

TRAMPLING ON **THE TREATIES**



ROB MCKENNA AND THE POLITICS OF ANTI-INDIANISM

An Independent Research Report by Chuck Tanner and Leah Henry-Tanner

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Chapter 1

Introduction: Rob McKenna and the Politics of Anti-Indianism

In 1989 the State of Washington signed the historic Centennial Accord with the Indian Nations in whose homelands we live. The Accord promised to create a framework for respectful *government-to-government* relations between tribes and the state. The parties pledged to “respect the sovereignty of the other,” assuring that neither “waives any rights, including treaty rights, immunities, including sovereign immunities, or jurisdiction.”

The Centennial Accord placed the state’s responsibility for carrying out this vision squarely on the shoulders of the Governor. The Governor’s Chief of Staff would oversee implementation, while state agency directors would develop procedures to make the government-to-government relationship a reality. The Office of Indian Affairs would provide agencies with educational information.¹

The 2012 race for the Governor of Washington State could impact our state’s commitment to the Centennial Accord. One candidate, Attorney General Rob McKenna, has promoted policies and ideas at odds with respect for tribal sovereignty and treaty rights. McKenna has also made alliances with anti-Indian organizations. He did so in 2007 when his office gave strategic legal advice to Barbara Lindsay of One Nation United. McKenna also appointed Lindsay to his Attorney General’s Task Force on Eminent Domain. In 2008, McKenna attempted to nominate another anti-Indian leader, Elaine Willman, to the state’s Executive Ethics Board. Willman is the former chair of the anti-Indian group Citizens Equal Rights Alliance. Rob McKenna also filled the seats of his Attorney General’s Task Force on Eminent Domain with representatives of so-called property rights groups whose proposed policies threaten tribal treaty rights and natural resources.

This report documents Rob McKenna’s anti-Indian politics. This document is based on an analysis of anti-Indian movement literature, press accounts, King County Archives and more than 800 pages of records obtained from the Office of the Attorney General of Washington State.²

This report begins with two case studies demonstrating Rob McKenna’s use of positions of public trust to oppose the rights of tribes and promote anti-Indian ideas. These case studies examine:

- Rob McKenna’s attempt to impose county regulations on the Muckleshoot tribe during his tenure on the Metropolitan King County Council. During this time, he worked closely

with Kent Pullen, a fellow council member and onetime Advisory Board Member for the anti-Indian group Steelhead/Salmon Protective Association and Wildlife Network (S/SPAWN).³ In the 1980s, S/SPAWN led efforts to overturn the Boldt decision (*U.S. v. Washington*), a 1974 federal court decision recognizing tribal treaty fishing rights.

- Under Rob McKenna, the Office of the Attorney General has led the state's opposition to treaty fishing rights during *Phase II* of the Boldt decision. The current phase addresses whether habitat destroying culverts built and maintained by the state violate treaties between tribes and the federal government. McKenna's office argues that they do not, despite state reports indicating that the repair of culverts may take some 150 years to complete at the present pace.
- Briefs filed by Rob McKenna's office in *Phase II* of the Boldt decision promote ideas strikingly similar to those found in anti-Indian literature of the 1980s, including views expressed by S/SPAWN.⁴

This report also documents Rob McKenna's willingness to ally his public authority with extreme opponents of tribal rights, including groups and individuals who advocate abrogating treaties and terminating tribal sovereignty. This includes the following:

- While leading the state's case against *Boldt Phase II* treaty rights, Rob McKenna's office provided strategic legal advice to One Nation United National Director Barbara Lindsay. The AG office's advice appeared aimed at helping the anti-Indian group craft a more effective, anti-treaty legal strategy. Barbara Lindsay was the executive director of S/SPAWN as well as a series of organizations formed in the 1990s and 2000s by S/SPAWN's leaders. For nearly 30 years, Lindsay has worked to overturn the treaty rights and sovereignty of Indian Nations. One Nation United is the lineal descendant of S/SPAWN, as this report also documents.
- In 2007 Rob McKenna appointed One Nation United National Director Barbara Lindsay to a seat on his Attorney General's Task Force on Eminent Domain.
- In November 2007, when Barbara Lindsay was unable to attend Task Force meetings, McKenna's office temporarily replaced her with One Nation United (ONU) Secretary/Treasurer Kim Halvorson and Linda Matson. An email from Lindsay to McKenna's office described both as One Nation United board members.
- In 2008, Rob McKenna offered to nominate Elaine Willman to Washington State's Executive Ethics Board, according to an email from Willman to McKenna. Elaine Willman is a national leader in the organized anti-Indian movement. She has served as the chair of the anti-Indian group Citizens Equal Rights Alliance and continues to oppose tribal rights as an Administrator for the Village of Hobart, Wisconsin.

This report also documents Barbara Lindsay and Elaine Willman's extensive roles in the organized anti-Indian movement.

Finally, this report documents that Attorney General Rob McKenna filled the seats of his Task Force on Eminent Domain with representatives of so-called property rights groups whose narrowly-conceived policies threaten tribal treaty rights and natural resources. The report describes McKenna's long-standing relationships with some of these organizations. These appointments included representatives from the following organizations:

- Washington Policy Center – This conservative think tank has supported extending taxes and tax-like fees into Indian Country. The Policy Center also opposes the Washington State Department of Ecology's proposal to raise fish consumption rates (used in human health risk assessment) in order to protect high fish-consuming populations, including Indian Nations and Asian and Pacific Islander communities.
- Evergreen Freedom Foundation – This libertarian-leaning think tank has opposed policies intended to protect critical environmental areas, such as nearshore and stream ecosystems. Such policies, including the use of vegetated buffers, are important tools used to protect the habitat upon which tribal and non-tribal fisheries are based. The Freedom Foundation formed Stop Taking Our Property (STOP) – Thurston County to oppose such policies in that county. EFF staffer and STOP leader Glen Morgan also opposes tribal exemption from county taxes. In keeping with these views, the Freedom Foundation gave a platform to Skagit County anti-Indian leader John Fleming at its 2007 Leadership Conference. Fleming is best known for leading the passage of a tribal termination resolution at the 2000 Washington State Republican Party convention.
- Citizens Alliance for Property Rights – This Enumclaw, Washington-based group dismisses the importance of protecting critical environmental areas, absurdly referring to the use of vegetated buffers as “socialism.” The group's San Francisco Bay Area chapter refers to environmental and social justice as a “cancer.” SF Bay CAPR has called on the federal government to end the recognition of “special classes” of people for public policy purposes, specifically referring to American Indian and Alaska Native peoples. Anti-Indian organizations commonly espouse such views.
- Washington Farm Bureau – This statewide organization has opposed raising fish consumption levels to protect high fish-consuming indigenous communities. The Farm Bureau has also opposed tribal jurisdiction over non-Indians on roads passing through reservations.
- Institute for Justice – This national libertarian group filed an amicus brief in *Lucas v. South Carolina Coastal Council*. The brief argued that any government regulation restricting ordinary property use, and not justified by the law of nuisance, constitutes a 5th Amendment taking. Such a policy would render it impossible for governments to regulate activities that subject critical environmental areas to cumulative impacts.

If elected Governor, Rob McKenna could impact Washington State's relations with Indian Nations by proposing and vetoing laws and approving state budgets; issuing executive orders; and making appointments to public offices.⁵

McKenna's willingness to appoint extreme opponents of tribal rights to positions of public trust is particularly troubling. Washington State Governors affect a broad range of policies through their appointment powers. Governors appoint cabinet members who shape policies on educational equality, social welfare and the preservation of natural resources. The Governor appoints the leadership of the Office of Indian Affairs as well as members to more than 200 boards and commissions. These bodies influence executive policies on civil and human rights, educational and health disparities and natural resource protection. The latter include at least 13 entities, ranging from the Fish and Wildlife Commission and Growth Management Hearings Board to the Puget Sound Partnership.⁶ The Governor's office also makes judicial appointments to fill vacancies.⁷

Rob McKenna's anti-Indian policies and ideas, and his willingness to ally his public office with opponents of tribal rights, should raise a large red flag for all people in Washington State who support respectful relations with Indian Nations. If Rob McKenna is elected Governor, people of good will who support the rights of Indian Nations should take heed and be prepared to act together in support of the rights of our tribal neighbors.

Chapter 2

Echoes of S/SPAWN: Rob McKenna Versus Tribal Treaty Rights and Sovereignty

Throughout his political career, Attorney General Rob McKenna has been willing to promote policies and ideas at odds with respect for the treaty rights and sovereignty of Indian Nations. This chapter recounts two case studies demonstrating McKenna's use of positions of public authority to oppose tribal rights. One of the cases also demonstrates McKenna's willingness to have his office aid a radical anti-Indian organization in developing a more effective anti-treaty legal strategy.

The picture of Rob McKenna that emerges in this report is not one of an active and fanatically driven anti-Indian activist wholly dedicated to ending tribal self-determination. The report clearly illustrates, however, that when the Republican leader perceives a state interest at issue, and ambiguities exist in the law, Rob McKenna will actively oppose the treaty rights and sovereignty of Indian tribes to accomplish his goals. McKenna will also ally his public authority with radical opponents of Indian Nations to do so.

The first case study documents Rob McKenna's attempt to impose county regulations on the Muckleshoot Tribe during his tenure as a Metropolitan King County Council member. This is a violation of tribal sovereignty. In doing so, McKenna joined forces with Kent Pullen, a council member who had served on the advisory board of Barbara Lindsay's Steelhead/Salmon Protective Association and Wildlife Network, or S/PAWN. S/SPAWN was a leading anti-Indian organization in the 1980s. McKenna would appoint Lindsay to his Attorney General's Task Force on Eminent Domain in 2007 [See Chapter 3].

The second case study describes McKenna's leadership opposing tribal treaty rights as Washington State's Attorney General. With McKenna at the helm, the AG's office has led the opposition to treaty fishing rights during *Phase II* of *U.S. v. Washington*. In *Phase I* of this historic decision, Federal District Court Judge George Boldt upheld the treaty-reserved fishing rights of tribes as well as their right to participate in fisheries co-management. *Phase II* addresses whether federal courts will recognize that state government destruction of tribal fisheries constitutes a treaty violation. McKenna's office claims that state constructed and maintained road culverts that damage salmon stocks do not violate tribal treaty rights. Legal briefs filed by McKenna's office in this case promote ideas strikingly similar to those of S/SPAWN.

The second case study also shows that Rob McKenna’s office provided strategic legal advice to One Nation United leader Barbara Lindsay. As emails from between Lindsay and McKenna’s office indicate, McKenna received copies of the advice sent to the One Nation United leader – advice apparently intended to aid the anti-Indian group in crafting a more effective anti-treaty legal strategy. One Nation United is the lineal descendant of S/SPAWN, as this report also documents [See Chapter 3].

Anti-Indianism and the Anti-Indian Movement

Before turning to these case studies, it is important to understand what this report means by the term “anti-Indian.” Pejoratives are too frequently used without explanation in politics. This is not the intent of this report. In addition to defining this term, this section briefly describes the anti-Indian movement and introduces Barbara Lindsay, Steelhead/Salmon Preservation Action for Washington Now (S/SPAWN), and its political progeny. Lindsay and S/SPAWN play important roles throughout the story of Rob McKenna’s anti-Indian politics.

Crow Creek Sioux scholar Elizabeth Cook-Lynn describes cultural anti-Indianism in the United States as “that which treats Indians and their tribes as though they don’t exist, the sentiment that suggests that Indian nationhood (i.e., tribalism) should be disavowed and devalued.”⁸ Cook-Lynn captures the political core of the modern anti-Indian movement – groups and individuals who ultimately deny the independent nationhood of indigenous peoples and seek to terminate tribal governments and break federal treaties signed with tribes.

The modern anti-Indian movement has focused on overturning *on reservation* tribal jurisdiction and *off-reservation* treaty-reserved resource rights. These groups’ writings often betray an ultimate goal of ending tribal self-governance and continuing nationhood. Since its rise in the 1960s, the modern anti-Indian movement has organized at the local, regional and national levels to overturn tribal rights. Movement activists have run for office, organized inside political parties, circulated petitions, lobbied, held public meetings, produced literature and other media, and engaged in intimidation and violence against Native people and their allies.

Leaders in the modern anti-Indian movement often employ a rhetoric of “equal rights,” characterizing tribal rights – recognized in U.S. and international law – as “special rights” and a “government sanctioned ‘Super-citizenry’.”⁹ As becomes clear when reading anti-Indian literature, this language is used to justify the unilateral imposition of all federal, state and local laws and regulations on Indian tribes – effectively abrogating treaties and terminating tribal self-governance. In this vein, movement activists accuse tribes of “*arrogantly holding themselves above the Law of the Land.*”¹⁰ “Federal Indian policy” declares Barbara Lindsay’s One Nation United, is “undermining democracy and equality under the law guaranteed to all Americans;” it

is unfair and does not work, ONU argues, because “*people share the same geographical space, but not the same set of laws*” [Italics added].¹¹

Anti-Indian claims to the contrary, the independent political status of Indian Nations is rooted in eons of tribal self-governance. It has also been recognized over-and-over again by the U.S. Supreme Court in the last 180 years.¹² While the language of “equal rights” appeals to broad and honorable themes in U.S. history, its use in this context recalls the drive by white Americans to control Indian lands and natural resources, displace tribal authority and forcibly assimilate Indian peoples into American society. The anti-Indian movement’s proposed extension of all U.S. laws into Indian Country is the modern descendant of the General Allotment Act of 1887, boarding schools, coerced religious conversion, and the Termination laws of the 1950s and 1960s.

In Washington State, the most prominent anti-Indian organizations have included Steelhead/Salmon Preservation Action for Washington Now (S/SPAWN) and a series of groups formed by its leaders from the late 1980s to the 2000s.¹³ The terminal end of S/SPAWN is Barbara Lindsay’s One Nation United.

S/SPAWN’s origins lie in the backlash against the 1974 Boldt decision (*U.S. v Washington*). In *Phase I* of the case, Judge George Boldt ruled that treaties signed in the 1850s between the United States and tribes in the Pacific Northwest reserved for tribes one-half of the fish passing through their “usual and accustomed” fishing sites. The ruling also recognized the right of tribes to co-manage fisheries with state government. A backlash immediately ensued as state political leaders, sports and commercial fishers and anti-Indian activists mobilized against the decision.¹⁴

S/SPAWN emerged during a second wave of activity in the 1980s. In 1983, under the leadership of Executive Director Barbara Lindsay, the group campaigned for Initiative 84, a proposal to “constitutionally overturn the Boldt Decision.”¹⁵ In 1984 the group promoted and passed Initiative 456 which declared that “[A]ll resources in the state’s domain shall be managed by the state alone” and that “any special off-reservation legal rights or privileges of Indians established through treaties that are denied to other citizens were terminated by that 1924 enactment [Indian Citizenship Act].”¹⁶ That is, treaties would be abrogated and tribes excluded from fisheries co-management. Elsewhere, S/SPAWN went even further, rejecting tribal sovereignty and tribal nationhood itself [See Chapter 3].

Beginning in 1989, S/SPAWN’s leaders initiated a series of organizational changes, adapting to the continuing recognition of tribal treaty rights in federal courts. In 1989 the group officially changed its name to United Property Owners of Washington, a response to efforts by tribes to seek federal recognition of treaty shellfishing rights. By 2002, UPOW began calling itself United Property Owners, an apparent attempt to cultivate a national brand. In 2005 United Property Owners of Washington, still the legal name of the group, merged with the Oklahoma-based

lobby One Nation to form One Nation United. Barbara Lindsay remained executive director of S/SPAWN's offspring and each remained committed to an assault on tribal rights. [These changes and the continuity between S/SPAWN and One Nation United are described in greater detail in Chapter 3].

Anti-Indian groups, and the public officials who support all or part of their agenda, operate in an environment shaped by institutional practices, policy dynamics and emerging developments in Federal Indian Law. Because judges and politicians do not always respect tribal sovereignty, this context includes the detritus of past anti-tribal laws and policies – levers available for political leaders intent on overturning inherent tribal sovereignty. Political leaders can exploit this context in an attempt to further extend non-Indian control over tribal lands, resources and people. Such politicians can draw on ideas espoused by anti-Indian groups and recruit from these networks to advance their various goals.

Rob McKenna has done all of these.

To be fair, McKenna's positions and actions are not always and persistently anti-Indian. Where political realities and clear law inhibit attacks on tribes, McKenna may not push the envelope. For instance, McKenna has opposed pressing for revenue sharing in gaming compacts between tribes and the state, a policy seen by some conservative groups as a means of extending a tax-like fee into Indian Country.¹⁷ However, as the following case studies indicate, when anti-tribal legal tools exist, and Rob McKenna views a state interest at issue, he will promote anti-Indian policies and ideas and ally his public authority with extreme opponents of tribal rights.

Rob McKenna, Kent Pullen and Citizens for Safety and Environment

Rob McKenna's anti-Indian politics extend back in time to his service on the Metropolitan King County Council. McKenna was elected to the Council in 1995 and re-elected for two subsequent terms. When the Muckleshoot Tribe proposed the construction of an amphitheater near Auburn, Washington in 1996, McKenna took action. Alongside Kent Pullen, a council member with close ties to anti-Indian groups, McKenna helped lead an attempt to violate tribal sovereignty by seeking to impose King County land use regulations on the Muckleshoot.

Following the Muckleshoot proposal, some county residents opposed to the project formed Citizens for Safety and Environment (CSE). CSE stressed concerns about possible adverse environmental and community impacts from the project and the need for more extensive environmental studies. However, the group quickly jumped beyond seeking respectful government-to-government negotiations to address these concerns into the realm of anti-

Indianism. They did so when they rejected tribal sovereignty and pressed for the imposition of state and county land use regulations on Muckleshoot lands.

Citizens for Safety and Environment's rejection of tribal sovereignty is displayed in the group's literature, correspondence with public officials and actions. Auburn CSE leader Dennis Swanson parroted anti-Indian rhetoric in a 1997 letter to King County Council members, writing that "No one should have *super citizen* status. 'Sovereignty' does not give you the right to 'straight arm' your neighbors...*equal rights under the law, not special preferences is the law of the land*" [Italics added].¹⁸ The group's newsletter referred to tribal sovereign immunity as "absurd."¹⁹ CSE mobilized a petition drive and filed lawsuits in an effort to stop the amphitheater. A 1998 CSE lawsuit sought to require the county to impose state laws on the tribe and collect real estate taxes on the amphitheater parcel.²⁰ By rejecting the tribe's jurisdiction over its own lands, these actions are reasonably described as anti-Indian.

Ironically, at least one active CSE member, Lyle Zeller of Auburn, voiced support for the Cedar County secession movement, a mid-1990s effort to form a new county in eastern King County. The Cedar County movement argued that growth management regulations, including the very regulations CSE sought to impose on the Muckleshoot, unduly burdened rural landowners.²¹

The political climate created by Citizens for Safety and Environment set the stage for Rob McKenna's attempted violation of tribal sovereignty. In late 1997 McKenna and a minority of council members supported two ordinances to extend King County regulations into Muckleshoot lands. The ring-leader of these efforts was Ninth District council member Kent Pullen. Documents obtained from the King County archives demonstrate that Pullen can fairly be described as an active participant with Citizens for Safety and Environment in the anti-sovereignty campaign.²² Pullen's office received repeated calls from the group and was sent a CSE membership list by Dennis Swanson. A legislative aid for Pullen attended at least one meeting with CSE leaders while Pullen appears to have distributed the group's contact information.²³ CSE leader Dennis Swanson wrote an April 1999 letter to Pullen stating, "Your efforts in helping Citizens for Safety and Environment (CSE) opposing the White River Amphitheater have gained you a very loyal group of supporters including myself."²⁴

CSE and the Muckleshoot amphitheater were not Ken Pullen's first foray into anti-Indian alliances. In 1989 Pullen was listed in S/SPAWN literature as an Advisory Board member.²⁵ In 1990, Pullen designated United Property Owners of Washington Executive Director Barbara Lindsay to represent him at a meeting of the Wisconsin Counties Association. In a letter to the Association, Pullen expressed "a strong interest in issues surrounding the jurisdictional rights of Indians." He continued, "I would appreciate the full inclusion of Mrs. Barbara Lindsay to meetings open to county representatives and officials."²⁶ Like Pullen, McKenna would open a

door for Lindsay to enter the realm of public officialdom when he appointed her to his Task Force on Eminent Domain in 2007 [See Chapter 3].

In the mean time, Rob McKenna supported two separate attempts to impose King County regulations on the Muckleshoot. As is often the case in anti-Indian politics, this effort exploited legal decisions that undermined tribal sovereignty. A September 1997 letter from Kent Pullen to King County prosecutor Norm Maleng showed that the council member's effort had piggy-backed on two anti-tribal court cases: (1) *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, which had opened parts of the Yakima reservation with substantial non-Indian populations to county regulation; and (2) *County of Yakima v. Confederated Tribes and Bands of the Yakima Nation*, which had allowed some lands in Indian Country to be taxed by the county.²⁷ Both decisions reflect the settler colonial practice of intermingling non-Indian occupation of tribal lands with the extension of jurisdiction.

Pullen and McKenna first moved against tribal sovereignty when five Metropolitan King County Council members proposed an ordinance to impose interim King County zoning designations on the Muckleshoot reservation. The ordinance would have blocked amphitheater construction if it was found out of compliance with county regulations. Pullen, McKenna and three other council members drafted a letter to County Executive Ron Sims threatening Council action on the ordinance if he failed to “take swift action to preserve the status quo” – that is, maintain county land use regulations. The proposed ordinance lapsed in October 1997 without action.²⁸

In November 1997 Pullen and McKenna mounted another run at tribal sovereignty. The two proposed that King County “ordinances, regulations and codes” be “effectively enforced throughout unincorporated King County, including, but not limited to, fee-patented lands on Indian reservations.” No further development or construction would be “permitted except in conformance with the regulatory provisions of the King County Code.”²⁹

Recognizing what was at stake, Council member Larry Gossett responded that, “Federal, state and local governments, for 200 years, have broken or violated just about every treaty with Native American tribes. The unlawful taking of Indian lands is a policy of the past. Let's keep it that way.”³⁰

The ordinance came before the Metropolitan King County Council on December 15, 1997. Several Citizens for Safety and Environment leaders appeared before the council, including Co-Chair Janet Devlin, board member Brent Warwick, Dennis Swanson and Lyle Zeller. A statement apparently read before the Council by Zeller declared,

“ATTITUDE AND SHEER NEGLIGENCE IN UPHOLDING THE LAW AS IT IS CURRENTLY WRITTEN HAS GIVEN RENEWED VIGILANCE AND DETERMINATION IN OUR EFFORTS TO FORM CEDAR COUNTY!! THIS WILL BE DONE REGARDLESS OF

THE COST AND YOUR MANY OBJECTIONS!! WE ARE ALL THE MORE DETERMINED TO SECEDE FROM KING COUNTY!!...REMEMBER, COUNCIL MEMBERS, WHAT GOES AROUND COMES AROUND!! WE WILL NOT UNDER ANY CIRCUMSTANCES TOLERATE THE AMPHITEATER IN THIS LOCATION.” [Capitalization in original]³¹

The ordinance failed eight to five. Rob McKenna voted for this plan to violate Muckleshoot sovereignty by imposing King County regulations in Indian Country.

Echoes of S/SPAWN: Rob McKenna and the Culverts Case

Rob McKenna’s actions on the Metropolitan King County Council showed his willingness to impose county regulations on a federally recognized Indian Nation. Attorney General Rob McKenna’s leadership during *Phase II* of *U.S. v Washington* demonstrates his opposition to treaty rights and promotion of ideas strikingly similar to those of S/SPAWN. This case study also documents that McKenna’s office provided strategic legal advice to the leader of a national anti-Indian organization.

In *Phase I* of *U.S. v Washington* (1974), U.S. District Court Judge George Boldt upheld tribal fishing rights reserved in treaties signed between the United States and Indian Nations in the 1850s. The treaties included language stating that, “The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States.” Boldt ruled that the treaties reserved for tribes one-half the fish passing through their “usual and accustomed” fishing places and the right to participate in fisheries co-management with the state.

The roots of *Phase II* of *U.S. v Washington*, now known as the “culverts case,” lie in a relatively straightforward idea: that the “right of taking fish” referenced in the 1850s treaties reserved an actual “right of taking fish.” Actions limiting that right – for instance, Washington State’s construction and maintenance of habitat-blocking culverts that diminish salmon runs – violate the treaties. When the United States received some 63 million acres of Pacific Northwest land and resources in return for a reserved tribal “right of taking fish,” its governments and citizens gave up the right to destroy tribal fisheries.

The current case began in 2001 when 20 tribes sued the State of Washington for constructing and maintaining culverts that cut off upstream habitat to spawning salmon. The tribes’ based their suit, in part, on a 1997 Washington State Department of Transportation (WSDOT) report indicating that 268 of the agency’s culverts blocked some 249 miles of salmon stream habitat. WSDOT reported this habitat capable of producing 200,000 fish.³² The actual impact of state culverts is much greater, as later WSDOT reports would reveal. In addition, at its present pace of repair, Washington State will take some 150 years to fix its culverts across the state.³³

“A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations.” (U.S. Supreme Court. *Washington v. Washington State Fishing Passenger Vessel Association*, 443 U.S. 658, 1979).

Judge George Boldt had raised, but not resolved, the issue of habitat protection for treaty-reserved fisheries in his 1974 ruling. After tribes received a favorable district court ruling in 1980, a federal appeals court held that a decision on this issue required a specific set of facts and state actions before the court. The WSDOT report provided such facts. In 2007, the Western District federal court upheld the tribes’ position, ruling that,

“The right of taking fish, secured to the Tribes in the Stevens Treaties, imposes a duty upon the State to refrain from building or operating culverts under State-maintained roads that hinder fish passage and thereby diminish the number of fish that would otherwise be available for Tribal harvest.”³⁴

The case returned to the district court in 2010 for its remedy phase. A decision is still pending.

During the first phase of the Boldt decision, then-Washington State Attorney General Slade Gorton led the case against treaty rights, allying his office with anti-Indian activists and popularizing the image of Indians as “super-citizens” with “special rights.”³⁵

Rob McKenna has followed in Gorton’s footsteps.

McKenna assumed responsibility for the culverts case after his 2004 election as Attorney General. Briefs filed during the case show that McKenna has continued the misguided tradition of promoting anti-Indian ideas, including views strikingly similar to those expressed by S/SPAWN in the 1980s. Also like Gorton, McKenna’s office has allied with at least one anti-Indian group, offering strategic legal advice to Barbara Lindsay of One Nation United.

The Attorney General’s interactions with Barbara Lindsay are instructive. In September 2007 Lindsay sent an email to Danielle French in the Attorney General’s office. The message was cc’d to Rob McKenna. Lindsay wrote that she

“Just wanted to make sure the AG’s legal team is aware of this important ruling by the U.S.S.C. [U.S. Supreme Court] Saying ‘Doctrines of laches, acquiescence and impossibility’ now apply to tribal claims, as well as the ‘Doctrine of Justifiable Expectations’ so that local governments and property owners can expect our local land

use rules to apply, rather than tribal jurisdiction. We hope these recent precedents will be cited in WA State's appeal of the Culvert case. Can you please put me in touch with the right person in the AG's office."

Lindsay continued,

"We [One Nation United] are interested in filing to intervene on behalf of a concerned coalition of groups (if it is not too late) or, at least file some joint amicus briefs. The State and Tribes are now at the bargaining table, yet we don't have a seat and our private property rights are in jeopardy. Has appeal been filed?"³⁶ [See Appendix for a copy of this email]

Lindsay's email made the rounds at the Attorney General's office, with at least seven staffers receiving copies.³⁷

Lindsay's email included a copy of the U.S. Supreme Court's 2005 decision in *City of Sherrill v. Oneida Indian Nation of New York*. This case pertained to lands recognized as the Oneida reservation in the 1794 Treaty of Canandaiuga. The land was later obtained by New York State in clear violation of the 1790 Indian Trade and Intercourse Act, which forbade states from gaining tribal lands without federal authorization. *Sherrill* specifically addressed whether former reservation lands re-purchased by the Oneida Nation were subject to taxation by the City of Sherrill. Despite the lands being reserved by treaty, and clearly illegally obtained by New York, an 8-1 Court ruled that the Oneida lands were subject to city taxes. In short, the doctrines Lindsay cited were used by the Court to assail Oneida sovereignty. The Court ruled that the Oneida were subject to city taxation because the tribe's claim occurred long after New York's purchase, the area had been settled and governed by the state for many years, and the assertion of Oneida sovereignty could disrupt these patterns.³⁸

Indigenous Law Institute co-founder Steve Newcomb has aptly called the ruling as an "attack on the existence of the Oneida Indian Nation" because of the importance of land to the tribe (and all tribes). He also noted the double standard applied in the case, observing that a similar purchase by the federal government would immediately take the land off of city tax rolls. Not so, the Court ruled, for the Oneida Nation.³⁹

Lindsay's effort to apply this ruling to the culverts case was an attempt to nullify Boldt *Phase II* treaty rights. This is expected from an individual who has dedicated her life to overturning tribal rights.

The response of Rob McKenna's office was not expected. McKenna forwarded the email to Deputy Attorney General Rob Costello, requesting that he respond to Lindsay. An email to Lindsay from Costello, cc'd to Rob McKenna, offered strategic legal advice to the One Nation United leader. Costello informed Lindsay that the Attorney General's office was "indeed aware of this important decision and very conscious of its potential applicability to the Culvert case."

He told Lindsay that the decision was not used because it came down “long after the State’s answer was filed in the Culvert case,” but it was being “preserved for appeal.” Costello informed Lindsay that appeal was presently premature because a final judgment had not been handed down and that the deadline for interveners had passed.

Costello then offered Lindsay the following advice:

“Moreover, while we understand the concern on the part of property owners and others, intervention or argument implying impacts on private property may be premature at best, and ill-advised as (sic) worst. Judge Martinez’s order recites that it is narrowly tailored to apply only to state-owned culverts within the case and the case area. Efforts to intervene to protect private property interests (even if intervention were possible) may send an unintended message that the Judge’s order is viewed more expansively” [See Appendix for a copy of this email].⁴⁰

What is clear here is that the Attorney General’s office provided strategic legal advice to an extreme anti-Indian organization. The advice appears intended to aid One Nation United in crafting a more effective anti-treaty legal strategy and coordinating any potential actions with the Attorney General’s case. And, Rob McKenna was sent a copy of the message sent by Deputy Attorney General Costello to Barbara Lindsay.

While ONU announced plans in 2008 to lead a coalition against a pro-treaty ruling, by 2009 this had changed.⁴¹ Satisfied with Rob McKenna’s leadership, One Nation United’s Fall 2009 newsletter exhorted,

“If you live in Washington State, please let Attorney General Rob McKenna know that you strongly support the position he has taken on the ‘Culvert case’ (U.S. V WA). Thank him for his wisdom and courage in holding the line against any further financial concessions to tribes”⁴² [Emphasis in original].

Rob McKenna’s affinity for the anti-Indian movement did not stop with providing legal advice. A closer look at the Attorney General’s legal briefs in the culverts case is like a trip into the recent past, an echo of the very ideas that animated S/SPAWN and Barbara Lindsay’s attacks on tribal treaty rights nearly 30 years ago. Rob McKenna’s briefs mimic S/SPAWN literature of the 1980s in at least four distinct areas [See *Echoes from S/SPAWN* on Page 20-21]. While these briefs do not call for the wholesale abrogation of treaty rights and fisheries co-management, the parallels are undeniable.

Just like S/SPAWN, McKenna’s trial briefs promote the idea that upholding treaty rights in this case would threaten state fisheries and fiscal health as well as the safety and well-being of the state’s citizenry. The briefs argued that an injunction in support of tribes would “be self-defeating in the larger efforts to protect and restore salmon” and “undermines comprehensive plans already in place.” McKenna’s office also argued that a favorable ruling for tribes would

“lead to compromises of safety or mobility for millions of drivers” and “mean taking funding away from health care, children’s services, or higher education.”⁴³ In effect, McKenna’s briefs argue that treaty rights threaten citizens and salmon – a charge made by S/SPAWN almost 30 years ago. These assertions fail to address the potential economic and social benefits of salmon restoration to Indians and non-Indians alike; that Department of Transportation funds are separate from the state’s general fund and would not drain the latter; and that Washington State has a dismal record repairing salmon-blocking culverts [See Footnote 29].⁴⁴

A closer look at Rob McKenna’s legal briefs in the culverts case is like a trip into the recent past, an echo of the ideas that animated S/SPAWN and Barbara Lindsay’s attacks on tribal treaty rights nearly 30 years ago.

McKenna’s trial briefs also echo the states’ rights themes mobilized by S/SPAWN, asserting that “[D]eference to state officials with regard to how best comply with federal law is of substantial importance.” “Salmon recovery,” the AG’s briefs continue, is “a complex field best left to officials who have devoted their lives to deciding how best to make use of limited resources.”⁴⁵ Tribal leaders and fisheries scientists have also dedicated their lives to such ends. However, McKenna would not show tribal treaty rights or tribes’ substantial fisheries knowledge the deference he would afford the State of Washington. Neither would S/SPAWN.

And, just like S/SPAWN, McKenna’ legal briefs expound a version of Washington State history that blames tribes for the controversy that followed the 1974 Boldt decision. The following passage is found in Washington State’s 2006 Motion for Summary Judgment as well as its 2009 Trial Brief:

“The Boldt decision was very controversial, but most of the controversy had to do with the remedy, not the law. In devising an equitable remedy to implement the Tribes’ right to a fair share of harvestable fish, the Court set the tribal share at 50%, in part because of the Tribe’s historic dependence on fishing for food and commerce. That meant non-Indian fishers had to be severely curtailed, resulting in several years of turmoil.”⁴⁶

Echoes of S/SPAWN

	Rob McKenna's Trial Brief	S/SPAWN (1983-1984)
<p>State's rights versus treaty rights:</p> <p>Conservation and enhancement decisions should be made by the Washington State</p>	<p>"[D]eference to state officials with regard to how best comply with federal law is of substantial importance... [S]almon recovery is a complex field best left to the officials who have devoted their lives to deciding how best to make use of limited resource..."</p>	<p>"The People of the State of Washington declare that conservation, enhancement and proper utilization of the state's natural resources, including but not limited to lands, waters, timber, fish and game are responsibilities of the State of Washington and shall remain within the express domain of the State of Washington." (S/SPAWN, Initiative 456, 1984)</p> <p>"In conformance with your [President Reagan] goals under the 'New Federalism' for greater respect for state's rights and statement management authority over natural resources, the voters of Washington State passed Initiative 456...Initiative 456 explicitly requires the State to be the sole manager of the natural resources within its domain." (Letter from S/SPAWN to President Ronald Reagan, February 22, 1984)</p>
<p>Indians are threatening the state's citizens:</p> <p>Upholding treaty rights is a burden on the state treasury and threatens non-Indians</p>	<p>"[T]he Court should not ignore the potential large impact on the State treasury of the requested remedy... Increasing the funding for correction of fish passage barriers, at the expense of other areas of the transportation budget, will lead to compromises of safety or mobility for millions of drivers. Looking outside the transportation budget, the largest source of money in the operating budget would mean taking funding away from health care, children's services, or higher education."</p>	<p>"This is a 'People's Issue.' The Boldt decision affects MANY CITIZENS of our state, not just a few sportsmen and fishermen. The Evergreen State has <u>lost hundreds and hundreds of jobs of all kinds since 1974 as a direct result of the Boldt decision</u>, not to mention the indirect effects upon food and commodities prices (plus millions of dollars have been spent by the State in tax monies just to comply with Boldt's oppressive federal mandate)." (S/SPAWN News Release, Sept. 28, 1983)</p>

Echoes of S/SPAWN (cont.)

	Rob McKenna’s Trial Brief	S/SPAWN (1983-1984)
<p>Blaming Indians for Salmon Decline:</p> <p>Upholding treaty rights harms salmon planning and recovery</p>	<p>“Any significant funding increases for culvert remediation could be taken from other environmental projects and thereby be self-defeating in the larger efforts to protect and restore salmon... Without an injunction [to require culvert repair], a holistic state approach to salmon recovery would still be in place... The primacy of barrier culverts sought by the Tribes undermines comprehensive plans already in place.”</p>	<p>“An emergency now exists in the management of Steelhead and Salmon in Washington State – we’ve reached the ‘crisis’ state! The State Fisheries Department has progressively become unable to manage the resource. Thus, management fishery is in chaos. To quote Initiative Measure No. 84: ‘AN EMERGENCY EXISTS IN THE MANAGEMENT OF SALMON AND STEELHEAD RESOURCES SUCH THAT BOTH ARE IN GRAVE PERIL. A TIMELY RESOLUTION OF THE MANAGEMENT CRISIS IS ESSENTIAL TO PERPETUATING AND ENHANCING THESE RESOURCES’ (S/SPAWN News Release, Sept. 28, 1983)</p>
<p>Remaking History:</p> <p>Recognizing tribal rights, not years of state violation, caused the post-Boldt controversy.</p>	<p>“The Boldt decision was very controversial, but most of the controversy had to do with the remedy, not the law. In devising an equitable remedy to implement the Tribes’ right to a fair share of harvestable fish, the Court set the tribal share at 50%, in part because of the Tribe’s historic dependence on fishing for food and commerce. That meant non-Indian fishers had to be severely curtailed, resulting in several years of turmoil.”</p>	<p>“Relations between Indians and non-Indians have become severely strained in many areas of our nations as Indians have begun claiming rights to natural resources and jurisdiction over non-Indians. There have been threats of violence and acts of civil disobedience are on the increase. The federal government’s advocacy of the the (sic) Indians’ claims has strongly contributed to this growing tension.” (Letter from S/SPAWN to President Ronald Reagan, February 22, 1984)</p>

Like most distortions of history, McKenna and S/SPAWN's versions misrepresent reality more by what they leave out than what they include. The Boldt decision was indeed controversial. The claim that "most" of the controversy resulted from the "remedy" stretches historical truth to breaking point. The controversy that followed the Boldt decision can only be understood in the context of the decades-long suppression of tribal treaty rights by the State of Washington, including outlawing tribal fishing practices and arresting tribal fishers exercising treaty-reserved rights. This abject denial of treaty rights by state officials and citizens created the political, legal and cultural context in which recognizing treaty rights became controversial.

An historical analogy can be drawn between the struggle for treaty rights and the civil rights movement, an analogy made in the Ninth Circuit Appeals Court's assessment that, "Except for some desegregation cases...[following the Boldt decision] the district court has faced the most concerted official and private efforts to frustrate the decree of a federal court witnessed in this century."⁴⁷ Applying the logic of Rob McKenna's briefs, we might argue that court-ordered desegregation, and not a lengthy history of *de jure* white supremacy and Jim Crow segregation, created the "controversy" that followed the Supreme Court's 1954 decision in *Brown v Board of Education*. Such versions of history erase the base conditions that produced the "controversy," omit the racist behavior of whites, and blame the targets of systemic discrimination for the strife that follows the legal recognition of their rights. Both distortions justify attacks on the rights of people of color and both should be rejected by people concerned about human rights.

Should the federal District Court do the right thing by upholding tribal treaty rights in the culverts case, Rob McKenna's legal briefs provide a political framework for backlash against Indian Nations. Just like S/SPAWN before him, McKenna's briefs distort treaty history, declare that tribal goals would harm salmon and threaten the public good, and revive state's rights arguments about resource management.

Should the Federal District Court do the right thing by upholding tribal treaty rights in the culverts case, Rob McKenna's briefs provide a political framework for backlash against Indian Nations. McKenna's briefs distort treaty history, blame tribal rights for undermining salmon restoration and claim that treaty rights threaten the public good. McKenna's briefs also revive states' rights arguments that animated previous campaigns against tribes in Washington State. Should an anti-Indian bandwagon roll following a just ruling in the culverts case, Attorney General Rob McKenna must shoulder some of the blame for inviting bigots on board.

Chapter 3

Elevating Anti-Indianism: Rob McKenna and the Terminators

The previous chapter described Rob McKenna's opposition to treaty rights and tribal sovereignty; his willingness to ally his public office with an anti-Indian group; and his office's promotion of ideas strikingly similar to those of a leading anti-Indian organization of the 1980s.

This chapter describes another troubling aspect of the Attorney General's politics – his appointment and attempted nomination of anti-Indian leaders to positions of public trust. The chapter again centers around two case studies:

- Rob McKenna's appointment of One Nation United leader Barbara Lindsay to a position on the Attorney General's Task Force on Eminent Domain, and
- McKenna's apparent offer to nominate Elaine Willman to a seat on Washington State's Executive Ethics Board.

This chapter also documents these individuals extensive involvement in organizations dedicated to terminating tribal sovereignty and abrogating treaties between the United States and Indian Nations.

The Spawn of S/SPAWN: Barbara Lindsay and One Nation United

In 2007, Washington State Attorney General Rob McKenna created the Task Force on Eminent Domain in response to the U.S. Supreme Court's 2005 decision in *Kelo v City of New London, Connecticut*.⁴⁸ In this decision, a 5-4 Court upheld the authority of local governments to condemn land for economic development purposes. The U.S. Constitution's Fifth Amendment references this power, stating "nor shall private property be taken for *public use*, without *just compensation*."

People across the political spectrum opposed the ruling, pointing to the government's potential abuse of eminent domain powers.⁴⁹ If *Kelo* caused concern among genuine civil rights supporters, the post-*Kelo* response was prominently shaped by libertarian and property rights groups and frames.⁵⁰ The policies of such groups often clash with civil rights, economic and environmental justice, and the sovereignty and treaty rights of Indian tribes [See Chapter 4].

The broader political context of the post-*Kelo* reaction, and Rob McKenna's own political leanings, led the Attorney General to assemble a Task Force that favored so-called property rights groups over representatives of low income organizations (those most affected by eminent domain takings). A July 2008 letter from McKenna to the libertarian Institute for Justice's Washington State Executive Director William Maurer states, "With your help, I established the Eminent Domain Task Force in 2007."⁵¹

Other groups represented on the Task Force included the Evergreen Freedom Foundation, Washington Policy Center, Citizens Alliance for Property Rights and Washington Farm Bureau [See Chapter 4]. Nestled among the representatives of these groups was Barbara Lindsay, the National Director of the anti-Indian group One Nation United [See Appendix for a list of the groups on the Task Force on Eminent Domain].

In contrast to the prominent place of property rights groups on McKenna's Task Force, efforts to include low income representation were shunned by McKenna and Tim Ford, the former Business Industries Association of Washington attorney chosen to oversee the appointment process. This exclusion ultimately led one Task Force member to resign in protest, writing that "I have questioned the imbalance in the make-up of the group since our first meeting; nothing has been done to correct this."⁵² In the end, the bias in this process appears to have left policy options off the table, including possible uses of eminent domain to address urban homelessness and inadequate low income housing.

The bias in McKenna's appointment process set the stage for the AG's appointment of Barbara Lindsay to the Task Force. Lindsay initiated her appointment in a February 10, 2007 email to Rob McKenna. Sending her message under the "Business Name" of "One Nation United (formerly United Property Owners of Washington)," Lindsay struck a tone of familiarity:

"Dear Rob, Happy New Year! I hope all is well with you and your family? I am writing to ask you if I could please be considered for appointment to your Eminent Domain Task Force...ONU [One Nation United] is dedicated to defending private property rights and our free enterprise system...I have served as Director and Spokesperson for our nonprofit, nonpartisan 501c4 organization since 1989."⁵³

A July 6, 2007 email distributed by Tim Ford listed people who had "expressed an interest in serving on the Task Force," including Barbara Lindsay as "National Director – One Nation United." Ford made clear that "The list is tentative and subject to final approval by Rob McKenna."⁵⁴ A "July Update" from the Attorney General's office included Barbara Lindsay as a "Citizen Representative" from "United Property Owners of Washington."⁵⁵ A draft letter from McKenna's office addressed to Lindsay announced her appointment and praised, "Your background and keen interest in responsible government will provide a unique perspective and make significant contributions to the Task Force's important responsibility" [See Appendix for a copy of this document].⁵⁶ In January 2008, One Nation United announced that "ONU National

Director and Spokesperson, Barb Lindsay, was recently appointed by Washington Attorney General Rob McKenna to serve on his Eminent Domain Abuse Task Force.”⁵⁷

Rob McKenna’s appointment of Barbara Lindsay to his Task Force on Eminent Domain showed the Attorney General’s willingness to ally his public authority with a radical opponent of tribal rights. For nearly 30 years, Barbara Lindsay has been dedicated to abrogating treaties and overturning tribal sovereignty.

McKenna and Ford’s maintenance of anti-Indian representation on the Task Force continued when Barbara Lindsay was unable attend Task Force meetings in November 2007. The AG’s office temporarily replaced the anti-Indian leader with One Nation United Secretary-Treasurer Kim Halvorson and lobbyist Linda Matson [See Chapter 4 for more on Linda Matson]. An August 2007 email from Lindsay to the Attorney General’s office described the two as “Board Members from my organization” and stated that “ONU observers [of Task Force meetings] would be Linda Matson of Thurston County and/or Kim Halvorson of Snohomish County.”⁵⁸ Tim Ford asked Danielle French in the Attorney General’s office to “Please add these two to our list for notice to the task force members. They are the substitutes for Barbara.”⁵⁹

Who is Barbara Lindsay? And what is the nature of her organization, One Nation United? While Lindsay’s anti-Indian credentials were introduced in Chapter 2, they are examined at greater length here to illustrate just who Rob McKenna appointed to his Attorney General’s Task Force on Eminent Domain.

Recall that Lindsay’s February 2007 email to Rob McKenna described One Nation United as “dedicated to defending private property rights and our free enterprise system.” While this description contains a grain of truth, it is not the whole grain. In fact, Lindsay’s place at the helm of One Nation United is rooted in a nearly three decade campaign against tribal sovereignty, treaty rights, and the very idea of tribal nationhood.

The 1974 Boldt Decision (*U.S. v Washington*) set the stage for Lindsay’s rise to national prominence in the anti-Indian movement and the eventual formation of One Nation United. Boldt’s ruling began to address a long history of treaty violations by Washington State [See Chapter 2 for more on the Boldt decision]. State leaders had banned tribal fishing methods and state law enforcement officers arrested tribal fishers for exercising their treaty-reserved rights.

Decades of struggle by tribal members led to the Boldt decision. The tribal victory, which included recognition of fishing and co-management rights, was met with aggressive opposition by state political leaders and sports and commercial fishers. Anti-Indian groups formed the Interstate Congress for Equal Rights and Responsibilities (ICERR) in order to project a national image for their cause.⁶⁰ The Ninth Circuit Appeals Court concluded about this period that, “Except for some desegregation cases...the district court has faced the most concerted official and private efforts to frustrate the decree of a federal court witnessed in this century.”⁶¹

Barbara Lindsay emerged as a national anti-Indian leader during a second wave of activism in the 1980s. In 1983, Lindsay became Executive Director of Steelhead/Salmon Protection Action for Washington Now, or S/SPAWN. Under Lindsay’s leadership, the group campaigned for Initiative 84, described in S/SPAWN literature in no uncertain terms:

“We seek to constitutionally overturn the Boldt Decision by addressing the courts on State rights and equal rights for all...[W]e believe it’s time to put an end to the inequity of the Boldt decision.”⁶²

“We seek to constitutionally overturn the Boldt Decision by addressing the courts on State rights and equal rights for all...[W]e believe it’s time to put an end to the inequity of the Boldt decision.” S/SPAWN, under the leadership of Barbara Lindsay, describing its Initiative 84

At the time, local anti-Indian groups, sports clubs and commercial fishers comprised S/SPAWN’s base.⁶³ The group had also stepped a foot in the muck of organized white supremacy. Then-Washington State Senator Jack Metcalf was listed in S/SPAWN literature as the I-84 Campaign Coordinator and as an incorporator of S/SPAWN-PAC in 1986.⁶⁴ The Langley, Washington legislator was admired among white supremacists for promoting global banking conspiracies at racist meetings and in the pages of *Spotlight*, the leading national racist tabloid of the time. Metcalf also used his State Senate seat to call on Congress to “abrogate all existing treaties” with Indian tribes.⁶⁵

In 1984, the Lindsay-led S/SPAWN promoted and passed Initiative 456. Again waving the banner of states’ rights and “equality,” I-456 declared,

“The people of the state of Washington declare that conservation, enhancement, and proper utilization of the state’s natural resources, including...lands, waters, timber, fish and game are responsibilities of the state of Washington and shall remain within the

express domain of the state of Washington...[A]ll resources in the state's domain shall be managed by the state alone...The people further declare that any special off-reservation legal rights or privileges of Indians established through treaties that are denied to other citizens were terminated by that 1924 enactment [Indian Citizenship Act]" [Italics added].⁶⁶

That is, tribal treaty rights and fisheries co-management should be abolished.

In 1989, S/SPAWN's leaders apparently formed a federal non-profit named Steelhead/Salmon Protective Association and Wildlife Network.⁶⁷ Despite the name change, the new group promoted itself as the "Successful Sponsors of Initiative 456" and pledged to "breathe life back into 456" in 1990.⁶⁸ Documents filed with Washington State continued to use the previous name. Leaders of both S/SPAWNs included Executive Director Barbara Lindsay, Tom and Carol Lewis, Fairalee Marcusen, Jack Metcalf, and Doug Olson.⁶⁹

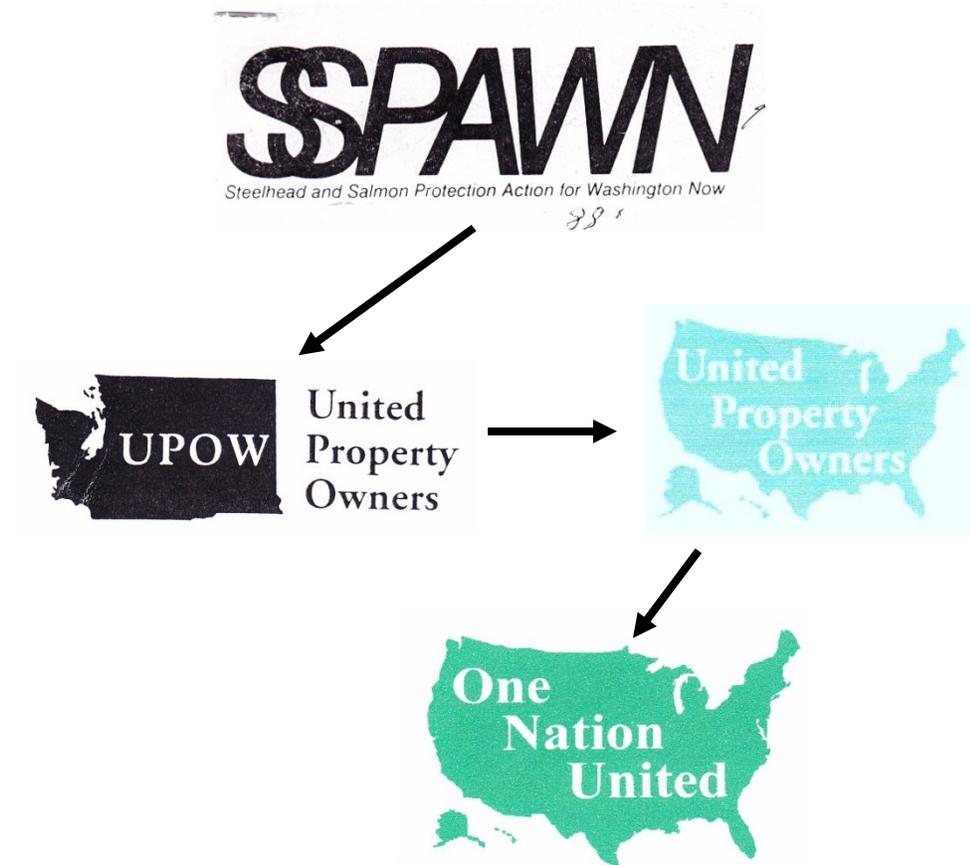
While S/SPAWN's most public campaigns assailed treaty rights and tribal co-management, the group's literature betrayed an attack on Indian nationhood itself. A 1984 S/SPAWN letter to President Ronald Reagan called for the creation of a Presidential Commission to "study the non-Indian perspective on American Indian policy."⁷⁰ The letter dismissively placed the word "nation" in quotations when referring to Indian tribes. It also opposed a sweeping range of policies recognizing tribal political authority, all of which are an outgrowth of tribal nationhood. This included opposing tribal water rights and natural resource claims; tribal exemption from state taxes; tribal regulation of *on-reservation* fishing and hunting; tribal sovereign immunity and, very broadly, tribes having "a greater voice in decisions concerning their lands."⁷¹

Beginning in 1989, S/SPAWN's leaders initiated a series of organizational changes, each apparently responding to the continued recognition of tribal treaty rights in federal courts. Across this period, the various spawn of S/SPAWN shared a common legal status and lead personnel; Barbara Lindsay remained at the helm; and each new entity remained dedicated to a wholesale attack on tribal rights. Barbara Lindsay acknowledged this organizational continuity in her February 2007 email to Rob McKenna, writing, "I have served as Director and Spokesperson for our nonprofit, nonpartisan 501c4 organization since 1989."⁷²

S/SPAWN first spawned in 1989 in response to a lawsuit by tribes seeking federal recognition of treaty-reserved shellfishing rights – a subproceeding of *U.S v Washington*. S/SPAWN wrote, "In an effort to implement a two-pronged attack, we are organizing the tideland property owners under an umbrella group called United Property Owners of Washington (UPOW) to support their rights and will file an intervention on their behalf" [emphasis in original].⁷³ The group's leaders filed documents with the Washington Secretary of State "Changing the name to United Property Owners of Washington." UPOW's 2005 I.R.S. Form 990 listed among the group's leadership former S/SPAWN leaders George Garland and Douglas Olsen. Alan Montgomery served as a registered agent and director by 2004. Barbara Lindsay served as Executive Director of both

groups.⁷⁴ UPOW entered as a full party to the case, only to see the court extend federal recognition to treaty shellfishing rights.

S/SPAWN and Its Spawn



As early as 2002 UPOW began calling itself United Property Owners (UPO) and replaced the map of Washington on its masthead with a map of the 50 United States, an apparent effort to cultivate a national brand.⁷⁵ I.R.S. Form 990s continued to list the group's name as United Property Owners of Washington and federal documents indicated the organization legally remained UPOW until 2004. During the time the group used the name United Property Owners, its directors were the same as in documents filed with the I.R.S. under the name UPOW. Alan Montgomery continued to be the chair of UPO and Lindsay Executive Director.⁷⁶

S/SPAWN's next offspring emerged when United Property Owners (UPO) became One Nation United (ONU). Press coverage described that UPO had merged with the Oklahoma-based One Nation, a lobby consisting of the Oklahoma Farm Bureau and the Oklahoma Independent Petroleum Marketers.⁷⁷ One Nation United elaborated that its Oklahoma partners included the Southern Oklahoma Water Alliance and Oklahoma Convenience Store and Gas Station Owners Association.⁷⁸ The group legally changed its corporate name with Washington State in 2005, the same year One Nation United began filing 990s with the I.R.S.⁷⁹ While the group's directorship expanded geographically, George Garland, Cynthia Rasmussen, and Marilyn Sherry were listed as directors in 2004 UPOW and 2005 One Nation United documents. I.R.S. Form 990s listed former S/SPAWN leader Jack Metcalf as a director, Barbara Lindsay as Vice-President and Alan Montgomery as Chairman Emeritus. ONU publications listed Lindsay as National Director.⁸⁰ S/SPAWN had spawned again.

Across its generations, S/SPAWN and its descendants remained committed to a radical attack on Indian Nations, opposing treaty rights and tribal sovereignty and seeking an effective end to continuing indigenous nationhood.

At least three actions demonstrate these group's ultimate goal of ending tribal nationhood. First, S/SPAWN's descendents have persistently used a rhetoric of "equal rights" to advocate the unilateral imposition of federal, state and local laws and regulations on Indian Nations. UPO alternatively attacked tribal political authority as a "special privilege" and a "government sanctioned 'Super-citizenry'."⁸¹ UPO/UPOW declared that "Our Free Enterprise System cannot work when any single group of Americans doesn't have to play by the *same tax and regulatory policies as everyone else*."⁸² Alternatively, UPO declared that "Tribes must respect OUR 'self-government' rights and honor OUR nation's law, instead of *arrogantly holding themselves above the Law of the Land*."⁸³ In 2007 ONU declared that "federal Indian policy" is "undermining democracy and *equality under the law guaranteed to all Americans*." These "unfair federal policies," ONU declared, "*simply don't work*" because "*people share the same geographical space, but not the same set of laws*"⁸⁴ [Italics added].

While the language of "equal rights" appeals to broad and honorable themes in U.S. history, its use in this context recalls the unjust and racist drive by white Americans to control Indian lands and natural resources, displace tribal authority and forcibly assimilate Indian peoples into American society. UPO and ONU's proposed imposition of federal, state and local laws on Indian Country is the modern descendant of the General Allotment Act of 1887, boarding schools, coerced religious conversion, and the Termination laws of the 1950s and 1960s. One Nation United's crass racism rears its ugly head when the group's leaders cite colonial-era laws to advocate the continued suppression of tribal rights. For instance, a 2007 One Nation United newsletter appealed to the 11th century papal Doctrine of Discovery:

“The U.S.S.C. [U.S. Supreme Court] found that fee title to all lands occupied by Indians when settlers arrived became vested in the sovereign – ‘Doctrine of Discovery’ – first to the European Nation that claimed the land and later to the original territorial and state governments and the United States. This defense would have denied Puget Sound tribes any ‘treaty right’ to take shellfish from public or privately owned beaches.”⁸⁵

This racist legal doctrine was used by Christian colonizers to justify claims to the lands of “savage” and “heathen” indigenous peoples. One Nation United’s appeal to this colonial legal idea places them as the latest link in a 500 year chain of white settlers seeking to dispossess Indian Nations.

Second, S/SPAWN’s progeny have overtly expressed disdain for the idea that tribes are, in fact, nations and political sovereigns. In response to court cases addressing state and local government efforts to tax and regulate Indian County, UPO’s Winter 2004 newsletter declared that “[W]ithout this kind of absolute sovereignty over their land, tribes cannot continue flouting state tax, welfare and environmental laws, as most tribes regularly do. The idea that tribes are really separate ‘nations’ may soon be exposed as the fiction that it is!”⁸⁶ One Nation United declared in 2006 that “the continual non-critical use of sovereignty to describe recognized Indian tribes merely perpetuates a myth.”⁸⁷

Third, S/SPAWN’s descendents have most commonly signaled their rejection of tribal nationhood by repeatedly opposing manifestations of tribal political authority. Like S/SPAWN before them, UPOW/UPO and ONU have endorsed a broad range of policies that reject tribal sovereignty. Both entities have opposed tribal gaming, sovereignty immunity, water rights, and treaty rights. Both have opposed tribal jurisdiction over non-Indians, tribal Treatment as a State for administering federal programs, and protection for tribal sacred sites. Both organizations have supported efforts to make fee-to-trust transfers more difficult and extend state taxation and regulatory powers onto tribal lands. The list goes on, demonstrating these entities’ efforts to end tribal sovereignty and the tribal nationhood on which it is founded.⁸⁸

In the end, S/SPAWN begat a series of organizations, all sharing a legal identity, key personnel, and common leadership by Barbara Lindsay. These groups also exhibited the same commitment to opposing the basic rights of tribes.

Rob McKenna allied his public authority with these politics by appointing Barbara Lindsay to his Attorney General’s Task Force on Eminent Domain.

Rob McKenna's Ethics: Elaine Willman in the Anti-Indian Movement

In 2008, Rob McKenna attempted to nominate long-time anti-Indian leader Elaine Willman for a position on Washington State's Executive Ethics Board, according to an email sent from Willman to McKenna on August 23, 2008 [See Appendix]. The Executive Ethics Board provides direction to the state in evaluating and improving the ethical behavior of government officers and employees. Members are appointed by the Governor, with one citizen member selected from a list nominated by the attorney general.⁸⁹ About her nomination, Willman wrote to McKenna,

“I am deeply honored to receive the recent communication with information regarding the State's Executive Ethics Board, that inquires as to my interest in becoming a nominee. Thank you for the high compliment.”

Willman declined the offer, citing her position as an Administrator for the Village of Hobart, Wisconsin. She continued that the Hobart Village board encourages “me to maintain my national involvement in concerns specific to federal Indian policy.” Her Hobart hiring agreement, she explained, “included the ability for me to be available to other states and communities for consultation or participation in discussions that seek solutions to escalating jurisdiction and economic conflicts occurring between tribal and other governments.”⁹⁰

Willman offered her services to Attorney General McKenna, writing, “I mention this availability in the event that Washington State should in the future convene a problem-solving discussion forum toward equitable co-existence of governments.”⁹¹

McKenna sent Willman's message to Judy Gaul on August 25th. Gaul responded later that day, asking whether she should “send a thank you from rob.mckenna, or would you prefer to respond yourself?” “The former,” McKenna responded on August 29th.⁹²

Willman's description of “national involvement” in “concerns specific to federal Indian policy” refers to her prominent national leadership role in the organized anti-Indian movement. Willman is a staunch opponent of the treaty rights and sovereignty of Indian Nations. Despite nearly 200 years of Supreme Court precedent to the contrary, Willman wrote of tribal sovereignty,

“The tiresome myth that inherent tribal sovereignty is pre-Constitutional needs a little sunshine. This misplaced theory has unfortunately succeeded a bit too often. It's my belief that anything ‘pre-Constitutional’ in this country was in fact, nullified by the U.S. Constitution.”⁹³

Willman's views on treaty rights are equally as wrong, and equally as extreme:

“State Enabling Acts are acts of Congress that preserve the sovereignty of state resources, and supersede Indian treaties; but Northwestern States utterly ignore this fact,

as well as the fact that all American Indians have been citizens since 1924, and the federal government should no longer be honoring treaties with its own citizens.”⁹⁴

The Enabling Acts and 1924 Indian Citizenship Act simply did not alter the national status of tribes or their treaty rights. Tribal nationhood and sovereignty is rooted in eons of self-governance by indigenous peoples. It is recognized in the Constitution’s Commerce Clause and in nearly 200 years of Supreme Court precedent. Treaties with tribes are based on the inherent sovereignty of tribes and recognized in the Constitution’s Supremacy Clause (Article VI) as the “supreme law of the land.” That is, they supersede state law.

Willman has also grossly distorted facts about Native peoples and their history, a common practice in the anti-Indian movement. As Chair of the Citizens Equal Rights Alliance, Willman wrote

“Certain lies, myths and political agendas, repeatedly expressed in words and print, can quickly become accepted beliefs, even community and national values. Two such examples are: 1) ‘You stole our (Indian land),’ and 2) ‘We (Indians) were here first.’ Neither statement is true, but both statements are current political mantra heard not just among Indian propagandists, but in the halls of national, state and local elected office.”⁹⁵



Elaine Willman’s willingness to assert such bold fallacies garnered her a lead role in a national anti-Indian movement. Willman began locally as Executive Director of Citizens Stand-up! Committee, a Toppenish, Washington based group that opposed Yakama Nation sovereignty. In the early 2000s the group held “Roundup” events in the Northwest in an effort to galvanize the regional anti-Indian movement. Citizens Standup! Executive Director Elaine Willman and President Rusty Jones drafted a March 2001 letter to anti-Indian activist John Fleming, an attendee at a “Roundup” in Toppenish that year. They wrote,

“we [Citizens Stand-up! Committee] are grateful for your depth of historical and legal research regarding violation of the U.S. Constitution and Federal Indian Policy respectively...[K]now that you have our unrestricted endorsement to speak for the Citizens STANDUP! Committee. We trust you will receive similar authority from many other groups around the country.”⁹⁶

At the time this letter was written, Fleming was best known for leading the successful passage of a tribal government termination resolution at the 2000 Washington State Republican Party

convention. When asked what would happen if tribes resisted this effort, Fleming told a reporter, “then the U.S. Army and the Air Force and the Marines and the National Guard are going to have to battle back.” As part of his alleged “depth of historical and legal research,” Fleming wildly claimed in 1999 that the Articles of Confederation continue to govern federal Indian policies and state powers vis-a-vis tribes – a fallacious claim that would allow states to abrogate treaties and terminate tribal governments.⁹⁷

Willman also served as a National Chair of the Citizens Equal Rights Alliance (CERA) in the mid-2000s.⁹⁸ CERA, a prominent national anti-Indian organization, promotes an end to tribal sovereignty under the moniker of “One People. One Law.”⁹⁹ Casting the group as a “civil rights” organization, CERA leader Darrel Smith has written,

“Federal Indian policy, modern tribal governments and the concept of sovereignty violate the most basic principles of the American Revolution...Indian policy and law defies the democratic principles of liberty and equality by giving Indians as a group political sovereignty...Integration is the law of the land....To allow Indians as a group to practice political sovereignty as a general government ruling non-Indians or a geographical territory is wrong.”¹⁰⁰

Willman has also written articles for the publication of Protect Americans’ Rights and Resources, a Wisconsin-based anti-Indian group formed in the 1980s to oppose the treaty-reserved spearfishing rights of the Chippewa (Anishinabe) tribe. “Most Indian tribes claim to be ‘sovereign’ nations,” wrote Victor Bellamy in a 2006 PARR newsletter. “This is a myth,” he concluded.¹⁰¹

Elaine Willman also served as an Honorary Advisory Board member of United Property Owners, the Barbara Lindsay-led descendant of S/SPAWN.¹⁰²

Rob McKenna’s apparent choice for a state ethics board has ethics that include working to terminate Indian Nations and abrogate treaties.

Chapter 4

Property Rights, Community Wrongs

Previous chapters documented Rob McKenna's promotion of anti-Indian policies and ideas; his office's effort to help an anti-Indian group craft a more effective legal strategy; and the Attorney General's appointment and attempted nomination of anti-Indian leaders to positions of public trust. This chapter documents McKenna's alliances with so-called property rights groups whose policies threaten both the public good and the treaty rights and sovereignty of Indian Nations.

Rob McKenna allied with property rights groups by appointing their leaders to his Attorney General's Task Force on Eminent Domain. Most of the non-governmental representatives on the Task Force, in fact, were leaders of conservative and libertarian-leaning organizations that promote a narrow version of property rights. Among the representatives of such organizations on the Task Force were:

- Paul Guppy – Washington Policy Center
- Trent England – Evergreen Freedom Foundation
- Steve Hammond – Citizens Alliance for Property Rights
- Dan Wood – Washington Farm Bureau
- William Maurer – Institute for Justice [See Appendix for a list of Task Force members]

The property rights and anti-Indian movements have frequently formed alliances, a reflection of their narrow conceptions of private property and general rejection of environmental regulation, among other things. For example, the Citizens Equal Rights Alliance, a national anti-Indian organization, participated in the August 1988 "Multiple Use Strategy Conference." This Reno, Nevada event was sponsored by the Center for the Defense of Free Enterprise and joined by such national anti-environmental groups as the Mountain States Legal Foundation and the National Inholders Association. The event was seminal in the rise of a "Wise Use" movement that opposes environmental regulations and federal control of public lands.¹⁰³ CERA continued this pattern in the 1990s, coordinating its own national meetings with those of the anti-environmental Alliance for America's "Fly In For Freedom." This event was promoted as "a grassroots gathering which brings several hundred representatives of farming, logging, fishing, recreating private property rights, and constitutional rights to our capitol every year."¹⁰⁴

The anti-Indian movement's affinity for the property rights movement has also fostered alliances with some industry interest groups. As described above, the formation of One Nation United involved an alliance between United Property Owners of Washington and commercial and resource-based interest groups.¹⁰⁵

Another case in point is that of Linda Matson. Along with One Nation United Secretary/Treasurer Kim Halvorson, McKenna's office selected Matson as a temporary replacement for Barbara Lindsay when the ONU leader could not attend meetings of the Task Force on Eminent Domain.¹⁰⁶ An August 2007 email from Lindsay to the Attorney General's office described both as "Board Members from my organization."¹⁰⁷

Linda Matson is a private consultant and with deep roots in business interest group lobbying. In the late 1980s and early 1990s Matson variously represented the Private Enterprise Coalition and National Federation of Independent Business, speaking on behalf of the latter at a state Tobacco and Candy Distributors convention.¹⁰⁸ Matson is a principal in the consulting firm Matson and Associates.¹⁰⁹

Matson is the registered agent and a lead activist for the Private Enterprise Project (PEP).¹¹⁰ PEP's stated goal is to "expand the base of business and property taxpayers" to "ensure our voices are being heard." The groups list of "friends" includes the Washington Retail Association, Citizens Alliance for Property Rights, National Federation of Independent Business, Washington Policy Center, Washington Farm Bureau and Evergreen Freedom Foundation.¹¹¹ In an attempt to build a base for pro-business polices, Matson has been slated to appear on PEP's behalf at meetings of the Woodinville/Redmond Tea Party Patriots, Seattle Tea Party Patriots and Kitsap Patriots Tea Party.¹¹²

Befitting her relationship with One Nation United, Matson's property rights-oriented politics led her to support anti-Indian causes. This was seen when she served as executive director of the Washington Entertainment Industry Coalition in 2004. While opposing a statewide campaign to ban smoking in public places, Matson was quoted in newspapers criticizing the tribal exemption from these potential laws. Tribal exemption from state laws is simply an aspect of tribal sovereignty. To Matson, however, a tribal exemption allowed tribes to subsidize tribal restaurants and "whipsaw" non-Indian businesses.¹¹³ Information attributed to Matson and Associates also appeared in a flyer distributed by Skagit County anti-Indian leader John Fleming.¹¹⁴

The Private Enterprise Project also illustrates the alliances property rights groups at times make with opponents of civil rights. One of the incorporators listed on PEP documents filed with Washington State is Joseph Backholm of Brier, Washington. Backholm is the Executive Director of the Family Policy Institute of Washington, a leading opponent of gay and lesbian civil rights in the state.¹¹⁵

Rob McKenna drew from just such networks to fill the seats of his Task Force on Eminent Domain. The following pages describe the organizations whose representatives McKenna placed on the Task Force and document the threat they pose to tribal rights.

Washington Policy Center

According to the Washington Policy Center's webpage, the late Jack Kemp once referred to the conservative think tank as "The Heritage Foundation of the Northwest." The Policy Center has earned this description by promoting conservative budget proposals, aggressively opposing public sector unions and advocating "free market environmentalism."¹¹⁶

Rob McKenna has a long-standing relationship with the Washington Policy Center. Hunter Graham Goodman, a former Policy Center vice-president, served as McKenna's Legal and Legislative Affairs Director during his tenure on the Metropolitan King County Council. Goodman later served as Deputy Chief of Staff under Attorney General Rob McKenna.¹¹⁷ It is not surprising, then, that McKenna is quoted on the Policy Center's webpage saying, "Time and again I've turned to the experts at Washington Policy Center, who bring forward powerful ideas that are well reasoned and thoroughly researched. That's what makes them such a great partner for me and many leaders and policy makers in our state."¹¹⁸

The Washington Policy Center is neither as strident as the organized anti-Indian movement, nor as dedicated to directly overturning tribal self-governance and treaty rights. Much like McKenna, however, the group's leaders have expressed ideas commonly found in the anti-Indian movement. Policy Center Vice President for Research Paul Guppy, a member of McKenna's Task Force, has written that "Indian-owned businesses have a *special tax status* – they do not pay state or federal taxes."¹¹⁹ WPC Policy Analyst Brandon Housekeeper writes, "For decades tribal members have benefited from a system of *special rules and regulations* that give them significant competitive advantages not available to other citizens." For Housekeeper, these "special" rights include tribal exemption from state taxation and smoking laws [italics added].¹²⁰

The language of "special rights" is used by anti-Indian leaders to undermine the legitimacy of tribal rights. The Policy Center matches this language by supporting the extension of taxes, and tax-like fees, into Indian Country. The group castigated Governor Christine Gregoire for failing to incorporate "revenue sharing" into gaming compacts with tribes in Washington State. In these compacts, authorized under the 1988 Indian Gaming Regulatory Act, tribes agreed to provide funds to reduce problem gaming and discourage tobacco use and invest in government services, law enforcement, job training, health care and public works.¹²¹ For the Washington Policy Center, this was not enough. WPC Policy Analyst Brandon Housekeeper makes plain the parallel he sees between "revenue sharing" and taxing Indian tribes, criticizing that the agreements "do(es) not require Indian tribes to pay any part of their gambling profits to the state, in place of the taxes normally paid by most other business."¹²²

The Washington Policy Center has also directly supported extending state taxing powers further into Indian Country. The group assailed gas agreements between 16 tribes and the State of Washington. Under these pacts tribes purchase fuel for tribally-owned stations with the state's motor vehicle fuel tax included, report their purchases to the Department of Licensing, and receive 75 percent of the tax as a refund. In addition, tribes agree to spend fuel tax proceeds on transportation and related services.¹²³ Policy Center opposition to these agreements plays on court decisions that have undermined tribal sovereignty by allowing some taxation of non-Indians on reservation lands. At the same time, recognition of tribal sovereign immunity has supported tribal sovereignty by blocking the state's ability to sue tribes to collect taxes. In reality, these compacts have allowed the state to collect a tax that it otherwise could not because of the sovereign status of Indian Nations.¹²⁴ The Policy Center's favored policy would undermine tribal sovereignty by further extending state taxes into Indian Country.

The Washington Policy Center also opposes a proposal by the Washington State Department of Ecology to raise fish consumption rates used in human health risk assessment. Ecology uses these rates to estimate the potential human health effects (such as cancer) from toxins that accumulate in the bodies of fish, and then humans, as they move up the food chain. The more fish people eat, the lower the allowable toxin levels in water must be to protect human health. Washington State currently uses default consumption rates of 1.9 ounces per day for sites needing cleanup after contamination, and 0.22 ounces per day for permits issued when businesses or government agencies release toxins into state waters. The first rate is based on recreational fishing consumption levels while the latter derives from a mid-1990s Environmental Protection Agency standard.¹²⁵

Tribes have long questioned whether these levels adequately protect their fisheries-dependent communities. Scientific evidence backs them up. Four studies examined by Department of Ecology scientists indicate that indigenous and Asian and Pacific Islander communities in Washington State consume fish at substantially higher rates than those used for state risk assessment. These studies found mean rates in Native communities as high as 7.5 ounces per day, with 90th percentile consumption rates as high as 17.2 ounces per day. DOE officials proposed raising fish consumption rates to between 5.5 and 9.4 ounces per day. Ecology found these studies "well designed and well conducted" and concluded that their proposed levels would not underestimate consumption by recreational fishers and the general public. Ecology's proposals intended to insure that default consumption rates "should be protective of all people in Washington who eat fish, including those individuals that eat a lot of fish, such as Native Americans, Asian and Pacific Islanders, and some recreational fishers."¹²⁶

Not so for the Washington Policy Center. Eastern Washington Policy Center Director Chris Cargill casts the Department of Ecology's proposals to raise fish consumption rates as an avenue to give "more power to unelected bureaucrats...to impose harsher water rules." Cargill

confusingly claims that the proposed changes are “not based on science but statistical projections” and wrongly asserts that DOE provides “little evidence” for the proposed increase. Cargill’s most callous argument comes in the following criticism:

“Many of those high [fish] consumers, according to the DOE, are the state’s Native Americans, who make up less than 2 percent of the state’s population. The state insists basing consumption rates for the state on such a tiny percentage is appropriate.”¹²⁷

For Cargill and the Policy Center, it is apparently “inappropriate” for the Department of Ecology to set default consumption rates to protect vulnerable communities if they are a small percentage of the population.

The Department of Ecology’s proposal has currently stalled.

Washington Farm Bureau

The Washington Farm Bureau (WFB), represented on the Task Force by Dan Wood, has also voiced opposition to the Department of Ecology’s proposal to raise fish consumption levels used for human health risk assessment. The Farm Bureau falsely alleges that there is “no scientifically defensible position” for the new standards.¹²⁸ Under “Problems with Ecology’s Parameters and Data,” the Farm Bureau includes,

“Shellfish and fish make up a greater percentage of some ethnic populations’ diets. Ecology appears to be pushing these standards to protect these specific, sensitive, at-risk populations in the state rather than targeting a more focused program to address this critical issue.”¹²⁹

Like the Washington Policy Center, the Farm Bureau appears opposed to adopting statewide standards that protect vulnerable populations.

The Washington Farm Bureau also supports policies at odds with tribal sovereignty. For instance, in February 2012 the group opposed provisions of state House Bill 2233. This bill proposed creating a process by which Washington State could retrocede civil and criminal jurisdiction in Indian Country to tribes. The bill addressed violations of tribal sovereignty that had occurred under Public Law 280 (PL 280), a termination-era Congressional act allowing states to extend their laws into Indian Country. Under PL 280, Washington State assumed full jurisdiction over eleven tribes in the state in 1957 and limited jurisdiction over the remainder in 1963. Retrocession refers to a process by which states can return full or partial jurisdiction to tribes.¹³⁰

In particular, the Washington Farm Bureau opposed the definition of Indian Country in HB 2233, arguing that under this definition “it appears that the process of retrocession would extend tribal authority over non-Indians...As the bill is written, it could grant authority over non-Indians traveling through reservations on public roads. Washington Farm Bureau is asking that the bill be amended to clarify that it does not create any new authority over non-Indians.” The definition of Indian Country in HB 2233 was simply that found in federal statutes. Tribal jurisdiction over non-members is a feature of political sovereignty allowing nations to protect their citizens from the actions of all people living in their territories. This aspect of tribal sovereignty is a frequent target of anti-Indian groups and has been undermined by some court decisions. HB 2233 was signed into law in March 2012.¹³¹

Citizens Alliance for Property Rights

Rob McKenna’s relationship with Citizens Alliance for Property Rights leader Steve Hammond extends back to his time on the Metropolitan King County Council. In 2002, McKenna’s office received a fax from the Washington Policy Center with an agenda for a meeting of the Coalition Forum. In addition to the Policy Center, the agenda described participants as the Evergreen Freedom Foundation and “Steve Hammond, Christian Coalition.”¹³²

Steve Hammond is the president of the Citizens Alliance for Property Rights Political Action Committee. Hammond served as a Metropolitan King County Council member from 2003 to 2005, claiming to have been “recruited to replace Councilman Kent Pullen to bring a clearly-focused set of principles to the county council.”¹³³ Recall that McKenna and Pullen attempted to impose King County regulations on the Muckleshoot tribe.

Steve Hammond is also a member of the Pastoral Advisory Board for the Christian Coalition of Washington State. Christian Coalition literature bearing Hammond’s name has attacked equality under the law for gay men and lesbians, describing the state’s marriage equality law as elevating “peculiar and unseemly two-person relationships by granting them parity with one-man-one-woman marriages.”¹³⁴

In 2008 Hammond was chosen as an alternate for Barbara Lindsay on the Task Force on Eminent Domain. A letter from McKenna announcing Hammond’s appointment to the Task Force stated, “Your [Hammond] background as a former councilmember, a property rights advocate, and your keen interest in responsible government will provide the Task Force with a unique perspective.”¹³⁵

The Citizens Alliance for Property Rights (CAPR) rejects the need to protect critical environmental areas. Critical areas include landscape features such as wetlands, marine

shorelines and streams. Healthy shoreline and stream habitats are critical to protecting and restoring treaty-reserved tribal fisheries as well as non-native commercial and recreational fisheries. Shoreline habitat, in particular, is crucial to sustaining healthy tribal and non-tribal shellfishing resources. Wetlands improve water quality by filtering toxins from sediments in stormwater runoff; protect property from flooding through their capacity to slow surface flows and store water; and provide critical habitat for a range of species, including juvenile salmon.

Washington State's Growth Management Act (GMA) requires local jurisdictions to designate critical areas and adopt development regulations for their protection. Local governments commonly use vegetated buffers, or strips of undisturbed land, to protect such areas. Buffers slow the flow of surface and subsurface waters into critical areas, allowing time for toxins to adhere to soil particles or break down through biochemical processes. Buffers are important tools used to protect the instream and nearshore habitat on which fisheries in Washington State are based. While reasonable people can disagree on the size of such buffers, a large body of science shows that they work; not surprisingly, larger buffers work better, with diminishing returns achieved at some point.

CAPR blithely refers to critical areas as "a portion of your private property that you can't use but must guard forever for your ecologically minded neighbors' use and enjoyment."¹³⁶ CAPR declares in Tea Party fashion that "Gang Green [environmentalists] thinks that buffers are the neatest thing since socialism."¹³⁷

CAPR's San Francisco Bay Area chapter rejects the ideas social and environmental justice and has promoted ideas found in the anti-Indian movement:

"The cancers of environmental justice, social justice, transportation justice (every justice but equal justice) are metastacizing (sic) throughout the body politic. The USDA has put out a document for public comment on it's (sic) Environmental Justice Strategic Plan. Page 12 of the draft specifies that the purpose is to help minority and/or low income populations including American Indian or Alaska Native populations. It's time to put an end to all these 'special classes' of people. We are all Americans. Let's not let our government put us in categories and play us off against each other."¹³⁸

This passage recalls the anti-Indian canard that treaty rights and tribal sovereignty are "special rights," not an outgrowth of the inherent status of Indian peoples as sovereign nations. The call for government to ignore these "categories" is akin to the anti-Indian movement's push for assimilating Indian peoples into American society. SF Bay CAPR appears to reject the independent nationhood of Indian tribes, the essence of anti-Indianism.

Institute for Justice

The Virginia-based Institute for Justice played a key role in Rob McKenna's Task Force on Eminent Domain. A July 2008 letter from McKenna to the libertarian group's Washington State Executive Director William Maurer states, "With your help, I established the Eminent Domain Task Force in 2007."¹³⁹ In drafting its final proposal, the Task Force "discussed definitions of 'economic development' and 'public use' and unanimously adopted the definitions proposed by the Institute for Justice with a few changes."¹⁴⁰

The Institute for Justice, a leading national libertarian think tank supported by billionaire oil barons Charles and David Koch, has promoted environmental policies that would threaten tribal and non-tribal fisheries alike.¹⁴¹ The group filed an amicus brief in the case of *Lucas v. South Carolina Coastal Council*. In this case, the Supreme Court ruled that a government regulation that deprives an individual of all economically viable use of a property constitutes a 5th Amendment "taking" requiring "just compensation." The Institute's brief went much further, arguing that any regulation restricting ordinary property use, and not justified by the law of nuisance, should constitute a 5th Amendment taking.¹⁴² The IJ's proposed policy would render it impossible for federal, state and local governments to regulate critical areas (e.g., shorelines, wetlands and streams) susceptible to cumulative impacts from development. The Institute's policies pose a direct threat to treaty-reserved fish and shellfish species that rely on nearshore and stream habitat. They also threaten resources valued by non-Indians for commercial and recreational purposes.

The group has also allied itself closely with strong opponents of civil rights, social welfare and labor rights. In September 2011 the Institute for Justice awarded its first ever "Champion of the Constitution" Award to Richard Epstein.¹⁴³ As the Institute's "Champion," Epstein has fashioned the 5th Amendment into a tool for a sweeping attack on working people and the poor. Epstein argues that this Amendment should define as illegal takings minimum wage and maximum hour laws, welfare transfer payments, unemployment compensation, worker's compensation and progressive taxation, among other policies.¹⁴⁴ Epstein also argues that employment discrimination laws, such as Title VII of the 1964 Civil Rights Act, should be repealed.¹⁴⁵

Evergreen Freedom Foundation

The Evergreen Freedom Foundation (EFF) is one of Washington State's leading libertarian-leaning think tanks, producing research and policy positions on issues ranging from property rights and business to state budgets and education. In the common mantra of such organizations, EFF describes its mission as seeking "individual liberty, free enterprise, and limited, accountable government."¹⁴⁶

Rob McKenna's relationship with the Evergreen Freedom Foundation extends back to his days on the Metropolitan King County Council. Recall that a meeting schedule faxed to McKenna's office by the Washington Policy Center listed the Freedom Foundation as a participant.¹⁴⁷

Rob McKenna apparently appointed the Freedom Foundation's Trent Green to the Task Force on Eminent Domain after conversations with EFF Founder Bob Williams. An email from Trent England to Tim Ford stated that "Bob Williams asked me to follow up with you on the AG's suggestion to Bob that EFF have a representative on the Eminent Domain Task Force...Bob would like me to do it as the current Interim Director of our New Property Rights Center."¹⁴⁸ Ford wrote to McKenna that "Trent's email references a conversation of yours with Bob Williams about appointing a member of EFF to the eminent domain task force. Would you like me to draft an appointment letter?" One-half hour later, McKenna responded, "Yes, Please."¹⁴⁹

Like the Citizens Alliance for Property Rights, the Evergreen Freedom Foundation is a strong opponent of county government regulations designed to protect critical environmental areas. Stop Taking Our Property (STOP) – Thurston County, a project of the Evergreen Freedom Foundation, vigorously opposes the implementation of a Critical Areas Ordinance in Thurston County. The proposed Thurston County CAO includes the adoption of buffers from 50 to 300 feet.¹⁵⁰ The EFF touts STOP as a means of educating the public about CAO impacts on property owners and advocating "common sense solutions...balancing environmental protection with economic costs."¹⁵¹

EFF and STOP's actions and rhetoric, however, have nothing to do with balance, or common sense. Rather, these groups defend the virtually unfettered use of private property. The group's ideological bent is seen in an article on the EFF website attributed to both R. Durrant and EFF Citizens Action Network Director Scott Roberts:

"The trashing of individual liberties is all quite predictable as the central planning of the GMA [Growth Management Act] is imposed on the people [See p. 40 for a summary of the GMA]. This GMA insanity can be used to impose such insults to one's property as moratoriums on the ability to develop your own property and *water buffers that severely limit your ability to use your own land*...This environmentalism is nothing short of socialism and reeks of Marxism (sic) doctrine...The GMA needs to be completely revised, if not entirely eliminated, in order to allow for individual and local control, and to stop this top-down government tyranny from hammering our constitutionally guaranteed property rights" [Italics added].¹⁵²

In line with such views, STOP activists have waved signs stating "Your buffers steal our land."¹⁵³ STOP Thurston County project manager and EFF Property Rights Director Glen Morgan has likened critical areas ordinances to North Korean central planning. "Our goal," he writes, "is that our children and our grandchildren can...laugh at the terrible central planning schemes of their parents and grandparents. They will laugh at the silly buffers."¹⁵⁴

As is common in the so-called property rights movement, STOP paints a picture pitting callous environmentalists against human rights (property rights). Glen Morgan has asked, “Why is it that so many who support the Critical Areas Ordinance appear to be so callous and uncaring about the plight of their fellow citizens?” He goes on to outlandishly compare the Thurston County CAO process to the “banality of evil” observed by Hannah Arendt. Arendt’s book *Eichmann in Jerusalem: A Report on the Banality of Evil*, analyzed Nazi war criminal Adolph Eichmann’s role in the extermination of European Jews. While Morgan concedes that “it may not be as extreme as Hannah’s writings,” he concludes that “Our government does not care about the little guy, and neither do the ‘environmentalists.’ There is no human empathy there.”¹⁵⁵

While alleging a lack of “human empathy” on the part of his political opponents, Morgan utterly ignores the very real human beings affected by the degradation of nearshore and stream habitat that critical areas ordinances are intended to protect – Indian tribes with treaty-reserved resource rights and non-Indian families who make their living and recreate along the region’s shorelines.

The Evergreen Freedom Foundation also writes tribal sovereignty out of their views about local government taxation in Indian Country. This is seen in a case involving Thurston County’s attempt to tax the Great Wolf Lodge, a development built on Chehalis Indian Tribe trust land by a corporation with majority tribal ownership. A federal district court ruled that the county could tax the land. The decision relied on a line of federal court cases that have undermined tribal sovereignty. Such cases have moved away from basing decisions on the inherent sovereignty of tribes and toward federal preemption and a balancing of federal, state and tribal interests.¹⁵⁶

In this case, Judge Benjamin Settle ruled that the Great Wolf Lodge could be taxed due to the limited role of the tribe in direct management and because the tribe “does not have ownership interest in the improvements” to the lodge (despite the fact that the Chehalis are 51 percent owners of the lodge!), and a limited federal role in funding and regulating the Lodge.¹⁵⁷ The Chehalis tribe has appealed the case to the 9th Circuit on the grounds that permanent improvements on tribal lands are not subject to state taxation; the county’s taxes are preempted by the strength of tribal and federal interests; and Thurston County’s taxes infringe on Chehalis sovereignty.¹⁵⁸ The latter is certainly the case.

The nuances of federal Indian law, and any semblance of respect for tribal sovereignty, are lost on EFF and STOP leader Glen Morgan. He writes,

“A troubling trend in local government is always the desire to increase taxes, and invent new fees and excuses to take more and more money from average people while politically-connected entities escape with no significant penalties. Nowhere is this dichotomy more evident than in Thurston County.”

Morgan's reference is, of course, to the Chehalis Tribe and Great Wolf Lodge. Rather than being rooted in eons of tribal self-governance, Morgan sees the exemption from county taxes of a 51 percent tribally-owned project on trust lands as an example of a "multi-million dollar out-of-state corporation" getting away with "zero tax liability." He continues,

"Any international organization can set up an identical company across the state on one of these newly purchased 'tribal trust land' properties, and undercut identical tax paying businesses across the road. These mini-Cayman Islands of Washington State do not deserve to exist."¹⁵⁹

Apparently, for EFF's Morgan, sovereign tribal nations exempt from state and local taxes "do not deserve to exist."

Befitting such views on tribal sovereignty, the Evergreen Freedom Foundation has provided a forum for at least one radical anti-Indian activist. This occurred when John Fleming spoke at the group's 2007 Leadership Conference. Billed as the West Coast Director of Protect Americans' Rights and Resources, a Wisconsin-based anti-Indian group, Fleming falsely told attendees that tribal sovereignty is "a myth," that no tribal treaties are "effective today," and that tribes "weren't sovereign nations. They were Asiatic nomads that lived in certain areas."¹⁶⁰ Fleming is best known for leading the passage of a tribal termination resolution at the Washington State Republican Party's 2000 convention. Fleming has gone so far as to claim that the Articles of Confederation form a basis for modern federal Indian policies, an absurd claim that would allow states to terminate tribes and abrogate treaty rights.¹⁶¹

This is the movement that Rob McKenna invited into the seats of government.

Chapter 5

Stand Up For Treaty Rights

This report has documented the willingness of Attorney General Rob McKenna to ally his public authority with anti-Indian organizations and some of the ideas and policies they espouse. Among McKenna's dalliances with anti-Indian politics, the report described the following:

- Rob McKenna's attempt as a Metropolitan King County Council member to impose county regulations on a federally recognized Indian Nation.
- Attorney General Rob McKenna's opposition to tribal treaty rights in the culverts case.
- The inclusion of ideas similar to those of the 1980s anti-Indian group S/SPAWN in Attorney General's briefs filed in the culverts case.
- Rob McKenna's office provided strategic legal advice to Barbara Lindsay, the leader of the anti-Indian organization One Nation United.
- Attorney General Rob McKenna appointed One Nation United leader Barbara Lindsay to a seat on his Task Force on Eminent Domain.
- Attorney General Rob McKenna offered to nominate Elaine Willman for a position on the State's Executive Ethics Board, according to an email from Willman to McKenna. Willman is a longtime anti-Indian leader and former chair of the Citizens Equal Rights Alliance.
- Rob McKenna filled the seats of his AG's Task Force on Eminent Domain primarily with leaders of groups that promote narrow versions of property rights. These groups often support positions at odds with tribal treaty rights and sovereignty.

Any one of these actions would be cause for concern. Together, they point to a pattern of disrespect for the basic rights of indigenous nations.

Rob McKenna is not the same political animal as Barbara Lindsay or Elaine Willman. He is not an ideologically driven political activist wholly dedicated to terminating Indian Nations and abrogating their treaties. However, when legal gray areas exist (as they frequently do in federal Indian law), and Rob McKenna perceives a state interest at issue, this report has documented that he will oppose the fundamental rights of Indian Nations and ally with anti-Indian activists to achieve his goals.

Tribes and their non-tribal allies should take heed. If Rob McKenna is elected governor, all people who support respectful relations between our nations should be prepared to watch his actions closely. They should also be prepared to take action to thwart any repeat of Rob McKenna's anti-Indian past.

Appendix

Rob McKenna and the Anti-Indian Movement

Gaul, Judy (ATG)

From: McKenna, Rob (ATG)
Sent: Monday, September 17, 2007 10:09 AM
To: Rob McKenna
Cc: Costello, Rob (ATG); French, Danielle (ATG)
Subject: FW: Who in AG's Office is handling Culvert case w. tribes?

Forwarding. JG

From: Barb Lindsay [mailto:barb@onenationunited.org]
Sent: Sunday, September 16, 2007 9:42 AM
To: French, Danielle (ATG)
Cc: McKenna, Rob (ATG)
Subject: Who in AG's Office is handling Culvert case w. tribes?

Hi again! Just want to make sure AG's legal team is aware of this important ruling by **U.S.S.C.** saying "**Doctrines of laches, acquiescence, and impossibility**" now apply to tribal claims, as well as the "**Doctrine of Justifiable Expectations**" so that local governments and property owners can expect our local land use rules to apply, rather than tribal jurisdiction. We hope these recent precedents will be cited in WA State's appeal of the Culvert case. Can you please put me in touch with the right person in the AG's Office? Thanks again! Barb Lindsay for One Nation United (ONU) Tel. 206-660-3085 ~ Email: Barb@OneNationUnited.org ~ See below the full text of the **Sherrill** ruling, to which only Justice Stevens dissented.

P.S. We are interested in filing to intervene on behalf of a concerned coalition of groups (if it is not too late) or, at least, file some joint amicus briefs? The State and Tribes are now at the bargaining table, yet we don't have a seat and our private property rights are in jeopardy. Has appeal been filed?

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CITY OF SHERRILL, NEW YORK v. ONEIDA INDIAN NATION OF NEW YORK *et al.*

certiorari to the united states court of appeals for the second circuit

No. 03-855. Argued January 11, 2005--Decided March 29, 2005

Respondent Oneida Indian Nation of New York (OIN or Tribe) is a direct descendant of the Oneida Indian Nation (Oneida Nation), whose aboriginal homeland, at the Nation's birth, comprised some six million acres in what is now central New York State (State). See, e.g., *Oneida Indian Nation of N. Y. v. County of Oneida*, [414 U. S. 661, 664](#) (*Oneida I*). In 1788, the State and the Oneida Nation entered into a treaty whereby the Oneidas ceded all their lands to the State, but retained a reservation of about 300,000 acres for their own use. See *County of Oneida v. Oneida Indian Nation of N. Y.*, [470 U. S. 226, 231](#) (*Oneida II*). The Federal Government initially pursued a policy protective of the New York Indians. In 1790, Congress passed the first Indian Trade and Intercourse Act (Nonintercourse Act), barring sales of tribal land without the Government's acquiescence. And in the 1794 Treaty of Canandaigua, the United States "acknowledge[d]" the Oneidas' 300,000-acre reservation and guaranteed their "free use and enjoyment" of the reserved territory. Act of Nov. 11, 1794, 7 Stat. 44, 45, Art. III. Nevertheless, New York continued to purchase reservation land from the Oneidas. Although the Washington administration objected, later administrations made not even a pretense of interfering with New York's purchases, and ultimately pursued a policy designed to open reservation lands to white settlers and to remove tribes westward. Pressured by the removal policy, many Oneidas left the State. Those who stayed continued to diminish in number and, during the 1840's, sold most of their remaining lands to New York. By 1920, the New York Oneidas retained only 32 acres in the State.

Although early litigation over Oneida land claims trained on monetary recompense from the United States for past deprivations, the Oneidas ultimately shifted to suits against local governments. In 1970, they filed a federal "test case" against two New York counties, alleging that the cession of 100,000 acres to the State in 1795 violated the Nonintercourse Act and thus did not terminate the Oneidas' right to possession. They sought damages measured by the fair rental value, for the years 1968 and 1969, of 872 acres of their ancestral land owned and occupied by the two counties. The District Court, affirmed by the Court of Appeals, dismissed the complaint for failure to state a federal claim. This Court reversed in *Oneida I*, [414 U. S., at 675, 682](#), holding that federal jurisdiction was properly invoked. After the Oneidas prevailed in the lower courts, this Court held,

Phillips, Marci (ATG)

From: Woods, Fronda (ATG)
Sent: Friday, September 28, 2007 8:19 AM
To: Dietrich, Steve (ATG); Ferester, Phil (ATG); Jones, Betty (ATG); Phillips, Marci (ATG); Steuerwalt, Matt (GOV); Loginsky, Pamela (pamloginsky@waprosecutors.org)
Subject: FW: Who in AG's Office is handling Culvert case w. tribes?

FYI, here is an exchange our office had recently with Barbara Lindsay, of One Nation United, a private advocacy group that focuses on tribal policy issues.

<http://www.onenationunited.org/>

From: Costello, Rob (ATG)
Sent: Thursday, September 27, 2007 6:19 PM
To: 'Barb Lindsay'
Cc: Rob McKenna
Subject: FW: Who in AG's Office is handling Culvert case w. tribes?

Hello Ms. Lindsay,

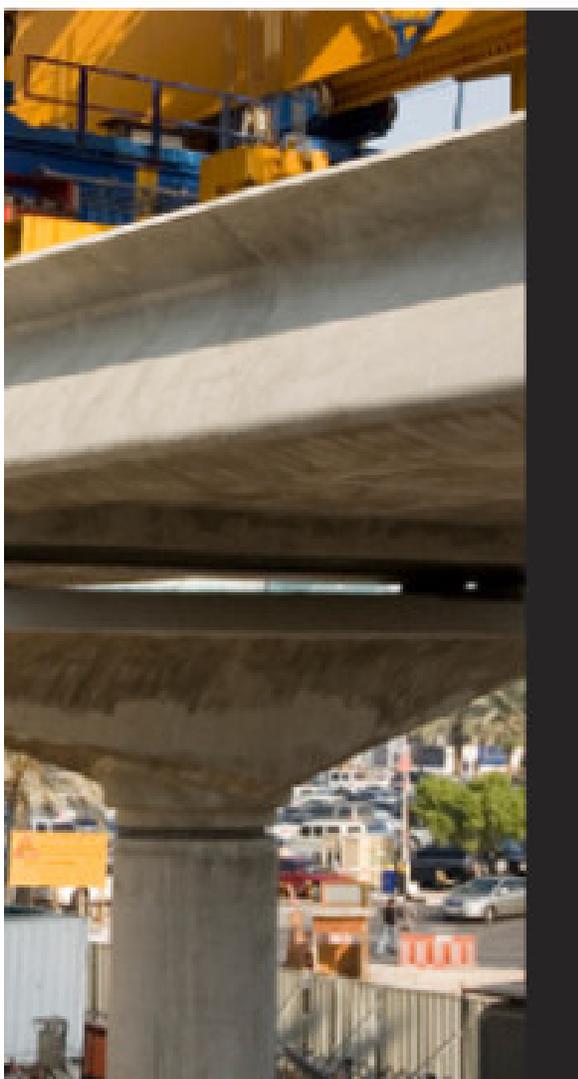
Attorney General McKenna forwarded your e-mail and asked me to respond.

First, thank you very much for sending us the *Oneida*, decision. We are indeed aware of this important decision and very conscious of its potential applicability to the Culvert case. The *Oneida* case, came out long after the State's answer was filed in the Culvert case, and consequently it is not referenced in the State's answer. Fortunately, however, the Washington Association of Prosecuting Attorneys (WAPA) subsequently intervened in the Culvert case, and WAPA was therefore able to present the *Oneida* arguments in its briefing on summary judgment. Judge Martinez did not acknowledge or address WAPA's *Oneida* arguments in his recent order, but the arguments have been presented and are preserved for appeal.

With regard to an appeal, it is too soon to appeal because we do not yet have a judgment in the case. After the remedy phase is concluded the court will issue a final judgment and the appeal clock will then begin to run. At this time, however, no appealable judgment has been issued – only an order resolving some, but not all of the issues in the case.

With regard to intervention in the case, it is probably too late. Per federal district court order of May 23, 2005, the deadline for intervention was June 9, 2006. Moreover, while we understand the concern on the part of private property owners and others, intervention or argument implying impacts on private property may be premature at best, and ill-advised as worst. Judge Martinez's order recites that it is narrowly tailored to apply only to state owned culverts within the case and the case area. Efforts to intervene to protect private property interests (even if intervention were possible) may send an unintended message that the Judge's order is viewed more expansively. This of course is something that you will want to discuss with your own private attorney should you contemplate trying to intervene or otherwise utilizing Judge Martinez's order.

I hope this is responsive to your questions, and again, thanks for passing along the *Oneida* decision



2009 FINAL REPORT

**ATTORNEY GENERAL ROB MCKENNA
CHAIR**

**ASSISTANT ATTORNEY
GENERAL TIMOTHY FORD
CO-CHAIR**

CT-00931
PRR-2012-00303

A. ATTORNEY GENERAL ROB MCKENNA'S DIRECTIVE

The Task Force was created by a directive of Attorney General Rob McKenna in June of 2007. Initially, Attorney General McKenna asked the Task Force to "review eminent domain laws, identify abuse of eminent domain powers, and determine what legislative reforms would be appropriate."⁴

In July 2008, Attorney General McKenna issued a letter narrowing the focus of the Task Force, stating "I believe the task force is well situated to focus its efforts more narrowly and address the question of whether legal protections are needed in Washington to limit or prohibit the use of eminent domain for economic development purposes."⁵

B. MEMBERSHIP

The Task Force was comprised of state and local elected officials, representatives of industries affected by the use of eminent domain, and public interest groups who have worked extensively on the issue. The Task Force was chaired by Attorney General McKenna and co-chaired by Assistant Attorney General Tim Ford. The members appointed by the Attorney General included:

Attorney General Rob McKenna (Chair)
Assistant Attorney General Tim Ford (Co-Chair)
Senator Adam Kline
Senator Mike Carrell
Representative Jay Rodne
Representative Lynn Kessler
Representative Larry Springer
William Maurer, Institute of Justice
Bryce Brown, Senior Assistant Attorney General
Mark Lamb, Mayor of Bothell
John Chelminiak, Deputy Mayor of Bellevue
Paul Guppy, Washington Policy Center
Randy Bannecker, Seattle-King County Association of REALTORS
Barbara Lindsay, One Nation United
Craig Johnson, Rancher
Dan Wood, Washington Farm Bureau
Mary Lou Powers, MS, Founder/Director, Citizens' Health Advocacy Group
Jim Irish, Appraiser
Tom Stowe, Stowe Appraisal, Inc.
Steve Hammond, Citizens' Alliance for Property Rights
Shawn Bunney, Pierce County Council
Trent England, Evergreen Freedom Foundation

The Task Force was staffed by Assistant Attorney General Geoffrey W. Hymans, Executive Assistant Elaine Ganga, and Legal Secretary Danielle French.

4. Attorney General Rob McKenna Appointment Letter dated July 9, 2007.

5. Attorney General Rob McKenna letter to the Task Force dated July 9, 2008.

July 9, 2007

Ms. Barbara Marie Lindsay
One Nation United
PO Box 3336
Redmond, WA 98073-3336

RE: Eminent Domain Task Force Appointment

Dear Ms. Lindsay:

I am very pleased to appoint you as a member of the Washington State Attorney General's Eminent Domain Task Force. The Task Force was created to review eminent domain laws, identify abuse of eminent domain powers, and determine what legislation reforms would be appropriate. Your background and keen interest in responsible government will provide a unique perspective and make significant contributions to the Task Force's important responsibility.

Our first meeting will be on August 14, 2007, from 9 a.m. to 12 p.m. at the Seattle Attorney General's Office (see enclosed directions). You will receive a packet of information for your review approximately a week prior to our first meeting. The packet will contain background materials about eminent domain, its purpose, powers, scope, and what agencies are authorized to exercise condemnation. Along with the packet will be a few suggested topics for focus by the Task Force.

Future meeting dates will be determined by the Task Force. I estimate that there will be approximately three to five meetings for about two to three hours each. The goal is to have a minimum of one meeting a month, and to draft legislative reform proposals by October for the Attorney General's Office to sponsor in the 2008 legislative session.

Thank you, Barbara Marie, for your willingness to serve. If you have any questions or needs, please do not hesitate to contact Tim Ford at (360) 586-4802, or Danielle French at (360) 753-6207.

Sincerely,

ROB MCKENNA
Attorney General

RM:df
Enclosures
cc: Timothy D. Ford, AAG

CT-00022
PRR-2011-00468

Message: Re: Message from Elaine Willman

✉ Re: Message from Elaine Willman

From Rob McKenna **Date** Friday, August 29, 2008 11:16 AM
To Gaul, Judy (ATG)
Cc

The former. Thanks very much.

----- Original Message -----

From: Gaul, Judy (ATG)
To: Rob McKenna
Sent: Mon Aug 25 17:24:03 2008
Subject: Message from Elaine Willman

FYI – shall I send a thank you from rob.mckenna, or would you prefer to respond yourself? Thanks.

From: Attorney General Rob McKenna
Sent: Monday, August 25, 2008 4:57 PM
To: Gaul, Judy (ATG)
Subject: FW: McKenna's "Must Read"

From: Toppin@aol.com [<mailto:Toppin@aol.com>]
Sent: Saturday, August 23, 2008 6:09 AM
To: Attorney General Rob McKenna
Subject: Re: McKenna's "Must Read"

Hello Attorney General McKenna - Rob,

I am deeply honored to receive the recent communication with information regarding the State's Executive Ethics Board, that inquires as to my interest in becoming a nominee. Thank you for the high compliment.

Rob, in January 2008 I moved to Hobart, Wisconsin - a high-end bedroom community of Green Bay (my home is just a few minutes from Lambeau Field and I'm learning to speak "Packers!"), to assume the position of Village Administrator for the Village of Hobart.

So, of course I must decline the invitation. The Village Board encourages me to maintain my national involvement in concerns specific to federal Indian policy as this community is, like my former home in Toppenish, entirely located within the boundaries of the reservation of the Oneida Tribe of Indians in Wisconsin.

Part of my hiring agreement with the Village included the ability for me to be available to other states and communities for consultation or participation in discussions that seek solutions to escalating jurisdiction and economic conflicts occurring between tribal and other governments.

I mention this availability in the event that the State of Washington should in the future convene a problem-solving discussion forum toward equitable co-existence of governments.

I wish you the very best and miss Washington State dearly, but made a good decision for my pursuit of studies in federal Indian policy and my utility to a local government under severe pressure of tribal government expansions in this region.

Best regards,

Elaine Willman,

Village Administrator

Village of Hobart

2990 South Pine Tree Road

Hobart, WI 54155

(W) 920-869-3806

(H) 920-884-0041

(C) 920-609-5361

Email: elaine@hobart-wi.org

It's only a deal if it's where you want to go. Find your travel deal here
<<http://information.travel.aol.com/deals?ncid=aoltrv00050000000047>> .

¹ Governor's Office of Indian Affairs. Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington. [http://www.goia.wa.gov/Government-toGovernment/Data/Centennial Accord.htm](http://www.goia.wa.gov/Government-toGovernment/Data/Centennial%20Accord.htm). Downloaded July 19, 2012.

² We would like to thank the staff at both the Attorney General's office and King County Archives for their help in accessing these documents.

³ S/SPAWN also operated as a state registered organization called Steelhead and Salmon Protection Action for Washington Now. This is explained in chapters 2 and 3.

⁴ S/SPAWN also used the name Steelhead/Salmon Protective Association and Wildlife Network in the late 1980s. Documents filed with the state of Washington list an organization under the name Steelhead/Salmon Protection Action for Washington Now-PAC.

⁵ National Governor's Association. 2011. Governor's Powers and Authority.

<http://www.nga.org/cms/home/management-resources/governors-powers-and-authority.html>.

⁶ These boards and commissions shape executive policy in a broad range of areas, including civil and human rights (Commission on African-American Affairs, Commission on Asian Pacific American Affairs, Committee on Disabilities Issues and Employment, Hispanic Affairs Commission, Human Rights Commission); educational and health disparities (Educational Opportunity Gap Oversight and Accountability Committee, Coordinating Council on Health Disparities, State Board of Education).

Governor-appointed commissions directly impact tribal treaty rights by influencing state environmental and natural resource protection policies. Such bodies include the Conservation Commission, Fish and Wildlife Commission, Pacific States Marine Fisheries Commission, North Pacific Fisheries Management Council, Forest Practices Board, Growth Management Hearings Board, Northwest Power and Conservation Council, Northwest Straits Citizens Advisory Commission, Olympic Natural Resource Center Advisory Board, Pollution Control/Shoreline Hearings Board, Puget Sound Partnership, Salmon Recovery Funding Board, Columbia River Gorge Commission. See Governor of Washington State. Boards and Commissions. <http://www.governor.wa.gov/boards/default.asp>. Downloaded June 22, 2012.

⁷ Since her election in 2004, Governor Gregoire has made 54 judicial appointments, filling Superior Court vacancies in 21 of the state's 39 counties; appointing nine Appeals court judges; and replacing two retiring State Supreme Court justices. Governor of Washington State. Governor Chris Gregoire. Judicial Appointments to Date. <http://www.governor.wa.gov/judicial/appointments.html>. Downloaded June 21, 2012.

⁸ Cook-Lynn, Elizabeth. 2001. *Anti-Indianism in Modern America: A Voice from Tatekeya's Earth*. Chicago: University of Illinois Press.

⁹ United Property Owners newsletter, Winter 2004; United Property Owners newsletter, Fall 2003.

¹⁰ United Property Owners newsletter, Winter 2002; United Property Owners newsletter, Winter 2004.

¹¹ One Nation United newsletter, January 2007, p.1.

¹² The political status of tribes, and the independent origins of tribal sovereignty, has repeatedly been recognized by the U.S. Supreme Court. See for instance, *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1932) ("The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial"); *Talton v. Mayes*, 163 U.S. 376 (1896) ("the powers of local self government enjoyed by the Cherokee nation existed prior to the Constitution"); *United States v. Wheeler*, 435 U.S. 313 (1978) (Double jeopardy did not apply to prosecutions of an individual in both federal and tribal courts, "Since tribal and federal prosecutions are brought by separate sovereigns"); and *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) ("As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority").

¹³ S/SPAWN also used the name Steelhead/Salmon Protective Association and Wildlife Network in the late 1980s. However, documents filed with the state of Washington list the organization as Steelhead/Salmon Protection Action for Washington Now-PAC.

¹⁴ See Ryser, Rudolph. *Anti-Indian Movement on the Tribal Frontier*. August 1995. Olympia, Washington: Center for World Indigenous Studies.

¹⁵ S/SPAWN News Release, September 28, 1983, p.2. Barbara Lindsay is listed as Executive Director of S/SPAWN.

¹⁶ Initiative 456 is presently in the Revised Code of Washington at RCW 77.110. See also Carr, Thomas F., Sr. Assistant Attorney General. 1984. Initiative 456. Memo to Bill Wilkerson, Director, Department of Fisheries, and Frank Lockard, Director, Department of Game. December 4, 1984; and S/SPAWN. 1984. Letter to President Ronald Reagan. February 14, 1984.

¹⁷ Callaghan, Peter. McKenna, Inslee venture off-script. *Tacoma News Tribune*. June 17, 2012. <http://www.thenewstribune.com/2012/06/17/v-printerfriendly/2184100/mckenna-inslee-venture-off-script.html>. Downloaded August 9, 2012.

¹⁸ Letter from Dennis Swanson to All King County Council Members. November 7, 1997; Citizens Equal Rights Alliance. Organizations, Washington State. <http://www.citizensalliance.org/organizations/Washington.htm>. Downloaded August 2, 2012.

¹⁹ Citizens for Safety and Environment. White River Amphitheater Newsletter. Winter 2001.

²⁰ Superior Court of Washington For King County. *Citizens for Safety and Environment v Ron Sims et al.* No. 98-2-04955-3. March 12, 1998; Kamb, Lewis. Judge denies challenge to Muckleshoot amphtheater. *Seattle Post-Intelligencer*. July 31, 2003. <http://www.seattlepi.com/news/article/Judge-denies-challenge-to-Muckleshoot-amphitheater>. Downloaded August 4, 2012.

²¹ Written statement by Lyle Zeller titled "King County Council Meeting" and dated December 15, 1997; King County Library. State Supreme Court rejects bid to form Cedar County out of eastern King County on February 5, 1998. http://www.historylink.org/_content/printer_friendly/pf_output.cfm?file_id=7894.

²² My sincere gratitude to the very professional staff at the King County archives.

²³ Notes from May 16, 1997 meeting attended by Citizens for Safety and Environment leaders and Diane Fish, legislative aid for Kent Pullen; CSE membership list sent to the attention of Diane Fish by CSE leader Dennis Swanson; phone logs from Pullen's office between January 1, 1997 and August 20, 1997; Draft of letter to constituents from Kent Pullen dated May 7, 1997.

²⁴ Letter from Dennis E. Swanson to Kent Pullen dated April 9, 1999.

²⁵ S/SPAWN newsletter. Summer 1989. The name of the version that Pullen advised was Steelhead/Salmon Protective Association and Wildlife Network.

²⁶ Butterfield, Nancy. Pullen's Action a Slat in the Face to Indians. *Seattle Times*. July 14, 1990. <http://community.seattletimes.nwsourc.com/>. Downloaded August 4, 2012.

²⁷ Letter from Kent Pullen to King County Prosecutor Norm Maleng dated September 25, 1997. U.S. Supreme Court. *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*. 492 U.S. 408 (1989). In *Brendale*, a four-judge plurality opinion (there were three multi-judge opinions and no majority) upheld county zoning regulations in so-called "open" areas of Yakama reservation. These areas were defined, in part, by a large portion of fee land owned by non-Indians. The case drew on the previous decisions in *Montana v. U.S.* that had undermined on-reservation tribal jurisdiction over non-Indians, save in certain prescribed circumstances. The principle at work in these cases is clearly one of settler colonialism in which political authority follows the occupation of tribal lands. U.S. Supreme Court. *County of Yakima v. Confederated Tribes and Bands of the Yakima Nation*. 502 U.S. 251 (1992). In this case, the Court upheld an ad valorem property tax on fee patent lands that had been "allotted" under the General Allotment Act of 1887. This applied to land owned in fee by tribal members and the tribe itself. Again, this case has roots in a settler colonial system of law, based as it is on the General Allotment Act. This act was part of a general trend in U.S. policy in the period toward coerced assimilation and the breaking up of tribally-held lands. The use of these laws illustrate how anti-Indian political actors draw on colonial traditions in U.S. law in an effort to further erode tribal sovereignty.

²⁸ Metropolitan King County Council, Committee of the Whole. Staff Report.

²⁹ Propose Ordinance 97-703. November 18, 1997. These documents indicate that the ordinance was introduced by only Kent Pullen and Rob McKenna.

³⁰ Gosset, Larry. Pro/Con - The Muckleshoot Amphitheatre Project. *Seattle Times*. November 13, 1997. <http://community.seattletimes.nwsourc.com/archive/>. Downloaded September 11, 2012.

³¹ Written statement by Lyle Zeller titled "King County Council Meeting" and dated December 15, 1997.

³² United States v. Washington, No. C70-9213, Subproceeding 01-1(Culverts), State of Washington's Trial Brief, p. 36; *U.S. v. Washington*. 2006. Plaintiff Tribes' Motion and Memorandum in Support of Motion for Partial Summary Judgment, September 29, 2006; United States v. Washington, No. C70-9213, Subproceeding 01-1(Culverts), State of Washington's Trial Brief, p. 36; *U.S. v. Washington*. 2006.

³³ Rob McKenna's legal briefs argue, in part, that the state's culvert repair program is sufficient and tribal plans would interfere with this restoration effort. The actual magnitude of the problem belies a different reality. While the tribes' lawsuit covers some 1,215 Department of Transportation (WSDOT) fish barriers in the Case area, and hundreds more owned by the Department of Natural Resources, Fish and Wildlife and state parks service, the problem is much larger.³³ As of 2010, WDFW reports documented that some 1,978 fish-blocking barriers owned by the Department of Transportation alone cut off some 3,895 linear miles of potential salmon habitat – enough habitat to stretch from Seattle to Miami, Florida and back 50 miles west of Dallas, Texas. *U.S. v Washington*. 2009. Plaintiff

Tribes' Trial Brief., Civil No. C70-9213, p.14; Washington State Department of Fish and Wildlife. *Progress Performance Report for WSDOT Fish Passage Inventory*, June 2011. Olympia, Washington.

WSDOT reports also demonstrate the glacial pace at which the state has fixed fish-passage barriers. Between 2005 and 2010 the state repaired a total of 72 culverts for an average of 12 culverts per year. This rate actually slowed across this period, averaging 15 barriers repaired per year between 2005 and 2007 and 9 per year between 2008 and 2010. If WSDOT continues to fix barriers at this rate it, it will take more than 152 years to fix these barriers. Even when repaired, the state's efforts have not always been effective. A study by state Fish and Wildlife personnel found that 30% of culverts allowed under the department's hydraulic permit authority were themselves fish passage barriers. Most of these failed culverts resulted from noncompliance with permit provisions. Contrary to interfering with state salmon restoration efforts, there is more than ample reason for thinking that a lawsuit was necessary to move this process forward. Washington State Department of Fish and Wildlife. *Progress Performance Report for WSDOT Fish Passage Inventory*, June 2006 to 2011. Olympia, Washington. Price, David., Quinn, Timothy and Robert J. Barnard. 2010. Fish Passage Effectiveness of Recently Constructed Road Crossing Culverts in the Puget Sound Region of Washington State. *North American Journal of Fisheries Management* 30:1110–1125.

³⁴ *U.S. v Washington*. 2007. United States District Court, Western District of Washington, Order on Cross-Motions for Summary Judgment.

³⁵ See Ryser, Rudolph. *Anti-Indian Movement on the Tribal Frontier*. August 1995. Olympia, Washington: Center for World Indigenous Studies.

³⁶ Email from Barb Lindsay to Danielle French, Attorney General's Office, dated September 16, 2007. The email was cc'd to Rob McKenna.

³⁷ Email from Judy Gaul to Rob McKenna dated September 17, 2007. This email was cc'd to Rob Costello and Danielle French.

³⁸ U.S. Supreme Court. *City of Sherrill, New York v. Oneida Indian Nation of New York*. 544 U.S. 03-855 (2005).

³⁹ Newcomb, Steve. Christian Discovery and Indian Sovereignty. *Cultural Survival Quarterly*. Summer 2005.

⁴⁰ Email from Rob Costello to Barbara Lindsay dated September 27, 2007. This email was cc'd to Rob McKenna.

⁴¹ One Nation United Update. January 2008; Email from Barbara Lindsay to Danielle French in the Office of the Attorney General of Washington State. September 16, 2007.

⁴² One Nation United Update. Fall 2009, p.6.

⁴³ *United States v. Washington*, No. C70-9213, Subproceeding 01-1(Culverts), State of Washington's Trial Brief, October 13, 2009.

⁴⁴ See also Frank, Billy Jr. *State Still Ignores Fish-Blocking Culverts*. Northwest Indian Fisheries Commission. September 4, 2012. <http://nwifc.org/2012/09/state-still-ignores-fish-blocking-culverts/>. Downloaded September 11, 2012.

⁴⁵ *United States v. Washington*, No. C70-9213, Subproceeding 01-1(Culverts), State of Washington's Trial Brief, October 13, 2009.

⁴⁶ *United States v. Washington*, No. C70-9213, Subproceeding 01-1(Culverts), State of Washington's Trial Brief, October 13, 2009. p. 34. This same argument also appears in Washington State's September 29, 2006 Motion for Summary Judgment and Argument in Support (No. C70-9213).

⁴⁷ Cohen, Fay G. 1986. *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*. Seattle, WA: University of Washington Press. For more on the struggles of tribes in the Northwest to exercise treaty fishing rights, see also Wilkinson, Charles. 2000. *Messages from Frank's Landing: A Story of Salmon, Treaties, and the Indian Way*. Seattle: University of Washington Press; and American Friends Service Committee. 1970. *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup and Nisqually Indians*. Seattle: University of Washington Press.

⁴⁸ Eminent Domain Task Force. *2009 Final Report*. Washington State Office of Attorney General Rob McKenna, Olympia, WA. www.atg.wa.gov, p.4.

⁴⁹ The National Association for the Advancement of Colored People (NAACP) pointed to *Kelo*'s parallel with past urban renewal programs, noting that "the displacement of African Americans and urban renewal projects are so intertwined that 'urban renewal' was often referred to as 'Black removal.'" Left political leaders such as U.S. Representatives Bernie Sanders (I-VT), Maxine Waters (D-CA) and Ralph Nader opposed the high court's decision. Shelton, Hilary O., Director NAACP Washington Bureau. 2005. "Protecting Property Rights After *Kelo*." Statement of Mr. Hilary O. Shelton, Director NAACP Washington Bureau, Before the House Energy & Commerce Committee, Subcommittee on Commerce, Trade and Consumer Protection. October 19, 2005; Harney, Kenneth. 2003 Eminent Domain Ruling Has Strong Repercussions. *The Washington Post*. July 23, 2005.

⁵⁰ A search of post-*Kelo* press coverage in more than 1,000 newspapers found that “property rights” frames overwhelmed “civil rights” frames in articles about the *Kelo* decision, occurring in some 1,450 articles against 111 for the latter. In addition, while 420 articles cited the libertarian Institute for Justice, just 39 cited the NAACP and 7 mentioned Ralph Nader (despite objections to *Kelo* from both). A search on the term “libertarian” returned 226 articles, reflecting an apparent mix of references to the Libertarian Party and characterizations of *Kelo* opponents. Even when articles cited the NAACP, “property rights” frames (25) outnumbered “civil rights” frames (6). When articles cited the Institute for Justice, 253 articles included a “property rights” frame while just 20 included a “civil rights” frame. This analysis was conducted using the ProQuest Newstand database, a search engine that encompasses 1,013 national, local and international newspapers. The number of articles returned in ProQuest indicate approximate result counts without duplicates. Proquest.com. Proquest Newstand, <http://search.proquest.com>. Downloaded February 3, 2012.

⁵¹ Letter from Rob McKenna to William Mauer, July 9, 2008.

⁵² McKenna and Ford’s resistance to including low income representation on the Task Force is seen in a series of emails between University of Washington Professor Emeritus Phil Beareano and Tim Ford between July 2007 and June 2008, when Bereano resigned in protest. These emails are available upon request. See, email from ATG MI AGO Ombudsman Tim Ford to Phil Bereano, July 3, 2007; email from Tim Ford to Phil Bereano, July 2, 2007; email from Tim Ford to Phil Bereano July 6, 2007; email from Phil Bereano to Tim Ford July 13, 2007; email from Phil Bereano to Tim Ford, July 17, 2007; email from Tim Ford to Phil Bereano, July 6, 2007; email from Tim Ford to Phil Bereano, July 17, 2007; email from Phil Bereano to Tim Ford, July 17, 2007; email from Tim Ford to Rob McKenna, July 19, 2007; e-mail from Danielle French to Michelle Stender, July 19, 2007; email from John Fox to Tim Ford, September 14, 2007; email from Tim Ford to John Fox, September 5, 2007; email from Phil Bereano to Eminent Domain Task Force Listserve October 10, 2007; email from Tim Ford to Eminent Domain Task Force Listserve, October 10, 2007; email from Phil Bereano to Eminent Doman Task Force distribution list; June 18, 2008. E-mail from Phil Bereano to Eminent Doman Task Force distribution list; June 18, 2008.

⁵³ Barbara Marie Lindsay, e-mail to Washington State Attorney General, February 10, 2007.

⁵⁴ Tim Ford, ATG MI AGO Ombudsman, email to Phillip L. Bereano. July 6, 2007.

⁵⁵ Office of the Washington State Attorney General Eminent Domain Task Force. July Update. Undated.

⁵⁶ Rob McKenna. Draft Letter “RE: Eminent Domain Task Force Appointment” to Ms. Barbara Marie Lindsay. July 9, 2007.

⁵⁷ One Nation United. *Update*. January 2008.

⁵⁸ Email from Barbara Lindsay to Danielle French, Attorney General's Office. August 20, 2007.

⁵⁹ Email from Barb Lindsay to ATG MI AGO Ombudsman (Tim Ford). November 2, 2007; email from Barb Lindsay to Linda Matson, cc'd to Kim Halvorson. November 2, 2007; email from ATG MI AGO Ombudsman Tim Ford to Danielle French. November 2, 2007; email from Linda Matson to Barb Lindsay and Kim Halvorson. November 2, 2007.

⁶⁰ Rysler, Rudolph C. *Anti-Indian Movement on the Tribal Frontier*. August 1995. Olympia, WA: Center for World Indigenous Studies.

⁶¹ Cohen, Fay G. 1986. *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*. Seattle, WA: University of Washington Press. For more on the struggles of tribes in the Northwest to exercise treaty fishing rights, see also Wilkinson, Charles. 2000. *Messages from Frank's Landing: A Story of Salmon, Treaties, and the Indian Way*. Seattle: University of Washington Press; and American Friends Service Committee. 1970. *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup and Nisqually Indians*. Seattle: University of Washington Press.

⁶² S/SPAWN News Release, September 28, 1983, p.2. Barbara Lindsay is listed as Executive Director of S/SPAWN.

⁶³ S/SPAWN News Release, September 28, 1983. Barbara Lindsay is listed as Executive Director of S/SPAWN.

⁶⁴ S/SPAWN News Release, September 28, 1983. Barbara Lindsay is listed as Executive Director of S/SPAWN; State of Washington Secretary of State. Certificate of Incorporation to Steelhead/Salmon Protection Action for Washington Now-PAC; December 30, 1986.

⁶⁵ Crawford, Robert. 1998. Jack Metcalf, Save the Whales: An Anti-Indian Activist Finds New Allies. *The Dignity Report*. Winter. Metcalf’s quote at the Humphries' event is taken from a September 1, 1984 video at the Heritage Library in Velma, Oklahoma. For a discussion of Jack Metcalf, Willis Carto and *Spotlight's* role in the white supremacist movement, see Zeskind, Leonard. 2009. *Blood and Politics: The History of the White Nationalist Movement from the Margins to the Mainstream*. New York: Farrar Straus Giroux.

⁶⁶ Initiative 456 is presently in the Revised Code of Washington at RCW 77.110. See also Carr, Thomas F., Sr. Assistant Attorney General. 1984. Initiative 456. Memo to Bill Wilkerson, Director, Department of Fisheries, and

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¹⁵⁷ U.S. District Court. Western District of Washington at Tacoma. *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*. Order Granting Defendant's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment Re: Bracker Preemption. Case No. C08-5562BHS. Judge Settle also made such a ruling despite the potential for adverse impacts on the tribal economy and self-determination. In this respect, Settle cited the 9th Circuit's ruling in *Crow Tribe of Indians v. Montana* (650 F. 2d 1104) that "a state tax is not invalid because it erodes at tribe's revenues, even when the tax substantially impairs the tribal government's ability to sustain itself and its programs." This statement appears to be a another proclamation that, at least in some instances, federal courts ares willing to support assaults on tribal communities and governments by allowing the destructive extension of state taxes into Indian Country.

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