No. 76017-3-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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

Appellant,

v.

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

Respondents.

DISCRETIONARY REVIEW

PETITION FOR REVIEW BY SUPREME COURT

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I. Identity of Petitioner

Appellants are property owners and Washington State citizens who own property on or near Lake Quinault and who have had their access to the Lake severely restricted or denied as a result of the Quinault Indian Nation ("the Nation"). In their civil action, the Appellants seek relief pursuant to Washington State's obligations under the public trust doctrine. Appellants hereby petition this Court to accept review of the unpublished decision of the Court of Appeals, Division I that is designated in Part II of this petition for review.

II. Court of Appeals Decision

In its January 30, 2017 opinion, the Court of Appeals, Division I dismissed the Appellants' claims by affirming the trial court's decision. A copy of the Court of Appeals' opinion is attached hereto as **Appendix A**. The Appellants seek review of this opinion.

III. Issue Presented for Review

Whether, when the Court of Appeals' decision is in direct and substantial conflict with a recent decision of the Supreme Court pursuant to RAP 13.4(b)(1), resulting in substantial harm, the Court should accept a Petition for Review? Yes.

Whether, when the petition involves an issue of substantial public

interest that should be determined by the Supreme Court pursuant to RAP 13.4(b)(4), the Court should accept a Petition for Review? Yes.

IV. STATEMENT OF THE CASE

A. The State of Washington has in large part abandoned its duties under the public trust doctrine and specifically with regard to Lake Quinault.

This case involves jurisdiction and access to Lake Quinault ("the Lake"), a remote lake located on the Olympic Peninsula and abutting the reservation of the Nation[1]. The Lake is undeniably a navigable waterway. *CP 163-166.* As a navigable waterway, title to the Lake was transferred from the federal government to the State of Washington upon statehood. This is so because title was never expressly transferred to the Nation prior to statehood (contrary to the Court of Appeals' assertion). From that point forward, the State held this navigable waterway in trust for the the public pursuant to the doctrine of public trust – although the State has never fulfilled its obligation in this respect.

The Appellants are owners of property adjacent to the Lake and, for decades, have suffered from the Nation's actions and restrictions concerning use and enjoyment of the Lake, which actions have become

[1] The actual location of the lake with regard to the Nation's reservation is a non-issue since the lake is undisputedly a navigable waterway. As such, it is subject ot the public trust doctrine and title transferred from the federal government to the State of Washington upon statehood. *See U.S. v. Holt State Bank*, 270 U.S. 49, 59, 46 S.Ct. 197, 70 L.Ed. 465 (1926).

increasingly strict and controlling over time. *CP 253-261*. In hopes of gaining clarity over the various rights and privileges associated with the Lake, the Plaintiffs filed a civil action asserting the State's abandonment of the public trust doctrine and seeking relief to force the State to comply with its mandatory obligations. The claims are solely tailored to action and/or inaction by the State with regard to its citizens and the public.

In the underlying action there are no claims against the Nation; however, the trial court ruled that the Nation is a necessary and indispensable party pursuant to Civil Rule 19 and on that basis, dismissed the Plaintiffs' suit before the merits could be considered. The Court of Appeals barely addressed the issue at all.

B. Procedural History

The Appellants filed a civil action in December, 2014 against the Nation and the State of Washington Department of Natural Resources in the Western District of the United States District Court, seeking declaratory and injunctive relief and seeking to quiet title to the Lake.

In January 2015, the Nation and the State brought Motions to Dismiss alleging sovereign immunity. The Motions were granted and the civil action was dismissed in February 2015.

In September 2015, the Plaintiffs filed a civil action against the State in Thurston County Superior Court seeking declaratory and injunctive relief and including a writ of mandamus.

On or about February 4, 2016, the State filed a Motion for Summary Judgment seeking dismissal of the Plaintiffs' suit. On or about February 8, 2016 the Nation filed a Motion for Leave to Appear as *Amicus Curiae*. Oral argument was heard on both Motions on March 4, 2016 before Thurston County Superior Court Judge Anne Hirsch, who granted both Motions and entered an Order dismissing the Plaintiffs' suit.

The Appellants appealed the trial court's decision to the Court of Appeals, Division II, on or about March 16, 2016. On or about October 25, 2016 the case was transferred to Division I. Oral argument was held before a panel of three judges on January 17, 2017. The Nation again participated as an *Amicus Curiae*. On January 30, 2017, the Court of Appeals, Division I affirmed the trial court's order, resulting in the dismissal of the Appellant's claims.

V. ARGUMENT

A. The Appellate Court's decision is in direct and substantial conflict with the Supreme Court's 2012 decision in *Automotive United Trades Organization v. State*, 175 Wn.2d 214, 285 P.3d 52 (2012).

The Court of Appeals' decision is in direct conflict with the recent

Supreme Court decision, *Automotive United Trades Organization v. State*, 175 Wn.2d 214, 285 P.3d 52 (2012), concerning whether the Nation is an indispensable party and whether a Plaintiff should be left with no venue or jurisdiction within which to seek relief. The Court held that the Nation (and the United States, as Trustee for the Nation) is a necessary and indispensable party, despite the fact that the relief pertains solely to the the State and its obligations and despite the fact that the Nation has no discernable legal interest in the Lake and, if relief were granted, it would not result in lack of access to the Lake by the Nation. The State can cite to no authority supporting a recognized legal interest, such as express language in a treaty granting the lakebed and lake to the Nation (the Nation *claims* an interest in the Lake, but the Appellants argue there is no legally supportable basis for this claim).

A party is necessary if (1) the trial court cannot make a complete determination of the controversy without that party's presence; (2) the party's ability to protect its interest in the subject matter of the litigation would be impeded by a judgment in the case; and (3) judgment in the case necessarily would affect the party's interest. *Town of Ruston v. City of Tacoma, 90 Wn.App. 75, 82, 951 P.2d 805 (1998).*

The allegation that the Nation is a necessary party is predicated upon the unsupported claim that the Nation has a "beneficial interest" in the lake.

Without said interest, there is no basis for alleging that the Nation is a necessary party. The fact that the Nation has usurped the State's jurisdiction with regard to the Lake does not, by and of itself, materialize into a "beneficial interest," regardless of whether the Nation perceives it as such.

Historically, title to Lake Quinault was not included in the original treaty establishing the reservation. In fact, the reservation was limited to coastal areas. Title to the Lake was not included in the initial survey expanding the Quinault reservation boundary from the coast in-land. The only mention of the Lake is as a reference point concerning the metes and bounds of the reservation – there was no express granting of any title to the Lake itself. The Court of Appeals' statement that the Nation's claim to the Lake predates statehood is factually and historically flawed. As of 1889, the Nation had not received title to the Lake or the lakebed.

Lake Quinault is a navigable waterway and as such, falls within the purview of the equal footing doctrine wherein title goes to the State upon statehood. It is also well established that a navigable waterway located within the boundaries of a reservation does not belong to the tribe unless there is an express transfer of title. *U.S. v. Holt State Bank, 270 U.S. 49, 57, 46 S.Ct. 197, 70 L.Ed. 465 (1926).* There is no evidence to support the allegation that the Nation has an interest in the lake such that it is a necessary and indispensable party.

In determining whether the Nation is necessary for the suit to proceed, the first element to be considered is whether a Court can make a complete determination of the controversy without the Nation's presence as a party. The controversy presented by the Appellants is whether the State has failed to uphold its obligation to the public pursuant to the public trust doctrine by failing to maintain the public's access to Lake Quinault for navigation, commerce and recreation.

A ruling that the State has failed to uphold this obligation would necessarily mandate that the State maintain access to the Lake for the public. If the court so found, this would not, by necessity, alter or restrict the Nation's acess to or use of the Lake, as is assumed by the Court of Appeals. It is not accurate to conclude that the Appellants relief, if granted, requires some form of enforcement action against the Nation. There are numerous scenarios whereby relief, if granted, would have no impact upon the Nation's current use and access to Lake Quinault. The unspoken assertion by the State is that it is somehow necessary for the Nation to have unfettered, exclusive access to the Lake – which is not the case and is unsupportable. The relief requested would return access to the public – but not exclusive access. Such relief does not, by implication, require that "enforcement action" be taken against any entity or party – this is a flawed assumption.

The second element is whether the Nation's ability to protect its interest in the subject matter of the litigation would be impeded by a judgment in the case. *Town of Ruston v. Tacoma, 90 Wn.App. 75, 82, 951 P.3d 805 (1998).* This begs the question, what "interest" has the Nation established with regard to the "subject matter." The "subject matter" of the litigation is whether the State has met its statutory and constitutional obligations with regard to the public trust doctrine and access to public waters. In other words, the subject matter of the Appellant's suit is narrowly tailored to apply solely to the State. Any decision as to whether or not the State has met its statutory and constitutional obligations cannot possibly be determinative as to any "interest" of the Nation. Furthermore, determinations as to whether the State has met significant and sweeping obligations under the law should not be prevented in this fashion.

The third element is whether judgment in the case necessarily would affect the party's interest. *Town of Ruston v. Tacoma, 90 Wn.App. 75, 82, 951 P.3d 805 (1998).* If the trial court ruled that the State failed to uphold its obligations, such a ruling would not "necessarily affect" the Nation's interest. First, as discussed above, the Nation has no legally supportable interest to the Lake, regardless of its claim. Furthermore, a ruling in favor of the Appellants would only require public access to the Lake to be maintained by the State.

The Appellate Court relies upon Bainbridge Citizens United v. DNR, *147 Wn.App. 365, 198 P.3d 1033 (2008)* to support its conclusion that the Nation is a necessary party; however, *Bainbridge Citizens* is distinguishable. In *Bainbridge Citizens*, a citizen's group sought a declaration under the UDJA that DNR had failed to enforce its own regulations by not ejecting alleged trespassers on state-owned aquatic lands. *Bainbridge Citizens United v. DNR*, *147 Wn.App. 365, 369, 198 P.3d 1033 (2008)*. However, in *Bainbridge Citizens*, the lawsuit was directed at the trespassers specifically, and the relief sought was intended to deprive the trespassers of a colorable interest. As the *Bainbridge* court noted, the Plaintiff's "***sole purpose in this lawsuit was to force the Department to evict, fine, and sue the vessel owners. Accordingly, the vessel owners were necessary parties.***" *Bainbridge Citizens United v. DNR*, *147 Wn.App. 365, 373, 198 P.3d 1033 (2008)(emphasis added).* In the instant case, the Plaintiffs' "sole purpose" is to require the State uphold the public trust doctrine – an objective aimed at the State, not the Nation. Unlike in *Bainbridge Citizens*, if the requested relief is granted, no evictions, fines or suits will result against the Nation. No action is required against the Nation for the State to provide public access to the Lake.

Similarly, in *Northwest Greyhound Kennel Ass'n, Inc. v. State, 8 Wn.App. 314, 506 P.2d 878 (1973)* the party found to be necessary and

indispensable was the persons "who are presently licensed under the act [who] would have their existing right to race horses . . . . . destroyed if the relief sought in this action were granted." *Northwest Greyhound Kennel Ass'n, Inc. v. State, 8 Wn.App. 314, 319, 506 P.3d 878 (1973).* In other words, the parties in question had legal and indisputable rights through licensing, rather than a "claimed" interest. This is distinguishable from the self-asserted and unsubstantiated "rights" the Nation alleges to a State-owned navigable waterway.

B. The Court of Appeals' analysis concerning declaratory relief pursuant to RCW 7.24.010 and RCW 7.24.050 is deeply flawed.

The Court states that because the Appellants are not challenging the validity or construction of the statutes under which they seek relief, they are not subject to relief under the UDJA, relying upon RCW 7.24.020 for that proposition. However, the Court construes RCW 7.24 too narrowly. To the contrary, the Appellants are entitled to relief pursuant to the UDJA. RCW 7.24.010 states:

> **Authority of courts to render.**
>
> Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

RCW 7.24.010 (2017).

RCW 7.24.050 states:

> **General powers not restricted by express enumeration.**
>
> The enumeration in RCW 7.24.020 and 7.24.030 does not limit or restrict the exercise of the general powers conferred in RCW 7.24.010 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

RCW 7.24.050(2017).

As stated, RCW 7.24.020 does not limit a Court's authority to issue declaratory relief in that instance where a judgment or decree will terminate the controversy or remove an uncertainty. In this case, the declaratory relief requested by the Appellants (i.e., declaring that the Lake is a navigable waterway and a public trust resource; that the State has breached its duty by failing to protect the public's access to the Lake) would terminate the controversy over the status of Lake Quinault as a navigable waterway and public trust resource and would remove the uncertainty that has lingered for decades.

Ultimately, the UDJA gives a Court authority to declare rights, status and other legal relations of the parties. *See RCW 7.24.010 (2017).*

C. The Appellate Court's conclusion that the public trust doctrine grants discretion to the State in its application is incorrect and creates bad precedent for the doctrine's application.

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. *See, 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 v. Boyle, 107 Wn.2d 662, 669, 732 P.2d 989 (1987)(quoting Wilbour v. Gallager, 77 Wn.2d 306, 316, 462 P.2d 232 (1969)).*

Case law historically supports the mandatory nature of the public trust doctrine. In *State v. Sturtevant*, the court acknowledged that the State held the right of navigation "in trust for the whole people of this state." *State v. Sturtevant, 76 Wash. 158, 135 P. 1035 (1913). See also Caminiti v. Boyle, 107 Wn.2d 662, 732 P.2d 989 (1987).*

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 v. Boyle, 107 Wn.2d 662, 669-70, 732 P.2d 989 (1987)(quoting Illinois Cent. R. Co. v. State of Illinois, 146 U.S. 387, 453, 13 S.Ct. 110, 36 L.Ed 1018 (1892)).

In *Caminiti,* the Washington Supreme Court held that RCW 79.90.105 did not violate the public trust doctrine, concluding that the legislature had given up relatively little right of control over the *jus publicum*. *See id. at 665-66, 732 P.2d 989.* In *Weden v. San Juan County, 135 Wn.2d 678, 958 P.2d 273 (1998)*, the Washington Supreme Court held that a San Juan County ordinance banning the use of motorized personal watercraft on all marine waters and a lake did not violate the public trust doctrine because the county had not given up control over its waters. *Weden v. San Juan County, 135 Wn.2d 678, 699, 958 P.2d 273 (1998).* The Court found that while the ordinance prohibited a particular form of recreation, the waters were open to the entire public, including personal watercraft owners who use other recreational methods. *See id.*

The duties imposed by the public trust doctrine upon the State are mandatory, not discretionary. In *Illinois Central R.R. v. Illinois, 146 U.S.*

387 (1892), the United States Supreme Court described the public trust as a trust that the Court labeled "inalienable" by the legislature. *Illinois Central R.R. v. Illinois, 146 U.S. 387, 453 (1892).* 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 in trust for its citizens. *WASH. REV. CODE § 79.01.004 (1962).*

Under the public trust doctrine, the State has no discretion: the interests of the public are paramount and inalienable. What may lead to confusion is that, although the State has no discretion with regard to its mandatory duty, it does have discretion as to how it chooses to implement that obligation. Although a fine distinction, it is a distinction nonetheless – the duty and obligation are mandatory. In other words, although the State has a mandatory duty to provide public access to Lake Quinault, it does have discretion in how it sets about providing that access. This was not recognized by the Court of Appeals.

D. Pursuant to ***Automotive United Trades Organization***, the Nation is not indispensable and the Appellants' claims should proceed to the merits.

Contrary to the Appellate Court's decision, *Automotive United*

Trades Organization v. State is on point and illustrative. The harm to the Plaintiffs in having no judicial forum within which to pursue their claims was not acknowledged by the Court, nor considered as is required. *Automotive United Trades Organization v. State, 175 Wn.2d 214, 223-24, 285 P.3d 52 (2012).* In *Automotive United*, as in this matter, the State sought dismissal of a case for failure to join Indian tribes, arguing that the tribes were necessary and indispensable parties pursuant to CR 19. *See id.* Although the *Automotive United* Court concluded that the tribes were "necessary" parties pursuant to CR 19(a)(2)(A), the Court further concluded that the tribes could not feasibly be joined due to sovereign immunity (as in this case). *See id. at 226, 285 P.3d 52.* The Washington Supreme Court discussed at some length how sovereign immunity impacted the fourth factor under CR 19: "to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties." *See id. at 229, 285 P.3d 52.* The Court stated: "[i]n evaluating the extent of prejudice, we accord heavy weight to the tribes' sovereign status." *See id. at 229-230, 285 P.3d 52.*

The Court in *Automotive United* acknowledged that the extent of prejudice to the tribes was significant, even though the absent tribes would not be bound by the ruling. *See id. at 231, 285 P.3d 52.* However, pursuant to CR 19(b)(4) (absence of any remedy), the Court found that the suit could

proceed without the tribes because, as in this case, the plaintiffs would be left with no other judicial forum in which to seek relief. *See id. at 232, 285 P.3d 52.* That extreme prejudice outweighed the harm to the tribe. The Court stated:

> But "complete justice" may not be served when a plaintiff is divested of all possible relief because an absent party is a sovereign entity. In such an instance, the quest for "complete justice" ironically leads to none at all – an outcome at odds with the equitable purposes underlying compulsory joinder. Nor does our respect for sovereign immunity compel this result. ***Sovereign immunity is meant to be raised as a shield by the tribe, not wielded as a sword by the State.*** An absentee's sovereign immunity need not trump all countervailing considerations to require automatic dismissal.

See id. at 233, 285 P.3d 52 (emphasis added).

The Washington Supreme Court concluded, in *Automotive United*, that the tribes were not indispensable. *See id. at 235, 285 P.3d 52.* The Court of Appeals, in considering this matter, failed to apply the Supreme Court's analysis *Automotive United*. The decision, in fact, is in direct conflict with the holding in *Automotive United* and, instead, allows the State (rather than the Nation) to use the Nation's sovereign immunity as a sword to avoid the claims. This is precisely the outcome that concerned the Surpeme Court in deciding *Automotive United*. The Court of Appeals' flawed analysis should be reviewed and rejected by this Court.

VI. Conclusion

The Court of Appeals' decision seriously distorts the analysis required by the Washington Supreme Court in *Automotive United* and deprives the Plaintiffs of any relief in any judicial forum. As the decision is in direct conflict with a recent decision of the Supreme Court, this Petition should be granted.

Furthermore, the Court of Appeals' decision involves an issue of substantial public interest and import: the public trust doctrine and its modern day application in the State of Washington. Lake Quinault is a navigable waterway entrusted to the State by the federal government upon statehood for the benefit of all Washington State citizens. If the Court of Appeals' decision stands, then the State has successfully used a non-party's sovereign immunity (i.e., the Nation) to immunize itself from suit. The Court erroneously allowed the use of tribal sovereign immunity as a sword wielded by the State – not the Nation – amounting to an obstruction of justice. This is particularly egregious where the State is the trustee for the Plaintiffs (i.e., the citizens).

The Appellants respectfully request that the Court accept review of this matter because this case presents an issue of substantial public interest that should be determined by this Court. Additionally, this case presents the Court with an opportunity to expound upon the decision rendered in

Automotive United and clarify whether the sovereign immunity of a third party may be deployed by a party to avoid claims.

Respectfully submitted this 22 day of February, 2017.

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

NORTH QUINAULT PROPERTIES, LLC, a Washington limited liability company; THOMAS LANDRETH, an individual; and BEATRICE LANDRETH, Appellants, v. STATE OF WASHINGTON; and PETER GOLDMARK, in his official capacity as Commissioner of Public Lands, Respondents.	No. 76017-3-I DIVISION ONE UNPUBLISHED FILED: January 30, 2017

2017 JAN 30 AM 10:

Cox, J. — North Quinault Properties LLC, Thomas Landreth, and Beatrice Landreth (collectively, "Properties LLC"), appeal the trial court's grant of summary judgment to the State and the Commissioner of Public Lands (collectively, "the State"). There are no genuine issues of material fact. Properties LLC is not entitled to relief under the Declaratory Judgment Act (UDJA). Moreover, it is not entitled to either a writ of mandamus or an injunction. The State is entitled to summary dismissal with prejudice of this case. We affirm.

Properties LLC is comprised of persons who claim property interests in the shores of Lake Quinault. The Quinault Indian Nation (the "Nation") claims an

ownership interest in Lake Quinault. This claim is based on the 1856 Treaty of Olympia and the 1873 Executive Order of President Ulysses S. Grant. These both predate Washington statehood in 1889.

In recent years, the Nation wrote to some of the owners of property on the shores of the lake, requiring that they apply for permit approval of a pipe extruding below the ordinary high water mark on their property. The Nation may have also prevented some of these owners from fishing and repairing a private dock.

Some of these owners brought an action in federal court against the Nation, the State, and the Department of Natural Resources (DNR). They sought declaratory and injunctive relief, arguing that the State owned the bed of Lake Quinault and had failed to protect the public's access to it.

The Nation and the State moved for dismissal based on their respective sovereign immunities to suit without their consent. The federal court granted their motions.

Thereafter, Properties LLC commenced this action against the State. It did not join either the Nation or the United States of America, as trustee for the Nation. In its complaint, it seeks a "court determination as to the status of Lake Quinault and the property rights of non-tribal property owners abutting the Lake." It also seeks a determination of "the public's right [of] access [to] the Lake, its shore and lakebed."[1]

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[1] Clerk's Papers at 6.

The trial court granted the Nation leave to appear as an amicus curiae. Thereafter, the State moved for summary judgment and dismissal with prejudice. The trial court granted the motion.

Properties LLC appeals.

DECLARATORY JUDGMENT ACT

Properties LLC argues the trial court incorrectly determined that this case cannot proceed under the UDJA. We disagree.

A threshold issue is whether RCW 7.24.110 bars this action requesting declaratory relief. We hold that it does.

In its summary judgment order, the trial court ruled that both the Nation and the United States are parties that cannot be joined in this action because of sovereign immunity. The court further ruled that this action could not proceed under RCW 7.24.110 of the UDJA.

We review de novo the grant of summary judgment.[2] We also review de novo the provisions of a statute to determine the legislature's intent.[3]

This statute provides in relevant part as follows: "When declaratory relief is sought, all persons ***shall*** be made parties who have or claim any interest which would be affected by the declaration, and ***no declaration shall prejudice*** the rights of persons not parties to the proceeding . . . ."[4]

UDJA (mandatory)

[2] Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

[3] Guest v. Lange, 195 Wn. App. 330, 335, 381 P.3d 130 (2016).

[4] RCW 7.24.110 (emphasis added).

It is beyond legitimate dispute that the word "shall" is mandatory, not permissive.[5] Given this, there is only one reasonable reading of this statute. The legislature intends that all persons who claim any interest that would be affected by the case "***shall*** be made parties."[6] Correspondingly, the legislature also intends that "***no*** declaration shall prejudice the rights of persons not parties."[7]

It is uncontested that the Nation ***claims*** an interest in the subject of this action: Lake Quinault. The treaty and executive order, both of which predate Washington statehood, evidence this claim. We presume similar analysis applies to the United States, which appears to act as trustee for the Nation with respect to Lake Quinault.[8] Nothing in this record shows that Properties LLC contests either of these basic points.

It is also uncontested that neither the Nation nor the United States can be made subject to suit absent its consent.[9] There is no showing of consent by either sovereign entity in this record. Accordingly, they may not be joined to this action.

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[5] State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994).

[6] RCW 7.24.110 (emphasis added).

[7] Id. (emphasis added).

[8] See Minnesota v. United States, 305 U.S. 382, 386, 59 S. Ct. 292, 83 L. Ed. 235 (1939); Carlson v. Tulalip Tribes of Wash., 510 F.2d 1337, 1339 (9th Cir. 1975).

[9] Michigan v. Bay Mills Indian Cmty., 134 S. Ct. 2024, 2030, 188 L. Ed. 2d 1071 (2014); United States v. Mitchell, 445 U.S. 535, 538, 100 S. Ct. 1349, 63 L. Ed. 2d 607 (1980).

A remaining threshold issue under the plain language of this statute is whether any declaration in this action would prejudice the rights of either the Nation or the United States. Plainly, it would.

There is nothing speculative about what is at the heart of this case. The Nation and the United States claim an interest in Lake Quinault. The complaint challenges these claims. As we previously stated in this opinion, Properties LLC frames its request for relief as a "court determination as to the ***status of Lake Quinault*** and the property rights of non-tribal property owners abutting the Lake."[10] It also seeks a determination of "the public's right [of] access [to] ***the Lake, its shore and lakebed.***"[11]

While Properties LLC clothes its request under the public trust doctrine, it does not satisfactorily explain why it should be allowed to seek adjudication of the above emphasized interests in the absence of the Nation and the United States. Instead, it implausibly states: "This Court does not have to decide the extent of the Nation's interest in the Lake to grant relief to Plaintiffs."[12] And in doing so, it relies on the equally untenable presumption that title to Lake Quinault was transferred from the federal government to the State upon statehood.[13] On this record, that appears doubtful. But we need not decide this question and do not do so.

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[10] Clerk's Papers at 6 (emphasis added).

[11] Id. (emphasis added).

[12] Appellants' Brief at 4.

[13] Id. at 3-4.

Only if the Nation and the United States were parties could there be a proper resolution of ownership issues that are at the heart of this case. In the absence of both, there cannot be a proper resolution of these issues. Accordingly, RCW 7.24.110 is not satisfied in either respect.

The plain words of this statute that we have just discussed are sufficient to resolve this question. But the Division Two case of Bainbridge Citizens United v. Department of Natural Resources[14] also addressed this statute and reached the same result.

There, Bainbridge Citizens United brought an action against the DNR to require it to enforce its own regulations against alleged trespassing on state-owned aquatic lands.[15] But it failed to join the alleged trespassers as parties. The DNR moved for summary judgment, arguing that the court could not proceed as Bainbridge Citizens United had failed to join the alleged trespassers as parties.[16] The trial court granted that motion.[17]

Division Two of this court affirmed that order, holding that the trial court could not completely determine the controversy if the alleged trespassers were not present.[18] Specifically, those absent could neither rebut the trespassing

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[14] 147 Wn. App. 365, 198 P.3d 1033 (2008).

[15] Id. at 369.

[16] Id. at 370.

[17] Id.

[18] Id. at 373.

claims nor otherwise protect their interests from a judgment that would necessarily affect them.[19] It would "necessarily affect[] the [alleged trespassers'] interest in property ownership and use."[20] Accordingly, the court held that the alleged trespassers were required to be joined and, absent their joinder, the UDJA required dismissal.[21]

Here, for the same reasons we already discussed in this opinion, the absence of the Nation and the United States would prejudice their rights to claim ownership in Lake Quinault. This case also supports the ruling of the trial court.

Neither the opening brief nor the reply of Properties LLC deals directly with the effect of RCW 7.24.110 that bars proceeding with this action. Its argument focuses on other provisions of the UDJA which we now consider.

Skirting the issue of RCW 7.24.110, Properties LLC argues that RCW 7.24.020 on which the State relies, in part, is not an additional limitation to the request for declaratory relief. Not so.

That provision renders declaratory relief unavailable to challenge the State's application or enforcement of State law. Under RCW 7.24.020, a person with proper standing "may have determined any question of construction or validity arising under" an instrument or statute affecting their rights. Bainbridge Citizens United clarified that this statute provides for review only "to determine the facial validity of an enactment, as distinguished from its application or

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[19] Id.

[20] Id.

[21] Id. at 373-74.

administration."[22] The party seeking such relief must raise a "question of construction or validity."[23] Thus, in that case, the court denied review because Bainbridge Citizens United merely asked the court to declare that the DNR had to enforce its own regulations.[24] Such relief did not go to the construction or validity of the regulations.[25]

Similarly here, Properties LLC raises no question about the construction or validity of any statute. Rather, it seeks a declaration on how the State must uphold its public trust duty. The UDJA does not provide for review of such a claim.

Accordingly, the trial court properly concluded that it could not issue a declaratory judgment.

Properties LLC argues we should overlook these restrictions because of language in RCW 7.24.010 and 7.24.050. RCW 7.24.010 reads:

> Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

RCW 7.24.050 reads: "The enumeration in RCW 7.24.020 and 7.24.030 does not limit or restrict the exercise of the general powers conferred in RCW

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[22] Id. at 374.

[23] RCW 7.24.020.

[24] Bainbridge Citizens United, 147 Wn. App. at 375.

[25] Id.

7.24.010, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty."

Division Two of this court considered the effect of these provisions in Bainbridge Citizens United. There, the court concluded that a request for the State to enforce certain laws against alleged trespassers did not touch upon "rights, status [or] other legal relations" as RCW 7.24.010 required.[26] Neither would a declaration that the State must enforce such laws terminate the controversy, as RCW 7.24.050 required, but it would rather "reopen the controversy of whether the individuals did trespass."[27] Accordingly, the court concluded that the trial court in that matter lacked authority to issue a declaratory judgment under these provisions as well.[28]

Here, Properties LLC's argument fails whether or not its request touches upon rights, status, or other legal relations in Lake Quinault. If it does, it would prejudice the Nation's and the United States' claims and require their joinder. But if it does not, then declaratory relief would be improper under RCW 7.24.010. Similarly, this litigation has demonstrated that a declaration would not terminate the controversy, as required under RCW 7.24.050. The Nation and the United States would have the right to continue to press their claims, and further controversies over access and ownership to Lake Quinault would ensue.

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[26] Id.

[27] Id.

[28] Id.

We conclude that the trial court correctly determined that this case cannot proceed because it is barred by RCW 7.24.110. Likewise, it also correctly concluded that RCW 7.24.020 bars declaratory relief. These bases are dispositive, and we need not also address whether this action is, alternatively, also barred by CR 19.

The additional requests for relief considered below depend upon a declaration as to the status of Lake Quinault. Because the trial court rightly declined to proceed on this declaratory request, the following requests for relief are unavailable.

WRIT OF MANDAMUS

Properties LLC next argues that the trial court abused its discretion in declining to issue a writ of mandamus. We hold that the trial court did not abuse its discretion in doing so.

A writ of mandamus is an extraordinary remedy that requires a state official "to comply with law when the claim is clear and there is a duty to act."[29] Thus, such relief will not lie to compel a discretionary or "general course of official conduct."[30] Instead, the writ is only appropriate "[w]here there is a specific, existing duty which a state officer has violated and continues to violate."[31]

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[29] Ahmad v. Town of Springdale, 178 Wn. App. 333, 341, 314 P.3d 729 (2013).

[30] Walker v. Munro, 124 Wn.2d 402, 408, 879 P.2d 920 (1994); see Ahmad, 178 Wn. App. at 341; County of Spokane v. Local No. 1553, American Fed'n of State, County, & Mun. Emps., AFL-CIO, 76 Wn. App. 765, 769, 888 P.2d 735 (1995).

[31] Walker, 124 Wn.2d at 408.

We review for abuse of discretion a trial court's decision on the issuance of a writ of mandamus.[32]

Here, Properties LLC claims that such a specific, existing duty exists, namely the State's duty under the public trust doctrine to "maintain public access to navigable waterways."

The trial court ruled that a writ of mandamus would not issue on two bases. First, state action under the asserted doctrine is discretionary. Second, such a writ is not available to direct general compliance with law. These conclusions correctly applied the relevant law.

Regarding the first basis, any duty under the public trust doctrine is discretionary. State law "determines the public trust doctrine's limitations within the boundaries of the state."[33] In doing so, the legislature has recognized the complicated roles the State undertakes in managing its aquatic lands to promote the public interest. It has found that Washington's "aquatic lands are faced with conflicting use demands."[34] It has thus tasked the DNR with "provid[ing] a balance of public benefits for all citizens of the state."[35] The DNR must necessarily exercise great discretion in balancing these competing needs.

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[32] Ahmad, 178 Wn. App. at 342.

[33] Wash. State Geoduck Harvest Ass'n v. Dep't of Nat. Res., 124 Wn. App. 441, 451, 101 P.3d 891 (2004).

[34] RCW 79.105.010.

[35] RCW 79.105.030.

Here, the trial court could not issue a writ of mandamus to compel the State to enforce the public trust doctrine, as that doctrine entails substantial discretion. Action within such discretion is not amenable to relief by mandamus.

Regarding the second basis, Properties LLC fails to indicate with requisite specificity the duty it requests the State perform. They ask only that the State protect their access to Lake Quinault. What form this would take is left to speculation. Such a request asks the State do nothing more specific than enforce the public trust doctrine and, as such, is insufficient to justify a writ of mandamus.

Thus, the trial court properly concluded that a writ of mandamus was improper because it would compel the State to take discretionary and general action.

INJUNCTIVE RELIEF

Properties LLC lastly argues that the trial court abused its discretion in denying their request for injunctive relief. We disagree.

To obtain injunctive relief, a party must show "'(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.'"[36]

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[36] Tyler Pipe Indus., Inc. v. Dep't of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982) (quoting Port of Seattle v. Int'l Longshoremen's & Warehousemen's Union, 52 Wn.2d 317, 324 P.2d 1099 (1958)); RCW 7.40.020.

The party seeking the injunction bears the burden to show all three elements.[37] The trial court will not issue an injunction in a "'doubtful'" case.[38] This court reviews for abuse of discretion a trial court's grant or denial of an injunction.[39]

Here, regarding the first element, Properties LLC argues that it has a clear legal or equitable right at stake. But to conclude that right is clearly established, the trial court would have to determine whether the State or the Nation owns the Lake. We have already discussed why the trial court could not reach this determination absent the Nation and the United States. Thus, Properties LLC fails to establish this first element. Accordingly, we need not address the other two elements.

The trial court did not abuse its discretion in denying an injunction.

We affirm the summary judgment order dismissing this action with prejudice.

Cox, J.

WE CONCUR:

Trickey, ACJ

Appelwick, J.

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[37] San Juan County v. No New Gas Tax, 160 Wn.2d 141, 153, 157 P.3d 831 (2007).

[38] Tyler Pipe Indus., Inc., 96 Wn.2d at 793 (quoting Isthmian S.S. Co. v. National Marine Eng'rs' Beneficial Ass'n, 41 Wn.2d 106, 117, 247 P.2d 549 (1952)).

[39] San Juan County, 160 Wn.2d at 153.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 22nd day of ~~September, 2016~~ February, 2017 I caused to be served a copy of the foregoing **PETITION FOR REVIEW** on the following person(s) in the manner indicated below at the following address(es) :

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DATED this 22nd day of February, 2017.

Elizabeth C. Thompson