

NO. 738933

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF  
WASHINGTON**

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STATE OF WASHINGTON,

Petitioner,

v.

BRUCE M. SNYDER  
GREGG B. SNYDER,

Respondents.

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COURT OF APPEALS  
STATE OF WASHINGTON  
*[Handwritten signature]*

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**AMICUS CURIAE BRIEF OF THE TULALIP TRIBES  
OF WASHINGTON IN SUPPORT OF  
MOTION FOR DISCRETIONARY REVIEW**

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## I. INTRODUCTION

This case involves an attempt by a modern-day group of individuals to assert and establish Treaty-Tribe status and entitlement to Treaty guaranteed hunting rights.

The motion for discretionary review relates to an order of the Skagit County Superior Court reversing the district court's original determination that Respondents Bruce and Gregg Snyder, who claim membership in a so-called Snoqualmoo Tribe, failed to demonstrate that the modern-day Snoqualmoo have maintained a continuous political identity from treaty times to the present sufficient to demonstrate that they are an actual Treaty-Tribe. The existence of Treaty-Tribe status is a necessary predicate to the assertion of any federally reserved off-reservation treaty rights. *United States v. Washington*, 641 F.2d 1368, 1372-73 (9th Cir. 1981).

This Court should accept review to correct the superior court's misapplication and miscomprehension of the law and evidentiary burden associated with the determination of Treaty-Tribe status. Doing so will eliminate conflict with prior reported decisions and provide clear guidance to future courts.

## II. INTEREST OF THE AMICUS

The Tulalip Tribes (“Tribe”) are co-managers of fish and wildlife resources along with the Washington Department of Fish and Wildlife (“WDFW”) to preserve, protect, perpetuate, and manage wildlife and food fish, game fish, and shellfish. (*U.S. v. Washington*, 19 F. Supp 3d 1252, 1256, Co-Management Order of April 28, 1997.) To accomplish this, the Tribe issues licenses that allow hunting and fishing activity, and, in cooperation with the State of Washington, creates management plans for fish and wildlife resources, and promulgates regulations that guide the exercise of hunting and fishing activity.

As noted above, WDFW engages in “co-management” of fish and wildlife resources with tribal entities throughout the State. *See, e.g., United States v. Washington*, 19 F. Supp. 3d 1252, 1256 (W.D. Wash. 1997) (Stipulation and Order Concerning Co-Management and Mass Marking). Typically, this co-management occurs with Treaty-Tribes who have reserved rights to hunt and fish in off-reservation areas. Treaty-reserved fishing and hunting rights in off-reservation areas preempt the State’s licensing and regulation of members of a Treaty-Tribe.

Treaty-reserved fishing (and hunting) rights have typically been adjudicated in relation to the original and continuing jurisdiction maintained in *United States v. Washington*, 384 F. Supp. 312, 419 (W.D.

Wash. 1974). That court concluded that the modern-day Snoqualmie Tribe does not possess Treaty-Tribe status. See *United States v. Washington*, 476 F. Supp. 1101, 1108 (W.D. Wash. 1979), *aff'd*, *United States v. Washington*, 641 F.2d 1368 (9th Cir. 1981). The Snoqualmoo, who appear to be related to the Snoqualmie (e.g., RP 55-56 – Trial Transcript), have never sought to adjudicate their claim to possess treaty rights in a subproceeding of *United States v. Washington*.

The determination of whether a group of people, who self-identify as a Native American Tribe, is also a “Treaty-Tribe” is of special significance to Tulalip for purposes of planning, co-management, and the exercise of licensing and regulatory authority within the State.

### III. ARGUMENT

The Tulalip Tribes take great interest in any group’s claim to exercise off-reservation treaty hunting and fishing rights. Indeed, because fish and wildlife resources are increasingly scarce, the Tulalip Tribes express great concern when WDFW recognizes or discusses the existence and/or scope of any group’s overlapping off-reservation fishing and hunting rights.

There are a number of significant legal issues and decisions that this Court must consider.

First, there is no federally recognized “Snoqualmoo Tribe.” Recognized tribes are reported periodically in the Federal Register, which constitutes the official list of recognized tribes. 80 Fed. Reg. 1942, Jan. 14, 2015. There is no “Snoqualmoo” on that list. There is a tribe known as Snoqualmie, which is the modern day spelling of “Snoqualmoo.” *Id.* at 1946. The federal courts have held that the Snoqualmie Tribe “...is composed primarily of persons who are descendants in some degree of Indians who in 1855 were known as Snoqualmoo Indians...” *U.S. v. Washington*, 626 F. Supp 1405, 1527 (W.D. Wash 1985).

The Snoqualmie Tribe was held to be “... composed primarily of persons who are descendants in some degree of Indians who in 1855 were known as Snoqualmoo Indians...” *U.S. v. Washington*, 476 F. Supp 1101, 1108, (W.D. Wash. 1979).

Second, the Snoqualmie Tribe has been held to not be “a treaty Tribe in the political sense...,” and that it does not hold “. . . for itself or its members fishing rights secured by any of the Stevens Treaties....” *U.S. v. Washington*, 476 F. Supp 1101,1111, (W.D. Wash. 1979). Although the specific finding deals with fishing rights, the underlying reasoning of the decision clearly applies to hunting rights.

Third, the Tulalip Tribes, amicus herein, have been held to be “composed largely of one or more of the groups commonly referred to

today as the Snohomish, Snoqualmie and Skykomish tribes, although many variants of those names have been used in treaty-time and subsequent writings.” *U.S. v. Washington*, 626 F. Supp 1405, 1527, (W.D. Wash. 1978).

Finally, the Tulalip Tribes have been held to be the political successor in interest to certain tribes which were parties to the Treaty of Point Elliott, *U.S. v. Washington*, 459 F. Supp 1020,1039 (W.D. Wash. 1978). As noted above, those Tribes include the Snoqualmie/Snoqualmoo. In other words, treaty rights of the Snoqualmie reside in the Tulalip Tribes.

As reflected in the preceding section, adjudicating a claim of Treaty-Tribe status is a matter of significant public interest. That status may preempt a large body of state licensing and regulatory authority designed to achieve legislative objectives regarding the wise use of Washington’s fish and wildlife resources. Preemption of that authority raises an issue of significant public interest consistent with the discretionary review criteria set forth in RAP 2.3(d). This Court should accept review because the superior court misapplied well-settled law regarding the determination of Treaty-Tribe status in conflict with a court of appeals’ opinion.

Tulalip agrees with the Attorney General that the legal dimension behind the Snyders’ claim is well articulated in federal case law, and was



applied in *State v. Posenjak*, 127 Wn. App. 41, 111 P.3d 1206 (2005), a case where Division II squarely rejected a claim of treaty rights asserted by a member of the modern-day Snoqualmoo. A modern-day group self-identifying as a tribe does not possess Treaty-Tribe status simply because it consists of persons with Indian ancestry traceable to a treaty signatory. *Washington*, 641 F.2d at 1370-71; *accord*, *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 776 (9th Cir. 1990); *Posenjak*, 127 Wn. App. at 49. Instead, there must be evidence of continuous and unbroken “organized tribal structure” from treaty times to the present. *Id.*

Tulalip also agrees with the arguments of the Attorney General concerning the application of the law concerning determination of Tribal status. (See Amicus Brief of the State of Washington, December 15, 2015, pp. 5-8.)

#### IV. CONCLUSION

The motion for discretionary review should be granted on the basis that the appeal presents a question of significant public interest and to address the conflict presented with *State v. Posenjak*.

RESPECTFULLY submitted this 30th day of December, 2015.

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**PROOF OF SERVICE**

I certify that I served a copy of the Amicus Curiae Brief of the Tulalip Tribes of Washington in Support of Motion for Discretionary Review via United States Mail, postage prepaid, on all parties or their counsel of record on the date below as follows:

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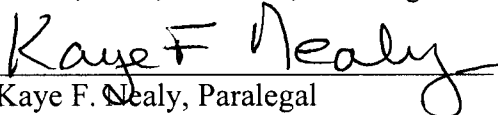
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 30th day of December, 2015, at Seattle, Washington.

  
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