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Division III
State of Washington
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

DOUGLAS COUNTY, a political subdivision
of the State of Washington

Respondent,

v.

MARK MARLOW and NANCY MARLOW, husband and wife, et al.

Appellants.

BRIEF OF RESPONDENT DOUGLAS COUNTY

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I. INTRODUCTION

This case involves Douglas County's enforcement of shoreline and critical area violations against the Marlows. This Court is familiar with the Marlows' violations, as it affirmed dismissal of the Marlows' LUPA action challenging the County's Notice of Land Use Violations and Order to Comply. Unpublished Opinion, *Marlow v. Douglas County*, Court of Appeals No. 31013-2-III. After this Court issued its Mandate, the County moved forward with an enforcement action in Superior Court against the Marlows. Months after the trial, and after three review hearings, the Marlows filed this appeal claiming the Superior Court lacked subject matter jurisdiction and failed to enforce an alleged settlement agreement.

II. COUNTER-STATEMENT OF THE CASE

Statement of State Court Procedure

On June 24, 2011, Douglas County issued a Notice of Land Use Violations and Order to Comply directed to Mark Marlow and Nancy Marlow and the Chelan County P.U.D. alleging unauthorized development and land use violations located within the shoreline of the Columbia River and/or adjacent critical areas, both waterward and landward of the ordinary high water mark, on real property owned by the Marlows. CP 278, Finding of Fact 1.05; Ex 1; CP 267,

Ex A.

The Notice of Land Use Violations and Order to Comply identified the following unauthorized development conducted by the Marlows:

- a. Boatlift;
- b. Concrete sidewalk/patio on the shoreline and bulkhead;
- c. Concrete launch ramp;
- d. Multiple dock floats and a ramp;
- e. Diving board and slide;
- f. Grading and the placement of retaining walls and non-native fill/sand; and
- g. Concrete gazebo pad placed above retaining walls.

CP 278, Finding of Fact 1.06; Ex 1. The Notice alleged that the Marlows' unauthorized development violated the Shoreline Management Act, RCW Chapter 90.58, the Douglas County Shoreline Master Program, and/or the Douglas County Critical Areas Ordinance adopted under the Growth Management Act, RCW Chapter 36.70A. CP 278, Finding of Fact 1.06; Ex 1.

The Marlows appealed the issuance of the Notice of Land Use Violations and Order to Comply to the Douglas County Hearing Examiner.¹ A public hearing was held on November 17, 2011. On December 21, 2011, the Hearing Examiner issued Findings of Fact,

¹ The Marlows were represented by attorney John Goren throughout the these prior proceedings: the administrative hearing before the Douglas County Hearing Examiner, in the LUPA proceedings in the Superior Court, and the direct appeal before the Court of Appeals.

Conclusions of Law and Decision affirming the Notice of Land Use Violations and Order to Comply. CP 280, Finding of Fact 1.08; Ex 2.

On January 11, 2012, the Marlows filed a Land Use Petition in the Douglas County Superior Court challenging the December 21, 2011, decision of the Douglas County Hearing Examiner, under cause No. 12-2-00010-4. On June 29, 2012, the Superior Court issued an Order Dismissing Land Use Petition, which affirmed the decision of the Douglas County Hearing Examiner and dismissed the Land Use Petition. CP 280, Finding of Fact 1.09; Ex 3.

On July 20, 2012, the Marlows filed a Notice of Appeal to the Court of Appeals, Division III, No. 31013-2-III. On October 22, 2013, the Court of Appeals issued an Opinion affirming the Order Dismissing Land Use Petition and issued its Mandate to the Douglas County Superior Court on January 7, 2014. CP 280, Finding of Fact 1.10; Ex 4 and Ex 5.

On February 24, 2014, Douglas County filed a Summons and Complaint to enforce the Notice of Violations and Order to Comply. CP 257, 272.

A status hearing was held on July 8, 2014, in the Superior Court at which the Marlows were granted additional time to file a

complete application with Douglas County for authorization to remove their unpermitted, illegal development of the Columbia River shoreline and to remediate the shoreline as required by the Notice of Land Use Violations and Order to Comply. A review hearing was set on August 12, 2014. CP 280, Finding of Fact 1.12. At the review hearing held on August 12, 2014, the Superior Court granted the Marlows additional time and set a review hearing on September 9, 2014. CP 281, Finding of Fact 1.13. At the review hearing held on September 9, 2014, the Marlows still had not complied and the case was set for trial on November 18, 2014. CP 281, Finding of Fact 1.14.

The trial was held on November 18, 2014. The Marlows had not removed their unauthorized development within the Columbia River shoreline, nor had the Marlow filed applications to retain any or all of their development. CP 281, Finding of Fact 1.15. The Marlows were ordered by the Superior Court to comply with the Notice of Violations and Order to Comply and a review hearing was set for March 24, 2015. CP 283, Findings of Fact, Conclusions of Law and Judgment.²

² Attorney Robert G. Dodge filed an appearance the Marlows after the Findings of Fact, Conclusions of Law and Judgment were entered in the Superior Court.

Mark Marlow appeared at the review hearing on March 24, 2015. The Superior Court found the Marlows had not complied with the Notice and the Court's Judgment, and set a review hearing for July 14, 2015. CP 285. The Marlows appeared at the review hearing on July 14, 2015. The Superior Court again found the Marlows had not complied, and set another review hearing for October 13, 2015. CP 291.

On August 11, 2014, the Marlows filed a 65 page Notice of Chain of Title asserting title to the subject real property originally derived from a 1906 "land patent" issued by the United States to Northern Pacific Railway Company. CP 12, 14-16. The filed Notice of Chain of Title includes a copy of the Statutory Warranty Deed by which the subject real property was conveyed to the Marlows. The Statutory Warranty Deed describes the Marlows' property as located within Section 26, Township 22, Range 21. CP 72-75. The Northern Pacific Railway Company "land patent" relied upon by the Marlows does not describe any property located within Section 26, Township 22, Range 21. CP 14-16.

On October 12, 2015, the day before the review hearing, the Marlows filed the following pleadings:

Mr. Dodge filed a Notice of Intent to Withdraw as the Marlows' attorney on March 17, 2015.

1. Verified Jurisdictional Challenge Supporting Affidavit of Material Facts Regarding Land Patent Development and Demand for Acceptance or Submit By-the-Number opposition to Such Declared Material Facts with Provable Court Admissible Evidence, Set No. 1. CP 129.
2. Verified Jurisdictional Challenge Supporting Affidavit of Material Facts Regarding Land Patent Development and Demand for Acceptance or Submit By-the-Number opposition to Such Declared Material Facts with Provable [sic] Court Admissible Evidence, Set No. 2. CP 139.
3. Verified Jurisdictional Challenge Supporting Affidavit of Material Facts Regarding Land Patent Development and Demand for Acceptance or Submit By-the-Number opposition to Such Declared Material Facts with Provable [sic] Court Admissible Evidence, Set No. 3. CP 149.
4. Verified Jurisdictional Challenge Supporting Affidavit of Material Facts Regarding Land Patent Development and Demand for Acceptance or Submit By-the-Number opposition to Such Declared Material Facts with Provable [sic] Court Admissible Evidence, Set No. 4. CP 159
5. Verified Special Appearance on Paper and Notice and Demand to Verify and Clarify Jurisdictional Challenge Dated September 21, 2015, Along with Marlow's [sic] Good Faith Offer to Pay Judgment. CP 77

In response to the Marlows' pleadings, Douglas County filed a motion to strike or, in the alternative, to deny the Marlows' motions. CP 295. The review hearing was continued and a hearing on the motions was held on November 10, 2015. The Superior Court held:

1. The alleged status of the Marlows property as either

allodial or having been acquired through a land patent did not bar, remove or otherwise eliminate the Superior Court's subject matter jurisdiction;

2. The Marlows never raised a timely challenge, defense or affirmative defense before the Douglas County Hearing Examiner, during the prior Superior Court LUPA proceedings, or during the prior appeal to the Court of Appeals relating to allodial land or a land patent;

3. To the extent the pleadings filed by the Marlows purported to be motions, such motions were denied and the Marlows' pleadings were otherwise stricken; and

4. The Marlows' action in filing these pleadings was frivolous, without legal basis, and filed for the purpose of avoiding or delaying the Marlows' obligations imposed by the Court's Judgment and subsequent Orders.

CP 309.

Immediately after the hearing on Douglas County's motion, the third review hearing was held. The Superior Court again found the Marlows had not complied with the Notice and the Court's Judgment, and set another review hearing for March 8, 2016. CP 305.

The Marlows filed a Notice of Appeal³ on November 20, 2015, and designated the following decisions for review:

1. The Order on Plaintiff's Motion to Strike Pleadings or, in the Alternative, Deny Defendants' Motions entered on November 10, 2015; and
2. The Order on Third Review Hearing and Supplemental Judgment entered on November 10, 2015.

CP 313.

Statement of Federal Court Procedure

On May 14, 2015, the Marlows filed an action in the United States District Court for the Eastern District of Washington, *Marlow v. Hotchkiss, et al.*, Case No. 2:15-CV-00131-TOR. Appendix A. The Marlows sought "an Order to Quiet Title" and, in addition to other relief, claimed their state court subject matter jurisdiction challenges were improperly denied (Second Cause of Action), and their "constitutionally guaranteed and secured Right to the FOREVER BENEFITS of the Sovereign Allodial Land Ownership" relating to alleged United States land patent had been violated (Fifth Cause of Action).

³ The Marlows filed the Notice of Appeal pro se. Attorney Kenneth Kato subsequently appeared as the appellate attorney for the Marlows. Mr. Kato withdrew on February 7, 2017.

On January 14, 2016, the District Court issued its Order dismissing the Marlows' action. Appendix B. On February 29, 2016, the District Court issued an Order denying the Marlows' motion for reconsideration. Appendix C.

The Marlows appealed the District Court's Order to the Ninth Circuit Court of Appeals, Case No. 16-35211. On October 30, 2017, the Ninth Circuit issued its Memorandum affirming the District Court. Appendix D.

III. ARGUMENT

A. Allodial Land Has No Enhanced Legal Rights or Protections

The Marlows assert the Superior Court lacks subject matter jurisdiction because their real property is allegedly allodial land originally acquired from the United States through a land patent. The Marlows fail to cite any legal authority to support their claim that their subject property is allodial land and that their subject property is entitled to enhanced legal rights or protections.

"Allodial" is an archaic term and legal concept from the era of feudal fealty under English law. *Black's Law Dictionary* (10th ed. 2014) provides:

allodial (ə-loh'-dee-əl) *adj.* (17c) Held in absolute ownership; of, relating to, or involving an allodium.

“The term ‘alodial’ originally had no necessary reference to the mode in which the ownership of land had been conferred; it simply meant land held in absolute ownership, not in dependence upon any other body or person in whom the proprietary rights were supposed to reside, or to whom the possessor of land was bound to render service. It would thus properly apply to the land which in the original settlement had been allotted to individuals, while bookland was primarily applicable to land the title to which rested on a formal grant. Before long, however, the words appear to have been used synonymously to express land held in absolute ownership, the subject of free disposition *inter vivos* or by will.” Kenelm E. Digby, *An Introduction to the History of the Law of Real Property* 11–12 (5th ed. 1897).

Although the Washington State constitution does not address allodial and feudal ownership of land, other state constitutions expressly provide that all lands within the state are allodial and prohibit feudal ownership:

All lands in this State are declared to be allodial; and feudal tenures of every description, with all their incidents, are prohibited. Arkansas Const. art. 2, §28.

All lands within the state are allodial and feudal tenures of every description with all their incidents are prohibited. Leases and grants of agricultural lands for a longer period than 21 years reserving rent or service of any kind shall be void. Minnesota Const. art I, §15.

All lands within the state are declared to be allodial, and feudal tenures are prohibited. Leases and grants of agricultural land for a longer term than fifteen years in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation reserved in any grant of land, hereafter made, are declared to be void. Wisconsin

Const. art. I, §14.

The Washington Attorney General has opined that “allodial” real property is subject to property taxes:

The legal concept of holding land by “allodial freehold” or “in allodium” traces to the feudal roots of the English system of land tenure. As it operated at the height of the middle ages, feudalism involved a descending pyramid of lords and vassals. The monarch granted tenure to tenants in chief, who in turn often granted portions of their estates to others. Those lower on the pyramid owed certain obligations, in the form of military service, cash, crops, or other services, to the higher lord. This system generated the revenues and services with which the monarch financed the expenses of government and maintained an army. C. Moynihan, *Introduction to the Law of Real Property* 1-8 (2d ed. 1988).

An allodium is defined as:

Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens. An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof.

Black's Law Dictionary 76 (6th ed. 1990). This distinction between property held subject to tenure and in allodium has long since been derogated to mere academic interest. The obligations owed by vassals to their lords, such as providing the services of a particular number of knights, were gradually superseded as society modernized. While concepts of land tenure were initially imported to the American colonies, as evidenced by original royal land grants, such concepts have been abolished with all land, long since held free of feudal obligation. Moynihan, *supra*, at 18-23.

Washington AGO No. 6 (1996).

The Marlows' allegation that their real property is allodial land provides no enhanced rights or protections to the Marlows. All real property in Washington is allodial, as that archaic concept was applied in past centuries. The Marlows' appeal and argument on this assertion is frivolous.

B. *A United States Land Patent Confers No Enhanced Rights or Protections*

The Marlows allege title to their subject real property originates from a United States land patent granted to Northern Pacific Railway Company and, therefore, the Superior Court lacked subject matter jurisdiction. CP 12. However, the Marlows' real property is not included in the description of property covered by the alleged Northern Pacific Railway Company land patent. CP 14-16. The Marlows have never provided a factual or legal basis supporting this allegation. Further, they fail to cite any legal authority specifically supporting their assertion the subject property is entitled to enhanced legal rights or protections.

Black's Law Dictionary (10th ed. 2014) defines a land patent as “[a]n instrument by which the government conveys a grant of public land to a private person.” The United States Supreme Court

has compared a land patent to a quit claim deed:

[T]he patent is a deed of the United States. As a deed, its operation is that of a quit-claim, or rather of a conveyance of such interest as the United States possessed in the land.

Beard v. Federy, 70 U.S. 478, 491, 18 L.Ed 88 (1866); *Wilson*

Cypress Co. v. Del Pozo y Marcos, 236 U.S. 635, 648, 35 S.Ct.

446, 59 L.Ed 758 (1915) (quoting *Beard v. Federly*).

In *Packer v. Bird*, 137 U.S. 661, 11 S.Ct. 210, 34 L.Ed. 819

(1891), the Supreme Court considered what riparian rights arose

from a United States land patent:

The courts of the United States will construe the grants of the general government without reference to the rules of construction adopted by the states for their grants; but whatever incidents or rights attach to the ownership of property conveyed by the government will be determined by the states, subject to the condition that their rules do not impair the efficacy of the grants, or the use and enjoyment of the property, by the grantee. As an incident of such ownership, the right of the riparian owner, where the waters are above the influence of the tide, will be limited according to the law of the state

Packer v. Bird, 137 U.S. at 669-670.

In *Hardin v. Jordan*, 140 U.S. 371, 11 S.Ct. 808, 35 L.Ed 428

(1891), the Supreme Court again considered the rights of a riparian

owner claiming title originating from a land patent:

In our judgment the grants of the government for lands bounded on streams and other waters, without any reservation or restriction of terms, are to be construed as to

their effect according to the law of the state in which the lands lie.

Hardin v. Jordan, 140 U.S. 384.

In *Shively v. Bowlby*, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331 (1894), the Supreme Court took up the question of land patent riparian rights to tidelands along the Columbia River:

Grants by Congress of portions of the public lands within a territory to settlers thereon, though bordering on or bounded by navigable waters convey, of their own force no title or right below high water mark, and do not impair the title and dominion of the future state, when created, but leave the question of the use of the shores by the owners of uplands to the sovereign control of each state, subject only to the rights vested by the Constitution in the United States.

Shively v. Bowlby, 152 U.S. at 58.

Five years after *Packer v. Bird*, the Supreme Court addressed the state's power of condemnation over real property deriving its title from a land patent. In *Eldridge v. Trezevant*, 160 U.S. 452, 16 S.Ct. 345, 40 L.Ed. 490 (1896), the Court held the property was subject to state condemnation:

These decisions [*Packer*, *Shively* and *Hardin*] not only dispose of the proposition that lands situated within a state, but whose title is derived from the United States, are entitled to be exempted from local regulations admitted to be applicable to lands held by grant from the state, but also of the other proposition that the provisions of the Fourteenth Amendment extend to and override public rights, existing in the form of servitudes or easements, held by the courts of a state to be valid under the Constitution and laws of such

state. The subject matter of such rights and regulations falls within the control of the states, and the provisions of the Fourteenth Amendment of the Constitution of the United States are satisfied if, in cases like the present one, the state law, with its benefits and its obligations, is impartially administered.

Eldridge v. Trezevant, 160 U.S. at 468.

Over 100 years later, the *Eldridge* decision was followed in *Virgin, SR. v. County of San Luis Obispo*, 201 F.3rd 1141 (9th Cir. 2000), where the landowners asserted their derivative land patent rights were superior to the county's development regulations. In rejecting the landowner's claim of federal jurisdiction arising from the land patent, the Ninth Circuit Court held:

[N]either the Supreme Court nor the Ninth Circuit has ever invoked *Packer* to create federal common law conferring federal question jurisdiction. Furthermore, five years after *Packer*, the Supreme Court rejected the appellants' argument and held that property received through federal land patents is subject to state and local regulations. See *Eldridge v. Trezevant* [citations omitted].

A land patent does not excuse debt, the payment of property taxes, or compliance with zoning and building codes. As the court explained in *Wisconsin v. Glick*, 782 F.2d 670 (7th Cir. 1986):

People saddled with mortgages may treasure the idea of having clean title to their homes. The usual way to obtain clean title is to pay one's debts. Some have decided that it is cheaper to write a "land patent" purporting to convey unassailable title, and to file that "patent" in the recording system. For example,

Samuel Misenko, one of the appellants, drafted a “declaration of land patent” purporting to clear the title to an acre of land of all encumbrances. He recorded that “patent” with the appropriate officials of Manitowoc, Wisconsin. He attached to his “patent” a genuine patent, to a quarter section of land, signed by President Fillmore in 1851.

The theory of Misenko's new “patent” is that because the original patent from the United States conveyed a clear title, no state may allow subsequent encumbrances on that title. The patent of 1851 grants title to “Christian Bond and to his heirs and assigns forever.” Misenko apparently thinks that this standard conveyancers' language for creating a fee simple “forever” bars all other interests in the land. We have held to the contrary that federal patents do not prevent the creation of later interests and have nothing to do with claims subsequently arising under state law. See *Hilgeford v. Peoples Bank*, 776 F.2d 176 (7th Cir.1985).

Wisconsin v. Glick, 782 F.2d at 671-72.

State courts have ruled similarly. In *Hamilton v. Noble Energy, Inc.*, 220 P.3d 1010 (Colo. Ct. App. 2009), the landowner asserted a land patent superseded a predecessor's grant of mineral rights lease. The Colorado court held:

As with any other piece of real property, real property conveyed by the federal government via land patent can be conveyed and burdened by subsequent interests, such as a reservation of mineral interests, by a party otherwise conveying all surface rights, or a lease of the same.

Hamilton v. Noble Energy, Inc., 220 P.3d 1013. *Fed. Land Bank v. Gefroh*, 390 N.W.2d 46, 47 (N.D.1986) (Rejecting argument that

land patent forever bars subsequent interest in the land).

In 1988, this division of the Court of Appeals considered whether real property originally allegedly acquired by a United States land patent was an allodial interest in the real property that precluded a mortgage foreclosure action. The Court of Appeals held the appeal presented no debatable issues and was frivolous. *Fed. Land Bank of Spokane v. Redwine*, 51 Wn.App. 766, 755 P.2d 822 (1988).

As part of its opinion, the Court of Appeals cited the definition of “allodium” in its first footnote:

Allodium is defined as “1: a form of estate among 11th century Anglo–Saxons in which absolute possession and control were vested in the holder ... 2 ...: land that is the absolute property of the owner: real estate held in absolute independence without being subject to any rent, service, or acknowledgment to a superior”. *Webster’s Third New International Dictionary* 60 (1969).

Fed. Land Bank of Spokane v. Redwine, 51 Wn.App. at 767.

In rejecting the claims of the property owner, the Court of Appeals summarized and adopted the holding in *Hilgeford v. Peoples Bank, Portland, Indiana*, 607 F.Supp. 536 (N.D.Ind.1985), *aff’d*, 776 F.2d 176 (7th Cir.1985), *cert. denied*, 475 U.S. 1123, 106 S.Ct. 1644, 90 L.Ed.2d 188 (1986):

[T]he plaintiffs brought a quiet title action against the bank

which had loaned them money and secured the loan via a mortgage on plaintiffs' land. The plaintiffs claimed superior title by virtue of an alleged land patent which they drafted and signed themselves and recorded. The court noted, at 538, that a land patent is a creature of statute whereby the United States grants public land to private individuals. The plaintiffs' "patent" did not concern public land; rather, it related to private property. The court, at 539, characterized the claim as frivolous and imposed sanctions on the plaintiffs.

Fed. Land Bank of Spokane v. Redwine, 51 Wn.App. at 769.

There is no evidence the Marlows' title to the subject property is derived from a United States land patent. Even if it was, a land patent confers no enhanced rights or protections. The Marlows present no specific legal authority to the contrary. The Marlows' assertion is frivolous.

C. *The Superior Court Has Subject Matter Jurisdiction*

The Marlows have no evidence or legal authority supporting their assertion that their subject real property is derived from a land patent. The Marlows have no evidence or legal authority supporting their assertion that their property is entitled to any enhanced rights or protections. The Marlows have no evidence and present no legal authority supporting their assertion the Superior Court lacks subject matter jurisdiction.

The jurisdiction of the Superior Court is established by the

Washington Constitution and the Revised Code of Washington:

The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine . . . of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance . . . and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court . . .

Const. art. IV, § 6

The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine . . . of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance . . . and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court . . .

RCW 2.08.010

The superior courts have broad and comprehensive original jurisdiction. This includes jurisdiction over all claims which are not within the exclusive jurisdiction of another court. Exceptions to the broad jurisdiction of the superior courts are to be read narrowly.

Orwick v. City of Seattle, 103 Wn.2d 249, 251, 692 P.2d 793 (1984); *In re Schneider*, 173 Wn.2d 353, 360, 268 P.3d 215 (2011); *State v. Golden*, 112 Wn.App. 68, 73, 47 P.3d 587 (2002).

The real property owned by the Marlows is located in the State of Washington and, specifically, Douglas County. The prior litigation regarding the validity of the Notice of Land Use Violations and Order to Comply issued by the County, which included the Court of Appeals affirming the County's action, upheld factual findings and legal holdings that the Marlows' development of the shoreline area violated the Shoreline Master Program under the Shoreline Management Act, and the County's Critical Areas Ordinance under the Growth Management Act. The Douglas County Superior Court has subject matter jurisdiction over the enforcement action brought by the County against the Marlows.

Further, the line of federal cases from the 19th century through the 21st century discussed in the above section of argument - *Packer, Shively, Hardin, Eldridge* and *Virgin, SR* - clearly establish that ownership, use and regulation of real property originally acquired through a United States land patent is subject to state laws.

The Marlows' assertion that the Superior Court has no subject matter jurisdiction is frivolous.

D. *No Agreement Existed Between the Marlows and the County*

The Marlows claim an agreement existed that resolved their

development violations. The Marlows have failed to produce any evidence of a settlement agreement, written or oral. Instead, the Marlows rely upon a surreptitious recording and incomplete transcript of a meeting with the County Commissioners. The meeting occurred before the Superior Court's review hearings on July 8, 2014, August 12, 2014, and September 9, 2014. CP 280-281, Findings of Fact 1.12, 1.13 and 1.14. The trial in the Superior Court was held on November 18, 2014, and eight months after the meeting.

The Marlows omitted from their "evidence" submitted to this Court the emails and written correspondence sent by the County immediately after the meeting with the County Commissioners. These emails and correspondence withdrew any and all prior settlement offers due to the Marlows' misrepresentations regarding the condition of the subject property. Douglas County's Response to Motion to Modify Commissioner's Ruling, July 12, 2017, Appendices A1- A11.

There was no settlement agreement before the Superior Court. The Marlows' appeal and argument on this assertion is frivolous.

E. The Marlows' Appeal is Frivolous

The Marlows' appeal is frivolous and has been brought for the purpose of delay. RAP 18.9(a) provides, in part:

The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or authorized transcriptionist preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

[A]n appeal is frivolous if it raised no debatable issues on which reasonable minds might differ and it is so totally devoid of merit that no reasonable possibility of reversal exists. *Protect the Peninsula's Future v. City of Port Angeles*, 175 Wash.App. 201, 220, 304 P.3d 914 (2013). All doubts as to whether the appeal is frivolous should be resolved in favor of the appellant. *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd.*, 170 Wash.2d 577, 580, 245 P.3d 764 (2010).

Hanna v. Margitan, 193 Wn.App. 596, 615, 373 P.3d 300 (2016)

(Where appellants prevailed on issues relating to fees and costs, appeal was not frivolous).

The record before this Court clearly shows the Marlows have been engaged in a continuous pattern of delay. See, Counter-Statement of the Case, *supra*. The legal issues raised by the Marlows are entirely without merit, unsupported by evidence and case law, and contrary to a long line of existing legal precedent. The Marlows have had legal counsel assisting them in various

stages of the litigation, all of whom have terminated representation.

The Marlows have chosen to continue this appeal *pro se*.

Douglas County requests that this Court sanction the Marlows or, in the alternative, award to Douglas County its reasonable fees and costs incurred in defending this appeal, pursuant to RAP 18.9(a).

IV. CONCLUSION

The County's patient attempts to have the Marlows comply with the Shoreline Management Act and the County's Critical Areas have been ongoing since prior to June of 2011. The Marlows have continuously pursued every procedure and device to delay their compliance with the Notice of Land Use Violations and Order to Comply and the Judgment of the Superior Court.

The Judgment of the Superior Court should be affirmed.

Respectfully submitted this 5th day of April, 2018.



Steven M. Clem, WSBA #7466
Prosecuting Attorney
For Respondent Douglas County

DECLARATION OF SERVICE

I declare, under penalty of perjury under the laws of Washington, that I served a true and accurate copy of the foregoing document on the Defendants by placing a copy in a pre-addressed envelope, postage prepaid, to the address below and depositing the mailing envelope with the U.S. Postal Service at Waterville, Washington, on April 5, 2018.

Signed this day at Waterville, Washington.


Sandra Gabriel

Addressees:

Mr. Mark Marlow
Mrs. Nancy Marlow
5050 State Route 28
Rock Island, WA 98850

APPENDIX A

United States District Court
Eastern District of Washington
Case No. 2:15-CV-00131-TOR

VERIFIED ACTION-AT-LAW FOR DAMAGES RELATED TO 1) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALINGS; 2) JURISDICTIONAL CHALLENGE VIOLATIONS; 3) FOURTH AMENDMENT VIOLATION OF EXPECTATION OF PRIVACY; 4) FIFTH AMENDMENT VIOLATION OF DUE PROCESS OF LAW; 5) VIOLATION OF THE FOREVER BENEFITS OF THE SUBJECT UNITED STATES LAND PATENT NO. 218; 6) ACTION FOR A QUIET TITLE AGAINST ALL NAMED DEFENDANTS; 7) DECLARATORY RELIEF

COPY

1 **Mark Marlow and Nancy Marlow**
2 **c/o 5050 State Route 28**
3 **Rock Island, Washington state**

4 **Phone 509-670-1446**
5 **No Fax**

6 **In Pro Se**

RECEIVED
MAY 26 2015
Douglas County
Prosecuting Attorney

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
MAY 14 2015
SEAN F. McAVOY, CLERK
YAKIMA, WASHINGTON DEPUTY

7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10
11 **Mark Marlow and Nancy Marlow,**
12 **husband and wife**

13 **Plaintiffs,**

14 **vs.**

15 **JOHN HOTCHKISS, in his individual**
16 **capacity,**
17 **STEVEN M. CLEM, in his individual**
18 **capacity,**
19 **ANDREW L. KOTTKAMP, in his**
20 **individual capacity,**
21 **KAREN M. URELIUS, in her**
22 **individual capacity.**
23 **GLEN A. DE VREIS, in his individual**
24 **capacity,**
25 **JERRY J. GREGORY, in his**
26 **individual capacity,**
27 **RAMON PEREZ, in his individual**
28 **capacity,**
29 **ANTHONY O. WRIGHT, in his**
30 **individual capacity,**
31 **ERIC PENTICO, in his individual**
32 **capacity,**

Case No.
2:15-CV-00131-TOR

VERIFIED ACTION-AT-LAW
FOR DAMAGES RELATED TO 1)
BREACH OF COVENANT OF GOOD
FAITH AND FAIR DEALINGS;
2) JURISDICTIONAL CHALLENGE
VIOLATIONS;
3) FOURTH AMENDMENT
VIOLATION OF EXPECTATION OF
PRIVACY;
4) FIFTH AMENDMENT VIOLATION
OF DUE PROCESS OF LAW;
5) VIOLATIONS OF THE FOREVER
BENEFITS OF THE SUBJECT
UNITED STATES LAND PATENT
NO. 218;
6) ACTION FOR A QUIET TITLE
AGAINST ALL NAMED
DEFENDANTS; 7). DECLARATORY
RELIEF;

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VERIFIED ACTION-AT-LAW FOR DAMAGES RELATED TO 1) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALINGS; 2) JURISDICTIONAL CHALLENGE VIOLATIONS; 3) FOURTH AMENDMENT VIOLATION OF EXPECTATION OF PRIVACY; 4) FIFTH AMENDMENT VIOLATION OF DUE PROCESS OF LAW; 5) VIOLATIONS OF THE FOREVER BENEFITS OF THE SUBJECT UNITED STATES LAND PATENT NO. 218; 6) ACTION FOR A QUIET TITLE AGAINST ALL NAMED DEFENDANTS; 7). DECLARATORY RELIEF

1 GARY GRAFF, in their his individual
2 capacity,
3 BRUCE A. ESTOK, in his individual
4 capacity,
5 F. DALE BAMBRICK, in his
6 individual capacity,
7 MARK D. KULAAS, in his individual
8 capacity,
9 DALE L. SNYDER, in his individual
10 capacity,
11 KEN STANTON, in his individual
12 capacity,
13 STEVEN JENKINS, in his individual
14 capacity, and DOES 1 through 10
15 inclusively in their individual
16 capacity;

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Defendants.

**SEVENTH AMENDMENT
TRIAL BY JURY DEMANDED**

1. Plaintiffs, Mark Marlow and Nancy Marlow (Hereinafter, "Plaintiffs Marlow") make the following Declarations in support of this ACTION-AT-LAW. BECAUSE all named Co-Defendants are herein sued in their individual capacity, Plaintiffs Marlow hereby object to the possibility of the Sovereign People of Washington State or Douglas County paying for any Attorney Representation for their private non-jurisdictional activities hereinafter presented.

**NOTICE TO THE AGENTS IS NOTICE TO THE PRINCIPAL.
NOTICE TO THE PRINCIPAL IS NOTICE TO THE AGENTS.**

JURISDICTION

2. Competent Jurisdiction for this United States District Court ACTION-AT-LAW, is found in the Constitution for the United States of America, its Supremacy Clause found at Article VI, Paragraph 2, its First, Fourth, Fifth and Seventh Amendments, the 1848 International Treaty of Guadalupe Hidalgo and its Protocol of Queretaro, the

2
VERIFIED ACTION-AT-LAW FOR DAMAGES RELATED TO 1) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALINGS; 2) JURISDICTIONAL CHALLENGE VIOLATIONS; 3) FOURTH AMENDMENT VIOLATION OF EXPECTATION OF PRIVACY; 4) FIFTH AMENDMENT VIOLATION OF DUE PROCESS OF LAW; 5) VIOLATIONS OF THE FOREVER BENEFITS OF THE SUBJECT UNITED STATES LAND PATENT NO. 218; 6) ACTION FOR A QUIET TITLE AGAINST ALL NAMED DEFENDANTS; 7). DECLARATORY RELIEF

1 United States Land Patent Laws, the Congressional Township Survey Laws, and the
2 UNIFORM COMMERCIAL CODE.

3 **PARTIES AND VENUE**

4 3. Plaintiffs Marlow, at all material times mentioned in this ACTION-AT-LAW,
5 have lived in Douglas County, Washington state on the subject private land which is the
6 subject of this ACTION-AT-LAW and is more commonly known as 5050 State Route
7 28, Rock Island, Washington state.

8 4. At all relevant times Defendants, JOHN HOTCHKISS, STEVEN M. CLEM,
9 ANDREW L. KOTTKAMP, KAREN M. URELIUS, GLEN A. DE VREIS, JERRY J.
10 GREGORY, RAMON PEREZ, ANTHONY O. WRIGHT, ERIC PENTICO, GARY
11 GRAFF, BRUCE A. ESTOK, F. DALE BAMBRICK, MARK D. KULAAS. DALE L.
12 SNYDER, KEN STANTON, STEVEN JENKINS, have conducted non-jurisdictional
13 acts, activities, and actions against Plaintiffs Marlow and their United States Land
14 Patented private land located in Douglas County, Washington state.

15 5. Plaintiffs Marlow are informed and believe, and thereon allege, that at all time
16 mentioned herein, each of the herein described Co-Defendants, were at all times herein
17 mentioned, acting within the course, scope, purpose, consent, knowledge, ratification,
18 and authorization of such agency, employment, joint venture and conspiracy, against
19 Plaintiffs Marlow and their family and their private land.

20 6. Regarding Doe Defendants, Plaintiffs Marlow do not know the true names and
21 capacities, whether individual, corporation, associate or otherwise, sued therein as Does
22 1 through 10 Inclusive. Plaintiffs Marlow will seek leave of court to amend this
23 ACTION-AT-LAW to allege such names and capacity as soon as they are ascertained.

24 7. Agency Status of Co-Defendants, Each of the Co-Defendants, whether
25 specifically named as DOE were, at all times therein mentioned, the agent, servant,
26 employee, partner, franchisee and/or joint venture of each of the other Co-Defendants,
27 and at all times were acting within the course and scope of said agency, service,

1 employment, partnership, franchise and/or joint venture. Whenever the reference is
2 made in this ACTION-AT-LAW to any act of any Defendant(s), the allegations shall
3 mean that each Defendant acted individually and jointly with the other Co-Defendants.

4 8. At all relevant times, the named all Co-Defendants have engaged in a
5 conspiracy, common enterprise and common course of conduct, the purpose of which
6 was and is to engage in violations of well-settled historic American Law and
7 Jurisprudence as alleged in this ACTION-AT-LAW. This conspiracy, common
8 enterprise and common course of conduct continues to present date against Plaintiffs
9 Marlow and their family, and their private land, as well as the public as a whole.

10 9. The violations of law alleged in this ACTION-AT-LAW occurred in Douglas
11 County and elsewhere throughout Washington state. Venue in this Court is proper
12 because the acts complained of herein occurred within this Judicial District and all acts
13 which are complained of herein were performed by each of the named Co-Defendants
14 within this Judicial District.

15 AS TO FORM

16 10. While Plaintiffs Marlow have attempted to draft, file, and serve this ACTION-
17 AT-LAW according to their best knowledge, information, and belief the format they
18 have used is protected by the American Law of the Land, and its Common-Law and
19 American Jurisprudence, and they sincerely believe that they can justifiably rely, if
20 necessary, on the old MAXIM that clearly states: "Substance is more important than
21 Form," and they also believe that they can also justifiably rely on the UNITED
22 STATES SUPREME COURT Case, entitled, *Haines v. Kerner*, 1972, 404 U.S. 519,
23 30 L. Ed. 2d 652, 92 S. Ct. 594, 496, Reh. Den., 405 U.S. 948, 30 L. Ed. 2d 918, 92 S.
24 Ct, 963, which clearly states, to wit:

25 **"Pro Se complaints are held to less stringent standards than formal**
26 **pleadings by lawyers, and regardless of who represents the Plaintiffs a**
27 **motion to dismiss is not to be granted unless it appears beyond doubt that**
28 **the Plaintiffs can prove no set of facts which would entitle them to relief."**

1 11. Pro Se Plaintiffs Marlow sincerely believe that this Honorable Court cannot
2 hold them to the same standard as Attorneys at Law and thereby overturn and/or ignore
3 United States Supreme Court case: Haines v. Kerner, 1972, 404 U.S. 519, 30 L. Ed. 2d
4 652, 92 S. Ct. 594, 496, Reh. Den., 405 U.S. 948, 30 L. Ed. 2d 918, 92 S. Ct. 963
5 (Supra) with Local Rules.

6 **VERIFIED ACTION-AT-LAW - GOOD-FAITH INTENT**

7 **LAW OF THE LAND JURISDICTION AND TRIAL BY JURY DEMANDED**

8 12. It is the *good-faith intent* of Plaintiffs Marlow to invoke the basic American Law
9 of the Land, Common-Law/At-Law, Constitutional, Seventh Amendment, "Court of
10 Record," jurisdiction of this Honorable UNITED STATES DISTRICT COURT, which
11 is believed to be under the Article III jurisdiction of the ORIGINAL 1787 A.D.
12 Constitution for the United States of America.

13 13. It is also the *good-faith intent* of Plaintiffs Marlow to Demand AND obtain a
14 constitutionally valid, Seventh Amendment guaranteed and secured Common-Law/At-
15 Law, Trial BY a Jury of their land owner peers pursuant to the mandates of the
16 ORIGINAL (never amended) 1791 A.D. Seventh Amendment to the 1787 A.D.
17 Constitution for the United States of America, wherein the Jury judges BOTH the
18 Law(s) AND the Fact(s) as the last in the American constitutionally valid system of
19 legislative, executive and judicial *checks and balances* conducted by the Sovereign
20 People themselves against bad laws, and wherein the Judge merely sits and maintains
21 the proper procedure and order. IF this Honorable Court IS NOT such a
22 Constitutionally valid Article III, Court of Record, but merely a federal, corporate,
23 Administrative-Law Tribunal, (ALT) Respectful Demand is hereby made for this
24 Honorable Court or Administrative-Law Tribunal as the case may be, to transfer the
25 instant ACTION-AT-LAW, forthwith to such an intended and required Article III,
26 Common-Law, Court of Record.

TO DEFENDANTS AND DEFENDANTS' ATTORNEYS
FRAUD UPON THE COURTS

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"A judge is an officer of the court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. A judge is not the court." *People v. Zajic*, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

"Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed their judicial function thus where the impartial functions of the court have been directly corrupted."

"*Fraud upon the court*" has been defined by the 7th Circuit Court of Appeals "to embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 *Moore's Federal Practice*, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

NEWLY DISCOVERED MATERIAL JURISDICTIONAL INFORMATION

14. This new ACTION AT LAW represents a Jurisdictional Paradigm-Shift away from all non-jurisdictional state court actions that were accomplished while in the clear, total, complete, absence of all Subject Matter Jurisdiction. This is due to the Fact of well-settled American Law and Jurisprudence clearly provide herein clearly which indicates that no Federal, State, County, City, Township, Town, or Village

1 Administrative-Laws apply to Plaintiffs Mark Marlow and Nancy Marlow and the
2 subject Private Sovereign I and.

3 15. Under the American Law of the Land and its Common-Law, Plaintiffs Marlow
4 refer to the protected United States Land Patented private land in terms of land, dirt,
5 earth, soil, and ground, in hereby object, and protest to that being identified under Law
6 of the Sea terms as real property, real estate, property, premises, or parcel. Plaintiffs
7 Marlow believe that legal words and their meanings are critical in a Common-Law
8 Court of Record, or any Administrative-Law Tribunal.(ALT)

9 16. Well-Settled American Law and Jurisprudence clearly indicate that "**Judges are**
10 **presumed to know the law.**" Because defendant Hotchkiss was always in the clear,
11 total, complete absence of all Subject Matter Jurisdiction he cannot claim Absolute
12 Judicial Immunity against this personal injury ACTION AT LAW. Therefore,
13 Defendant Hotchkiss is accused of impersonating a judicial officer who knew or
14 reasonably should have known the American Laws regarding the Sovereignty of the
15 subject United States Land Patented private land and the Sovereignty of its owners
16 Mark Marlow and Nancy Marlow, and their family.

17 17. Plaintiffs Marlow hereby Declare that due to the Clear, Total, and Complete
18 Absence of all Subject Matter Jurisdiction of all Co-Defendants, Quasi-Judicial
19 Immunity, Good Faith Immunity, Police Officers Immunity, and Qualified Immunity is
20 not and cannot be available as a defense for anyone.

21 18. For the record, there is absolutely no claim of a Sovereign Citizen Status and
22 Standing relating to any type of Sovereign Citizen Ideology in this document, or
23 anywhere else. Plaintiffs Marlow sincerely believe the term Sovereign Citizen is an
24 oxymoron, as one cannot be a Sovereign, and a Citizen at the same time. Plaintiffs
25 Marlow believe that those who use the term Sovereign Citizen are simply displaying
26 their ignorance regarding those words and their meanings. Plaintiffs Marlow claims to
27 be Sovereign American Native Inhabitants, as were the American Founding Fathers

1 and their posterity, and NOT Sovereign Citizens. Plaintiffs Marlow sincerely believes
2 that the term Sovereign Citizen can be compared to the impossible terms - Christian
3 Atheist, and Virgin Whore.

4 19. Plaintiffs Marlow have recently learned that both of them and ALL named Co-
5 Defendants, i.e. JOHN HOTCHKISS, STEVEN M. CLEM, ANDREW L.
6 KOTTKAMP, KAREN M. URFIJUS, GLEN A. DE VREIS, JERRY J. GREGORY,
7 RAMON PEREZ, ANTHONY O. WRIGHT, ERIC PENTICO, GARY GRAFF,
8 BRUCE A. ESTOK, F. DALE BAMBRICK, MARK D. KULAAS. DALE L.
9 SNYDER, KEN STANTON, STEVEN JENKINS, have literally wasted more than four
10 years and many thousands of private and public funds through their ignorance of the
11 well-settled historic American Law and Jurisprudence presented herein.
12 ABSOLUTELY NO PREVIOUSLY QUASI-ADJUDICATED STATE COURT
13 ISSUES ARE PRESENTED HEREIN. This document is not to be considered as any
14 type of an Appeal over the null and void actions of the state court. This document
15 should be considered as a brand-new Subject Matter Jurisdictional Challenge, of which
16 can be challenged at any time, so says the United States Supreme Court, to wit:

17 "Jurisdiction can be challenged at any time." *Bialac v. Harsh*, 93 S Ct. 558,
18 34 Led2d 512. (See also Subject Matter Jurisdictional Challenge
19 MEMORANDUM OF LAW attached.)

20 20. This document will squarely address the following almost lost issues that were a
21 originally considered as a wonderful and generous gift to the American People by
22 America's Founding Fathers.

23 21. But first we must address some negative issues stated by some of today's
24 governmental officers, agents, or employees regarding the American Founding Fathers.

25 22. Historic documents tell us that at the time of the formation of the original
26 American governments there were two primary groups, i.e. the Federalists, and the
27 Anti-Federalist. The Anti-Federalist became what could be called sore-losers, and they

1 still exist to this day with their negative comments about those prevailing American
2 Founding Fathers. Today's Anti-Federalist refer to the American Founding Fathers as
3 "a group of rich, white, slave owners." And while some of them may have been rich
4 and white, and slave owners they were NOT ALL of such description. The bottom line
5 is, they were all truly looking out after themselves and their posterity when they created
6 the original state and federal governments for the sole purpose of servicing them well.
7 The various state and federal constitutions were simply drafted to be a "plan," that was
8 required to be followed in order to create "a government of the [Sovereign] People,
9 by the [Sovereign] People, and for the [Sovereign] People." A government that
10 would govern itself through the mandates of the constitutions, and never govern the
11 Sovereign American People. Some of the Sovereign American People would thereafter
12 step down from their Sovereign Status and Standing for a brief period of time during
13 the day to become Citizen/Person, known and identified a Public Servant, thereby
14 placing themselves UNDER the mandates of those original state and federal
15 constitutions. Then at the end of the work period, when they ceased their
16 governmentally created obligations, duties, and responsibilities and headed home, at
17 that very moment they then regained their Sovereign American Status and Standing,
18 until the next time when they again stepped down from there Sovereign American
19 Status and Standing to again become a Citizen/Person also known as a Public Servant,
20 during the course of their workday and again placing themselves UNDER the
21 constitutional control of those original state and federal constitutions, and laws made
22 pursuant thereto.

23 23. Looking back at historic documents along with well-settled American Law and
24 Jurisprudence there is now present clear and convincing evidence that the American
25 Founding Fathers drafted the original, organic state and federal constitutions for the
26 sole purpose of creating the original state and federal governments that guaranteed and
27

1 secured the following gifts to themselves, their posterity, and to the other Sovereign
2 American People, to wit:

- 3 a. The historic Sovereign Status and Standing of the American Founding
4 Fathers, their posterity, and the other Sovereign American People through
5 their drafting and serving of their 1776 A.D. document entitled: THE
6 DECLARATION OF INDEPENDENCE.
- 7 b. The American Founding Fathers and their provisions for adopting a Republic
8 form of government UNDER the American Law of the Land based on
9 British Common-Law, and thereby rejecting a Democratic form of
10 government under the international Law of the Sea and its Roman, civil,
11 equity, administrative-laws.
- 12 c. The Historic 1787 A.D. Constitution for the United States of America and its
13 Supremacy Clause, found at Article VI, Paragraph 2, which presents a
14 Federal Question "of great public interest."
- 15 d. The historic 1787 A.D. Constitution for the United States of America and its
16 prohibitions against ex post facto (retroactive) laws, which presents a Federal
17 Question "of great public interest."
- 18 e. The historic Constitutional requirements regarding the mandates of the
19 constitutional OATH OF OFFICE, to support, defend and uphold the historic
20 1787 A.D. Constitution for the United States of America along with its
21 Supremacy Clause, found at Article VI Paragraph 2.
- 22 f. The original historic Sovereign Status and Standing of the American People.
- 23 g. The original historic Sovereign Status and Standing of ALL land in America.

GIFTS OF THE FOUNDING FATHERS

- 24 a. The historic Sovereign Status and Standing of the American Founding
25 Fathers, their posterity, and the other Sovereign American People
26

1 through their drafting and serving of their 1776 A.D. document entitled:
2 THE DECLARATION OF INDEPENDENCE.

3 The American Founding Fathers risked their own lives and the lives of their
4 families when they drafted and served their July 4, 1776 A.D. document entitled:
5 DECLARATION OF INDEPENDENCE, which clearly provided for recognition of
6 certain **Unalienable Rights** endowed to them by their Creator, including, but not
7 limited to the **right to life, liberty, and the pursuit of happiness**. It was this document
8 that gave them and their posterity a well-recognized Sovereign Status and Standing.
9 America was thereafter known world-wide as a Country of Sovereigns with no
10 Subjects, with no one to govern but themselves. (See Sovereignty Memorandum of Law
11 attached)

12 **b. The American Founding Fathers and their provisions for adopting a**
13 **Republic form of government UNDER the American Law of the Land**
14 **based on British Common-Law, and thereby rejecting a Democratic**
15 **form of government under the international Law of the Sea and its**
16 **Roman, Civil, Equity, Administrative-Laws.**

17 Originally the American Law of the Land and the international Law of the Sea
18 met at the Mean (average) High Tide Mark on the coast-line of America. The American
19 Founding Fathers thereafter drafted the document entitled: ARTICLES OF
20 CONFEDERATION which created a Republic Form of government based on British
21 Common-Law, thus rejecting a Democratic Form of government. THERE IS NO
22 SUCH FORM AS A DEMOCRATIC REPUBLIC. The two Forms are at opposite ends
of the spectrum.

23 **c. The Historic 1787 A.D. Constitution for the United States of America**
24 **and its Supremacy Clause, found at Article VI, Paragraph 2, which**
25 **presents a Federal Question "of great public interest."**

1 The American Founding Fathers thereafter in 1787 A.D., drafted a document
2 entitled: Constitution for the united States of America, "in order to form a more
3 perfect union," than they had under their original ARTICLES OF
4 CONFEDERATION. One of the material parts of this document as far as the instant
5 ACTION-AT-LAW is concerned is found at Article VI, Paragraph 2, known as the
6 Supremacy Clause, to wit:

7 "[1] This [federal] constitution, and [2] the [constitutionally valid]
8 laws of the United States which shall be made in pursuance thereof; and [3]
9 all [constitutionally valid] treaties made, or which shall be made, under the
10 authority of the United States, shall be the supreme law of the land; [as
11 distinguished from the international law of the sea] AND THE JUDGES [that
12 are located] in every state shall be bound thereby, any thing in the
13 constitution or laws of any state to the contrary notwithstanding."
14 (Emphasis added).

15 This above-quoted Clause *forces* everyone who has sworn an OATH OF
16 OFFICE to place the 1787 A.D. Constitution for the United States of America, AND all
17 constitutionally valid laws made pursuant thereto, AND all treaties made or which shall
18 be made, to be far superior to the Washington state, and Douglas County revenue
19 generating and controlling Administrative Laws in the well-recognized hierarchy of
20 historic American Law and Jurisprudence.

21 d. The historic 1787 A.D. Constitution for the United States of America
22 and its prohibitions against ex post facto (retroactive) laws, which
23 presents a Federal Question "of great public interest.", to wit: No Bill of
24 Attainder or ex post facto (retroactive) Law shall be passed."

25 The named Co-Defendants have for more than four years attempted to enforce a
26 retroactive ex post facto Administrative-Law on the subjects United States Land
27 Patented private land and its owners Mark Marlow and Nancy Marlow.

1 e. The historic Constitutional requirements regarding the mandates of the
2 constitutional OATH OF OFFICE, to support, defend and uphold the
3 historic 1787 A.D. Constitution for the United States of America along
4 with its Supremacy Clause, found at Article VI Paragraph 2.

5 The Senators and Representatives before mentioned, and the
6 Members of the several State Legislatures, and all executive and judicial
7 Officers, both of the United States and of the several States, shall be bound
8 by Oath or Affirmation, to support this Constitution; but no religious Test
9 shall ever be required as a Qualification to any Office or public Trust under
10 the United States. (Emphasis added)

11 This above-quoted clause *forces* everyone who has sworn an OATH OF
12 OFFICE to place the 1787 A.D. Constitution for the United States of America, AND
13 all constitutionally valid laws made pursuant thereto, AND all treaties made or which
14 shall be made, to be far superior to the Washington state, and Douglas County revenue
15 generating and controlling Administrative-Laws in the well-recognized hierarchy of
16 historic American Law and Jurisprudence.

17 f. The original historic Sovereign Status and Standing of the American
18 People.

19 It is well-settled historic American Law and Jurisprudence that on July 4, 1776
20 A.D. roughly 2 ½ million former British Subjects who were living under the laws of
21 Great Britain in America, became the Sovereign People of America, and there
22 posterity remains so to this today. There is absolutely no court admissible evidence in
23 the record that *anyone* was EVER given Full Disclosure, that they would be waving
24 their Sovereign Status and Standing by any governmentally created contract, i.e.
25 Marriage License, Birth Certificate, Social Security Application, Public School
26 attendance, Selective Service Application, Driver License Application, or any other
27

1 governmentally created privilege as evidenced by a Federal, State, County, or City
2 governmental License, Pass, Permit, or Franchise. It is sincerely believed that as were
3 the original Citizen/Person Public Servants, all named Co-defendants are also
4 members of the Sovereign American constituency when they cease their governmental
5 office, Agency, or employment and go home for the day, but again in the morning they
6 again step down from there Sovereign Status and Standing at such time as they enter
7 into the governmentally privileged office, agency, or employment, and thus become
8 Citizen/Persons Public Servants and place themselves under the Federal, State,
9 County, and City ordinances, codes, statutes, titles, resolutions, rules, and regulations,
10 until such time at the end of the day that they again cease their governmentally
11 privileged activities and regain their Sovereign American Status and Standing.

12 **g. The original historic Sovereign Status and Standing of ALL land in**
13 **America.**

14 **HEREIN LIES THE CRUCIAL PART OF THIS ACTION-AT-LAW.**

15 ALL dry land in America is under the Sovereign, Allodial, Land Ownership
16 rights, title, interest, estate, use, and control of one of the two types of distinctly
17 different and separate Sovereign entities, i.e. 1.) The American Sovereign People, (such
18 as Plaintiffs Marlow) or 2.) A Federal, State, County, City, Township, Town, or Village
19 governmental entity.

20 The subject private land ORIGINALLY came under the Sovereign Allodial
21 Land Ownership rights, title, interest, estate, use, and control of the Federal government
22 of the United States of America, where thereafter such total Sovereign rights were
23 Quit-Claim transferred to the NORTHERN PACIFIC RAILROAD COMPANY via a
24 United States Land Patent, No. 218, which reserved ABSOLUTELY NO rights, title,
25 interest, estate, use, and control to any Federal, State, County, City, Township, Town,
26 or Village in Washington state, rendering such ownership title to the grantee, the
27 NORTHERN PACIFIC RAILROAD COMPANY, its successors, and assigns

1 (Plaintiffs Marlow) FOREVER, via said United States Land Patent No. 218, dated
2 September 25, 1906. The old Maxim of law that says "what is not said is sometimes
3 more eloquent than what is said," is an appropriate observation regarding the
4 verbiage of the above-cited United States Land Patent. Plaintiffs Marlow claim that
5 they are to be clearly identified as assigns in the Chain of Title from the original United
6 States Land Patent, Quit-Claim Deed, that reserved absolutely no such Rights to the
7 Federal Government, or to its Army Corps. of Engineers, or to Washington state, or to
8 Douglas County, or to any Washington City, Township, Town, or Village therein
9 mentioned. (See the subject United States Land Patent, No. 218 attached)

10 DEMAND is hereby made for all Army Corps. of Engineer Co-Defendants to, in
11 their ANSWER to this ACTION-AT-LAW, cite the Constitutionally valid Law that
12 transferred the original Washington state jurisdiction of the Columbia River bottom in
13 the area to the Army Corp. of Engineers, listing its Title, its Enabling Clause, its Date
14 of Enactment, its Date of Publication, its Effective Date, and its Security Bond number
15 along with the Security Bond number of the legislative body who either 'passed,' it or
16 'adopted' it.

17 "The nature and effect of the patent issued pursuant to the act of 1851
18 has been well described by both the United States and Supreme Courts.
19 The patent of the government is evidence of title and is conclusive against
20 the government and all persons claiming under it. The patent is a deed of
21 the United States and operates as a quit claim of any interest the United
22 States may have reserved in the land. It establishes in the grantee full and
23 complete title to the property." *Beard v. Federy* (1866) 70 U.S. (3 Wall.) 478,
24 18 L.Ed. 88; *Teschmacher v. Thompson* (1861) 18 Cal. 11.

25 FOR THE RECORD. It is hereby noted, that at the time the subject United
26 States Land Patent was issued in 1906, the Northern Boundary of the subject United
27 States Land Patented private land was at the southern edge of the Columbia River

1 which was *at the time* much lower and about 60 feet farther North due to the absence of
2 the Rock Island Dam. That original boundary existed many feet North of the subject
3 now-floating private and non-commercial dock, with such original property line located
4 at the original 1906 A.D. high-water mark of the original Southern side of the Columbia
5 River. Plaintiffs Marlow stipulates to the fact that a former owner granted an Easement
6 for the waters of the Columbia River to rise above the historic southern edge of the
7 Columbia River unto their private land thus encroaching on and over the subject private
8 land. It should be noted that nowhere on that Easement document was there any
9 prohibition against the owner using their United States Land Patented private land over
10 the easement area. Such prohibition is not thereon listed. Again. The old Maxim of law
11 that says "**what is not said is sometimes more eloquent than what is said,**" is an
12 appropriate observation regarding the verbiage of the above-mentioned Easement
13 document.

14 24. Plaintiffs Marlow hereby makes their brand-new and highly specific Subject
15 Matter Jurisdictional Challenge against all Co-Defendants, to have any possible
16 regulatory control over Plaintiffs Marlow, their family, or their subject United States
17 Land Patented private land due to all the facts regarding the Sovereignty of the
18 American People and the Sovereignty of their United States Land Patented private land
19 as hereinbefore and hereinafter presented.

20 25. DEMAND is hereby made for the named Co-Defendants, JOHN HOTCHKISS,
21 STEVEN M. CLEM, ANDREW L. KOTTKAMP, KAREN M. URELIUS, GLEN A.
22 DE VREIS, JERRY J. GREGORY, RAMON PEREZ, ANTHONY O. WRIGHT, ERIC
23 PENTICO, GARY GRAFF, BRUCE A. ESTOK, F. DALE BAMBRICK, MARK D.
24 KULAAS. DALE L. SNYDER, KEN STANTON, STEVEN JENKINS, in their
25 ANSWER to this ACTION-AT-LAW to submit constitutionally valid laws that would
26 render the above-mentioned Sovereign Status and Standing, the light of their own
27 OATH OF OFFICE, to uphold and defend the above-mentioned Article VI, Paragraphs

1 2 and 3, and render the declared above-mentioned Sovereign Status and Standing of
2 Plaintiffs Marlow and their United States Land Patented private land, null and void, or
3 in the alternative to tacitly accept such Sovereign Status and Standing as a relates to
4 Plaintiffs Marlow, their family, and their United States Land Patented private land.

5 26. The Co Defendants have and had absolutely NO standing NOR can they produce
6 AUTHENTIC, Legal, Court Admissible Evidence to prove that they have any type true
7 Subject Matter Jurisdiction over private land that was Quit-Claim transferred from the
8 Public Domain of the united States of America to the private sector, via the
9 NORTHERN PACIFIC RAILROAD COMPANY United States Land Patent No. 218,
10 dated September 25, 1906 that Quit-Claim transferred its own sovereign, allodial, land
11 ownership rights, title, interest, estate, use, and control to the NORTHERN PACIFIC
12 RAILROAD COMPANY and to its Successors and Assigns FOREVER.. (See the
13 subject United States Land Patent, No. 218 attached).

14 ***"A party lacks standing to invoke the jurisdiction of a court. Unless he has, an***
15 ***individual or a representative capacity, some real interest in the subject matter***
16 ***of an action it would not be entitled to judgment as a matter of law." Deutsche***
17 ***Bank National Trust Co. vs Gilbert, 2012 IL App (2d) 120164 (Emphasis added)***

18 27. Defendants have attempted to induce Plaintiffs Marlow with VOID documents
19 and with NO LAWFUL SUBJECT MATTER JURISDICTION OR STANDING in
20 order to proceed with their criminal, unconstitutional and therefore unlawful acts
21 against the subject private land and its owners, and have thereby attempted to have an
22 alleged state court to become an accomplice to their criminal activities.

23 28. Accordingly, Plaintiffs Marlow respectfully request that this Honorable Court
24 through its Trial BY Jury, rule in Favor of Plaintiff's ACTION-AT-LAW in its
25 Entirety.

26 29. All of the Defendants' contentions on their Claims are utterly without merit and
27 their entire Claims, are frivolous and without merit and designed solely to unlawfully
28 and unconstitutionally injure Plaintiffs Marlow, their family and their private land.

FIRST CAUSE OF ACTION

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

1
2
3 30. Plaintiffs Marlow re-allege and re-incorporate all above presented paragraphs as
4 if fully contained herein.

5 31. Plaintiffs Marlow hereby claim that they had a constitutionally guaranteed and
6 secured Right to be protected by the implied Covenant of Good-Faith and Fair Dealing.

7 32. Plaintiffs Marlow allege that at all times there existed an implied Covenant of
8 Good-Faith and Fair Dealing requiring Defendants, JOHN HOTCHKISS, STEVEN M.
9 CLEM, ANDREW L. KOTTKAMP, KAREN M. URELIUS, GLEN A. DE VREIS,
10 JERRY J. GREGORY, RAMON PEREZ, ANTHONY O. WRIGHT, ERIC PENTICO,
11 GARY GRAFF, BRUCE A. ESTOK, F. DALE BAMBRICK, MARK D. KULAAS.
12 DALE L. SNYDER, KEN STANTON, STEVEN JENKINS, and each of them, to
13 safeguard, protect, or otherwise care for the assets and rights of Plaintiffs Marlow and
14 their family. Said Covenant of Good-Faith and Fair Dealing prohibited Defendants
15 from activities interfering with or contrary to the herein stated constitutionally
16 guaranteed and secured Rights of Plaintiffs Marlow.

17 33. Plaintiffs Marlow allege that the commencement of proceedings upon the
18 private land lawfully belonging to them and their family without the production of
19 proper Subject Matter Jurisdictionally valid documents was in violation of their
20 constitutionally guaranteed and secured right to be protected by the implied Covenant
21 of Good-Faith and Fair Dealing.

22 34. As a consequence and proximate result of the above-mentioned violation of their
23 constitutionally guaranteed and secured right to be protected by the implied Covenant
24 of Good-Faith and Fair Dealing, Plaintiffs Marlow have been injured in a sum to be
25 proven at trial.

SECOND CAUSE OF ACTION
VIOLATION OF PAST SUBJECT MATTER JURISDICTIONAL
CHALLENGE PROCEDURES

1
2
3
4 35. Plaintiffs Marlow re-allege and re-incorporate all above presented paragraphs as
5 if fully contained herein.

6 36. Plaintiffs Marlow had a constitutionally guaranteed and secured right to
7 justifiably rely on their Subject Matter Jurisdictional Challenges in the past and to rely
8 on the procedures mandated by High Court's regarding their Subject Matter
9 Jurisdictional Challenge (see attachment)

10 37. All named Co-Defendants, JOHN HOTCHKISS, STEVEN M. CLEM,
11 ANDREW L. KOTTKAMP, KAREN M. URELIUS, GLEN A. DE VREIS, JERRY J.
12 GREGORY, RAMON PEREZ, ANTHONY O. WRIGHT, ERIC PENTICO, GARY
13 GRAFF, BRUCE A. ESTOK, F. DALE BAMBRICK, MARK D. KULAAS. DALE L.
14 SNYDER, KEN STANTON, STEVEN JENKINS, had an obligation, duty, and
15 responsibility to comply with well-settled High Court decisions regarding the
16 procedures mandated when a Subject Matter Jurisdictional Challenge was made.

17 38. As a consequence and proximate result of the above-mentioned violations
18 wherein all named Co-Defendants, JOHN HOTCHKISS, STEVEN M. CLEM,
19 ANDREW L. KOTTKAMP, KAREN M. URELIUS, GLEN A. DE VREIS, JERRY J.
20 GREGORY, RAMON PEREZ, ANTHONY O. WRIGHT, ERIC PENTICO, GARY
21 GRAFF, BRUCE A. ESTOK, F. DALE BAMBRICK, MARK D. KULAAS. DALE L.
22 SNYDER, KEN STANTON, STEVEN JENKINS, failed, refused, or neglected to
23 comply with well-settled High Court mandated procedures regarding Plaintiffs
24 Marlow's well-presented Subject Matter Jurisdictional Challenge procedures, they have
25 been injured in a sum to be proven at trial.

THIRD CAUSE OF ACTION
FORTH AMENDMENT EXPECTATION OF PRIVACY VIOLATIONS
AND PROBABLE CAUSSE VIOLATIONS

1
2
3
4 39. Plaintiffs Marlow re-allege and re-incorporate all above presented paragraphs as
5 if fully contained herein.

6 40. Plaintiffs Marlow hereby declare that they have a constitutionally guaranteed
7 and secured right to their Fourth Amendment Right to the Expectation of privacy and to
8 be secure in their persons, house, papers, effects unless there is a Warrant supported by
9 an Affidavit of Probable Cause particularly naming the person or thing to be searched
10 or seized. It should be noted that in 1789 when the Fourth Amendment was drafted and
11 presented and in 1791 when it was ratified as one of the BILL OF RIGHTS, the legal
12 phrase Probable Cause referred to an unwritten Common-Law Felony such as murder,
13 rape, treason, kidnapping, etc. a Mala in se (bad in itself) Crime, as Congress had not
14 yet met to "Pass," any Statutes at Large or any other criminal statutes. The INTENT of
15 the original law makers is binding on all of today's Courts of Record and
16 Administrative-Law Tribunals. The terms Reasonable Cause, or simply Cause, do not
17 rise to the level of the original Probable Cause.

18 41. As a consequence and proximate result of the above-mentioned violations, Co-
19 Defendants, JOHN HOTCHKISS, STEVEN M. CLEM, ANDREW L. KOTTKAMP,
20 KAREN M. URELIUS, GLEN A. DE VREIS, JERRY J. GREGORY, RAMON
21 PEREZ, ANTHONY O. WRIGHT, ERIC PENTICO, GARY GRAFF, BRUCE A.
22 ESTOK, F. DALE BAMBRICK, MARK D. KULAAS. DALE L. SNYDER, KEN
23 STANTON, STEVEN JENKINS, spied on and filed unlawful fraudulent non-
24 jurisdictional granting Documents in the state court in violation of Plaintiffs Marlow's
25 constitutionally guaranteed and secured Right to Fourth Amendment Right to the
26 Expectation of Privacy and their right to be secure in their persons, house, papers,
27 effects unless there is a Warrant supported by an Affidavit of Probable Cause

1 particularly naming the person or thing to be searched or seized, which has created an
2 injury in the sum to be proven at trial.

3 **FOURTH CAUSE OF ACTION**

4 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS**

5 42. Plaintiffs Marlow re allege and re-incorporate all above presented paragraphs as
6 if fully contained herein.

7 43. Plaintiffs Marlow hereby declare that they at all relevant times had a
8 constitutionally guaranteed and secured Right to Fifth Amendment Due Process of
9 Law.

10 44. As a consequence and proximate result of the above-mentioned violations the
11 named Co-Defendants, JOHN HOTCHKISS, STEVEN M. CLEM, ANDREW L.
12 KOTTKAMP, KAREN M. URELIUS, GLEN A. DE VREIS, JERRY J. GREGORY,
13 RAMON PEREZ, ANTHONY O. WRIGHT, ERIC PENTICO, GARY GRAFF,
14 BRUCE A. ESTOK, F. DALE BAMBRICK, MARK D. KULAAS. DALE L.
15 SNYDER, KEN STANTON, STEVEN JENKINS, filed unlawful fraudulent non-
16 jurisdictional granting documents in the state court in violation of Plaintiffs Marlow's
17 constitutionally guaranteed and secured Right to Fifth Amendment Due Process of Law
18 which has created an injury in the sum to be proven at trial.

19 **FIFTH CAUSE OF ACTION**

20 **VIOLATION OF THE FOREVER BENEFITS OF A SPECIFIC UNITED**

21 **STATES LAND PATENT**

22 45. Plaintiffs Marlow re-allege and re-incorporate all above presented paragraphs as
23 if fully contained herein.

24 46. Plaintiffs Marlow hereby claim that they at all relevant times had a
25 constitutionally guaranteed and secured Right to the FOREVER BENEFITS of the
26 Sovereign Allodial Land Ownership rights, title, interest, estate, use, and control that
27 was originally Quit-Claim transferred to the Northern Pacific Railroad Company by

1 United States Land Patent No. 218, dated 1906 A.D. as they are an assign specifically
2 mentioned on the subject United States Land Patent. (See attached United States Land
3 Patent)

4 47. As a consequence and proximate result of the above-mentioned violations, All
5 named Co-Defendants, JOHN HOTCHKISS, STEVEN M. CLEM, ANDREW L.
6 KOTTKAMP, KAREN M. URELIUS, GLEN A. DE VREIS, JERRY J. GREGORY,
7 RAMON PEREZ, ANTHONY O. WRIGHT, ERIC PENTICO, GARY GRAFF,
8 BRUCE A. ESTOK, F. DALE BAMBRICK, MARK D. KULAAS. DALE L.
9 SNYDER, KEN STANTON, STEVEN JENKINS, had a constitutionally mandated
10 obligation, duty, and responsibility to comply with the well-settled American Law and
11 Jurisprudence regarding the FOREVER benefits that were Quit-Claim transferred from
12 the United States of America to the Northern Pacific Railway Company by United
13 States Land Patent No. 218, dated 1906. As a result of the Defendants failure, refusal,
14 or neglect to comply with the well-settled American Law and Jurisprudence regarding
15 the FOREVER BENEFITS that were Quit-Claim transferred from the United States of
16 America to the Northern Pacific Railway Company by United States Land Patent No.
17 218, dated 1906 A.D. Plaintiffs Marlow have been injured in the sum to be proven at
18 trial.

18 **DUE PROCESS NOTICE**

19 48. Plaintiffs Marlow, hereby give NOTICE that a valid dispute has arisen between
20 and among Plaintiffs Marlow and the named Defendants and each of them as to the
21 obligations, duties, and responsibilities of the respective parties with regard to their
22 misinterpretation of such obligations, duties, and responsibilities associated with their
23 OATH OF OFFICE.

24 49. This dispute concerns, but is not limited to the Sovereign, Allodial, Land
25 Ownership rights, title, interest, estate, use, and control of the subject United States
26 Land Patented private land. As to these issues, Plaintiffs Marlow seeks relief.

1 50. Plaintiffs Marlow further gives NOTICE that they respectfully Demand a Court
2 Declaration of Rights regarding the duties of the parties and that such Declaration of
3 Rights essential to determine the actual status and validity of the subject United States
4 Land Patented private land.

5 CONCLUSION

6 51. Plaintiffs Marlow re-allege and re-incorporate paragraphs 1 through 48, et seq.,
7 above as if fully contained herein.

8 52. Plaintiffs Marlow have been grossly injured by Defendants who have unjustly
9 attacked them, and their family, and their United States Land Patented private land
10 while in the Clear, Total, and Complete Absence of all Subject Matter Jurisdiction.

11 53. WHEREFORE, in the interest of justice, Plaintiffs Marlow respectfully requests
12 this Honorable Court through its Constitutionally valid Seventh Amendment Trial BY
13 Jury to uphold state and federal laws along with well-settled American Law and
14 Jurisprudence as held by the United States Supreme Court in its entirety, and apply
15 such authority to the specific facts which have been established herein, and render an
16 Order to Quiet Title in favor of the Marlow's and against all named Defendants.

17 54. For the Record, Plaintiffs respectfully requests this Honorable Court and its
18 Trial BY Jury to make its Final Order in the form of a STATEMENT OF FACTS AND
19 CONCLUSION OF LAW.

20 55. Plaintiffs Marlow hereby also request this Honorable Court to render a Court
21 Judgment for Damages for the Marlow's injuries, in the amount of \$1,500,000 in the
22 MONEY OF ACCOUNT OF THE UNITED STATES OF AMERICA.

23 56. FOR THE RECORD. The living and breathing human Plaintiffs herein
24 identified as Mark Marlow and Nancy Marlow hereby object to an governmental office
25 or agency identifying them as the federal, corporate, dead legal entities MARK
26 MARLOW and NANCY MARLOW.

27 57. This document contains a 7,292 word count.

1 58. This document is executed by the voluntary act of our own hands in Douglas
2 County, in Washington state, and is dated this fourteenth day of the fifth month, in the
3 year two thousand fifteen, Anno Domini, in the two-hundred and thirty-ninth year of
4 the Independence of America.

5 

6 _____
7 Mark Marlow, In Pro Se
8 Authorized Representative of MARK MARLOW
9 (Legal distinction being made)

10 

11 _____
12 Nancy Marlow, In Pro Se
13 Authorized Representative of NANCY MARLOW
14 (Legal distinction being made)

VERIFICATION

We, Plaintiffs Mark Marlow and Nancy Marlow, attest to the truth of the following:

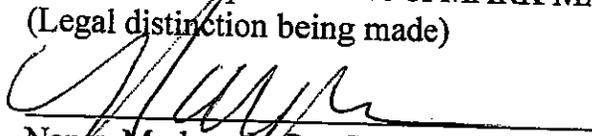
We have read the foregoing **VERIFIED ACTION-AT-LAW FOR DAMAGES RELATED TO 1) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALINGS; 2) JURISDICTIONAL CHALLENGE VIOLATIONS; 3) FOURTH AMENDMENT VIOLATION OF EXPECTATION OF PRIVACY; 4) FIFTH AMENDMENT VIOLATION OF DUE PROCESS OF LAW; 5) VIOLATIONS OF THE FOREVER BENEFITS OF THE SUBJECT UNITED STATES LAND PATENT NO. 218; 6) ACTION FOR A QUIET TITLE AGAINST ALL NAMED DEFENDANTS; 7). DECLARATORY RELIEF;** and know the contents thereof.

We are a party to the above entitled action or proceeding, and certify that the matters stated therein are facts of our own knowledge.

We declare under the penalty of perjury of the Laws of Washington state and these United States of the America, that the foregoing ACTION-AT-LAW is correct and complete to the best of my knowledge, information and belief, and that this Verification is executed by the voluntary act of my own hand in Douglas County and is dated this fourteenth day of the fifth month, in the year two thousand and fifteen, Anno Domini, in the Two-Hundred and thirty-ninth year of the Independence of the America.



Mark Marlow, In Pro Se
Authorized Representative of MARK MARLOW
(Legal distinction being made)



Nancy Marlow, In Pro Se
Authorized Representative of NANCY MARLOW
(Legal distinction being made)

1 KAREN M. URELIUS,

2
3 GLEN A. DE VREIS,

4
5
6 JERRY J. GREGORY,

7
8 RAMON PEREZ,

9
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11 ANTHONY O. WRIGHT,

12
13 ERIC PENTICO,

14
15
16 GARY GRAFF,

17
18
19 BRUCE A. ESTOK,

20
21 F. DALE BAMBRICK,

22
23
24 MARK D. KULAAS.

25
26 DALE L. SNYDER,

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KEN STANTON,

STEVEN JENKINS

I declare under the penalty of perjury of the Laws of the Washington state and *these* united States of the America, that the foregoing is correct and complete to the best of my knowledge, information and belief, and that this PROOF OF SERVICE is executed by the voluntary act of my own hand in Douglas County and is dated this fourteenth day of the fifth month, in the year two thousand and fifteen, Anno Domini, in the Two-Hundred and thirty-ninth year of the Independence of the America.

APPENDIX B

United States District Court
Eastern District of Washington
Case No. 2:15-CV-00131-TOR

ORDER ON DEFENDANT'S MOTION TO DISMISS

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

6

7

MARK MARLOW and NANCY
MARLOW, husband and wife,

8

Plaintiffs,

9

v.

10

JOHN HOTCHKISS, in his individual
capacity; STEVEN M. CLEM, in his
individual capacity; ANDREW L.
KOTTKAMP, in his individual
capacity; KAREN M. URELIUS, in
her individual capacity; GLEN A. DE
VREIS, in his individual capacity;
JERRY J. GREGORY, in his
individual capacity; RAMON PEREZ,
in his individual capacity; ANTHONY
O. WRIGHT, in his individual
capacity; ERIC PENTICO, in his
individual capacity; GARY GRAFF, in
his individual capacity; BRUCE A.
ESTOK, in his individual capacity; F.
DALE BAMBRICK, in his individual
capacity; MARK D. KULASS, in his
individual capacity; DALE L.
SNYDER, in his individual capacity;
KEN STANTON, in his individual
capacity; STEVEN JENKINS, in his

NO: 2:15-CV-0131-TOR

ORDER ON DEFENDANTS'
MOTIONS TO DISMISS

1 individual capacity; and DOES 1
2 through 10, inclusively in their
individual capacity.

3 Defendants.

4
5 BEFORE THE COURT are Defendants Eric Pentico and Gary Graff's
6 Motion to Dismiss or in the Alternative for Summary Judgment (ECF No. 40),
7 Defendants F. Dale Bambrick, Bruce Estok, Jerald Gregory, Karen Urelus, and
8 Anthony Wright's ("Federal Employee Defendants") Motion to Dismiss (ECF No.
9 44), Defendants John Hotchkiss, Steven M. Clem, Andrew Kottkamp, Glen A.
10 Devries, Ramon Perez, Mark Kulaas, Dale Snyder, Steven Jenkins and Ken
11 Stanton's ("Douglas County Defendants") Motion to Dismiss (ECF No. 45).
12 These matters were submitted without oral argument. Defendants Pentico and
13 Graff are represented by Carl P. Warring. The Federal Employee Defendants are
14 represented by Vanessa R. Waldref. The Douglas County Defendants are
15 represented by Heather C. Yakely. Plaintiffs Mark and Nancy Marlow are
16 proceeding *pro se*.

17 The Court has reviewed the briefing, the record and files therein, and is fully
18 informed.

19 //

20 //

BACKGROUND

1
2 On May 14, 2015, Plaintiffs filed a Complaint in this Court alleging
3 constitutional violations related to zoning and permitting issues concerning
4 Plaintiffs' real property in Douglas County, Washington. ECF No. 1. Specifically,
5 Plaintiffs allege the following causes of action: (1) "Breach of the Covenant of
6 Good Faith and Fair Dealing;" (2) "Violation of Past Subject Matter Jurisdictional
7 Challenge Violations;" (3) "Fourth Amendment Expectation of Privacy Violations
8 and Probable Cause Violations;" (4) "Violation of Fifth Amendment Due Process;"
9 (5) "Violation of the Forever Benefits of a Specific United States Land Patent;" *Id.*
10 at 18-22, (6) Action for a Quiet Title Against All Named Defendants; and (7)
11 Declaratory Relief. *Id.* at 1. Plaintiffs also allege damages in the amount of
12 \$1,500,000. *Id.* at 23.

13 In the Complaint caption Plaintiffs assert they are suing each Defendant in
14 their individual capacity. *Id.* at 1. Defendant Graff is a Professional Wetland
15 Scientist who works for the Washington State Department of Ecology, and
16 Defendant Pentico is an Area Habitat Biologist who works for the Washington
17 State Department of Fish and Wildlife. ECF No. 40 at 7. All of the Federal
18 Employee Defendants are employed by the United States Army Corps of Engineers
19 and National Oceanic and Atmospheric Administration. ECF No. 44 at 1-2. The
20 Douglas County Defendants are officials and employees of Douglas County, and

1 Defendant John Hotchkiss is a Douglas County Superior Court Judge and
2 Defendant Steven M. Clem is a Douglas County Prosecuting Attorney. ECF No.
3 45 at 2.

4 The Douglas County Defendants and Defendants Graff and Pentico have
5 answered the Complaint. ECF Nos. 5, 9. The Federal Employee Defendants have
6 not filed an answer, and argue that Plaintiffs have failed to properly serve the
7 Federal Employee Defendants pursuant to Federal Rule of Civil Procedure 4(i).
8 *See* ECF No. at 13-14.

9 On October 30, 2015, Defendants Pentico and Graff filed a motion to
10 dismiss for failure to state a claim or, in the alternative, for summary judgment.
11 ECF No. 40. On November 3, 2015, both the Federal Employee Defendants and
12 Douglas County Defendants filed motions to dismiss. ECF Nos. 44, 45.
13 Additionally, the Douglas County Defendants filed a joinder to adopt the Federal
14 Employee Defendants' argument that Plaintiffs' complaint does not meet the
15 requirements of FRCP 8(a)(2). ECF No. 46 (citing ECF No. 44 at 12-13).

16 Plaintiffs filed responses in opposition to each motion to dismiss. ECF Nos.
17 48, 49, 50. The Federal Employee Defendants and Douglas County Defendants
18 filed respective replies. ECF No. 52, 53. Defendants Pentico and Graff filed a
19 notice to the Court and parties that they will not file a reply and rely on their
20 original briefings. ECF No. 51.

1 Sometime in 2011,¹ Plaintiffs' claim their case was reviewed by a Douglas
2 County Hearing Examiner. *Id.* Plaintiffs do not provide the details of the Hearing
3 Examiner's decision, but the Court presumes the outcome was unfavorable for
4 Plaintiffs as they filed an appeal with the Douglas County Superior Court. *See id.*
5 at 6-7. Similarly, Plaintiffs do not set forth the dates and details regarding the
6 appeal, but dispute the jurisdiction of the Douglas County Superior Court over this
7 matter and claim its decision is "null and void" *See* ECF No. 1 at 7, 8.

8 On May 14, 2015, Plaintiffs initiated this action. *See* ECF No. 1. In the
9 Complaint, Plaintiffs assert "sovereign" title to their Douglas County Property, *id.*
10 at 14-16, and claim the "named Co-Defendants have for more than four years
11 attempted to enforce a retroactive ex post factor Administrative law on [Plaintiffs
12 and their property]." *Id.* at 12. The gravamen of Plaintiffs' Complaint is that their
13 property is not subject to any county, state, federal, or other, laws, and the
14 administrative and judicial proceedings enforcing the land use and permitting laws
15 against their Douglas County property were commenced without authority, and
16 therefore, have no force. *See id.* at 6-8, 14-17.

17 //

18 _____
19 ¹ Plaintiffs do not clearly set forth the dates and details regarding this hearing, and
20 other matters.

1 **DISCUSSION**

2 **I. Jurisdictional Bar**

3 As a preliminary matter, Defendants Pentico and Graff argue that the Court
4 lacks jurisdiction over Plaintiffs' claims pursuant to the *Rooker-Feldman* doctrine.
5 ECF No. 40 at 4-5. Because the *Rooker-Feldman* doctrine concerns the scope of
6 the Court's jurisdiction, the Court will address this issue first in order to determine
7 if it can reach the remaining defenses raised by Defendants.

8 Pursuant to the *Rooker-Feldman* doctrine, "a United States District Court
9 has no authority to review final judgments of a state court in judicial proceedings.
10 Review of such judgment may be had only in [the United States Supreme Court]."
11 *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 492 (1983); see
12 *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012) ("The doctrine bars a district
13 court from exercising jurisdiction not only over an action explicitly styled as a
14 direct appeal, but also over the 'de facto equivalent' of such an appeal) (citation
15 omitted). "This is true even if the challenge to a state court decision involves
16 federal constitutional issues." *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir. 1995)
17 (citing *Feldman*, 460 U.S. at 484-486). "The purpose of the doctrine is to protect
18 state judgments from collateral federal attack." *Doe & Assocs. Law Offices v.*
19 *Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001).

1 “To determine whether the *Rooker-Feldman* bar is applicable, a district court
2 first must determine whether the action contains a forbidden *de facto* appeal of a
3 state court decision.” *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013)
4 (citing *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003)). The Ninth Circuit has
5 explained, “[t]o determine whether an action functions as a *de facto* appeal, we pay
6 close attention to the *relief* sought by the federal-court plaintiff. It is a forbidden
7 *de facto* appeal under *Rooker-Feldman* when the plaintiff in federal district court
8 complains of a legal wrong allegedly committed by the state court, and seeks relief
9 from the judgment of that court.” *Cooper*, 704 F.3d at 777-78 (emphasis in
10 original) (internal citations and quotations omitted). If the court determines a
11 plaintiff brought a forbidden *de facto* appeal, and consequently, the *Rooker-*
12 *Feldman* doctrine applies, the doctrine will not only prohibit the plaintiff from
13 litigating the *de facto* appeal, but also any issue that is “inextricably intertwined”
14 with the state court’s judgment. *Id.* at 778-79. A claim is “inextricably
15 intertwined” with a state court judgment “if the federal claim succeeds only to the
16 extent that the state court wrongly decided the issues before it,” i.e. “[w]here
17 federal relief can only be predicated upon a conviction that the state court was
18 wrong.” *Id.* at 779. (quotation omitted); *see also Bianchi v. Rylaarsdam*, 334 F.3d
19 895, 898 (9th Cir. 2003) (providing that claims are “inextricably intertwined” with
20

1 the state court's decision if "the adjudication of ... [such] claims would undercut
2 the state ruling").

3 Plaintiffs contend that they are not attempting to appeal any state court
4 decision or judgment, rather, they claim their Complaint "should be considered as
5 a brand-new Subject Matter Jurisdictional Challenge[.]" ECF No. 1 at 8.

6 Specifically, Plaintiffs assert this action is a "Jurisdictional Paradigm-Shift away
7 from all non-jurisdictional state court actions that were accomplished while in the
8 clear, total, complete, absence of all Subject Matter Jurisdiction." *Id.* at 6.

9 Plaintiffs argue that well-settled law indicates that "no Federal, State, County, City,
10 Township, Town or Village Administrative-Laws apply to Plaintiffs [] and the
11 subject Private Sovereign Land," *Id.* at 6-7, and consequently the actions of the
12 state court are "null and void." *Id.* at 8. Further, Plaintiffs accuse Defendant Judge
13 Hotchkiss of "impersonating a judicial officer who knew or reasonably should
14 have known the American Laws regarding the Sovereignty of the subject United
15 States Land Patented private land and the Sovereignty of its owners [Plaintiffs],
16 and their family." *Id.* at 7.

17 Despite Plaintiffs' argument otherwise, the Court finds this action is a de
18 facto appeal of a state court decision or judgment. Plaintiffs challenge the subject
19 matter jurisdiction of the Douglas County Superior Court over Plaintiffs'
20 permitting dispute with the County. The Superior Court rejected this argument.

1 *See id.* at 19. While Plaintiffs’ argument that a court’s subject matter jurisdiction
2 “can be challenged any time” has merit, *id.* at 8, Plaintiffs must follow the
3 appropriate and timely appellate processes required by Washington State Court
4 Rules. *See Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003) (stating a federal
5 district court does not have subject matter jurisdiction to a hear a direct appeal
6 from a state court; the United States Supreme Court is the only federal court with
7 jurisdiction to hear such an appeal). Tellingly, while Plaintiffs’ Complaint
8 includes a request for \$1.5 million in damages against all Defendants, Plaintiffs
9 also request “action for a quiet title against all named defendants” and declaratory
10 relief that the original state action lacked jurisdiction over Plaintiffs and their
11 Douglas County property due to Plaintiffs’ and their property’s “sovereign” status.
12 *See* ECF No. 1 at 1; 6-8. If this Court were to grant Plaintiffs the relief they seek,
13 it would necessarily involve overturning the Superior Court’s judgment concerning
14 Plaintiffs’ jurisdictional challenge and Plaintiffs’ unpermitted improvements to
15 their Douglas County property. Thus, the Court finds *Rooker-Feldman* applies to
16 Plaintiffs’ request for a declaration that the original state court action was without
17 subject matter jurisdiction (Causes of Action (2) and (7)) and “violated” Plaintiffs’
18 sovereignty over their Douglas County property (Causes of Action (5) and (7)) and
19 Plaintiffs’ request for a quiet title (Cause of Action (6)). *See Cooper*, 704 F.3d at
20 777-78. Pursuant to the *Rooker-Feldman* doctrine, Plaintiffs’ Causes of Action

1 (2), (5), (6) and (7) are a collateral attack on a state court's judgment and this Court
2 is without jurisdiction to hear these claims. Accordingly, these claims are
3 dismissed with prejudice.

4 Having determined that Plaintiffs' action is, at least in part, a de facto
5 appeal, the Court considers next whether any remaining claims are "inextricably
6 intertwined" with the state court decision from which the de facto appeal was
7 taken. *See Noel*, 341 F.3d at 1165.

8 Plaintiffs allege Defendants' conduct violated their Fourth Amendment right
9 to privacy and their Fifth Amendment right to due process. *See* ECF No. 1 at 20,
10 21. A claim alleging misconduct, even by a third party, may be "inextricably
11 intertwined" if the allegations were previously considered by the state court judge
12 in reaching the decision in a particular case. *See Cooper*, 704 F.3d at 782 (holding
13 plaintiff's claim that a prosecutor, senior criminalist, and other public officials had
14 falsified evidence was "inextricably intertwined" with the state court's judgment in
15 the plaintiff's cause because the state court had "found that similar and, in some
16 instances, identical allegations were insufficient"). Here, Plaintiffs' allegations
17 that their rights were violated are based on their contestation to the state court's
18 jurisdiction. *See* ECF No. 1 at 20, 21 (Plaintiffs claiming Defendants'
19 unconstitutionally "spied on and *filed unlawful fraudulent non-jurisdictional*
20 *granting Documents in the state court*" in violation of their Fourth and Fifth

1 Amendment rights) (emphasis added). The implication of Plaintiffs' claim is that
2 the alleged misconduct, the filing of documents in state court, is unconstitutional
3 because the state court did not have jurisdiction over Plaintiffs and their property.
4 These allegations were considered in the state court action when the court rejected
5 Plaintiffs' subject matter jurisdiction challenge. Therefore, the Court finds that
6 these allegations (Causes of Action (3) and (4)) are "inextricably intertwined" with
7 Plaintiffs' de facto appeal, and consequently, these claims are dismissed with
8 prejudice.

9 Similarly, in their remaining claim, Plaintiffs' allege "that the
10 *commencement of proceedings upon the private land* lawfully belonging to them...
11 was in violation of their constitutionally guaranteed and secured rights to be
12 protected by the implied Covenant of Good-Faith and Fair Dealing." ECF No. 1 at
13 18 (emphasis added). While it is unclear precisely what cause of action Plaintiffs'
14 assert,² it is clear that this claim, again, is based on Plaintiffs' subject matter
15 jurisdiction challenge. As above, this allegation is "inextricably intertwined" with
16 Plaintiffs' de facto appeal, and this Court lacks jurisdiction to hear this claim.

17 _____
18 ² A breach of the covenant of good faith and fair dealing is a contract claim. Here,
19 Plaintiffs do not allege any facts that indicate a contract between Plaintiffs and any
20 defendant exists, nor do Plaintiffs allege such a contract exists.

1 Thus, Plaintiffs' remaining claim (Cause of Action (1)) is dismissed with
2 prejudice.

3 Accordingly, the Court finds that Plaintiffs' claims are barred by the *Rooker*
4 *Feldman* doctrine, and Defendants' motions to dismiss are granted on this basis.
5 *See Cooper*, 704 F.3d at 777.

6 Finally, granting leave to amend the complaint would be nothing less than
7 futile. See *id.* at 783-85.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 9 1. Defendants' Motions to Dismiss (ECF Nos. 40, 44, 45) are **GRANTED**.
- 10 2. Plaintiffs' claims are **DISMISSED with prejudice**.

11 The District Court Executive is hereby directed to enter this Order, enter
12 Judgment for Defendants, provide copies to counsel and Plaintiffs, and **CLOSE**
13 the file.

14 **DATED** January 14, 2016.



15 *Thomas O. Rice*
16 THOMAS O. RICE
17 United States District Judge
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APPENDIX C

United States District Court
Eastern District of Washington
Case No. 2:15-CV-00131-TOR

**ORDER DENYING PLAINTIFFS'
MOTION TO RECONSIDER DISMISSAL**

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARK MARLOW and NANCY
MARLOW, husband and wife,

Plaintiffs,

v.

JOHN HOTCHKISS, in his individual
capacity; STEVEN M. CLEM, in his
individual capacity; ANDREW L.
KOTTKAMP, in his individual
capacity; KAREN M. URELIUS, in
her individual capacity; GLEN A. DE
VREIS, in his individual capacity;
JERRY J. GREGORY, in his
individual capacity; RAMON PEREZ,
in his individual capacity; ANTHONY
O. WRIGHT, in his individual
capacity; ERIC PENTICO, in his
individual capacity; GARY GRAFF, in
his individual capacity; BRUCE A.
ESTOK, in his individual capacity; F.
DALE BAMBRICK, in his individual
capacity; MARK D. KULASS, in his
individual capacity; DALE L.
SNYDER, in his individual capacity;
KEN STANTON, in his individual
capacity; STEVEN JENKINS, in his

NO: 2:15-CV-0131-TOR

ORDER DENYING PLAINTIFFS'
MOTION TO RECONSIDER
DISMISSAL

1 individual capacity; and DOES 1
2 through 10, inclusively in their
individual capacity.

3 Defendants.

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5
6 BEFORE THE COURT is Plaintiffs' Verified Motion to Reconsider

7 Dismissal With Prejudice - With Memorandum of Law (ECF No. 58). This matter
8 was submitted for consideration without oral argument. The Court has reviewed
9 the briefing, the record and files therein, and is fully informed.

10 **BACKGROUND**

11 Plaintiffs, proceeding *pro se*, filed their Complaint in this action on May 14,
12 2015. ECF No. 1. In their Complaint, Plaintiffs assert constitutional violations
13 related to zoning and permitting issues concerning their real property in Douglas
14 County, Washington.

15 On January 14, 2016, this Court granted Defendants' motions to dismiss,
16 finding the Court lacks jurisdiction over Plaintiffs' claims pursuant to the *Rooker-*
17 *Feldman* doctrine. ECF No. 56. Accordingly, this Court dismissed Plaintiffs'
18 claims with prejudice and entered judgment for Defendants. ECF No. 57.

19 In the instant motion, Plaintiffs ask this Court to reconsider its order
20 dismissing this case. ECF No. 58.

//

DISCUSSION

1
2 A motion for reconsideration of a judgment may be reviewed under either
3 Federal Rule of Civil Procedure 59(e) (motion to alter or amend a judgment) or
4 Rule 60(b) (relief from judgment). *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255,
5 1262 (9th Cir. 1993). “Reconsideration is appropriate if the district court (1) is
6 presented with newly discovered evidence, (2) committed clear error or the initial
7 decision was manifestly unjust, or (3) if there is an intervening change in
8 controlling law.” *Id.* at 1263; *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*,
9 555 F.3d 772, 780 (9th Cir. 2009). “There may also be other, highly unusual,
10 circumstances warranting reconsideration.” *School Dist. No. 1J*, 5 F.3d at 1263.

11 Whether to grant a motion for reconsideration is within the sound discretion
12 of the court. *Navajo Nation v. Confederated Tribes and Bands of the Yakama*
13 *Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003). Reconsideration is properly
14 denied when the movant “present[s] no arguments . . . that had not already been
15 raised” previously. *Taylor v. Knapp*, 871 F.2d 803, 805 (9th Cir. 1989); *see also*
16 *City of Fresno v. United States*, 709 F.Supp.2d 888, 916 (E.D. Cal. 2010) (“A party
17 seeking reconsideration must show more than a disagreement with the Court’s
18 decision, and recapitulation of the cases and arguments considered by the court
19 before rendering its original decision fails to carry the moving party’s burden.”).

1 The Court finds reconsideration is not warranted. Plaintiffs fail to show
2 more than disagreement with the Court's decision, and merely rehash the same
3 arguments and allegations they have asserted in nearly every pleading before this
4 Court. Although Plaintiffs believe this Court's order was "unconstitutional" and
5 denied them their right to a trial by jury, they have failed to show manifest error,
6 present new facts or law that could not have been brought to this Court's attention
7 earlier, or otherwise demonstrate any reason that justifies reconsideration. *See Sch.*
8 *Dist. No. 1J*, 5 F.3d at 1262. Accordingly, Plaintiffs motion is denied and the
9 Court's previous order stands.

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 11 1. Plaintiffs' Motion to Reconsider Dismissal with Prejudice (ECF No. 58) is
12 **DENIED.**

13 The District Court Executive is hereby directed to enter this Order and provide
14 copies to counsel and Plaintiffs

15 **DATED** February 29, 2016.



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Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge

APPENDIX D

United States Court of Appeals
Ninth Circuit
Case No. 16-35211

United States District Court
Eastern District of Washington
Case No. 2:15-CV-00131-TOR

MEMORANDUM

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 30 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARK MARLOW, husband; NANCY
MARLOW, wife,

Plaintiffs-Appellants,

v.

JOHN HOTCHKISS, in his individual
capacity; et al.,

Defendants-Appellees.

No. 16-35211

D.C. No. 2:15-cv-00131-TOR

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, Chief Judge, Presiding

Submitted October 23, 2017**

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

Mark Marlow and Nancy Marlow appeal pro se from the district court's judgment dismissing their action alleging various claims related to their real property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismissal under the *Rooker-Feldman* doctrine. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We affirm.

The district court properly dismissed the Marlows' action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine because the claims constituted a forbidden "de facto appeal" of a prior state court judgment or were "inextricably intertwined" with that judgment. *See id.* at 1163-65 (discussing proper application of the *Rooker-Feldman* doctrine); *see also Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007) (*Rooker-Feldman* doctrine barred plaintiff's claim because the relief sought "would require the district court to determine that the state court's decision was wrong and thus void").

AFFIRMED.

DOUGLAS COUNTY PROSECUTING ATTORNEY

April 05, 2018 - 3:05 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 33928-9
Appellate Court Case Title: Douglas County v. Mark Marlow and Nancy Marlow, et al
Superior Court Case Number: 14-2-00066-6

The following documents have been uploaded:

- 339289_Briefs_20180405150409D3674593_6716.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Douglas County v Marlow - COA 33928 - Brief of Respondent.pdf

Comments:

Declaration of Service attached.

Sender Name: Steven Clem - Email: sclem@co.douglas.wa.us
Address:
PO BOX 360
213 RAINIER
WATERVILLE, WA, 98858-0360
Phone: 509-745-8535

Note: The Filing Id is 20180405150409D3674593