

No. 84716-9

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner

v.

LESTER RAY JIM, Respondent

BRIEF OF *AMICI CURIAE* CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION, CONFEDERATED TRIBES OF
THE WARM SPRINGS RESERVATION OF OREGON, NEZ PERCE
TRIBE, AND CONFEDERATED TRIBES AND BANDS OF THE
YAKAMA NATION

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INTEREST OF *AMICI CURIAE*

The Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation are federally recognized Indian tribes (jointly, "*amici* tribes") occupying lands throughout the Pacific Northwest. We exercise various rights in and along the Columbia River, which were expressly retained in our respective 1855 Stevens or Palmer treaties. We are all beneficial owners of the Maryhill Treaty Access Fishing Site ("Maryhill Site"), which constitutes Indian country land set aside in 1988 by the United States for our use to fulfill federal treaty obligations along the Columbia River. By definition, the land in question is among the *amici* tribes' "Indian reservation" lands. The *amici* tribes exercise criminal jurisdiction over all of their Indian country lands including, in part through the Columbia River Inter-tribal Fish Commission (CRITFC) law enforcement program, the Columbia River fishing sites. This case directly affects the ownership interests and sovereign powers of the *amici* tribes in the Maryhill Site.

SUMMARY OF ARGUMENT

We offer three reasons why the State's position in this case should be rejected: 1) RCW 37.12.010 does not apply to the Maryhill Site as it is Indian country established after the 1968 amendments to Public Law 280, which mandates tribal consent for assertion of state jurisdiction in Public Law 280 option states; 2) A proper understanding of certain federal Indian law terms of art reveals that there is no conflict among the appellate court's decision in this case, *State v. Sohappy*, *U.S. v. Sohappy*, *State v. Cooper*, or *State v. Boyd* – they all fit harmoniously within a well established framework; and 3) The appellate court decision does not create a jurisdictional gap as tribes have concurrent authority over “Indian country” under Public Law 280 jurisprudence.¹

ARGUMENT

I. RCW 37.12.010 DOES NOT APPLY IN THIS CASE WITHOUT A MAJORITY VOTE OF THE *AMICI* TRIBES' CITIZENS

A. Washington's jurisdiction in Indian country acquired after 1968 requires tribal consent

In 1953 Congress enacted Public Law 280, which mandated state criminal jurisdiction over Indian country in some states and left open an

¹ *Amici* tribes also support the arguments in the brief filed on behalf of Mr. Jim.

option for other states to assert jurisdiction if they so desired. 67 Stat. 588 §7. Washington was not a “mandatory 280” state, but in 1957 it chose to exercise the option to assert jurisdiction over Indian country in a limited context. Laws of 1957, Ch. 240. Under the 1957 laws, the State did not assert jurisdiction unless and until a tribe expressly authorized an extension of the State’s jurisdiction over its lands. *Arquette v. Schneckloth*, 56 Wash. 2d 178 (1960). The State’s law was amended in 1963 to exclude the tribal consent requirement. Laws of 1963, Ch. 36; RCW 37.12.010. In 1968, consistent with the newly adopted federal policy of self-determination and pursuant to the Indian Civil Rights Act, the United States amended Public Law 280 to require option states to obtain tribal consent prior to assertion of jurisdiction. 25 U.S.C. § 1321(a); Goldberg, *Public Law 280: The Limits Of State Jurisdiction Over Reservation Indians*, 22 UCLA Law Review 535, 546, 549 (1974). This limitation was not retroactive, leaving intact jurisdiction assumed by the State prior to the Act’s passage. 25 U.S.C. § 1323(b)(“... such repeal shall not affect any cession of jurisdiction made ... prior to its repeal.”); *State v. Hoffman*, 116 Wash. 2d 51, 68-69, 804 P.2d 577 (1991).

At no point have any of the *amici* tribes consented to the exercise of Washington’s jurisdiction in their Indian country lands. *Arquette* at 183.

On the contrary, the Yakama Nation has rigorously fought against a non-consensual extension of state jurisdiction into its Indian country lands. See, e.g., *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463, 465-66, 99 S.Ct. 740 (1979).

Washington is obligated to obtain consent for any Indian country established after 1968. 25 U.S.C. § 1326.² The 1968 amendment to Public Law 280 provides:

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses... shall be applicable in *Indian country* only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose.

25 U.S.C. § 1326 (italics added). The plain language of the 1968 amendment requires tribal consent to jurisdiction assumed after 1968. *State v. Hoffman*, 116 Wn.2d 51, 68-69, 804 P.2d 577 (1991). Liberally construing this language with all ambiguities in the tribes' favor, the amendment prevents extension of state criminal jurisdiction into Indian country established after 1968. *State v. Eriksen*, --- Wn.2d. ---, 241 P.3d 399 (2010)(stating Indian law canon of construction). The lands in question in this case were set aside for the four *amici* tribes by Congress in

² Because RCW 37.12.010 was adopted prior to the 1968 amendments Washington was not required to obtain tribal consent when it asserted jurisdiction over Indian country in 1963. Goldberg at 549.

1988. At no time did any of the citizens of the four *amici* tribes for whom the land was set aside vote to permit the extension of state jurisdiction.

B. *State v. Cooper* is in accord

This court in *State v. Cooper*, 130 Wn.2d 770, 928 P.2d 406 (1996), recognized that the 1968 amendment requires tribal consent for Indian country established after its adoption. Among the arguments Mr. Cooper asserted was that the land in question was not subject to Washington authority because the Nooksack Tribe had not agreed to the assertion of state jurisdiction. The court in *Cooper* recognized that the state does not have jurisdiction over the Nooksack Reservation because its creation in 1973 postdated the 1968 amendments to Public Law 280. *Cooper* at 776, 781 n.6. The land where the incident occurred, however, was not a part of the Nooksack Reservation, but was allotted to an individual Indian in 1897. *State v. Cooper*, 81 Wash. App. 36, n.6, 912 P.2d 1075 (Div. 1 1996). The court noted that the State necessarily had jurisdiction over the Indian allotment in question because it existed in 1963 when Washington passed RCW 37.12.010. *Cooper*, 130 Wn.2d at 776. This was prior to the creation of the Nooksack Reservation and prior to the 1968 amendments to Public Law 280. *Id.*

C. *State v. Squally* is also in accord

Recognition of the necessity for tribal consent regarding after acquired Indian country land is also reflected in this court's analysis in *State v. Squally*, 132 Wash. 2d 333, 937 P.2d 1069 (1997). *Squally* involved lands of the Nisqually Indian Reservation. In 1957, shortly after the State adopted the 1957 Public Law 280 statute, the Tribe requested that the State assert criminal jurisdiction over "the peoples of the Nisqually Indian Community, and all persons being and residing upon the Nisqually Indian Reservation... particularly described as follows: (legal description)." *Squally* at 339. Based on this request, the governor issued a proclamation stating that, "[t]he criminal... jurisdiction of the State of Washington shall apply to the Nisqually Indian people, their reservation, territory, lands and country, and all persons being and residing therein." *Id.*

After the 1968 amendments to Public Law 280, between 1979 and 1982, the tribe acquired additional lands and expanded its reservation by 36 acres. *Id.* at 340. Mr. Squally was accused of crimes committed on this after acquired property. He argued two things: that the State did not have criminal jurisdiction because the Nisqually Tribe's consent was limited to the original reservation boundaries given the legal description in the

consent resolution, and that the tribe did not grant permission for exercise of jurisdiction after acquiring the new lands.

Recognizing that the application of the 1968 amendment required tribal consent for after acquired properties, this court held that the State retained jurisdiction. Relying on the Tribe's broad original request for State jurisdiction over the "[c]ommunity and all persons residing on the Nisqually Indian Reservation" and the governor's broad grant of authority in response to the Tribe's request, the court found that the Tribe had consented to state jurisdiction over the entire reservation, including after acquired properties. *Id.* at 343-345. Absent the broad tribal request and state proclamation, the State's jurisdiction would not have extended to the after acquired lands.

D. The Maryhill Site, being acquired in 1988, is after acquired property

The land in question in the present case is Indian country, and the state concedes this fact.³ It was established by Public Law 100-581, November 1, 1988, 102 Stat. 2938, which in pertinent part reads as follows:

SEC. 401. (a) All Federal lands within the area described on maps numbered HR2677 sheets 1 through 12, dated September 21, 1988, and on file in the offices of the Secretary of the Interior, the Secretary

³ For reasons explained in section 2 below, it is actually Indian reservation land.

of the Army and the Columbia River Gorge Commission shall, on and after date of the enactment of this Act, be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Indian Nation.

The Maryhill Treaty Fishing Access Site is federal land owned by the United States Government and set aside for the use of *amici* tribes to exercise their treaty reserved fishing rights. It is not state land. It is not private land owned in fee simple absolute. It is not an individual Indian allotment. The federal government holds title, the land is managed by the U.S. Bureau of Indian Affairs, 25 C.F.R § 274, and the tribes have a statutory right to use the land for treaty fishing purposes. In short, it is Indian country established by the federal government in 1988 and specifically reserved for use by the *amici* tribes.

As required by the 1968 amendments to Public Law 280, and because Washington is a Public Law 280 option state, Washington must first obtain the consent of the *amici* tribes by majority vote of their citizens before the state can assert jurisdiction over this site. 25 U.S.C. § 1321; 25 U.S.C. § 1326. At no point have any of the *amici* tribes consented to the State of Washington's assertion of criminal jurisdiction over the Maryhill

Site, let alone conducted a vote of their membership as required by federal law.

II. NO CONFLICT EXISTS AMONG THE VARIOUS CASES

There is no conflict between the decision in the case below and *State v. Cooper*, *State v. Boyd*, *State v. Sohappy*, or *United States v. Sohappy*. Rather, the interplay of these cases provides an excellent roadmap to help explain what constitutes Indian country within the context of Indian criminal law and how Indian criminal jurisdiction works in Washington State.

A. Indian country encompasses “Indian reservations”, “dependent Indian communities”, and “Indian allotments”

The United States has defined the term “Indian country” for purposes of federal Indian criminal jurisdiction at 18 U.S.C. § 1151. It is a federal statutory definition, but it is also helpful in understanding what types of Indian land are subject to Washington state criminal jurisdiction under RCW 37.12.010.

The federal statutory definition codified well-settled federal common law on the subject and served as a vehicle to resolve various uncertainties that existed within the federal common law at the time. Cohen’s Handbook of Federal Indian Law § 3.04[2][c][ii] at 190 (2005).

That definition includes three things: Indian reservations, dependent Indian communities, and Indian allotments. 18 U.S.C. § 1151. Each of these terms are themselves well settled terms of art in Indian law and while they are sometimes loosely used interchangeably by courts with the term “Indian country”, they refer to very specific types of land. They are not identical, despite what the defense attempted to argue in *Cooper*. For our purposes we can focus on the terms of art “Indian reservation” and “Indian allotment”.

B. *State v. Sohapp* and *U.S. v. Sohapp* apply the original understanding of the term “Indian reservation”

Pursuant to 18 U.S.C. § 1151(a) Indian country includes “all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent....” The term “Indian reservation” is not defined in the statute, but is an established term of art as it was a term originally used in the Indian Major Crimes Act, 18 U.S.C. § 1153, prior to its amendment in 1948 to use the then statutorily defined term “Indian country”. At one point, the term “Indian reservation” referred to land tribes reserved for themselves when they ceded other lands to the federal government by treaty and over which they never extinguished title. Cohen at 189; *Donnelly v. United States*, 228 U.S. 243, 269, 33 S.Ct. 449 (1913). In the mid-1800s it began to be used

in a manner that included lands held in the public domain that is reserved for Indian use and benefit. *Id.* This is the type of land at the Maryhill Site – land in the public domain that was set aside for the *amici* tribes in fulfillment of their treaty reserved fishing rights. Presently, the term “Indian reservation” generally refers to federally protected Indian tribal lands regardless of origin. Cohen at 189.

The United States Supreme Court has held that land declared by Congress to be held in trust by the federal government for the benefit of Indians is a reservation for purposes of criminal jurisdiction. *United States v. John*, 437 U.S. 634, 649, 98 S.Ct. 2541 (1978). Similarly, the United States Supreme Court has held that land “validly set apart for the use of Indian as such, under the superintendence of the Government” is reservation land. *United States v. Pelican*, 232 U.S. 442, 449, 34 S.Ct. 396 (1914).⁴ For this reason, and relying on these cases, the Ninth Circuit in *United States v. Sohapp*y correctly held that the land set aside by the federal government for use by certain tribes to exercise treaty fishing rights at Cooks Landing and Celilo were “Indian reservations” for the purposes of federal criminal jurisdiction. *United States v. Sohapp*y, 770

⁴ The *Pelican* court uses the term “Indian country” when describing both lands set aside for use by Indians (reservation lands) and lands allotted to individual Indians (allotted lands).

F.2d 816, 822-823 (1985), *cert. denied*, 477 U.S. 906, 106 S. Ct. 3278, 91 L.Ed. 2d 568 (1986).⁵ Given the Ninth Circuit opinion, the Washington Supreme Court likewise held in *State v. Sohappy* that Cooks Landing constituted “Indian reservation” land under RCW 37.12.010. *State v. Sohappy*, 110 Wn.2d 907, 910-911, 757 P.2d 509 (1988). While this court’s decision in *Sohappy* was limited to the specific facts of that case, the decision was nonetheless correct and consistent with how that term of art has been used in the federal Indian criminal law context.

C. *State v. Boyd* and RCW 37.12.010 illustrate pre-1948 notions of an “Indian reservation”

The common law definition of an “Indian reservation” was expanded by 18 U.S.C. 1151(a) by including “all land... notwithstanding the issuance of any patent”. These additional terms effectively include all federal land located within Indian reservations that are reserved, not for the benefit of Indians, but for an independent federal governmental purpose. In addition, and contrary to the pre-1948 developed common law,

⁵ It should be noted that failure to use the term “trust” in legislation setting aside land for the benefit of tribes does not effect this determination. In *United States v. Sohappy* the court noted that one tract in Celilo was purchased “*in trust for the use of [the amici tribes]*” while another tract was transferred to the Secretary of Interior “*for the use and benefit of [the amici tribes]*”. *Id.* In the present matter the Maryhill Site is to “*be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for [the amici tribes]*”. 102 Stat. 2938. As such, it is set aside for the use and benefit of the *amici* tribes in fulfillment of the federal government’s treaty obligations to provide the *amici* tribes with access to usual and accustomed fishing sites.

it includes all unrestricted fee simple lands lying within an Indian reservation. *Clairmont v. United States*, 225 U.S. 551, 558-559, 32 S.Ct. 787 (1912); *Dick v. United States*, 208 U.S. 340, 358-359, 28 S.Ct. 399 (1908); *Cohen* at 190. The added language, which expands and clarifies pre-existing federal common law, helps to highlight the manner in which Washington's assertion of criminal jurisdiction in Indian country differs from the federal statutory construct.

Pursuant to RCW 37.12.010, Washington retains criminal jurisdiction over lands within an Indian reservation that are not either "tribal lands or allotted lands" or land "held in trust by the United States or subject to a restriction against alienation imposed by the United States...." This statutory language is in keeping with the pre-1948 common law notion of the term "Indian reservation" as excluding federal lands not acquired for the benefit of Indians. It also resolves the unrestricted fee simple land question in favor of state jurisdiction as opposed to the federal statute's resolution in favor of tribal and federal jurisdiction.⁶ *State v.*

⁶ The unrestricted fee nature of the land is an important distinction. Some Indian country lands are held in fee, but not fee simple absolute. For example, there are two types of Indian allotments: trust allotments and restricted fee allotments. With restricted fee allotments, the individual Indian holds the land in fee but the government has restrained the ability to alienate the land without their consent; with trust allotments the government holds the fee title but the land is set aside specifically for the benefit of the Indian allottee. See *United States v. Ramsey*, 271 U.S. 467, 470, 46 S.Ct. 559 (1926).

Boyd is an excellent example of these distinctions. *State v. Boyd*, 109 Wash. App. 244, 34 P.3d 912 (2001).

In *Boyd* the defendant's actions occurred at the Rogers Bar Campground, which is federal land condemned as part of the Grand Coulee Dam project and within the boundaries of the Colville Indian Reservation. *Id.* at 247. Importantly, this condemned land was not set aside for the benefit or use of the Colville tribe or its members; nor was it tribal, trust, or allotted lands. Its condemnation purpose was specific to the Grand Coulee Dam project. *Id.* Since, the campground was not held in trust by the United States or subject to a restriction against alienation imposed by the United States for the benefit of the Colville tribe, the campground was subject to state criminal jurisdiction.⁷

In contrast, the Maryhill Site is federal land specifically set aside by an act of Congress for the use of the members of the *amici* tribes. Alienation of this property would require a similar act of Congress. Unlike the Rogers Bar Campground, the Maryhill Treaty Fishing Access Site is not open to public use. The site is managed by the Bureau of Indian

⁷ The *Boyd* court also states that land held by the United States in fee simple is excluded from tribal jurisdiction. *Id.* at 252. It is important to understand this statement in the context of the previous footnote – it refers to unrestricted fee simple land that has not been set aside for the benefit of a tribe or individual Indian. Trust land *is* land set aside for the benefit of a tribe or individual Indian with the fee in the United States. *United States v. West*, 232 F.2d 694, 697 (1956).

Affairs “for the exclusive use of members of the [*amici* tribes].” 25 C.F.R. § 274.2(b). Consistent with the legislative intent of the Treaty Fishing Access Sites, “[t]he general public or people fishing who do not belong to the tribes listed above cannot use [the Maryhill Site].” 25 C.F.R. § 247.3(b). For these reasons *Boyd* is not in conflict with the appellate court’s decision in this case, *State v. Sohappy* or the Ninth Circuit’s decision in *United States v. Sohappy*.

D. *State v. Cooper* highlights the difference between an “Indian allotment” and an “Indian reservation”

The federal statutory definition of “Indian country” also includes “Indian allotments”. 18 U.S.C. § 1151(c). As with the term “Indian reservation”, “Indian allotment” is a well defined term of art in federal Indian law. At common law it was deemed part of Indian country. *United States v. Sutton*, 215 U.S. 291, 30 S.Ct. 116 (1909); *Clairmont v. United States*, 225 U.S. 551, 558 (1912). Federal common law defines an Indian allotment as land owned by individual members of a tribe that is held in trust by the federal government or otherwise has a restriction on alienation. *United States v. Ramsey*, 271 U.S. 467, 446 S.Ct. 559 (1926); *United States v. Pelican*, 232 U.S. 442, 34 S.Ct. 396 (1914); *United States v. Jackson*, 280 U.S. 183, 50 S.Ct. 143 (1930). The federal statute includes Indian allotments within the definition of Indian country separate and

apart from Indian reservations. They are not identical. Just because a piece of land is an Indian allotment does not mean it is an Indian reservation. Likewise land within an Indian reservation may not be an Indian allotment. The court in *Cooper* was correct in so holding. *Cooper*, 130 Wn.2d at 778.

The impact of 18 U.S.C. § 1151(c), defining Indian allotment for purposes of federal criminal jurisdiction, is precisely in circumstances where an Indian allotment is not part of Indian reservation lands. There are many circumstances in which this can occur. Public domain allotments and Alaska Native allotments are among the many examples. 25 U.S.C. § 334; 25 U.S.C. § 336.⁸

State v. Cooper is also an excellent example of the difference between lands that are Indian allotments and lands that are Indian reservations. *Cooper* involved land that was allotted to a member of the Nooksack tribe. However, the land in question was placed into trust for the

⁸ With one exception, there are no reservations in Alaska. *Native Village of Venetie I.R.A. Council v. State of Alaska*, 522 U.S. 520, 118 S.Ct. 948 (1998). However, there can certainly be Indian allotments. Act of May 17, 1966, 34 Stat. 197. Disestablished reservation lands are another circumstance in which this arises. A reservation may be disestablished at a certain point in time, but this disestablishment does not eliminate the trust status of individual allotments previously within the Indian reservation. *DeCoteau v. District County Court*, 420 U.S. 425, 427 n. 2, 446 (1975); *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 615 n. 48, 97 S.Ct. 1361 (1977). Prior to 1976 the federal statutes included an Indian homesteading law that could create such allotments outside of an Indian reservation. 23 Stat. 76. Fee lands purchased for individual Indians and converted to trust are also of this type, and was at issue in *City of Tacoma v. Andrus*, 457 F. Supp. 342 (DDC 1978).

benefit of an individual Indian in 1897. *Cooper* at 81 Wn. App. 36, 41 n. 6. This was the case despite the fact that the Nooksack tribe itself was not federally recognized, or its reservation established, until 1973. *Id.* at 39. Since the Nooksack reservation did not exist until 1973, it did not include the 1897 allotted land. Consequently, the land at question in *Cooper* would not have been considered “Indian reservation” land at common law. Likewise, this court’s decision in *Cooper* was correct in holding that an Indian allotment is not necessarily an Indian reservation and was factually correct in holding that the land in question did not constitute land within the Nooksack Tribe’s Indian reservation lands. *Cooper*, 130 Wn. 2d at 772 n. 1, 776. This is true under both RCW 37.12.010 and 18 U.S.C. § 1151.

E. These cases fit within a well established framework in Indian law

The decision below is consistent with well established terms of art in Indian law, and contrary to the State’s claims, none of the decisions discussed above conflict with each other. Rather, they fit neatly within well established Indian law concepts: *State v. Cooper* highlights how an Indian allotment is Indian country, but may not be an Indian reservation, *State v. Boyd* illustrates the pre-1948 common law definition of Indian reservation land as excluding unrestricted fee simple lands and lands set aside for a federal purpose other than that of Indians, and both *State v.*

Sohappy and *United States v. Sohappy* apply the well established definition of Indian reservation land as constituting federal lands set aside for the benefit of Indian tribes.

III. THERE IS NO JURISDICTIONAL GAP AS STATE PUBLIC LAW 280 JURISDICTION IS CONCURRENT WITH TRIBES

It is well settled that tribes have concurrent jurisdiction over Indian country in Public Law 280 states. *State v. Eriksen*, --- Wn. 2d ---, 241 P.3d 399 (Wash. 2010). Furthermore, the State has conceded that the land in question is Indian country. Consequently, the state's claim that a jurisdictional gap would arise if the appellate court decision is upheld is baseless.

Absent Public Law 280, or similar federal statutes, states have no jurisdiction over Indian country. *Cooper* 130 Wn. 2d at 772-773. Public Law 280 granted to states the federal government's jurisdiction over Indian country. 25 U.S.C. § 1321(a); 18 U.S.C. § 1162. However, this did not divest tribes of their inherent sovereign power to exercise jurisdiction in Indian country – the grant to states was not exclusive of tribes. See *Walker v. Rushing*, 898 F.2d 672, 675 (8th Cir. 1990); *Cabazon Band of Mission Indians v. Smith*, 388 F.3d 691 n. 3 (9th Cir. 2004)(citing *Cabazon Band of Indians v. Smith*, 34 F. Supp. 2d 1195, with approval). While the

term "Indian reservation" is often used interchangeably with "Indian country" in these cases, nothing in them limits the concurrent nature of the state grant of federal authority only to "Indian reservations" in so far as there are "Indian country" lands that are not "Indian reservation" lands.

With respect to the Maryhill Site, the tribes have criminal jurisdiction over the activity of Indians on the Indian reservation land. The *amici* tribes have specifically asserted such jurisdiction in their criminal codes and have granted law enforcement authority regarding such crimes to CRITFC law enforcement. In turn, CRITFC officers enforce the laws of the *amici* tribes at Maryhill and other similar sites along the Columbia River. CRITFC law enforcement has been operating along the Columbia River on behalf of the *amici* tribes for over 25 years. Presently, the *amici* tribes are stepping up their efforts to curb criminal activity at these sites. State law enforcement is unnecessary and unwanted unless specifically requested in specific circumstances.

CONCLUSION

Absent a majority vote of each of the *amici* tribe's citizens, RCW 37.12.010 does not apply to the Maryhill Site. It is Indian country land acquired after 1968. The decision below is also consistent with various federal and state cases the state incorrectly asserts are in conflict. When certain terms of art are properly understood, it is clear that no conflict exists. Finally, it is black letter federal Indian law that state jurisdiction under Public Law 280 is concurrent with tribal jurisdiction as tribes retain their inherent sovereign authority to pass their own laws and be governed by them.

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Respectfully submitted,

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