ 1491 Claims against the United States generally; The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States.
3. 28 U.S.C. @ 1505 (2013). Similarly, the Tucker Act provides: The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated damages in cases not sounding in tort.
4. Pursuant to RCFC rule 7, motions made under 12 (B) Responses. A response to any of these motions must be filed within 28 days after service of the motion. I received the Defendants Motion to Dismiss Plaintiff's Amended Complaint on November 20, 2018.
5. Pursuant to RCFC rule 9 (o) & (P) I must explain; **under (o)** Action by Another Tribunal or Body. I am **not** relying upon the actions of another tribunal. The prior lawsuits were filed under the Public Trust Doctrine. The two prior lawsuits were dismissed due to the claim of immunity by the Quinault Indian Nation and the 11th Amendment by the State of Washington. The prior lawsuits included a small group of people under the North Quinault Properties, LLC.

6. The current Amended Complaint before the United States Court of Federal Claims is submitted with only one name and that is the Plaintiff Thomas G. Landreth.
7. I filed the amended complaint to protect my *Jus Privatum and no other persons*.
8. The Defendant, United States refers and relies upon the prior lawsuits to deny my *Jus Privatum*.
9. Pursuant to RCFC 9 (P) I must explain: The two previous lawsuits by the North Quinault Properties, LLC. filed the complaint using the subject matter of the Public Trust Doctrine which is in effect in Washington State. The State of Washington does not have any statutory regulations to enforce violations of the Public Trust Doctrine. (It is a trust given to the people and governments are to abide by the public trust doctrine for all the people)
10. The Honorable Judge Leighton in Federal Court in Tacoma, WA dismissed the first suit due to immunity and the 11th amendment by the Defendants. The Honorable Judge Leighton recommended filing our complaint in Washington State in Superior Court under the Equal Footing Doctrine. Our counsel did file in Washington State Superior Court in Olympia, WA under the Public Trust Doctrine instead of the recommended subject matter by the Honorable Judge Leighton. Our counsel did not suggest or inform North Quinault Properties, LLC. that amendment of our dismissed complaint was an option.
11. The Honorable Judge Hirsch dismissed our suit in Superior Court in Olympia, WA under the claim of immunity and the 11th amendment as well as failing to enjoin all parties that have an interest in navigable Lake Quinault. Honorable Judge Hirsch also

suggested we commit a violation of Indian Law and have are complaints determined in Tribal Court. The court appearance in Honorable Judge Hirsch's court did provide the admission by Washington State Attorney Edward Callow that Lake Quinault is a navigable waterway and was used for commerce at the time of statehood in 1889. Honorable Judge Hirsch allowed the Quinault Indian Nation Tribe's attorney Rob Smith to enter into the proceeding an un-certified or accepted (by the Bureau of Land Management) map produced by the Quinault Indian Nation's GIS department specifically for the proceeding illustrating that Lake Quinault is within the Quinault Indian Reservation. The map was not shown to the plaintiff's counsel or plaintiff prior to the hearing. (official accepted maps by the BLM are E-14)

12. In 1995 Cadastral Surveyor Richard R. Shattoo performed a survey of the East Boundary of the Quinault Indian Reservation in T.23 North, Range 9 West and are including field notes and accepted map as E-15, 19 pages along with a summary of the history of surveys of Lake Quinault in E-16 with 4 pages.

13. The Survey by Surveyor Shattoo covered the same east boundary of the Quinault Indian Reservation as the one which established the east boundary by Deputy Surveyor Oliver Ort in 1895 (100 years apart)

14. Pursuant to RCFC Rule 10 (c) Adoption by Exhibit. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any pleading or motion. A copy of a written instrument that is an exhibit to a pleading is part of the pleading for all purposes.

15. The Quinault Indian Tribe/Nation claims to be the owner of navigable Lake Quinault located in the State of Washington. The claim of ownership to Lake Quinault is the main reason the Quinault Indian Tribe/Nation has taken the action to close Lake Quinault in 2013. It is most important to determine if the claim of ownership is based on facts according to the laws of the United States.
16. A dismissal of my amended complaint by the United States Federal Court of Claims will destroy the civil rights given to me under the Constitution of the United States, Washington State Constitution, Washington State and Federal Laws.
17. The Equal Footing Doctrine requires all states added to the Union are conveyed the ownership of all navigable water when it achieves statehood to be on an equal footing. The same as all states admitted to the Union in all regards.
18. The affect of the two dismissals allowed the Quinault Indian Nation to support and increase their claim of ownership and jurisdiction over the shore land between the ordinary low water and the ordinary high water of navigable Lake Quinault and destroy my legally obtained property and civil rights regarding my private land abutting navigable Lake Quinault.
19. The secondary affect of the two dismissals also destroyed the legally obtained property and civil rights of all private land owners with private property abutting navigable Lake Quinault.
20. Along with the dismissals came the destruction of the civil rights of all non-Quinault Indian people visiting or planning to visit the Lake Quinault Recreational Area as well as the Olympic National Park.

21. Pursuant to RCFC rule 10. (c) Adoption by Reference, Exhibits. A statement by adoption may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is part of the pleading for all purposes.
22. All exhibits and text presented in my RESPONSE TO THE NATION'S MOTION TO APPEAR is made a part of my pleading for the DEFENDANT'S MOTION TO DISMISS PLAINTFF'S AMENDED COMPLAINT.

STATEMENT OF THE CASE

The Federal Government removed a tract of land in 1856 from the public domain and reserved the land for the use and occupancy of the signatory Indian Tribes of the Treaty of Olympia. Reserving the land for the Indian Tribes and leaves the ownership of the land to the Federal Government, thus creating a landlord tenant contract (fiduciary relationship). The Federal Government has the authority to abrogate the Treaty of Olympia with a stroke of the pen and thereby eliminate the landlord tenant contract. When tenants of any property contract/treaty disregard the contract/treaty the owner of the contract is responsible for the breach of trust that goes along with the contract. The Treaty of Olympia is a part of the Constitution and is considered to be part of the Law of the Land. As a law of the land, Article 8 is a law agreed to by both parties. (See E-4)

The 1873 Executive Order by President Grant (E-11) enlarged the tract of land in accordance with the 1856 Treaty of Olympia. The Treaty of Olympia and the Executive Order do not discuss or retain any water rights to the Indian Tribes. Water rights are implied as are the implied rights

to all land abutting a water body navigable. When the Federal Government reserves land it also reserves the water within or abutting that water body in the amount needed to supply the water needed to support the purpose of the reserved land. (Winters Doctrine)

CONTRACTS & TREATIES

Supreme Law of the Land

The last treaty that the United States made with an Indian tribe was in 1868. After 1871, formal agreements replaced treaties, but the treaties that had been made between the United States and the Indians were still recognized as valid. They are still recognized as such today, and the United States recognizes that the Indian tribes in the United States possess a certain measure of sovereignty. As part of the "Supreme Law of the land" according to the U.S. Constitution, the treaties must be observed. Because these treaties are still in force, the provisions written into them such as establishing land reservations, off-reservation hunting and fishing rights, and the right to self-government are recognized as well.

Above is From Indian Country website

From Northwest Indian Fish Commission: "We kept our word when we signed the treaties that ceded almost all of the land that is in western Washington," said Billy Frank Jr. "We expect the United States to keep its word, too." (Trust Relationship) The Quinault Indian Tribe did not keep their word.

23. My Amended Complaint submitted to the United States Federal Court of Claims arises from the Constitution of the United States, Bill of Rights and the 1856 Treaty of Olympia.
24. According to the Northwest Indian Fish Commission the Indians signing the treaties in the Washington Territory promised to keep their word and abide by the letter of the treaties. This promise created an enforceable trust responsibility under the Federal Common Law.

25. An **express contract** is an exchange of promises in which the terms by which the parties agree to be bound are declared either orally or in writing, or a combination of both, at the time it is made.
26. The Constitution of the United States is an express contract with the citizens of the United States and under the Constitution adopted in 1787 has the inclusion of all navigable waters to remain open and free to all people as public highways.
27. The 1796 Congressional Act of May 18, 1796 section 9 was adopted into law that all navigable rivers (lakes) will remain as public highways. The Act of May 18, 1796 has not been amended to remove navigable rivers (lakes) from being public highways. Section 9 also separated navigable water from non-navigable water. All land under non-navigable water shall belong to the different persons abutting the non-navigable water and the bed thereof common to both. (E-3)
28. The same 1796 Congressional Act created the office of the Surveyor General whose duty it shall be to engage a sufficient number of surveyors, as his deputies; whom he shall cause, without delay, to survey and mark the unascertained outlines of the lands lying northwest of the river Ohio, with the instructions on how to perform the un-surveyed lands.
29. The commerce clause of the United States Constitution justifies the placement of all navigable water into the constitution. The entire United States and un-surveyed land relied and still relies upon the navigable waterways for commerce and fishery.
30. The BILL OF RIGHTS is a part of the Constitution and it states under the 14th Amendment four prongs of rights among many, 1. "No person was allowed to be

deprived of life, liberty, or property without "due process of law."2. "the right to demand protection of the Federal Government on the high seas or abroad, the right of assembly" 3. "the right to use the navigable waters of the United States, and 4. rights secured by treaty."

The 5th amendment of the Constitution: Sometimes, a government regulation infringes upon private property ownership to such an extent that the regulation can be considered a taking, thus requiring just compensation. The Supreme Court, over a series of regulatory takings cases, has developed a 4-part test to determine whether a regulation is considered to be a taking.

1. Is the regulation a taking under *Loretto*?
 1. A government regulation is a taking when the government authorizes a permanent physical occupation of real/personal property
2. Is the regulation a taking under *Lucas*?
 1. The regulation is a taking when the regulation causes the loss of all economically beneficial/productive uses of the land, unless the regulation is justified by background principles of property law/*nuisance* law
3. Is the regulation a taking under *Nollan-Dolan*?
 1. The regulation is a taking if the government demands an exaction that lacks a nexus with a legitimate state interest or lacks proportionality to project's impacts
 1. Exaction – a requirement that the developer provides specified land, improvements, payments, or other benefits to the public to help offset the project's impacts
4. Is the regulation a taking under the *Penn Central* balancing test?
 1. Here a court will look at 3 factors:
 - i. The character of the governmental action involved in the regulation
 1. If the government's action is a physical action, rather than a "regulatory invasion," then the action is almost certainly a taking
 - ii. The extent to which the regulation has interfered with the owner's reasonable investment-backed expectations for the parcel as a whole
 - iii. The regulation's economic impact on the affected prop owner

Types of Takings

Many types of government action infringe on private property rights. Accordingly, the Fifth Amendment's compensation requirement is not limited to government seizures of real property. Instead, it extends to all kinds of tangible and intangible property, including but not limited to *easements*, *personal property*, *contract rights*, and *trade secrets*.

In *United States v. Dickinson*, 331 U.S. 745 (1947), the Supreme Court held that even if the government does not physically seize private property, the action is still a taking "when inroads are made upon an owner's use of it to an extent that, as between private parties, a servitude has been acquired either by agreement or in course of time."

These are two suits brought under the Tucker Act (Judicial Code § 24 (20), 28 U.S.C. § 41 (20)) to recover the value of property claimed to have been taken by the Government.

Peabody v. United States, 231 U.S. 530. Of course, payment need only be made for what is taken, but for all that the Government takes it must pay.

It was thus put in Bauman v. Ross, 167 U.S. 548, 574: "when part only of a parcel of land is taken for a highway, the value of that part is not the sole measure of the compensation or damages to be paid to the owner; but the incidental injury or benefit to the part not taken is also to be considered. When the part not taken is left in such shape or condition as to be in itself of less value than before, the owner is entitled to additional damages on that account."

The claim of taking of my shore land abutting navigable Lake Quinault has left my remaining land in a position of less value than before.

The Quinault Indian Tribe President Fawn Sharp **illegally** claims our land as a government with jurisdiction in the area.(April 2013 letter to Washington State Department of Ecology)

Under common law and U.S. Code, the owner of private land has the right to the full enjoyment of his land whether it abuts navigable water or not.

25 April 16, 2013 Quinault Indian President Fawn Sharp issued a letter to the Washington State Director of the Department of Ecology stating the Quinault Nation retains the right to take this action, **as the owner of the lake and as the government with jurisdiction in the area.** Taking shore land under a claim of ownership is an illegal taking without due process when acting as a government. My land is not within or abutting land owned or reserved to the Quinault Indian Tribe and therefore the Quinault Indian Nation is outside the legal tract of land set aside by Executive Order in 1873. (E-12)(E-5) My privately owned land is within the Olympic National Park and the park has exclusive jurisdiction.

26 In 1897 a Presidential was proclamation was issued creating the Olympic Forest Reserve. The Proclamation included Lake Quinault within the boundary of the Olympic Forest Reserve. The 1895 survey available to the President prior to making the proclamation was surveyed by the Deputy Surveyor Ort of the Quinault Indian

Reservation which was accepted by the Surveyor General showing Lake Quinault to be in the Forest Reserve.(E-8)

27 In 1902 a second Presidential Proclamation was issued reducing the size of the Olympic Forest Reserve which included Lake Quinault within its boundary.

28 In 1907 a third Presidential Proclamation was issued enlarging the size of the Olympic Forest Reserve with the official map showing Lake Quinault to be in the Olympic Forest Reserve.

26. All treaties made by the United States Congress must be compliant with the Constitution of the United States.

BILL OF RIGHTS

1. The BILL OF RIGHTS in amendment one states; "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.
2. United States Code @ 1302 Constitutional rights states; (a) In general **No Indian Tribe** in exercising powers of self-government **shall—**(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances.
3. Article 8 of the 1856 express/self executing Treaty of Olympia ratified in 1859 by the Senate and the President of the United States, states: "The said tribes and bands

acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens, thereof, and pledge themselves to commit no depredations on the property of such citizens; and should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities."

4. Article 13 of the 1856 Treaty of states: "This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States."
5. Under our system of government, the **president's** authority to issue such **orders** (or to engage in any other form of unilateral **executive** action) must come from the Constitution or federal law. ... Still, the **president** has to sign the **law** enacting that **change**, unless Congress is able to override his veto

All Executive Orders issued by the President of the United States must be in compliance with the Constitution of the United States. The 1873 Executive Order enlarging the Quinault Indian Reservation could not include land under navigable water. Issuance of navigable water to any person or persons is barred by the Constitution of the United States after the signing of the Mining Act in 1866.

6. Pursuant to the Constitution of the United States all navigable waters within the United States are for all the people to use as public highways. U.S. Code § 931. **Navigable rivers as public highways** All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both.

7. The Constitution of the United States nor U.S. Codes separate navigable Lake Quinault or the entire Quinault River from being navigable waters of the United States located in Sovereign Washington State.
8. The Constitution of the State of Washington Article XVII Section 1. Declaration of state ownership. The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: *Provided*, that his section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state. Section 2. "Disclaimer of certain lands. The State of Washington disclaims all title in and claim to all tide, swamp and overflowed lands, patented by the United States; *Provided*, that same is not impeached for fraud.
9. The suit is maintainable under Jud. Code, § 24 (14) as a suit for protection of rights and privileges guaranteed by the due process clause. P. 525.
10. The right conferred by the Civil Rights Act of April 20, 1871, to maintain a suit in equity in the federal courts to protect the suitor against a deprivation of rights or immunities secured by the Constitution has been preserved, and whenever the right is one of personal liberty, not dependent for its existence upon the infringement of property rights,

TITLE 42—THE PUBLIC HEALTH AND WELFARE

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory
conspire or go in disguise on the highway
or on the premises of another, for the purpose of
depriving, either directly or indirectly, any person
or class of persons of the equal protection of

the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.
(R.S. § 1980.)

RULE 9. PLEADING SPECIAL MATTERS

11. 331 U.S. 745 (1947) *United States v. Dickinson*. No 77. Supreme Court of United States. These are two suits brought under the Tucker Act. (Judicial Code @ 24 (20), 28 U.S. @ 41 (20) to recover the value of property claimed to have been taken by the Government. Court “affirmed.” The Constitution is “intended to preserve practical and substantial rights, not to maintain theories.” *Davis v. Mills*, 194 U.S. 451, 457. One of the most theory-ridden of legal concepts is a “cause of action.” This Court has recognized its “shifting meanings” unrelated to the function which the concept serves in a particular manner. *United States v. Memphis Cotton Oil Co.* 288 U.S. 62, 67. Mr. Justice Frankfurter delivered the opinion of the Court.

12. 312 U.S. 584 (1941) United States v. Sherwood, No. 500. Supreme Court of United States. The question for decision is whether a United States District Court has jurisdiction to entertain the suit. It is stated: "and if the relief sought is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court," The trust responsibility to the Indian Tribes with an express contract/treaty (Article 8) stipulating how deprivations are resolved is a part of the law of the land. The government must adhere to and support the constitution and all contracts made with dependant nations. Land lords are ultimately responsible for the land owned by them and any breach of trust under that contract is abusing the contract and breach of trust.
13. 307 U. S. 496 (1939) Hague, Mayor, Et Al. v. Committed for Industrial organizations Et Al. No. 651. Supreme Court of United States. Freedom of speech and of assembly for any lawful purpose or rights of personal liberty secured to all persons, without regard to citizenship, by the due process clause of the Fourteenth Amendment. P. 519. This case reviewed more 50 cases involving civil rights abuses.
14. As indicated by the Defendant, the previous two suits filed by the North Quinault Properties LLC. were dismissed due to immunity and the 11th amendment. To sue again in another federal or state court would end with the same result. Immunity claimed by the sovereign Quinault Indian Nation, and the State of Washington. The only court with jurisdiction over subject-matter in special matters is the United States Federal Court of Claims.
15. The civil rights and breach of trust violations committed by the Quinault Indian Nation occurred in 2013, when I add 6 years to 2013, the total is 2019. Lawsuits filed to

obtain, a resolution to Lake Quinault has been in the court system for 5 of the last 6 years. The first suit was filed in 2014 and is within 6 years of 2009.

16. The shore land along the north shore of Lake Quinault was donated to the Federal Government by the Washington State Legislature in 1906. The shore land was placed within the Olympic Forest Reserve and the Quinault Indian Reservation. Senate Congressional Records.

17. The north shore private property was purchased via the Homestead Act in 1904. 1906, 1908 by the Higley family as government lots with ownership to the Water edge. Along with implied water rights the same as all land reserved or sold by the government. This water right includes the freedom of ingress and egress of the water needed in the amount needed to support the reserved or sold land abutting all navigable or non-navigable water.

The Tucker Act supports all claims arising from the Constitution

18. The Quinault Indian Tribe has not produced any document of conveyance giving them ownership of Lake Quinault.

19. My civil rights, (jus publicum) property rights legally obtained by birth and purchase of private land abutting navigable Lake Quinault have been destroyed by President Fawn Sharp and the Quinault Indian Business Committee.

20. Defendant states I do not sufficiently allege a taking has taken place. When President Fawn Sharp of the Quinault Indian Nation states the Quinault Police will make sure no persons are to enter navigable Lake Quinault, is definitely a taking under color of the law. It is also a threat of possible harm.

21. Defendant suggests I am trying to re-litigate the prior lawsuits regarding the Public Trust Doctrine (Jus publicum). This is a diversion to remove the facts regarding civil right violations. It is without doubt the Quinault Indian Nation violated the public trust relationship, implicated in the Treaty of Olympia. The state of Washington does not have a law to enforce the public trust relationship, if it did the Quinault Indian Nation would claim immunity.
22. Under the Fifth Amendment the claimed taking of my property rights over the shore land in front of my property has value or had value. The Olympic National Park has paid \$400,000.00 dollars for an undeveloped lot on the north shore of Lake Quinault abutting the lake shore. The Olympic National Park paid 1.4 million dollars for land abutting the shore of Lake Quinault. The waterfront property on Lake Quinault is valuable and I have lost that value with the claimed taking of the shore land.
23. My land has been in my family since 1943 and used as recreational property for all these many years with the freedom to use the lake shore and the water in the lake for all purposes, including domestic use.
24. The Washington State Water Code adopted in 1917 and is the same today, which states: All water within the State of Washington is owned by the public. Lake Quinault has not been severed from water within the State of Washington.(E3)
25. The 1964 Cook Creek Feasibility Study conducted by the Department of the Interior to create a fish hatchery for the Quinault Indians admits all the water in the state belongs to the public and is adjudicated by the State of Washington.

26. Defendant states the Quinault Indian Nation did not claim to take my shore land for a public use. The Quinault Indian Reservation was created for a public purpose and not a public exigency. (emergency) The creation of the Quinault Indian Reservation was for a public use/purpose.

27. Defendant states my complaint did not sufficiently allege the Federal nexus needed to bring a Fifth Amendment taking claim, "in both physical takings and regulatory takings. A claim of taking land on paper or in the newspaper or any other publication is still a taking and destruction of legally obtained property rights and denial of civil rights to the use of the water and the right to peaceably assemble on the water.

28. RCFC 9 Pleading Special Matters (k) In pleading a claim founded on a contract or treaty, a party must identify the substantive provisions of the contract or treaty on which the party relies. I attached the 1856 contract/treaty with my amended complaint and named Article 8 and 13 as the most pertinent part, there may be others.

29. Defendant claims harms and wrongs that occurred over 6 years ago are barred by law. The harms or wrongs that occurred in 2013, is well within the 6 year limit. The past harms or wrongs are historically establishing a pattern of wrongful behavior with the ultimate goal to support a claim of ownership of shore land abutting legally obtained riparian property rights by non-Indians on non-Indian land.

30. Defendant states I failed to adequately plead a breach of contract between Mr. Landreth and the United States or violation of a money-mandating source of Federal law. I submit to the Court, the United States and the Quinault Indian Tribe entered a

binding contract that has produced harm and wrongs to parties not named in the binding contract/treaty. Defying the Trust Responsibility. The United States has the duty to protect all citizens from all wrongs placed upon them under the civil rights act and all its amendments since 1866. The binding contract provides for a remedy for depriving any citizen of wrongs or harms or property taken to be repaid out of their annuities. (Article 8.)

31. Defendant states Washington law is outside of this courts jurisdiction. Washington State law governs all highways and 7 other categories of law within the Quinault Indian Reservation under Public Law 280. It seems to me the State of Washington and the Federal government have concurrent jurisdiction over the Quinault Indian reservation. In particular, regarding public highways. There is concurrent jurisdiction between the State of Washington and the United States Forest service, which is public land reserved for public use and purpose.

32. Sounding in Tort does not always mean payment from the tort action. In this case, the Treaty of Olympia, which is a part of the law of the land, provides in the treaty/contract the process to make a person whole. The process requires proof of the taking of property to be proven before the agent and the property returned or payment may be made out of their annuities. Since the Agent did not respond I have taken the only avenue open to me to re-claim my real property and civil rights attached to my real property rights.

33. Defendant states the legal ownership of Lake Quinault cannot be determined in this court due to the non-enjoinder of the State of Washington and the Quinault Indian

nation. Once again it will be the claim of immunity and the 11th amendment from the Quinault Indian Nation and the State of Washington even if they were named in this suit. Legal ownership of the lake has already been determined with the Constitution of the State of Washington which states they assert their ownership of all navigable water within its boundary. (Equal Footing Doctrine) The State of Washington Attorney Edward Callow has admitted in the Supreme Court of Washington that it is sovereign over all water within the state. All water is owned by the public.

34. The Quinault Indian Nation has not produced a title or Deed of ownership of Lake Quinault or the submerged land under navigable Lake Quinault. However, the Quinault Indian Nation's Attorney Rob Smith produced a non-certified or accepted survey specifically made for the Court appearance in Thurston County Superior Court issued by Quinault Indian GIS Department showing the boundary of the Quinault Indian Reservation to include Lake Quinault. This map was not shared or shown to the counsel for plaintiffs prior to showing the extra large map to the Honorable Judge Hirsch. Counsel did object, but the map was accepted and played a critical role in the decision for dismissal.

35. Attached is E-6 & E-7 showing the land boundary of the Quinault Indian Reservation in 1989 & 1990. Exhibit E-5, is from the University of Washington published by Chehalis County in 1893 by C. H. Fenner using government surveys. Mr. Fenner was the Surveyor for Chehalis County and a Civil Engineer.

36. When the Federal Government reserves land in the State of Washington, it is required by the public land laws to have the land surveyed with a metes and bounds

survey and certified and registered in the jurisdiction the land is within. After the Metes and bounds survey is accepted a title of ownership is issued.

37. The first approved and accepted land survey of the entire Quinault Indian Reservation by the Surveyor General occurred in 1904.

38. The Public Land Surveys by the General Land Office regarding Lake Quinault establish the east land boundary to be at the ordinary low water mark of the lake, per the 1890 General Land Office survey manual. Deputy Surveyors were and still are required to strictly abide by the survey manual. Field notes, accepted surveys and special instructions to surveys establish the land boundary at the west shore.

39. The Bureau of Land Management admits Lake Quinault is navigable water. The only way the Bureau of land Management would be able to re-survey the private land along the north shore was for the lake to be navigable. On February 28, 2017 President Trump issued an Executive Order defining navigable waters of the United States to be as defined in 33 U.S.C. 1362 (7) "The term "navigable waters" means the waters of the United States, including the territorial seas."

40. Title 33 U.S.C. 1362 defines "municipality" which includes Indian Tribes. The Quinault Indian Tribe is a municipality and not a state, but is given Treated as a state status by the EPA (Environmental Protection Agency) to manage the disposal of pollutants into the waters within the tract of land known as the Quinault Indian Reservation with regulations meeting or exceeding the regulations required by the State of Washington.

41. The Defendant states I have not satisfactorily proven a depredation before the Quinault Indian Nation's agent. When the Quinault Indian Nation's agent has chosen to ignore my emails and information proving depredation before the agent, it is impossible to achieve a result. The agent is an employee of the Bureau of Indian Affairs and is not employed to protect the non-Indian citizens.
42. Defendant states this court does not have jurisdiction of any claim against the United States growing out of or dependent upon any treaty entered into with foreign nations. Once again, the reference to historical treaties demonstrates the Quinault Indian Tribes abuse of historical treaties giving all citizens the same right to the access and free use of all navigable water in the United States. (Trust Relationship)
43. The historical treaties dealing with navigable water places a fiduciary relationship on the historical treaties and the United States and all the people must abide by the historical express contracts/treaties that are compliant with the constitution of the United States.

General Allotment Act of 1887

44. The land abutting navigable Lake Quinault on the west shore within the boundary of the Quinault Indian Reservation is allotted land and not entirely owned or held in trust for the Quinault Tribe of Indians. The lands abutting the west shore of Lake Quinault are allotted lands and may be owned by non-Quinault Indians or non-Indians.
45. Ownership of allotted lands within the boundary of the Quinault Indian Reservation are not made public. The purpose of the allotted land was for the Quinault Indians to

reside upon and build a home, and become agriculturists. Land under Lake Quinault is not land for allotment under the General Allotment Act of 1887.

46. All surplus lands not allotted to Indians was re-purchased by the government and sold to settlers. Since Lake Quinault was not allotted land it was re-purchased by the government and continues to be held in trust for all the people. In some documents, Lake Quinault is included within the boundary of the Olympic National Park.

47. According to the Quinault Country Chronicle published in 1991 by the Natural Resources Division of the Quinault Indian Nation. On July 12, 1901 a survey of the lands within the Quinault Indian Reservation will be ordered and the land will be allotted to the Indians for their needs.

48. The same chronicle states on November 4, 1904 the surveyor general has received notice of acceptance of the survey of the Quinault Indian Reservation.

"PLACE OF WRONG"

49. The Quinault Indian Nation claims to own the lake and claims the laws of the Quinault Indian Nation apply. The new meander survey performed by the Bureau of Land Management about 2009 of navigable Lake Quinault is not land owned by the Quinault Indian Nation. Navigable Lake Quinault is water and is owned by the public according to Washington State Water Code, Washington State Constitution and common law.

50. President Fawn Sharp of the Quinault Indian Nation claims the Quinault Indian Nation law applies on Lake Quinault and the surrounding shore land. The State of

Washington does not recognize Quinault Indian Police as having any authority outside the land boundary of the Quinault Indian Reservation. The Quinault Police are not certified Washington State Police Officers. Indian Country and Public Law 280 is a 1951 federal law whereby states "Indian Country" is a term of and defined by federal statute, and includes; (1) all tribal lands within the boundaries of an Indian Reservation, including land allotted to individual Indians but held in trust by the federal government.

Water is not considered to be land, and submerged land under navigable water cannot be allotted. To be a Washington State Peace Officer the Indian Tribes would have to give up immunity.

51. My privately owned land is within the Olympic National Park, which is federally reserved land. The Olympic National Park has exclusive jurisdiction over all the land within the boundary of the park. The land boundary of the Olympic National Park is the water edge regardless of the lake level and this would include the private land within the boundary of the Olympic National Park.

52. Washington State Law applies to federally reserved land under exclusive jurisdiction at the time the private land was placed within the Olympic National Park. This occurred in 1938.

53. Ironically, the Quinault Indian Tribe submitted a BILL to Congress in 1939 asking the Congress to purchase the Lake and land around Lake Quinault to control all the recreation in the area. The BILL was rejected by Congress. Why submit a BILL if you already own it?

54. The Bureau of Land Management land survey manual Glossary defines:
Appurtenance—Anything so annexed to the land or used with it will pass with the

conveyance of the land. An incidental (as a right of way) attached to a principal right and passing in possession with it. As well as **Lakes, meandered**—From 1851 until the issuance of the Manual of Surveying Instructions, 1973, all lakes of the area of 25 acres or more were meandered. As well as **Meander Line**—In original surveys, meander lines are not run as boundary lines. As well as, **Navigable Waters**—The beds of navigable bodies of water are not public domain and are not subject to survey and disposal by the United States. Under the laws of the United States the navigable waters have always been and shall forever remain common highways. As well as, **Riparian Owner**—One who owns land having a boundary defined by a water course. Usage has broadened the term to include land along the sea or other tidal water, or along the shore of a lake or other considerable body of water. As well as **Riparian Rights**—The rights of an owner of land bordering on a river, lake, bayou, or sea which relate to the water (its use), ownership of the shore, right of ingress and egress, accretions, etc. As well as **Waters of the United States**—All waters within the United States which are navigable for the purpose of commerce, or whose navigation successfully aids commerce.

55. The claim of ownership of my shore land is in direct conflict with the definitions issued by the Bureau of Land Management. Navigable Lake Quinault has always supported commerce. The Quinault Indian Nation admits to this in there publications.
56. The annual reports to the Commissioner of Indian Affairs reports fur trading prior to or at the time of the 1856 signing of the Treaty of Olympia. The lower Quinault River

is reported in the same annual reports as describing the fur trade as a huge part of the Quinault Indian Tribe's income.

57. The Quinault Indian Police are not authorized to perform police duties outside the boundary of the Quinault Indian Reservation.

58. The special instructions given to the Deputy Surveyor Ort performing the survey of Township 23 N. 9 W. and Township 23 N. 10 W. in 1895 was instructed to establish closing corners at the meander boundary at the ordinary low water of the lake. The instructions **did not** say establish a closing corner at the meander boundary of the Indian reservation. (per Survey Manual dated 1890) Special Instructions state at the ordinary low water mark at the actual low water mark.

PUBLIC LANDS

59. Current U.S. Code 931—Navigable Rivers as public highways will remain as public highway.

60. The 1930 Pioneer Packing Co. v. Winslow states the Indians had command of all the lands and waters – command of all their beneficial use. This may be incorrect. At the time of the signing of the Oregon Territory Treaty in 1846, England had command of all the public land, Indians and water and signed treaties with the United States to keep that right after the Oregon Territory treaty was signed. The Hudson's Bay Company was still conducting fur trading on the Northwest Coast of America, including the Quinault River.

61. The United States Government allowed the Indian Tribes to cede and sell all the public land they considered to be the land of their ancestors. The signing of the Oregon Territory Treaty in 1846 gave the United States ownership of all things within its territorial boundary. This included water and the public land.

62. In January 1919 the St. Louis Law Review (E-3) penned the following regarding non-navigable water and water in general. "*The ownership of waters* does not mean title to the fugitive corpus, or even a proprietor's interest in so many gallons in a jug reduced to possession; but means a usufructuary water right, to take either a certain or a relative amount of the transitory waters as a point; just as a hunting right means no proprietary interest in certain foxes, but a right to take wild game. A *riparian water right* is one in common with other riparian proprietors, relatively, "a reasonable use of the stream as it flows by his land, subject to a like belonging to all other riparian owners." It is real property, an incident of the freehold, and therefore perpetual whether used or not, and limited to the watershed. It is upon common law riparian rights that the Federal title is asserted, as belonging to the proprietor of the public lands.

63. Allowing the Quinault Indian Nation ownership of navigable Lake Quinault will be creating a monopoly and that is detrimental to the whole public. (possibly illegal)

64. **SUMMARY**

65. **MUNICIPALITY**

66. TITLE 33 Navigable/Navigation defines Indian Tribes as a "Municipality". Municipality is defined as an elected local government body having corporate status and limited self-governance rights, and serving a specific political unit. The Quinault Indian Nation is the

elected governing body of the many Indian tribes residing upon the Quinault Indian Reservation. The governmental authority ends at the land boundary of the Quinault Indian Reservation.

67. This municipality came into being when we the people, through Congress, were signatory to the 1856 Treaty of Olympia.

68. When we the people through Congress are signatory to contract/treaty we the people, establish a trust relationship with all the signatories of the contract/treaty. Both parties have agreed to abide by the content of the contract/treaty signed.

69. We the people are signatory to the Constitution of the United States through Congress and our elected representatives. The Constitution of the United States is the "Supreme Law of the Land". We the people agreed to be peaceable to the Indians through the trust relationship originating in the 1856 Treaty of Olympia.

70. All laws established by we the people, Congress, must be in compliance with the supreme law of the land. Bill of Rights, Declaration of Independence, etc, and all local laws established in our local municipalities.

71. When one of the signatories of any contract/treaty violate that agreement and the contract/treaty has a remedy in place in the contract/treaty to repair the violation then the party violating the contract/treaty must abide by that agreement willingly made.

72. **NAVIGABLE WATER—SHORELAND**

73. On October 25, 1913 the Supreme Court of Washington in "**State v. sturtevant**" declared the following pertinent articles.

74. 3. Navigable Waters—Riparian Rights—Constitutional Provisions. Const. art. 17, @ 1, declaring that the people of Washington own the beds and shores of all navigable waters in the state up to and including the line of ordinary high water, destroyed all riparian rights in tide and shore lands, and affirmed the right of the state to control and dispose of those lands as the Legislature might chose.

75. 4. Navigable Waters—Riparian Rights—Owners of shore lands. Littoral and riparian rights along a navigable stream or lake attach to the shore lands, and pass to the one who purchases those lands from the state.

76. 8. Navigable Waters—Reliction—Title—Where the owner of the banks and bed of a navigable lake, whether the state or a private individual, conveyed the shore with right of access to navigable water, the grantee becomes entitled to any new land created as a reliction between the land conveyed and the navigable water.

77. The Quinault Indian Nation refers to United States v. Washington (9th cir. 191) regarding upland owners of Indian lands are entitled to accretions to their lands, and the ownership boundary between tribal submerged lands and the upland will therefore shift with the gradual movement of a watercourse.

78. **CONSTITUTION**

79. The Constitution under the 5th and 14th amendments gives all people the right of privileges and immunities, the right of property, equal protection of the laws, the right to peaceably assembly and the right to the use the navigable waters of the United States.

80. U.S. Code-1302 Constitutional rights, pertinent part states no Indian Tribe exercising self-government shall make or enforce any law prohibiting the free exercise of the right to peaceably assemble, violate the right of the people to be secure in their persons, and to petition for redress of grievance. (claiming immunity seems to violate this code)

81. **CONCLUSION**

82. The Quinault Indian Nation's Business Committee along with the President Fawn Sharp of the Quinault Indian Nation agreed to willingly violate Article 8 of the 1856 Treaty of Olympia with the decision to close and enforce the closure of navigable Lake Quinault in 2013. The Treaty of Olympia is a binding contract on both parties signatory to the treaty. The signatories are the Indian Tribes and the people of the United States through the acts of our elected representatives (Senate) and the President of the United States.

83. As a citizen of the United States and under the jurisdiction of Federal and Washington State Constitutions and laws have a trust relationship and are a part of the 1856 Treaty of Olympia.

84. For these reasons, I request that the Court deny the motion to dismiss.

Respectfully submitted



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December 7, 2018

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 7th day of December 2018, I caused a copy of the following "RESPONSE TO DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT" to be filed with the Court.

I caused a copy of this filing to be served via at the following address:

United States Postal Mail.

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DECEMBER 7, 2018

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