

HUNTING DISPUTE BACKGROUND INFORMATION AND HIGHLIGHTS FROM EXPERT REPORTS

- Letting the Klallam Tribes hunt in the QTA Tribes' ceded area *despite two consecutive WDFW conclusions that the Klallam Tribes produced no evidence of having treaty hunting rights there* is a blatant violation of *Buchanan*, WDFW's co-management responsibilities, and the Treaty of Olympia tribes' (Quileute, Quinault, and Hoh) treaty rights.
- Under *State v. Buchanan*, 138 Wn.2d 186 (1999), a tribe asserting hunting rights outside its ceded area must show "actual use **and** occupancy over an extended period of time" in the subject area at and before treaty times for the purpose of hunting. *Id.* at 204-07 (emphasis added). Where a tribe claims that it has hunting rights in another tribe's ceded area, the petitioning tribe has to show that it "**jointly or amicably** hunted in the same area to the exclusion of others." *Id.* at 205.
- Revisiting the criteria for these claims will not and cannot end in a different result for the Klallam Tribes.
 - WDFW's expert reiterated numerous times in two consecutive reports that the Klallam Tribes had "provide[d] no actual evidence for hunting" in the Quileute, Quinault, and Hoh ceded area at treaty time.
 - It is **not possible** for WDFW to satisfy the standard from *State v. Buchanan* **and** devise new traditional use criteria that would award a tribe hunting rights outside its ceded area where the tribe "provides no actual evidence for hunting" in the subject areas.
- To prove traditional use rights, the Klallam Tribes have to show they actually used and occupied the areas for hunting jointly or amicably with the QTA Tribes for an extended period of time at and before treaty times.
 - The Klallam Tribes have repeatedly failed to **remotely approach** this standard.
 - DFW's expert concluded:

[T]he Olympic Peninsula tribes hunted in the mountains within the watersheds of the rivers in their respective territories, [and] their hunting areas did not overlap. Whenever one tribe detected trespass by another, conflict resulted....

I found clear evidence that the S'Klallam hunted in their aboriginal territory and the Quileute in theirs. However, **I found that none of the information [in the S'Klallam Report] provides evidence of S'Klallam aboriginal hunting in those GMU locations.**¹
- DFW's anthropologist concluded:
 - "None of the [S'Klallam] Report's information provides evidence for an aboriginal S'Klallam hunting ground beyond treaty-ceded lands." *Id.* at 15.
 - "The S'Klallam Report provides no actual evidence for hunting in the Sol Duc and southern Dickey GMU areas[.]" *Id.* at 26.

¹ Thompson, Gail, *Review of Information in S'Klallam Tribes' August 2015 Report on S'Klallam Hunting in the WDFW Sol Duc (607) and Southern Dickey (602) Game Management Units*, pages 20, 29 (2015).

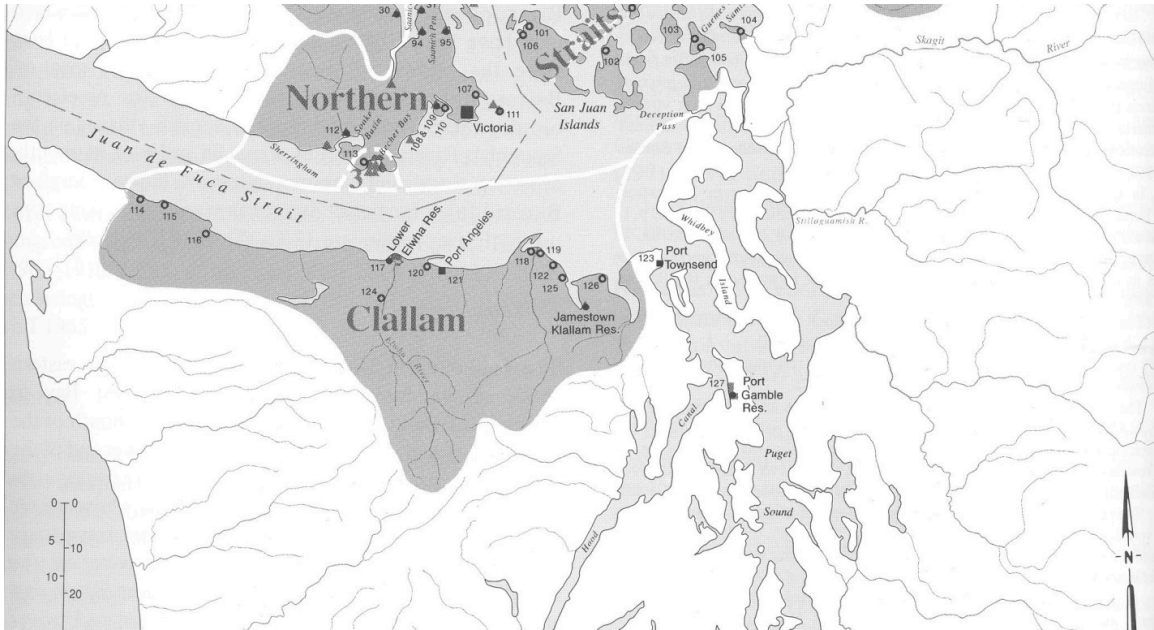
HIGHLIGHTS FROM WDFW'S EXPERT REPORTS

Other notable conclusions from DFW's anthropologist are as follows:

- “None of the [S’Klallam] Report’s information provides evidence for an aboriginal S’Klallam hunting ground beyond treaty-ceded lands.” *Id.* at 15.
- “The S’Klallam Report provides no actual evidence for hunting in the Sol Duc and southern Dickey GMU areas[.]” *Id.* at 26.
- “Because evidence that the tribe ‘actually used for hunting and occupied’ the claimed area is needed under the *Buchanan* standard and such evidence is lacking, I conclude and confirm my opinion that there is almost no evidence of S’Klallam aboriginal hunting in the Sol Duc and southern Dickey GMUs.” *Id.* at 30.
- “Ethnographic and Quileute Tribal oral history sources provide abundant evidence of Quileute traditional knowledge and use of the Dickey and Soleduck River drainages.... This is the kind of evidence I would expect to see if the S’Klallam were hunting in the two GMU portions, but which is lacking in the materials I reviewed.” Thompson, Gail, *Investigation of Lower Elwha Klallam Tribe, Port Gamble S’Klallam Tribe, and Jamestown S’Klallam Tribe Claim of Traditional Hunting in Portions of the WDFW Dickey (602) and Sol Duc (607) Game Management Units* 19 (2015).
- “Information on Quileute traditional knowledge and use of the Dickey and Soleduck watersheds contrasts sharply with that available for the S’Klallam and reflects extensive Quileute use, including hunting, of the two GMU portions.” *Id.* at 20.
- “Based on the information provided in the report sections above, evidence for S’Klallam traditional hunting south of the Hoko River drainage divide in the Dickey GMU (602) about treaty time is lacking in the materials reviewed. The same is true for S’Klallam hunting in the northern part of the Sol Duc GMU (607).” *Id.* at 30.

HIGHLIGHTS FROM OTHER EXPERT REPORTS AND EVIDENTIARY SOURCES

- Dr. Suttles, an anthropologist who worked with the Klallam Tribes and tribal members for decades, depicted Klallam aboriginal territory as follows—excluding the GMU areas claimed by the Klallam Tribes here:



See Powell, Jay, *Evaluation of the Lower Elwha Klallam Tribe's Claim to Treaty Hunting Rights in the Northern Portions of the Dickey and Sol Duc Game Management Units and the Southern Portion of the Pysht Game Management Unit* 6 (November 14, 2014).

- “No anthropologist in any published piece has defined the Klallam people’s territory as encompassing the areas claimed by Elwha here.” *Id.* at 15.
- Dr. Erna Gunther, one of the earliest ethnographers to study the Klallam Tribes, in the 1920s, reported that “[h]unting is of least importance, economically, to the Klallam. What little of it is done is carried on at sea rather than on land. The mountains back of the Klallam territory are known only to the few hunters who go there for elk and deer. Occasionally a hunter will take his family along to help him dry the meat and carry it home. There is generally only one hunter to a village.” *Id.*
- The only inland village the Klallam had in aboriginal times was located at the confluence of the Elwha River and Indian Creek—well outside the GMU areas at issue here. *Id.* at 13, 16. The other twelve villages were located on the shores of the Klallam territory. As Dr. Jay Powell observed, with one hunter per village, “[t]hirteen hunters over a great span of territory with abundant game would not need to worry about competition for resources. It defies logic to claim (as Elwha now does) that these hunters traveled for days on end over the dangerous, steep ridge lines of the Olympics to obtain big game that they would then need to haul back to their village, at the risk of being caught and killed by the Quileutes.... These hunters had vast expanses of abundant game adjacent to their villages.” *Id.* at 16.
- Indeed, Dr. Gunther observed that “[t]ravel over trails inland was very rare and considered a great hardship” by the Klallam Tribes. *Id.* at 18. She added that “[s]ince the Klallam do not

hunt very much they have to depend on trade for their supply of mountain goat wool” with other tribes “who were good hunters.” *Id.*

- Gunther also did not observe any record of trade between the Klallam Tribes and the Treaty of Olympia Tribes, and instead found that “[t]here is not a single record of an alliance with Quilleute or Quinault although they know these people.” *Id.* at 17-18.
- In 1954, Dr. Verne Ray, who did intensive anthropological work with the Quileute in the 1940s and 50s, testified as follows:

Q Now, in your opinion, did any of the neighboring tribes of the Quinaielts or Quileutes use or occupy any of the areas shown by you as the aboriginal areas of the Quinaielt and Quileute Tribes?

A No; they did not.

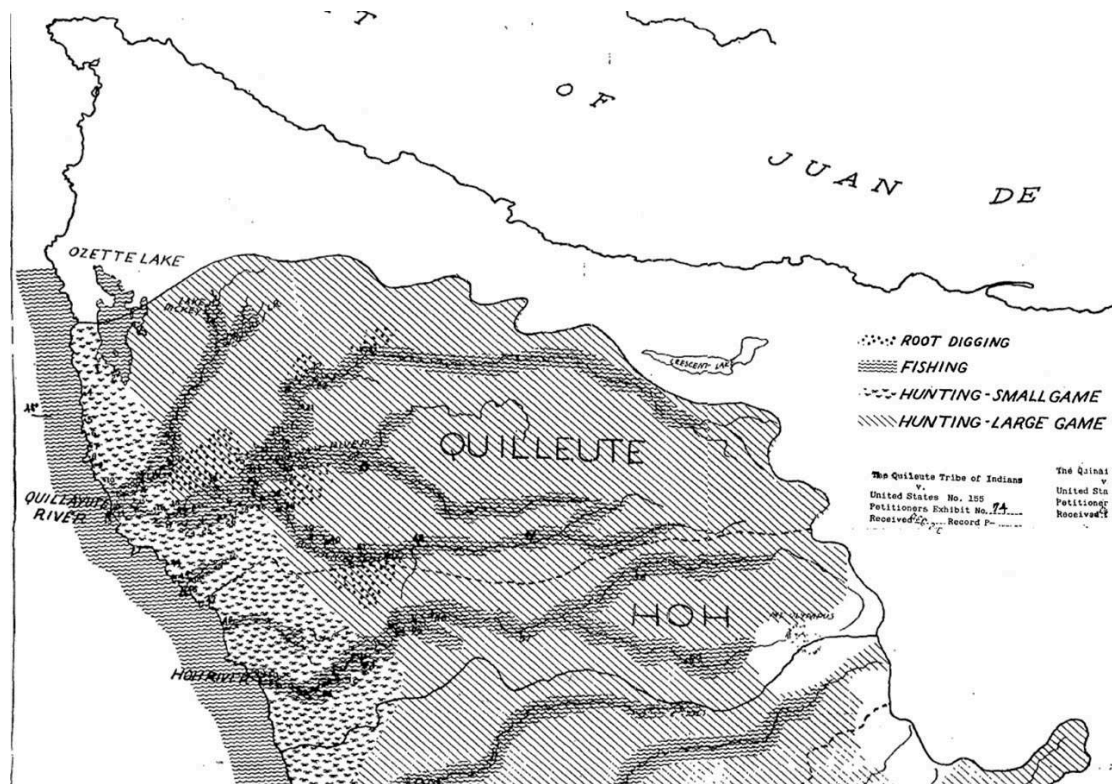
The evidence on this point is very strong. The sense of possession, exclusive occupancy of the Quinault and Quileute was so great as to lead to a clear definition of the area which they felt was theirs and could not be encroached upon by a member of any other tribe without challenge. Actual warfare developed as a consequence of this when there was occasional encroachment, even in the high mountain regions of the Olympics....

Q So, in your opinion, these areas, as you have shown, were occupied to the exclusion of other groups?

A Yes, they were.

Id. at 20.

- Dr. Ray depicted Quileute’s exclusive territory at treaty time as follows, indicating hunting activity with diagonal lines:



Id. at 27.

- Dr. Ray's field notes list "general hunting lands" as lands that the Quileute Tribe considered to be its tribal property, while "good hunting grounds" could be claimed by upper class Quileute families. *Id.* at 24-25. "Travelers could not hunt" in Quileute territory. *Id.*
- Anthropologist Ram Raj Prasad Singh, who worked with the Treaty of Olympia Tribes in the 1960s, reported in 1966 that:

The hunting and fishing grounds were owned by the family or by the household....

Hunting grounds usually consisted of the watershed of the streams of valleys well enclosed by hills or high mountains. The Indians knew that nobody owned the land, but it was their property in the sense that they had knowledge about it. Each the ownership of the hunting ground by a particular family appears vague, but for the Indians it was a kind of ownership. **It was against the custom for other people to go there to hunt alone without the permission of the person who had the possession of it. They either got permission or accompanied the owners.** The "accustomed land" was inherited either from father to son or from father to son-in-law.

Id. at 21-22.

- Based on information from Quileute informants, Dr. Leo Frachtenberg similarly reported in 1916 that:

The Quiliutes used to hunt along the banks of the Quiliute, Dicky [sic], Sol duc, Kalower [sic] and Bogachiel reviews going as far east as the Olympic Mountains []. In their canoes they went up the Sol Duc and Bogachiel rivers as far as the snow-capped peaks. These banks were full of game. They also hunted on Dickey Lake [], Ozette Lake [], Beaver Lake [], Thunder Lake [], Tyee Lake [] and another lake on the Dickey river, above the Forks of the Dickey and East Dickey rivers.... The prairies too were full of game and they hunted especially on Quileute Prairie [], Little Prairie [], Forks Prairie [], a prairie below the first Sol Duc bridge []; a prairie on Kalower [sic] River [], Beaver Prairie, Tyee Prairie []; Bear Creek. The hunting expeditions took them occasionally clear over the Olympic Mountains and they went as far as the Elwha river, especially when hunting with dogs.... **The hunting grounds belong to the whole tribe....**

Land was neither individual nor family property. It belonged to the whole tribe. A man or family, however, was looked upon as the proprietor of the place on which he built his permanent fishing, digging, or hunting houses. These houses could be inherited.... The hunting grounds up the several rivers were also family inheritable and indivisible property. As such grounds only these places were considered which were full of game. The places that had hardly any game, as for instance, the stretch about 3 miles from the ocean, were common (tribal) property and anybody (who was a Quileute) could hunt there. Berrying and root digging grounds were also common property. **These grounds were accessible only to the members of the tribe. Outsiders were excluded from them.**

Id. at 22-23.

- There are three Quileute legends, all of them documented long ago, that are based on the Quileute boundary with the Elwha/S'Klallams:

○ The Creation Legend.

Tso sa'. I'm goin' to tell you a story of the border monsters that used to fight up at Boulder Peak at the place where Quileute country and country of the 'ilhxwat' (Elwha) come together. **You know Boulder Peak, Bitsik'walas. We call it Bitsik'walas in Quileute 'cause it's the boundary, the border, and our Quileute land goes that far. And Elwha land starts there; everythin' beyond Boulder Peak is Elwha land....** K'wati did that, made that border so the Quileutes and Elwhas would know where the border was, cause **the Quileutes and the Elwhas used to fight sometimes about the border. They used to fight in the valley where Lake Crescent is now**, used to be a big meadow there and the Quileutes and Elwhas used to fight over there until Stormking Mountain had enough of it and tore off a big stone from his head. He threw it down into the valley and it killed the warriors, killed the warriors and made a jam, a dam in the river at the end of the valley and so (that's the reason) Lake Crescent is there.

Well, K'wati made Boulder Peak. He marked the boundary of Quileute country with Boulder Peak. It was K'wati who made the Quileutes from wolves. And he also went over there in Elwha country and found the Elwhas were little people, real little and they only had little salmon in their waters. So K'wati made a big king salmon out of lots of little ones and gave it a name and set it loose in the Elwha River. And then he stretched the people there so they would be big enough to handle them big kings in their river. And so the Old People would know where their border was, K'wati made that big pile of rocks for a border between Quileute and Elwha country. Well, then ... so K'wati made Boulder Peak to mark the boundary between Quileute country and Elwha country.

Powell, Jay, *Interim Ethnohistorical Analysis of S'Klallam Hunting and Territoriality in parts of the Olympic Peninsula in Western Washington including the Dickey, Sol Duc, Hoko, Quinault Ridge and Wynochee Game Management Units*, by Josh Wisniewski, PhD 20-21 (2014) (quoting Thompson and Egesdal, *Salish Myths and Legends*, (Univ. of Nebraska Press: Lincoln 2008) pp. 215-16).

○ The Legend of the Origin of Lake Crescent.

Many, many years ago, the Klallam people and the Quillayute people had a big battle near the shores of the Strait of Juan de Fuca. For two days they fought, from sunrise to sunset. Many warriors on both sides were killed, but neither side would ask for peace.

After watching the bloodshed for two long days, Mount Storm King became angry. On the third day he broke off a great piece of rock from his head and hurled it down into the valley. The rock was so huge that it killed all the men fighting in the valley below him, all the Klallam warriors and all the Quillayute.

Through the valley flowed a small river. The rock hurled by Mount Storm King dammed this stream, and soon at the foot of the mountain where the fighting had been fiercest a peaceful little lake sparkled in the sunshine. **For many generations no Indian ever went to the place where the warriors had been punished by death. The little lake is still there-Lake Crescent** it is called today. And Mount

Storm King, mirrored in its clear depths, still looks out across the Strait of Juan de Fuca and over the forest-covered mountains on both sides of it. Storm King guards the crescent-shaped shore line and the calm blue waters of the lake he made long ago.”

Id. at 22-23 (quoting Ella Clark, “Indian Legends of the Pacific Northwest” (1953), pp. 65-66).

- The Legend of the Border Monsters and Origin of Sol Duc Hot Springs and Olympic Hot Springs.

They [the Quileutes] referred to the curative waters of the hot springs as ‘skukum lemensen’ or ‘strong medicine’. The Indians had stumbled upon these hot springs, that bubbled forth from the ground far up the valley, centuries ago while hunting the great herds of elk that frequented the river valley in the fall and winter months. Each fall they would bring their sick relatives and friends up the river in canoes and by trail to this spot where they were restored to health. At the same time they hunted and cured their winter supply of elk meat.... The other hot springs, much larger than the one on the Soleduck River is located on Boulder Creek, a tributary of the Elwha River about twenty miles southwest of Port Angeles....

The following Indian legend about the origin of these two hot springs was told to me in the early 1900’s by an old Indian of the Quileute tribe.

A very long time ago the Olympic Mountains were ruled by two large and powerful dragons. One of these ruled all of the country north and east of the Elwha River that drained into Puget Sound and the Straits of Juan de Fuca. The other dragon ruled all of the country on the west side of the ridge drained by the Soleduck River and emptying into the Pacific Ocean. Each dragon ruled over all the Indians within his territory. **These dragons had many disputes and fights over the boundary line which was along the top of the divide with the Soleduck River on one side and the Elwha River on the other side. Boulder Peak was the highest point of this divide.** The headquarters of these monsters were near Boulder Peak in two great mountain caverns, each one on his respective side of the mountain.

Every full moon during centuries past, these dragons would patrol their domain and had met many times in combat over supremacy of the territory.... It is said that when their wounds are healed and they have regained their full strength they will again come forth and renew the battle for supremacy. In the **meantime the hot breath and tears of the Sol Duc dragon bubble up in the Soleduck Valley to give health and strength to his people during his convalescence, while the Elwha dragon’s hot breath and tears do the same for himself and his people in the Elwha Valley.**

Id. at 23-25 (quoting Chris Morgenroth, *Footprints in the Olympics: an Autobiography*, Fairfield, WA: Ye Galleon Press (1991), pp. 108-109.)²

² Chris Morgenroth was one of the earliest settlers in the west Olympic Peninsula. He established a homestead in Quileute aboriginal territory in 1890. His journal entries were published by his descendants in *Footprints in the Olympics*.

- Klallam informant Martin Hopie states that the tribes did not “jointly or amicably” hunt (or otherwise use) the same areas: “they were told not to trespass.” *Id.* at 10.
- Cynthia Larsen, who was a Jamestown S’Klallam tribal council member residing in the northern portion of the Jamestown S’Klallam territory in the 1950s, testified in the Indian Claims Commissions proceedings in 1952 as follows:

I’m familiar with the part of the boundaries in which we lived. And we went back to the foothills. I know that’s where they got their grasses and the bases for the basket making and they hunted elk and they got their camas roots in Spring Prairie....

I used to go with [my grandmother] when they went on these hunting parties. I must have been about eight, seven or eight. And they would go up into the foothills and kill their deer or their elk or whatever it was, and then they would strip them up there and dry them, and then bring them home for winter use. But fish and clams I think was their main--.

Id. at 26.

- Lester Jackson, chairman of the Port Gamble S’Klallam Tribe in 1952, testified in 1952 that Port Gamble had sufficient game in the flatlands, such that Port Gamble did not even need to travel to the foothills like the Jamestown S’Klallam did:

Q: Did you know of or did you ever hear of elk hunting in the Cascades by the Klallams?

A: Well, the other branches probably would. The Port Gamble, they stocked their game up on Hood Canal on the east side of the Olympics.

Q: What kind of game?

A: Oh, deer and bear....

Q: Did they take elk from the east side of the Olympic Mountains?

A: No, not until recently.

Q: There was sufficient [game] down on the flats?

A: Yes.

Id. at 26-27.

- Carsten Lien’s account of the 1889-90 Press Expedition trip to explore the Olympic Mountains confirms that the Klallam Tribes confined themselves to the lowlands:

while we were at the mouth of the [Elwha] river we had an opportunity to converse with the Indians who have settled there. **We were unable to gain from them any information regarding the interior of these mountains. Their fathers hunted the same foothills, and so far as we could learn, handed down no traditions, which would indicate more extended travel by their immediate ancestors,** or any better knowledge of the country by them than is possessed by their living descendants.

Powell, Jay, *Review and Critique of WDFW’s Methodology and Conclusion Regarding S’Klallam Hunting, Including Additional Evidence of S’Klallam Hunting on the Western Olympic Peninsula*, by Josh Wisniewski, PhD 43 (Oct. 21, 2015).

- A similar account states:

The Press Expedition met a party of S'Klallam hunters up the Elwha valley near what is now the Olympic National Park boundary. **The hunters told the explorers they had no idea what was upstream.** Of course, this might have just been a S'Klallam story to keep the hunting and fishing for themselves. **[But t]heir traditions say the Sasquatch had their own territory where the S'Klallam did not go.** In 1924, S'Klallam journalist George Totsgie wrote in the Olympic Tribune, a Port Angeles newspaper, on July 18, 1924: "Indians would not go up the Elwha River without many white men along because of their fear of the Stick Siwashes."

Id. at 44 (quoting Neal, Pat, *The Fishermen's Prayer: Stories, Poems, and Prayers from the Olympic Peninsula* 71 (2007)).

- George Gibbs, a member of the treaty commission, recorded in 1855 that:

From ["False Dungeness," or Port Angeles] to Port Townshend a strip of more local character, some of it valuable for cultivation, borders the coast and bays. Only a few streams, and those of inconsiderable length, empty into the straits. **Along this tract from the Okeho River to Point Wilson, the Klallam, or S'klallam are located, a tribe connected with those of the southeastern part of Vancouver Island. They are as may be supposed almost exclusively maritime,** depending mainly for support upon fish or the commodities which they get in exchange; but less venturous than the Makah, they do not pursue the whale, or voyage beyond the mouth of the straits."

Id. at 40.