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**MAY 15 2017**

WASHINGTON STATE  
SUPREME COURT

No. 94157-2

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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

Petitioners,

v.

STATE OF WASHINGTON; and PETER GOLDMARK, in his official  
capacity as Commissioner of Public Lands,

Respondents.

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**PETITIONER'S ANSWER TO QUINAULT  
INDIAN NATION'S *AMICUS CURIAE* BRIEF**

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## I. INTRODUCTION

This matter involves the public's right to enforce the timeless public trust doctrine whereby the State of Washington is entrusted on behalf of the public with navigable waterways and is obligated to ensure that the public has access to those navigable waterways. The issue is complicated by the fact that the navigable waterway involved, Lake Quinault ("Lake"), abuts the reservation of the Quinault Indian Nation ("the Nation"). The Nation in its *amicus curiae* memorandum asserts its interest in the Lake and sovereign immunity. Although the Nation arguably is an interested party, it is not an indispensable party to the litigation over whether the State has failed to assert its regulatory authority over the navigable water of the Lake.

## II. ARGUMENT

According to our state constitution, 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 . . ." *Wash. Const. art. XVI, § 1* (emphasis added). This language was a formal declaration by the people of rights which the State possessed by virtue of its sovereignty. *Caminiti v. Boyle*, 107 Wn.2d 662, 666, 732 P.2d 989, 993 (1987). Here, it is undisputed among the parties that the Lake is a navigable waterway. CP

163-166. As a navigable waterway, our constitution clearly declares state ownership and therefore title to the Lake was transferred from the federal government to Washington upon statehood. From that point forward, the state held this navigable waterway in trust for the the public pursuant to the doctrine of public trust.

#### **A. Public Trust Doctrine**

The “public trust” doctrine is a recognition of the sovereign right of the individual States to protect inviolable public entitlements associated with navigable waterways, among other natural resources. Implicit in the doctrine is the fundamental notion that a State may not alienate or otherwise diminish to private or non-public entities the public interest in navigable waterways. *E.g.*, A. Reid Allison III, *THE PUBLIC TRUST DOCTRINE IN WASHINGTON*, *University of Puget Sound Law Review*, Vol. 10:633, 638 (1987). The public trust doctrine concerns the public’s right to navigation and the incidental rights of fishing, boating, swimming, waterskiing and other related recreational uses of public waters. *Caminiti*, 107 Wn.2d 662 at 669 (quoting *Wilbour v. Gallager*, 77 Wn.2d 306, 316, 462 P.2d 232 (1969)).

Like other doctrines, the public trust was created with “a set of minimum [constitutional] standards that can be expanded, **but not contracted**, by the states.” *Charles F. Wilkinson, THE HEADWATERS OF THE*

*PUBLIC TRUST: SOME THOUGHTS ON THE SOURCE AND SCOPE OF THE TRADITIONAL DOCTRINE*, 19 *Envtl. L.* 425, 426 & n.3 (1989) (emphasis added). In other words, the obligations imposed by the doctrine cannot be “contracted” or lessened – they impose a mandatory obligation on the State. The public policy expressed in the state constitution is consistent with these public trust principles.

In fact, state legislation reiterates and underscores the importance of the doctrine and the mandatory duties that the State maintains as part of the doctrine. The legislature has enacted the following statutes:

**Aquatic lands – Findings.**

The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. **The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department the responsibility to manage these lands for the benefit of the public.**

RCW 79.105.010 (2016) (emphasis added).

**Aquatic lands – Management guidelines**

The management of state-owned aquatic lands **shall be in conformance with constitutional and statutory requirements.** The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the states.

RCW 79.105.030 (2016) (emphasis added).

**Fostering use of aquatic environment – Limitation**

The department **shall foster** the commercial and recreational use of the aquatic environment for production of food, fibre, income, and **public enjoyment** ....

RCW 79.105.050 (2016) (emphasis added).

The duties imposed by the public trust doctrine upon the State are mandatory, not discretionary. In *Illinois Central R.R. v. Illinois*, the United States Supreme Court discussed a trust that the Court labeled “inalienable” by the legislature. *Illinois Central R.R.*, 146 U.S. at 453. One early example of Washington State legislative action regarding public trust was the enactment in 1927 of the “Public Lands Act.” Designating navigable waterways such as tidelands “belonging to or held in trust by the state” as “public lands”, the legislature, in effect, recognized its sovereign responsibility to manage these lands as a valuable natural resource held by the State of Washington in trust for its citizens. RCW 79.01.004 (1962).

Under the public trust doctrine, the State has no discretion: the interests of the public are paramount and inalienable. This public property interest requires that the State protect public access to navigable waterways encompassed by the public trust doctrine. Implicit in the doctrine, the Constitution and the subsequent legislative action is a mandatory duty to maintain control over the navigable waterway.

Case law further supports the mandatory nature of the public trust doctrine. In *Caminiti*, the Court stated:

The state can no more convey or give away this *jus publicum* interest than it can “abdicate its police powers in the administration of government and the preservation of the peace.” Thus it is that the sovereignty and dominion over this state’s [navigable waterways], as distinguished from title, always remains in the state, and the state holds such dominion in trust for the public. It is this principle which is referred to as the “public trust doctrine”. Although not always clearly labeled or articulated as such, our review of Washington law establishes that the doctrine has always existed in the State of Washington.

*Caminiti*, 107 Wn.2d at 669-70 (quoting *Illinois Cent. R. Co. v. State of Illinois*, 146 U.S. 387, 453, 13 S.Ct. 110, 36 L.Ed 1018 (1892)).

**B. The Court Does Not Have To Adjudicate The Scope Of The Nation’s Interest**

The Court does not have to adjudicate the scope of the Nation’s interest in the Lake. As a matter of law, the presumption is that the State has the authority and duty to regulate the navigable water of the Lake.

Regardless of whether Quinault Lake is the boundary of the reservation or partly or entirely within the reservation, the State owns the land beneath the navigable water and consequently has the authority to regulate it. Petitioners are not asking the Court to determine the scope of the Nation’s rights with regard to the Lake. The Nation has not been named as a party and has chosen not to participate, except by *amicus* brief. There is no legal challenge to the presumption that the State acquired title to the bed of the lake when it became a state. Accordingly, the State has



jurisdiction over the navigable water of the Lake, even if such water is located in or near a reservation.

To this point, the state has already asserted regulatory authority over the Lake. Specifically, the Department of Fish and Wildlife has adopted WAC 220-410-060 which identifies the boundary descriptions of certain Game Management Units (GMUs) in Washington State. GMUs are discrete geographical areas designed by the state, via the Department of Fish and Wildlife, sets where certain hunting is allowed. RCW 77.04.055(2) grants the Department of Fish and Wildlife the authority to “establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy game fish and wildlife.” (emphasis added). One such regulation describes the boundaries of GMU 638-QUINAULT RIDGE, which encompasses the Lake as follows:

**GMU 638-QUINAULT RIDGE (Grays Harbor and Jefferson counties):**

Beginning on the Olympic National Park boundary and the Quinault Indian reservation boundary at the northwest corner of Lake Quinault; NE along the west shore of Lake Quinault to the Quinault River; NE on the Olympic National Park boundary, which is along the Quinault River, to the Olympic National Park boundary west of Bunch Creek; S and NE on the Olympic National Park boundary to the ridge between the Wynoochee River watershed and Humptulips River watershed; S along the ridge between the Humptulips River watershed and the Wynoochee River watershed to its intersection with US Forest Service (USFS) Rd 2281; E along USFS Rd 2281 to USFS Rd 2294; SE on USFS Rd 2294, paralleling Big Creek, to USFS Rd 22 (Donkey Creek

Rd); W on the USFS Rd 22 to US Hwy (US) 101; N on US 101 to the Quinault Indian reservation boundary; NE on the reservation boundary to Lake Quinault; NW along the south shore of Lake Quinault to the Olympic National Park boundary and the point of beginning.

WAC 220-410-060.

This boundary description established by the state in WAC 220-410-060, encompasses the Lake as depicted in the following map:



See Appendix A.

On one hand, the State is regulating hunting in an area encompassing the Lake. While on the other hand, the State is claiming that it has no obligation to the public and the citizens of the State pursuant to the public trust doctrine to maintain the public's access to Lake Quinault for

navigation, commerce and recreation. The State's management of this public resource does not require that it prohibit any use by the Nation – the two are not mutually exclusive. The State's assurance of public access would not interrupt any activities already enjoyed by the Nation, including fishing and fishery habitat, boating and recreating.

### III. CONCLUSION

What is absolutely at stake in this case is the public's inalienable interest in public access to navigable waterways – an interest that cannot be eliminated by governmental discretion. The judiciary, as co-equal branch of government, should be less concerned with the alleged harm or prejudice that may result to the Nation, and more concerned with whether the actions of the State violate the state constitution.

Respectfully submitted this 12<sup>th</sup> day of May, 2017.

DICKSON LAW GROUP PS



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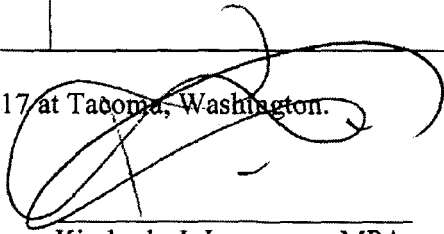
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**Certificate of Service**

I, the undersigned, hereby certify under penalty of perjury of the laws of the State of Washington that I caused the foregoing Petitioner's Answer to Quinault Indian Nation's Amicus Curiae Brief to be served upon:

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DATED this 12<sup>th</sup> day of May, 2017 at ~~Tacoma~~, Washington.



Kimberly J. Lampman, MPA

# **APPENDIX A**



WA 6041 630 Outlook Ridge  
 2004 Horizontal Datum  
 1:50,000 Scale



**my topo**  
 A National Geographic  
 Company



**Legend**  
 Symbols for roads, trails, and other features.



**UNIT CONVERSIONS**

1 inch	= 2.54 centimeters
1 foot	= 0.3048 meters
1 mile	= 1.6093 kilometers
1 nautical mile	= 1.852 kilometers
1 statute mile	= 1.6093 kilometers
1 meter	= 1.0936 yards
1 kilometer	= 0.6214 miles
1 hectare	= 2.471 acres
1 acre	= 0.4047 hectares

**CONTAINER SCALE**  
 1:50,000