NO. 55019-9-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

ANDREW LARRY SIMMONS and MICHAEL MYRON SIMMONS,
Appellants.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID L. EDWARDS, JUDGE

BRIEF OF RESPONDENT

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I. INTRODUCTION

Two members of the Cowlitz Tribe ask this Court to determine a weighty issue of whether they continue to enjoy their former hunting and fishing rights that accompanied aboriginal title to the lands of Southwest Washington by virtue of their tribe having not signed a treaty with the U.S. Government. While Washington courts have not been asked to make such a determination relative to the Cowlitz Tribe, this question has previously been adjudicated in federal courts. This Court, like the lower court before it, need only review these federal decisions to see that Appellants raise issues already fully settled factually and legally.

The Cowlitz, along with the Chinook, Shoalwater Bay, and Chehalis tribes, engaged in treaty negotiations with Washington's Territorial Governor Isaac Stevens in the 1850s, but could not reach an agreement. With settlers coming in greater numbers to the Pacific Northwest in the 1850s and 1860s, Congress made clear its intent to enter into treaties with the northwest tribes to obtain tribal relinquishment of land claims, while also directing the executive branch to survey and sell unoccupied lands. Without a treaty in place, the federal government opened the Cowlitz Tribe's aboriginal lands to settlement.

Nearly 100 years later, the Cowlitz tribe adjudicated the loss of its aboriginal title. The Indian Claims Commission determined that a series of

Congressional policies and actions during those initial decades of tribal relations and settlement served to extinguish the aboriginal title of not just the Cowlitz Tribe, but several other tribes in southwest Washington that had not signed treaties. Ultimately, a presidential proclamation in 1863 putting unoccupied lands up for sale marked the determinate event to end the aboriginal title for these tribes. With that extinguishment went the aboriginal right to hunt and fish on non-reservation lands.

II. RESTATEMENT OF ISSUES ON APPEAL AND ASSIGNMENTS OF ERROR

Did the Federal government extinguish the Cowlitz Tribe's aboriginal title through congressional action and executive orders in the 19th century that opened unoccupied land in southwest Washington to settlement and sale?

Does the federal Court of Appeals for the Ninth Circuit's decision in *Confederated Tribes*, which determined that multiple non-treaty tribes in southwest Washington do not have off-reservation aboriginal fishing rights due to their aboriginal title being extinguished in 1863, apply to the Cowlitz Tribe and its members?

Did the trial court correctly determine that the question of the Cowlitz Tribe's extinguishment of non-treaty fishing rights had been settled

by the Court of Appeals for the Ninth Circuit such that it properly denied the Appellant's motion to dismiss?

Does the federal adjudication of the Cowlitz Tribe's aboriginal rights before the Indian Claims Commission, upheld on subsequent appeal, also demonstrate the extinguishment of aboriginal rights, as an independent basis to uphold the trial court's denial of the Appellants' motion to dismiss?

III. STATEMENT OF CASE

A. Facts of the Case and Procedural Posture

Appellants Andrew and Michael Simmons, enrolled members of the Cowlitz Indian Tribe, were convicted in Grays Harbor District Court of Unlawful Recreational Fishing in the Second Degree, contrary to RCW 77.15.380(1), RCW 77.32.010(1) & WAC 220-220-030 (no clam license), and Unlawful Recreational Fishing in the First Degree, contrary to RCW 77.15.370(1)(a) (possession of more than twice the limit of clams). These convictions followed trial on stipulated facts held on September 27, 2019.

The charges stem from an incident on April 30, 2017, when Fish and Wildlife Officer Cory Branscomb performed a routine uniformed patrol for unlawful razor clam harvesting on Copalis Beach, located within Grays Harbor County. Officer Branscomb used his spotting scope to observe two individuals, the Appellants, father and son, with a substantial number of

razor clams in their clam bag. Upon contact, the Appellants produced Cowlitz Tribal identification and stated they were participating in a tribal harvest through the Quinault Tribe.[1] The Appellants did not have state-issued recreational shellfish licenses. The pair were charged in Grays Harbor District Court.

Appellants moved to dismiss the charges as a matter of law. They argued that they are not subject to state regulations regarding razor clam limits or licensing when at their usual and accustomed fishing locations because, as members of the non-treaty Cowlitz Tribe, they enjoy full aboriginal rights to fish that are not subject to state regulation. The Hon. Judge Thomas Copland, after hearing argument and reviewing *Confederated Tribes of the Chehalis Indian Reservation v. State of Washington,* 96 F.3d 334 (9th Cir. 1996), found the case to be dispositive and denied the motion by letter order. A stipulated-facts bench trial followed and the court found both Appellants guilty.

The Appellants appealed to the Grays Harbor County Superior Court, where the Hon. Judge David L. Edwards affirmed the District Court on the same grounds.

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[1] Notably, the Quinault Indian Nation had not approved a tribal razor clam harvest that day. And even if it had, it would not have extended to members of the separate Cowlitz Tribe.

The Appellants, acting individually and not on behalf of the Cowlitz Tribe, petitioned this Court for discretionary review, which was granted December 4, 2020.

B. Background of Cowlitz Tribal Aboriginal Title and Adjudication Thereof

The Cowlitz people are a tribe of Coastal Salish people in Southwest Washington with historical territory reaching from the lower Cowlitz river basin to the Willapa hills and shores of Willapa Bay. During negotiations with Governor Stevens in 1855, the Cowlitz and other tribes objected to the federal government's position that they would need to move to land reserved for them at the present site of the Quinault reservation. For that, and other reasons, negotiations did not produce a treaty with the Cowlitz, Chehalis, and other southwest Washington tribes. At the same time and thereafter, the federal government, through a series of congressional acts such as the Homestead Act (12 Stat. 392), an Act to Create the Office of Surveyor General of the Public Lands in Oregon (9 Stat 496)[2] and its amendment (10 Stat. 158), as well as forestry policy acts of the 1890s, (e.g. 26 Stat. 1095) directed the President and Executive Branch to dispose of

[2] The act was titled in full "An Act to create the Office of Surveyor General of the Public Lands in Oregon, and to provide for the Survey, and to make Donations to the Settlers of the said Public Lands."

and sell the Cowlitz' aboriginal lands for settlement or to place some in national forest preserves.

Congress created the Indian Claims Commission (ICC) in 1946 to hear and determine all tribal claims against the United States that accrued up to that date, ranging from violations of treaties, government takings without compensation, and violations of the government's trust obligations. In 1951, Simon Plamondon brought a claim on behalf of the Cowlitz Tribe seeking compensation for the government's taking of the tribe's aboriginal title to lands in southwest Washington.

Following more than a decade of gathering evidence, the ICC determined 18 years later that the Cowlitz Tribe's aboriginal title had been extinguished by a Presidential proclamation on March 20, 1863 (No. 693), directing the sale of surveyed lands in the Washington Territory. The Tribe appealed the ICC decision, asserting the 1863 date was incorrect because the United States had taken the Cowlitz land on a piecemeal basis following the collapse of treaty negotiations with the tribe in 1855, pointing to 1889, 1893, 1897 and 1907 as the dates of federal action to extinguish the tribe's aboriginal title. The U.S. Court of Claims upheld the ICC's determination.

In 1983, the Chehalis and Shoalwater Bay tribes sought to intervene in the *United States v. Washington* federal litigation that reaffirmed and adjudicated the treaty rights of tribes in Washington to co-manage salmon

and other fish, and to harvest up to half of the total fish harvest each year, in accordance with their various treaties. The State initiated subproceeding 83-3 in 1983 to determine which tribes can take fish from the Chehalis River and the Grays Harbor system. The Chehalis and Shoalwater Bay tribes initiated a separate lawsuit, which merged with subproceeding 83-3, asking the Court to declare that each tribe may fish off its reservation at its usual and accustomed fishing grounds. The tribes argued three distinct and independent legal theories—they retained aboriginal fishing rights by virtue of not ceding them through a treaty; the Executive Orders that established their reservations implied hunting and fishing rights beyond their reservation; and that the off-reservation rights to hunt and fish that the Quinault Indian Nation reserved in the Treaty of Olympia extended to them as the two plaintiff tribes were "affiliated" with the Quinault Indian Nation. The District Court rejected each of these three distinct theories. The tribes appealed to the Ninth Circuit, which upheld the District Court's decision in *Confederated Tribes of the Chehalis*, which is now the focus of this appeal.

IV. ARGUMENT

The question of when Indian rights reserved under federal treaties preempt state law has been exhaustively litigated. "Treaties made under the authority of the United States, along with the Constitution and laws of the

United States made in pursuance thereof, are the supreme law of the land." *State of Missouri v. Holland*, 252 U.S. 416, 432, 40 S. Ct. 382, 383, 64 L. Ed. 641 (1920). The relevant law for claiming a right superior to state law is straightforward: "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law applicable to all citizens." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S. Ct. 1267, 36 L.Ed.2d 114, 119 (1973). This rule provides the framework to analyze a legal argument, such as the Appellants', that a tribe has rights that preempt state law.

No treaty or affirmative federal action reserves or grants the Cowlitz Tribe off-reservation fishing rights. Instead, Appellants argue that their aboriginal rights must remain in the absence of express Congressional action to extinguish it. This argument does not square with well-established jurisprudence that only a federally approved treaty or some other express federal law preempts state law by virtue of the Supremacy Clause of the United States Constitution. *See United States v. Washington,* 520 F.2d 676, 684 (9th Cir. 1975), (citing *Missouri v. Holland*, 252 U.S. 416, 432, 40 S.Ct. 382, 64 L.Ed. 641 (1920)). Appellants ignore that multiple Congressional acts, and executive orders pursuant to Congressional authority, did actually extinguish the Cowlitz aboriginal title, and with it, use and occupation rights such as hunting and fishing. Appellants also ignore that federal courts, as

discussed below, have already thoroughly considered, adjudicated, and determined the extinguishment of the Cowlitz' aboriginal title in such cases such as *Confederated Tribes*.

A. The Ninth Circuit Rejected the Appellants' Argument in *Confederated Tribes*, Hence Its Direct Applicability

Federal courts have rejected at every opportunity the Appellants' theory that aboriginal title and hunting and fishing rights continue to exist for the non-treaty tribes of southwest Washington. As it pertains to aboriginal fishing rights by non-treaty tribes in southwest Washington, the issue has specifically been litigated as part of *United States v. Washington*[3] in subproceeding 83-3. See *United States v. Washington (Shoalwater)*, 18 F. Supp. 3d 1172, 1181-1202 (W.D. Wash. 1991); *affirmed sub. nom. Confederated Tribes of Chehalis v. Washington*, 96 F.3d 334 (9th Cir. 1996), *cert. denied* 520 U.S. 1168 (1997).[4]

[3] Following the original *United States v. Washington* decision, known as the Boldt Decision, (384 F. Supp. 312, *aff'd*, 520 F.2d 676 (9th Cir. 1975)), the U.S. District Court for Western Washington retained continuing jurisdiction to hear and decide controversies stemming from treaty fishing rights, including intertribal disputes, allocation, decisions to include hatchery-raised fish in the tribal allocation (506 F. Supp. 187, 191 (1980), *aff'd in part, rev'd in part by* 694 F.2d 1374 (9th Cir. 1983)), and the culverts decision, requiring State of Washington to replace or mitigate for state-owned fish barriers (20 F. Supp. 3d 1000-26 (2013), *aff'd* 853 F.3d 946 (9th Cir. 2017)). *United States v. Washington* remains the exclusive venue for federal adjudication of tribal fishing rights in the Puget Sound and Washington's coastal waters.

[4] The district court's decision will be referred to as the *Shoalwater* decision, and the Ninth Circuit's decision will be cited as *Confederated Tribes*.

Confederated Tribes upheld the determination that the Chehalis and Shoalwater Bay tribes have no off-reservation rights and therefore could not intervene in the *United States v. Washington* treaty tribal fishing proceeding. The decision bears directly on the question in this matter because, even though the Cowlitz Tribe did not join the subproceeding, the Court specifically named the Cowlitz Tribe, along with other non-party tribes, as all having their aboriginal rights extinguished due to their similar situation. *Confederated Tribes*, 96 F.3d at 341–42. For this reason, the Grays Harbor District Court and Grays Harbor Superior Court correctly read *Confederated Tribes* as pertaining to all the similarly situated tribes of southwest Washington, and concluded that *Confederated Tribes* answered the question presented by the Appellants in defense of their fishing violations. Setting aside that the *Shoalwater* and *Confederated Tribes* decisions specifically pointed to the situation of the Cowlitz Tribe, the trial court found "no meaningful distinction between the Chehalis and Cowlitz tribes for purposes of aboriginal fishing rights." CP 43. The superior court made a near-identical ruling, finding that "*Confederated Tribes* ... is controlling and that any aboriginal fishing rights claimed herein were extinguished by an 1863 executive order opening lands for non-Indian settlement." CP 154-55. Indeed, there is no meaningful distinction between the posture of the Chehalis and Shoalwater Bay tribes and the Cowlitz Tribe

as it relates to extinguishment of aboriginal rights—the same executive order that terminated the aboriginal title of the Shoalwater and Chehalis tribes extinguished the aboriginal title of the Cowlitz.

B. Appellants Fail to Demonstrate that *Confederated Tribes* Does Not Apply to the Cowlitz Tribe.

The Chehalis and Shoalwater tribes argued three distinct alternative theories why they retained off-reservation fishing rights and should be party to *United States v. Washington*. Appellants incorrectly conflate the arguments, asserting that the Grays Harbor District Court and Superior Court misread *Confederated Tribes* because the case "involved a claim by the Chehalis Tribe that they had come to possess fishing rights reserved by the Quinault treaty tribes" and that the ruling thus does not apply to the Cowlitz Tribe. Appellants' Brief, 14. This argument touches on one of the three distinct arguments made and rejected in *Shoalwater* and *Confederated Tribes*—that the plaintiff tribes' off-reservation rights flowed from the treaty with the Quinault. *Shoalwater*, 18 F. Supp. 3d at 1181. The argument was made and rejected completely independent of the argument that the tribes of southwest Washington had full aboriginal rights by virtue of not signing any treaty.

Appellants also claim that *Confederated Tribes* should not apply to the Cowlitz Tribe because the Chehalis Tribe made a "fatal concession" in

litigating their claim that the Cowlitz Tribe would not have made—the Chehalis "appear to have argued that the executive orders were effective but operated to preserve, rather than limit or abrogate, their hunting and fishing rights." Appellants' Brief, 18. Appellants again miss that the Chehalis and Shoalwater tribes presented this argument as an alternative to their theory of aboriginal rights. Not only do these alternative arguments have no bearing on the situation of the Cowlitz, but the Ninth Circuit rejected all three arguments, addressing each individually and in turn.

The *Shoalwater* and *Confederated Tribes'* decisions regarding the extinguishment of the Cowlitz Tribes aboriginal title is sound and there is simply no room to read the decisions in the hyper-deferential manner Appellants suggest so as to arrive at any different result. Appellants cannot and do not undermine the holding in *Confederated Tribes* as it pertains to aboriginal fishing rights, and fail to show that the trial court misread the *Confederated Tribes* decision, or failed to differentiate between the legal theories. The trial court specified that it found no meaningful difference between the tribes "for purposes of aboriginal fishing rights" (CP 43) and made no reliance on either of the alternative legal theories with less connection to the Cowlitz Tribe. The district court correctly relied on *Confederated Tribes* in denying the Appellant's motion to dismiss.

C. The Federal Government Extinguished the Cowlitz Aboriginal Title, and With It, Hunting and Fishing Rights

No treaty between the Cowlitz Tribe and the United States reserves any indigenous rights of the Cowlitz People. Therefore, any rights still enjoyed by the tribe or tribal members must be tied to the existence of aboriginal title. "Aboriginal title refers to the right of the original inhabitants of the United States to use and occupy their aboriginal territory." *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 279, 75 S.Ct. 313, 317, 99 L.Ed. 314 (1955). Indian title based on aboriginal possession is a permissive right of occupancy. *Wahkiakum Band of Chinook Indians v. Bateman*, 655 F.2d 176, 180 (9th Cir. 1981) (citing *Tee-Hit-Ton Indians*, 348 U.S. at 279). That aboriginal title can be extinguished, as it "exists at the pleasure of the United States, and may be extinguished by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy or otherwise." *United States v. Santa Fe Pacific R.R. Co.,* 314 U.S. 339, 347, 62 S.Ct. 248, 252, 86 L.Ed. 260 (1941). The power of Congress in this regard is supreme and the manner, method, and time of such extinguishment raise political issues. *Id.*

With aboriginal title, a tribe and its peoples enjoy certain aboriginal rights inherently tied to the original possession of land. Extinguishment of aboriginal title invariably terminates corresponding use and occupancy

rights, including hunting and fishing rights, except where a treaty, statute or executive order expressly or impliedly reserves such rights. *Western Shoshone National Council v. Molini*, 951 F.2d 200, 202 (9th Cir. 1991), *cert. denied*, 113 S. Ct. 74 (1992); *United States v. Dann*, 873 F.2d 1189 (9th Cir.), cert. denied, 493 U.S. 890 (1989); *see also United States v. Minnesota*, 466 F. Supp. 1382 (D. Minn. 1979), *aff'd sub nom. Red Lake Band of Chippewa Indians v. Minnesota*, 614 F.2d 1161 (8th Cir.), cert. denied, 449 U.S. 905 (1980) (aboriginal hunting and fishing rights are "mere incidents of Indian title, not rights separate from Indian title"). In *Molini*, the Court extended the reasoning that where a treaty fails to reserve certain rights with the passage of title, extinguishment of aboriginal title similarly extinguishes with it rights of use and occupation, such as hunting and fishing rights. "The Supreme Court has held that the conveyance of title includes hunting and fishing rights, absent an express reservation of those rights." *Molini*, 951 F.2d at 202, *citing Oregon Dep't of Fish and Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 105 S.Ct. 3420, 87 L.Ed.2d 542 (1985).

D. The Cowlitz Tribe Adjudicated the Extinguishment of Its Aboriginal Title before the Indian Claims Commission

Congress passed the Indian Claims Commission Act in 1946, establishing the Indian Claims Commission (ICC) to settle claims against

the U.S. Government including whether aboriginal titles and corresponding rights had been extinguished without fair compensation. 25 U.S.C. § 70a (suppl. 2 1958). The chief purpose of the ICC was to dispose of Indian claims with finality. Congress's intention was to "draw [ ] in all claims of ancient wrongs, respecting Indians, and to have them adjudicated once and for all." *Temoak Band of W. Shoshone Indians, Nevada v. United States*, 219 Ct.Cl. 346, 593 F.2d 994, 998 (1979); *Molini*, 951 F.2d at 202; *United States v. Dann*, 470 U.S. 39, 45–46, 105 S.Ct. 1058, 84 L.Ed.2d 28 (1985). Congress deliberately used broad terminology in the Act in order to permit tribes to bring all potential historical claims and to thereby prevent them from returning to Congress to lobby for further redress. *Oglala Sioux Tribe of Pine Ridge Indian Reservation v. U.S. Army Corps of Engineers*, 570 F.3d 327, 331 (D.C. Cir. 2009).

Consistent with this purpose, federal courts have repeatedly held that payment of a Commission award of compensation for a taking of aboriginal lands "conclusively establishes that the aboriginal title has been extinguished." *United States v. Pend Oreille Pub. Util. Dist. No. 1*, 926 F.2d 1502, 1508 (9th Cir. 1991), *citing Dann*, 873 F.2d at 1194; *United States v. Gemmill*, 535 F.2d 1145 (9th Cir. 1976).

In *Molini*, the Court relied on payment of an ICC claim by Congress as "ratification" of the claim that aboriginal title had been taken and extinguished. *Molini*, 951 F.2d at 203; *Gemmill,* 535 F.2d at 1147 ("[A]ny ambiguity about extinguishment that may have remained after the establishment of the forest reserves, has been decisively resolved by congressional payment of compensation to the Pit River Indians for these lands."); *In Re Wilson,* 634 P.2d 363, 368, 177 Cal. Rptr. 336 (1981) (ICC finding and settlement resolved extinguishment of Pit River Indian title).

The question of whether the Cowlitz Tribe's aboriginal title had been extinguished, and if so when, reached the ICC in the late 1960s. The ICC looked at several factors, including several acts of Congress, that had the effect of extinguishing the tribe's aboriginal title, discussed further below. Ultimately, the ICC determined a Presidential Proclamation on March 20, 1863, ordering unoccupied public land in the Washington Territory to be sold, operated as the key federal action to deprive the tribe of its aboriginal title to that land. 25 Ind. Cl. Comm. 442, 443 (1971).[5]

1. The Indian Claims Commission identified Congressional intent and executive actions extinguishing aboriginal title in southwest Washington

[5] The ICC first ruled that 1855, when treaty negotiations ended, marked the end of aboriginal title, but on reconsideration adjusted its finding to 1863 and the date of the Presidential Proclamation.

The Commission considered several federal actions that led to the extinguishment of the Cowlitz Tribe's aboriginal title. Specifically, the ICC pointed to the June 5, 1850, Act Authorizing the Negotiation of Treaties with the Indian Tribes in the Territory of Oregon, for the Extinguishment of their Claims to Lands lying west of the Cascade Mountains (9 Stat. 437), stating that all aboriginal claims to land of all tribes west of the Cascade Mountains should be extinguished by treaty, and the September 27, 1850, Act to Create the Office of Surveyor General of the Public Lands in Oregon, and to Provide for the Survey, and to Make Donations to the Settlers of the said Public Lands (9 Stat. 496), wherein Congress created in the executive branch the Office of Surveyor General of Oregon Territory and directed the office to survey the lands located west of the Cascade Mountains. 25 Ind. Cl. Comm. at 449. Three years later, on February 14, 1853, Congress amended that act, declaring that by April of 1855, all the lands west of the Cascades were to become subject to public sale, and directing the President to order such disposal and sale. 10 Stat. 158. The Commission decision pointed out

> It is probable that Congress delayed the possible sale of these lands for two years to allow time for treaties of cession to be entered into with the tribes west of the Cascades. It is clear that Congress anticipated that Indian title would be extinguished by 1855, because offering lands for public sale is totally inconsistent with the continued existence of Indian title in that land.

Id. at 450.

Further, the Commission considered Congress's appropriation for Fiscal Year 1861 where, "for the first time, it appropriated money for the expenses of removing non-treaty Indians in Oregon and Washington Territories ... the appropriation reveals a change in congressional policy." *Id.* "Rather than negotiating treaties with these tribes, Congress now intended that their aboriginal title be extinguished by their removal from their lands." *Id.* 450-51.

Ultimately, the Commission chose the Presidential Proclamation on March 20, 1863, where President Abraham Lincoln announced the public sale by the Land Office of the surveyed public lands of the Washington Territory, as the date of effective extinguishment, writing:

> Although neither the change in congressional intent alone nor the establishment of the Chehalis Reservation were sufficient to extinguish Cowlitz Title, when to these was added the public offering for sale of Cowlitz land by the defendant as evidenced by the Presidential Proclamation of March 20, 1863, an extinguishment of title did take place. In offering the Cowlitz lands for sale, [the United States] was taking an action which indicated that it no longer considered that Indian title existed on the land..

Id. at 450. In the proclamation itself, President Lincoln indicates the disposal and sale of the public lands is done under the authority of the aforementioned Feb. 14, 1853 amendment to the Act to Create the Office of

Surveyor General of the Public Lands in Oregon.[6] (Appendix, 7) The Presidential Proclamation that the ICC determined extinguished the Cowlitz Tribe's aboriginal title was therefore done at Congress's direction and under its authority. 10 Stat. at 157-58.

2. The Cowlitz Indian Claims Commission decision is sound—it has been challenged, upheld, and cited in subsequent federal decisions

The Cowlitz Tribe appealed the Indian Claims Commission's decision to the U.S. Court of Claims arguing that different congressional actions in different years had actually extinguished its aboriginal title. Ultimately, the Court upheld the decision of the ICC. *Plamondon ex rel. Cowlitz Tribe of Indians v. U.S.*, 467 F.2d 935 (Ct. Cl. 1972). The Cowlitz Tribe made the same arguments Appellants make in this matter—no treaty was ever made with the Cowlitz, there was no removal of the tribe from its ancestral home, the Cowlitz never accepted a reservation from the United States, and the 1863 order was ineffective to extinguish aboriginal rights. The tribe argued for a later extinguishment date, as late as 1907 when land was placed into the federal forest system. *Plamondon*, 467 F.2d at 936. Ultimately, the reviewing court determined "We need not decide whether

[6] Due to the difficulties in finding a copy of Presidential Proclamation No. 693, a scanned copy of the proclamation is attached as an Appendix pursuant to RAP 10.3(a)(8). The State thanks the librarians at the University of Washington for searching for and finding attached copy at the request of the Office of the Attorney General for the purposes of this appeal.

taken singly, the change in congressional intent, the establishment of the Chehalis Reservation, or the Presidential Proclamation of March 20, 1863, would be sufficient to extinguish Cowlitz title. We agree with the Commission that all three together are clearly sufficient." *Id.* at 937. The next year, the ICC entered judgment in favor of the Cowlitz for $1,550,000. 30 Ind. Cl. Comm. 129, 143 (April 12, 1973).

While the ICC decisions do not bind courts, they are persuasive. So too are the appeals of ICC decisions, such as the *Plamondon* decision. In fact, the District Court's decision almost 20 years later in the *Shoalwater* decision directly referenced the facts as determined by the ICC. 18 F. Supp. 3d at 1186-87.

In response to the argument that aboriginal title should remain because executive orders were inconsistent with Congressional intent, the District Court found as follows:

> Plaintiff tribes did not show that any incident of aboriginal title or fishing right was expressly or otherwise exempted from the extinguishment of the aboriginal title of the Upper Chehalis, Lower Chehalis, Satsop, Humptulips, Cowlitz, Chinook, or any other aboriginal Indian tribe where the extinguishment has been confirmed by the payment of an award of the I.C.C. Plaintiff tribes do not possess any unextinguished aboriginal fishing rights of those aboriginal tribes.
>
> *Id.* at 1201.

E. Ample Adjudicated Evidence Supports the District Court's Ruling That the Cowlitz Do Not Have Aborginal Off-Reservation Fishing Rights

While the Grays Harbor District Court and Grays Harbor Superior Court did not dive deep into the history of the Cowlitz Tribe's aboriginal title, or the pleadings and *Shoalwater* decision giving rise to *Confederated Tribes*, the trial court's ruling denying the Appellant's motion to dismiss is sound and must stand. Even if the strictures of *res judicata* do not allow *Confederated Tribes* to be summarily dispositive of claims the Cowlitz Tribe's aboriginal title, or if this Court finds the Cowlitz Tribe is positioned differently enough than the Chehalis and Shoalwater such that the decision in *Confederated Tribes* is not controlling, the analysis above shows ample evidence that any aboriginal title of the Cowlitz has long been extinguished. Therefore, this Court could find the trial courts reached the correct result, but should have relied on *Plamondon* as that case directly addressed the Cowlitz Tribe's title and the underlying ICC ruling.

Under the doctrine of affirmance on alternative grounds, "where a judgment or order is correct, it will not be reversed merely because the trial court gave the wrong reason for its rendition." *Ertman v. City of Olympia*, 95 Wn.2d 105, 108, 621 P.2d 724 (1980); RAP 2.5(a); 15A Douglas Ende, Wash. Prac. Handbook Civil Procedure § 88.2 (2020-2021 ed.). The purpose behind this doctrine is to uphold the intent of the trial court and

promote judicial economy "based upon the belief that if the trial court's decision was correct, albeit for a different reason than that cited by the trial court, a retrial of the case would serve no useful purpose." 2A Elizabeth Turner, Wash. Prac. Rules Practice, RAP 2.5 (8th ed.).

F. *Coffee* Pertains to Hunting Rights Reserved through Treaty and Therefore Does Not Apply to the Cowlitz

Appellants rely on *State v. Coffee* for the proposition that rights of non-treaty tribes are co-extensive with the rights reserved in treaties by treaty tribes. But that reliance is misplaced, as *Coffee* expressly states the aboriginal title of the Kootenai was extinguished; the decision pertains to hunting rights retained in a treaty the tribe did not sign where the land at issue was ceded to the government. *State v. Coffee*, 97 Idaho 905, 909-913, 556 P.2d 1185, 1189 (1976). In the case at hand, Appellants cannot point to any treaty by any tribe that might possibly reserve hunting rights in southwest Washington because the aboriginal lands of the Cowlitz Tribe and others were not ceded to the U.S. Government by any tribe, but were taken through the direct acts and intentions of Congress and the federal government in the 1850s and 1860s to open the land for sale. See *United States v. Santa Fe Pacific R.R. Co.,* 314 U.S. 339, 62 S.Ct. 248, 86 L.Ed. 260 (1941).

The only way *Coffee* helps the present inquiry at all is as a further example that courts rely upon the rulings of the ICC, such as the decision determination that the aboriginal title of the Idaho Kootenai tribe had been extinguished when other tribes ceded their land through the Hellgate Treaty of 1855. *Coffee*, 97 Idaho at 910, *citing* 5 Ind. Cl. Comm. 456 (1957). The *Coffee* court said "We have examined the analysis of the Commission and we are in agreement with its conclusion." *Id.* So too should this Court consider the ICC ruling regarding the Cowlitz.

The Appellants' application of *Coffee* to *Stritmatter* is just as strained. While *Coffee* found hunting rights for a non-treaty tribe by virtue of a reservation of rights found in a treaty, the *Stritmatter* Court found the executive order creating the Chehalis reservation inherently included on-reservation rights to fish, independent from any other tribe's treaty rights. *State v. Stritmatter*, 102 Wn.2d 516, 520-21, 688 P.2d 499 (1984). *Stritmatter* does not apply to the case at hand because the shellfish harvest at issue did not occur on a reservation created by executive order.

G. Appellants' Reliance on *McGirt* and *Towessnute* Is Misplaced

Appellants argue that *McGirt v. Oklaho*ma, ___ U.S. ___, 140 S.Ct. 2452, 207 L.Ed.2d 985 (July 9, 2020) has unequivocally stated that the Indian Commerce Clause authority lies entirely with Congress and in conflict with executive branch authority. This is simply a misreading and

stretching of *McGirt* beyond the ruling or issues presented to the U.S. Supreme Court. The *McGirt* Court specifically addressed the creation of reservations, and of the federal government's violation of promises made to tribes through treaties and acts of Congress. *McGirt* held that neither states nor courts can destroy or redraw reservation boundaries created by a federal treaty, as this authority belongs only to Congress. *McGirt* never once mentions aboriginal rights.

As the Cowlitz do not have a treaty with the United States and the land where Appellants harvested shellfish was never part of a Cowlitz reservation, *McGirt* is simply not applicable. Cases interpreting treaties and the authority to adjudicate or violate them are not applicable to questions pertaining only to aboriginal rights. "[Such] cases are inapplicable here, because there is no treaty which grants the Shoshone hunting and fishing rights." *Molini*, 951 F.2d at 203 ("We therefore hold that Shoshone aboriginal hunting and fishing rights were taken when full title extinguishment occurred.").

Similarly, Appellants' suggestion that Washington Supreme Court's 2020 *Towessnute* Order (Order Recalling Mandate, No. 13 083-3, July 10, 2020, order to publish April 26, 2021) supports the expansion of aboriginal rights or creates a new lens with which to view treaty or aboriginal rights is misplaced. Appellants argue that the *Towessnute* Order "included State civil

right and due process considerations in its ruling and did not merely limit its ruling to the strict and rigid confines of Federal Indian Law." Appellants' Brief 21. Any reader will fail to find any reference in the *Towessnute* Order to state civil rights or due process law. The Court's order in 2020 corrected a historic wrong based on three epic failings 104 years earlier—a disrespect for federal treaties as the supreme law of the land; failure to honor the treaty language that would later be definitively interpreted by the Boldt Decision; and, repudiation of ignorant, condescending, and racist language used in the original 1916 *Towessnute* opinion. Key to the Court's 2020 order in *Towessnute* is a recognition of *treaty rights*—an issue not at play in this case. While the Supreme Court's Order to recall the outdated and hurtful mandate marks a necessary and important touchstone in repairing and advancing tribal relations and promotes respect for this state's tribal communities, the *Towessnute* Order did not create new jurisprudence—it simply addressed prior poor jurisprudence connected to federal treaty rights, not aboriginal rights.

V. CONCLUSION

The Appellants, members of the Cowlitz Tribe, do not enjoy off-reservation fishing rights because such aboriginal rights have not been reserved through any treaty or any federal action. The aboriginal fishing rights of the tribe and the Appellants existed as use and occupancy rights

tied to the tribe's aboriginal title to lands in southwest Washington. The federal government extinguished that aboriginal title in 1863 when the unoccupied lands of southwest Washington were designated for sale by executive order.

The Ninth Circuit relied on this basic fact, that aboriginal title held by the Cowlitz, Chehalis, Shoalwater, and several other tribes in southwest Washington, was extinguished in the 1860s when it ruled in *Confederated Tribes* that these tribes had no off-reservation fishing rights. The Grays Harbor District Court properly considered that ruling and applied the law and facts to the Appellant's case, denying their defense and finding them guilty of unlawful recreational fishing.

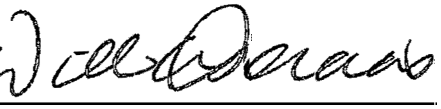
Even if the *Confederated Tribes* case is not directly applicable to the claims raised by Cowlitz tribal members, this Court can look to the federal adjudication of the Cowlitz Tribe's aboriginal title by the Indian Claims Commission, as upheld by the U.S. Court of Claims, and adopted and cited by several other federal courts. The thorough record of the adjudication establishes that, contrary to the argument of the Appellants, the aboriginal right to fish off-reservation simply does not exist for members of the Cowlitz Tribe.

For these reasons, the State respectfully requests this Court uphold the decisions of the lower courts.

DATED this 18th day of June, 2021.

Respectfully Submitted,

NORMA J. TILLOTSON
Prosecuting Attorney
for Grays Harbor County

By: 

WILLIAM A. LERAAS
Deputy Prosecuting Attorney
WSBA #15489

APPENDIX

Presidential Proclamation No. 693

Sec 5

No. 643

By the President of the United States

A Proclamation dated 2d Graham Lincoln

President of the United States of America, do hereby declare and make known that public sales will be held at the undermentioned local offices in the State of Washington and Montana, at the hours mentioned, to wit:

At the Territory of Washington

At the Land Office at Vancouver commencing on Monday the Third (3) day of August next, for the disposal of the public lands, embraced, situated in the following townships, and parts of townships, to wit:

North of the base line, and east of the Willamette Meridian.

Fractional township 2 North of Columbia river, including all of Vancouver Island except the western moiety townships 3, 4, and 5, of Range 1.

Fractional township 1 North of Columbia river, townships 2, 3, and 4; Sections 12, 13, and 16, and Sections 17 to 35, inclusive of township 6, of Range 2.

Fractional township 1 North of Columbia river, township 3; Sections 4 to 9 inclusive, Sections 17 to 21 inclusive, and Sections 28 to 33 inclusive, of township 3; Sections 1 to 7 inclusive, the N½ of Section 8, the N½ of Section 9, the N½ of Section 10, Sections 11 and 12, the S½ of Section 13, Sections 15 to 30 inclusive, and Sections 31 to 33 inclusive, of township 4; Sections 1 and 3, the S½ of Section 4, the S½ of Section 5, the S½ of Section 8, the S½ of Section 10, Sections 11 to 15 inclusive and Sections

[illegible] 25 inclusive of township 5 of Range 2.

Fractional township 1 North of Columbia river, Sections 13, 14 and 15 and Sections 21 & 22 inclusive of township 2 of Range 11.

Fractional township 1 North of Columbia river, Sections 17 & 21 inclusive, and Sections 25 to 28 inclusive of Township 2, of Range 5.

Fractional township 1 North of Columbia river, Sections 33, 25, 26, 34, 34, and 35 of township 2 of Range 6.

Sections 1, 3, 11, 13, 14, 15, 20, 21, 22, 27, 30, and Lot 1 of Section 31, of Township 2, of Range 7.

Fractional Township 3 North of Columbia river of Range 12.

Fractional township 3 North of Columbia river and Township 3, of Range 13.

Fractional township 3 North of Columbia river including Rabbit Island, and Township 3 of Range 14.

Fractional Township 3 North of Columbia river, and Township 3 and 4, of Range 15.

Fractional townships 3 and 3 North of Columbia river, and Township 4, of Range 16.

Township 5, of Range 22.

Township 5, of Range 23.

Township 7, of range 31

Township 7 of range 32

Township 8 of Range 33

Townships 7, 8, and 9 of Range 34,

All of townships 7 and 8, except Coal Valley Valley, Military Reservations townships 9, 10, and 11, of range 35,

All of township 7 except Military reservations on Mill creek, townships 8, 9, and 10, of range 36.

Sections 1 to 15 inclusive; Sections 19 to 24 inclusive and Sections 29 to 32 inclusive of Township 7, Townships 8, 9, and 10 of range 37,

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of Township 9 North of Range 3 West.

Parts of the fractional Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of Township 10 North of Range 3 West.

Fractional Townships 9, 10, and 11 North of Range 4 West.

Fractional Townships 9, 10, and 11 North of Range 5 West.

Fractional Townships 9, 10, and 11 North of Range 6 West.

Fractional Townships 9, 10, and 11 North of Range 7 West.

Fractional Townships 9, 10, and 11 North of Range 8 West.

Fractional Townships 9, 10, and 11 North of Range 9 West.

Fractional Townships 9, 10, and 11 North of Range 10 West.

Fractional Townships 9, 10, and 11 North of Range 11 West.

At the Land Office at Olympia commencing on Monday, the thirteenth (13) day of July, next, for the disposal of the public lands hereinbefore advertised, situated in the following Townships and parts of Townships, Viz:

North of the base line and East of the Willamette Meridian.

The Surveyed portion of Township

15 Township 16 fractional township 17 South and West of the Mesquitty river, fractional township 18 West of the Mesquitty river, all of township 19 except that portion east of Bayou Sara and west the Mesquitty river, fractional townships 20, 21 and 22 township 23, fractional townships 24, 25, 26, 27, 28, 29, 30, and 31, fractional Townships 32 except the north of township as re-surveyed by Maj. Long, Military reservation, fractional township 33 fractional township 34 South of Bayou Sara Lake, Sections 1 to 15 inclusive, Sections 17 to 20 inclusive, Sections 27, 28, 29, 33, 34, and 36 of township 34 of range 1.

Part of township South and West of the Mesquitty river, and the W½ of NE¼, the SE¼ and the E½ of NW¼, the NE¼ of NW¼, and lots 1, 3, 8, and 11 of Section 35 of township 17, lots 1 and 2 of Section 6 and fractional Sections 1 and 12 of township 20, fractional townships 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, and 43, fractional Sections 31 and 34, and lots 1, 2, 3, 4, and 5, of Section 32, of township 34, fractional Sections 1, 2, 11, 12, 13, 24, 25, 36, and 37 of township 37, Sections 1 to 5 inclusive, Sections 8 to 11 inclusive, and fractional Sections 12, 13, 24, and 25 of township 38 of range 2.

Fractional Sections 5 and 6 of township 21, fractional townships 22 and 23, fractional townships 24 East of Meridian, and fractional townships 25, 26, 27, 28, and 36 fractional township 31 West of Port Chisan Bay, Sections 17 to 22, inclusive, lots 1, 2, and 8, of Section 30, Sections 27 to 32 inclusive of township 32, Sections 4 to 9 inclusive, Sections 17 to 21 inclusive, and Sections 28 to 33 inclusive of township 38 of range 3.

Townships fractional townships 34, 35, 36, 37, 38, 39, and 30, of range 4.

[illegible]

[illegible]

[illegible]

[illegible] to the Puyallup and the South half of [illegible] Sections 6, 7 and [illegible] inclusive, [illegible] 8 and 16 south of [illegible] Sections 11 to 15 inclusive, and Sections 17 to 35 inclusive, of township 11; Sections 1 to 15 inclusive, Sections 17 to 24 inclusive, Sections 26, 27, 30 and 31, fractional Section 32, north and west of Mission claims of township 12; townships 13, 16, 17 and 18; fractional townships 19, 20, 21, 22, 25, 26 and 27. All of township 30 except Port Townsend Military Reservation; fractional townships 31, 32, 39 and 40 of range 1.

Townships 11, 12 and 13; Sections 1 to 11 inclusive, Sections 13, 14 and 15, and Sections 17 to 35 inclusive of township 14; Sections 1 to 15 inclusive, Sections 17 to 21 inclusive, Sections 25 to 33 inclusive, of township 15; townships 16, 17 and 18; fractional townships 19, 20, 21, and 22; Sections 25, 26, 27, 34, and 35 of township 25; fractional townships 30, and 31, of range 2.

Townships 13 and 14; Sections 1 to 15 inclusive, Sections 17 and 18, Sections 20 to 27 inclusive, Sections 34 and 35, of township 15; Sections 1 to 4 inclusive, Sections 9 to 15 inclusive, Sections 17 to 35 inclusive, of township 16; township 17; Sections 1, 12, 13, 24 and 25, of township 18; fractional townships 19, 20, 21, 22 and 30; Sections 30, 31, and 32, of township 31, of range 3.

Township 13; Sections 1 to 4 inclusive, Sections 5 and 6 north of Chehalis river, Sections 9 to 15 inclusive, Section 17, Sections

[illegible]

Sections 1 to 15 inclusive, of Township 17;
Sections 1, 13, 13, and 14 Sections [illegible] inclusive
of Township 18; of range 6.

Sections 1 to 15 inclusive, Sections 17 to 18
of Township 17; Sections 1, 2, 11, 12, 13, and 14, Sections
35 to 37 inclusive Sections 24 and 25 of
Township 18, of range 7.

Sections 1 to 15 inclusive, Sections 17 to 24
inclusive of Township 17 of range 8.

Sections 1 to 15 inclusive, Sections 17 to 24
inclusive of Township 17; Township 18, of range 9.

Fractional Township 12; fractional Sections 1, 2,
4, 5, 6, 12, 23, and 24. Sections 23 and 27 fractional
Sections 26, 25, and 34, of Township 13; fractional
Township 15; Sections, Sections 3 to 10 inclusive, Section
15, Sections 17 to 22 inclusive, and Sections 27 to 35
inclusive of Township 16; fractional Township
17; Sections 1, 2 and 3, Sections 10 to 15 inclusive
Sections 23 to 27 inclusive, Sections 34 and 35
of Township 18; of range 10.

Fractional Township 13; fractional
Sections 1, 2, 3, 4, the E½ of NW¼, and the E½ of

[illegible]

Lands reserved under the donations laws will be excluded from the sales.

No "Mineral Lands" or lands containing mineral deposits, will be offered at the Public Sales. Such Mineral lands being previously surveyed or platted, and excluded from sale or other disposal, pursuant to the requirements of the act of Congress approved February 26, 1853 entitled "An act to amend an act entitled an act to create the office of Surveyor General of the public lands in Oregon, and to provide for the Surveys, and to make donations to the settlers of the said public lands, approved September 27, 1850."

In the State of Michigan

At the Grand Office at Detroit commencing on Monday the thirteenth (13) day of July next, for the disposal of the vacant lands in the several numbered Sections and parts of Sections, within the undermentioned Townships, which remain to the United States, within six miles on each side of the Railroad from Grand Haven and Pere Marquette to Flint, and thence to Port Huron, subject as required by law to a minimum of two dollars and fifty cents per acre, Viz;

North of the base line, and West of the principal Meridian

The North half of S½ N½, and S½ of S½ of Section 25; the E½ of the E½ and the W½ of the E½ of Section 26, the N½, the W½ of the W½ of Section 35, the E½ of the E½ of the W½ of Section 34, the E½ of the E½ of the W½ of the W½ of Section 35, the E½ of the E½ of the W½ of the W½ of the S½ of Section 36, the N½ of the N½, the N½ of the S½ of the N½, the S½ of the S½ of the N½, and the N½ of the N½ of the S½ of Section 31, the N½ of the N½, the S½ of the N½, the N½ of the S½, and the S½ of the S½ of Section 32; the N½ of N½, the S½ of N½, and the S½ of S½ of Section 33; the E½ of E½ of Section 30; the N½ of Section 31; the N½ of the N½, the S½ of N½, the N½ of S½, and the N½ of S½ of Section 34; the N½ of N½, S½ of N½, the N½ of N½, S½ of N½, E½ of S½, and S½ of S½ of Section 36, of Township 16 of range 4.

The N½ and the S½ of Section 2; the NE¼ of E½, the N½ of N½, the SE¼ of N½, the N½ of S½, and S½ of S½ of Section 4; the N½ of Section 6; the N½ of Section 8; the E½ of NE¼, the E½ of SE¼, and N½ of S½ of Section 10; Section 12; the N½ of N½, the S½ of S½, and the SE¼ of S½ of Section 14; the N½ of N½ of Section 15; the S½ of NE¼ of Section 22; the S½ of NE¼, the E½ of N½, the N½ of N½, and the S½ of S½; the N½, the N½ of SE¼, and the S½ of Section 24; the N½ of NE¼, the SE¼ of NE¼, the S½ of N½, and the S½ of Section 26; the NE¼ of N½, the N½ of N½, and the S½ of S½ of Section 28; the N½ of NE¼, the SE¼ of NE¼, the S½ of N½, and the S½ of Section 30; the E½ of NE¼ of Section 32; the N½ of NE¼ of Section 34; and the E½ of NE¼ of Section 36 of township 16 of range 5.

The NW¼, the N½ of NE¼, and S½ of N½ of Section 11; the N½, the N½ of SE¼, and the S½ of Section 6; of Township 15, Section 2, 4, and 6; the NE¼, of NE¼ of N½, S½ of N½, N½ of S½, and S½ of S½, of Section 8; Sections 10, 12, 14, and 18; the N½, the SE¼, and the N½ of S½ of Section 20; Sections 22, and 24; the N½, and the N½ of SE¼ of Section 26; the SE¼, the E½ of SW¼, and the SW¼ of SW¼ of Section 28; the W½ of NW¼ and

S½ of N½ of Section 30; the S½ of N½ of N½ of N½ of N½, and S½ of N½ of N½ of N½ of the [illegible] E½ of N½ of Section 31; the S½ of N½ of the E½ of N½ of Section 32; the S½ of Section 33; the N½ of N½ of N½ of N½, and the [illegible] of Section 34; the [illegible] of Township No. 16 N. of Range 6 [illegible] of Section 6, of Section 1 of Range 6.

All the Land Office at East Saginaw will be open, on Monday the Third (3d) day of August next, for the disposal of the vacant lands, and [illegible] in the undermentioned Sections, and lands of like quality within the undermentioned Townships, which remain in the United States, within six miles on each side of the Rail Roads from Amboy, by Midland and Saginaw, and from Grand Rapids to some point on Saginaw Bay, and from Grand Haven and Port Marquette to Flint, and thence to Port Huron, subject as required by law to a minimum of five dollars and fifty cents per acre, viz:

North of the base line, and East of the fifth principal Meridian:

The E½ of NE¼, SW¼ of NE¼, W½ of NW¼, SE¼ of NW¼ lots 5 and 6 and E½ of SE¼, of Section 17; fractional Section 18, lots 5 and 6, of Section 20, of Township 13, the SE¼ of SW¼, of Section 30; the NE¼, lots 2 and 4, the NW¼ of SE¼, and E½ of SW¼ of Section 30; the S½ of NE¼, SE¼ of NW¼, of Section 31, and SE¼ and SE¼ of SW¼, of Section 33; the N½ of NW¼ and SW¼ of NW¼ of Section [illegible]; of Township 14, of Range 5.

The NE¼, and SE¼ of NW¼ of Section 10; the NW¼ of NE¼, of Section 30; the SE¼ of SE¼ of Section 33; the S½ of NE¼, E½ of SE¼, and NW¼ of SE¼ of Section 34, of Township 9; fractional Section 4, of Township 13; the N½ of SE¼, and SW¼ of Section 18; the NW¼ and W½ of SW¼

of Section 30; the N½ of S½ and S½ of S½ of Section 32; fractional Section 36, and all of Township 12 of Range 3,

Fractional Sections 4; the N½ of NE¼, S½ of N½, NE¼ of N½, and SE¼ of NE¼ of Section 10; the E½ of NE¼, the SE¼, NE¼ of SW¼ and S½ of SW¼ of Section 12; the N½ of NE¼, SE¼ of NE¼, W½ of SE¼, NE¼ of SE¼, and E½ of SW¼ of Section 14; the NE¼, E½ of NW¼, NE¼ of NW¼, and Lot No 4 of Section 24, of Township 13; the SE¼ of NE¼, Lots 4, 5, and 6, and S½ of SE¼, of Section 10; the NE¼, W½ of SE¼, NE¼ of SE¼, and N½ of Section 13; Section 14; Lots 3 and 4, and S½ of Section 18; Sections 30, and 32; the N½ of NE¼, NW¼, S½ of SE¼, and E½ of SW¼ of Section 34; Sections 36, and 38; fractional Sections 30 and 32; the N½, the N½ of SE¼, the N½ of SW¼, and NE¼ of SW¼, of Section 34; [illegible] of NE¼, E½ of SE¼, and SW¼ of SE¼, of Section 36; the North half of Section 36, of Township 13; of Range 3;

[illegible] of Section 6; fractional Section 10, of Township 11; the E½ of NE¼, Lots 1, 2, and 3, and the NE¼ of SE¼, of Section 30; the SW¼ of SE¼, of Section 20; the E½ of NE¼, Lots 2, 3, and 4, and E½ of SE¼ of Section 32, of Township 10; the N½ of NW¼ of Section 4; the N½ of NE¼, the N½ of SE¼, the NE¼ of SW¼, and Lots 3, 4, 5, 6, and 7, and SW¼ of SE¼ of Section 6; Lots 3, 4, 5, 6, and 7, and SW¼ of SE¼ of Section 6; Sections 8, and the fractional Section 20; of Township 13; Section 4, N½ of NE¼, and Lot 1 of Section 6; the [illegible] of NE¼, N½ of NW¼, SW¼ of NW¼, and SE¼ of NW¼ of Section 10; the W½ of NE¼, NE¼ of NE¼, SE¼, and W½ of Section 16; fractional Section 18; the N½ of NE¼, the N½ of SE¼, and the N½ of fractional SE¼ of Section 18; the N½ fractional SE¼ of N½, of Section 30, of Township 14; Lot No. 2, SE¼ of SE¼ and S½ fractional SW¼ of

Section 30, the Principal [illegible] East of Kansas [illegible] the West of [illegible] and the North half of the line 23, of [illegible] 15, [illegible] 5

[illegible] State of Kansas
[illegible] Board Office of Topeka, [illegible]
morning on Thursday, the Third (3rd) day of [illegible], for the disposal of the public lands, heretofore reserved, described in the following townships, and parts of townships [illegible]

North of the base line, and East of the Sixth Principal Meridian

The parts of Townships 12, 13, 14, and 15, inside of the Shawnee Reservation of range 20,

The parts of Township 12 inside of Shawnee Reservation Townships 13, and 14, and the parts of Township 15, inside of Shawnee Reservation, of range 21,

The parts of township 13, inside of Shawnee Reservation, townships 13, and 14, and the parts of townships 18, 19, and 20, inside of the Miami Reservation, of range 22,

The parts of townships 11, and 13, inside of the Shawnee Reservations, townships 13, and 14, and the parts of township 15 inside of the Shawnee Reservation, and the parts of township 18 inside of the Miami Reservation, townships 19 20, 21, and 22, of range 23,

The parts of township 11 inside of Shawnee Reservation townships 13, 13, and 14; the parts of township 15, inside the Shawnee Reservation, the parts of township 18 inside of the Miami Reservations; townships 19, 20, 21, and 22, of range 24.

The parts of Township 11, inside of the Shawnee Reservations, Townships 13,

and the fractional parts of township 13 south of the Miami Reservation, the parts of township 13 inside of the Miami Reservation, township 14, 20, 21, and 22, of range 24.

At the Land Office at Cumberland commencing on Monday the thirteenth day of July next, for the disposal of the public lands heretofore unoffered, situated in the following townships, and parts of townships, viz:

South of the base line and East of the 6th principal meridian.

The parts of township 23, inside of the Miami Reservation, of range 22.

The parts of township 23, inside of the Miami Reservation, of range 23,

The parts of township 23 inside of the Miami Reservation, of range 24,

The parts of township 23, inside the Miami Reservation, of range 25.

Lands reserved by law for the use of schools, saleries, and other purposes, or lands on which settlements have been filed under the provisions of the Homestead Laws will be excluded from the sales.

The offering of the above lands will be commenced on the days specified, and will proceed in the order in which they are advertised, until the whole shall have been offered, and the sale then closed, but no sale shall be kept open longer than two weeks, and no private entry of any of the lands will be admitted, until after the expiration of the two weeks.

Given under my hand, at the City of Washington, this twenty-sixth day of March in the Year of our Lord one thousand

GRAYS HARBOR COUNTY PROSECUTING ATTORNEY'S OFFICE

June 18, 2021 - 9:35 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	55019-9
Appellate Court Case Title:	State of Washington, Respondent v Andrew Larry Simmons and Michael Myron Simmons, Petitioners
Superior Court Case Number:	19-1-00802-7

The following documents have been uploaded:

- 550199_Briefs_20210618093257D2972082_8464.pdf
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  The Original File Name was Respondent's Brief RE Simmons.pdf
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  This File Contains:
  Motion 1 - Waive - Page Limitation
  The Original File Name was APPELLATE MOTION Thursday Jun 17 2021 at 073850_5082426 AM.pdf

A copy of the uploaded files will be sent to:

- Ben@DeschutesLawGroup.com
- ntillotson@co.grays-harbor.wa.us

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