

*Richardson draft for [unclear] XX (after [unclear])*

CONFERENCE  
COMMISSIONER OF INDIAN AFFAIRS  
WESTERN WASHINGTON TRIBES  
Olympic Hotel, Seattle, Washington

QUINAULT TRIBE, September 13, 1956, 2:10 p.m.

Cleveland Jackson  
Herbert Capoeman  
Mrs. Hannah Bowe chop

BUREAU REPRESENTATIVES

Commissioner Glenn L. Emmons  
Thomas M. Reid  
Homer B. Jenkins  
Don C. Foster  
Clarence W. Ringey

CONFERENCE
SEP 13 1956
14-228
Court of Claims
Docket No.

EMMONS: Folks, I am pleased to have a few moments to talk with you. I have done my talking, and I wish you folks would use up a few minutes to tell me your problems.

JACKSON: We are not going into any personal problems, Mr. Emmons, we don't have that time; but we will talk about something that is probably a problem nationally. Our number one problem is the heirship problem. We feel that the Bureau through the years got it into this mess, and it should be up to them to get it out to balance it out. We don't want anything like the Tulalip heirship bill or something similar. We could probably go to Congress and get some kind of a piecemeal, but we believe that anything like that should be national and universal.

EMMONS: We have to have something on that because we have the same problem everywhere.

JACKSON: Of the 200,000 acres approximately about 98 per cent of it is allotted and is what made our problem so great. I know that your office sponsored an heirship bill. A lot of them bucked it--they wanted a Christmas tree type. We are not interested in that.

EMMONS: Do you have any ideas on an heirship bill?

JACKSON: First, of course, there would have to be appraisals. That is where you would have to start. The majority of the group feels that many of them have an interest--in as many as a dozen allotments in one family. If something could be worked out whereby the owners in this thing would have preference to buy the others, or in some cases maybe treat some of their interests where there would be enough to consolidate in one ownership. That is possible up there, and it is probably possible in many cases.

EMMONS: Homer (Jenkins), do you have anything to say on this?

JENKINS: That was to a great extent the heart of the heirship bill proposed two years ago. There are two factors that have to be considered: one is that it is the present Acts that we are operating under--we must have the consent of all participating owners--interest holders--before we can take any action one way or the other for partitionment or disposition. That is only true with Indian law. All other law permits any one holder to bring an action to take care of this sort of a situation anywhere you go in any other country. It seems to me that with the terrific fractionalization you have up there, it is going to be impossible for you to pick up all the interests in every case. Some are gone and you have no idea where they are. If we could do it and have your support on a bill that would put it in the same category as everyone else, we could write into it so far as that is concerned a preference on partitionment or a preference on acquisition.

JACKSON: There would be parties of 1,000 interest in it, and I think it should be something like your leasing 51 per cent. That wouldn't be hard to get.

JENKINS: Frankly, across the board, there are places where it would be. We have some cases where we can't get 51 per cent.

EMMONS: On this reservation, could 51 per cent--in this particular tribe--  
would that be possible?

RINGEY: There is a peculiarity there. There are 2400 allotments on the  
Quinault, and I think there are less than 3 per cent on the reservation.

JACKSON: I think at one time there were 1700 off and ~~364~~<sup>370</sup> on the reservation.  
That was about three years ago.

RINGEY: 1700 were allottees and the residents were all men, women, and  
children.

EMMONS: It is something we have to get our teeth into to get resolved.

FOSTER: What is it Cleve is recommending here?

JACKSON: Some kind of an heirship bill to relieve the realty situation.

EMMONS: What type of an heirship bill could be feasible for this group?

FOSTER: I think they know their own group better than any of us. And what  
do you think, Cleve?

JACKSON: As I said before, the first thing would be appraisement. The  
Bureau got us into this mess, and they should bail us out. Take the Tulalip  
bill, anyone regardless of how small the interest would be--and there would  
be more small interests--they go to the State Court--some of the small interests  
won't get anything. They won't have enough to pay their attorney's fees.  
If they would do that and give the heirs the preference--whoever could--and  
if there are none able to put it up for sale--any of them able to buy and  
want to and the rest agree--he should be permitted to purchase.

FOSTER: What he is actually saying, instead of the Indian going to the State  
Court and paying all the costs involved, you would have the law amended to  
where you could petition the examiner . . . or whatever authority may be setup  
for it.

JENKINS: It would be exactly as our heirship bill offered two years ago with the exception of having any one participating petition holder . . . they would require 51 per cent of the interest holders. We would do it in the normal course of business.

JACKSON: Or anyone who has a majority interest.

JENKINS: It would work either way. The only problem we are trying to break down is an administrative one. When you put a requirement of 51 per cent-- that means the area and the superintendent has the administrative load of going around and rounding up these 51 per cent.

FOSTER: What he is saying now is they are willing to consider something else now.

JACKSON: The thing I am trying to get away from is these people with one hundred of one per cent coming in--supposing he had some money and the majority owner didn't have any--his three-fourths would be practically condemned.

JENKINS: Except for this--you always have the option of partitionment. That must be done first. If you have a case where a man holds half of the interest; it would be susceptible to partitionment and he would get his in full.

JACKSON: Wasn't that the general run of the Bureau proposed bill seven years ago?

JENKINS: Except that it was on the application of anyone interested. You would be protected by anyone having a major part by the partitionment feature.

REID: We had one case with 108 heirs and the common denominator 186 millions.

JACKSON: The thing is laying there dormant.

FOSTER: This is the largest single problem they have.

JENKINS: If the Tribe as a whole got strongly behind this type of a bill and it was tailored for your unit, it could be put through and we could go into business doggone fast.

EMMONS: I think there is some plan that might cover several other reservations--maybe the Lummi situation would cover lots of others.

JACKSON: I think a plan like that would cover most of the reservations that have a number of allotments.

FOSTER: The Lummis have the same problem there. Why couldn't the Quinault and the Tulalips who want to go together, get behind it? The Quileutes have the same problem.

JACKSON: I think they have the same problem in Coeur d'Alene.

FOSTER: You could approach them, Cleve.

JENKINS: You have 700 little allotments and they are in a mess. That is the Makah--you have yours--the Quileutes, Lummis--who could well fit into the same pattern.

FOSTER: You fellows get together on a common agreement, and if you got behind it and the Bureau got behind it--

EMMONS: I would sure like to see something worked out because we have to get our teeth into this thing, and in my opinion this is one of the most troublesome problems we have.

FOSTER: Here is a mighty fine man to carry the ball.

EMMONS: I would appreciate if you folks--in line with our policy--we would like to have the tribes work out their programs themselves.

JACKSON: Why don't we work out something and have our attorneys draft it and bring it to the Bureau. They will present it, and we will go back for the hearings.

EMMONS: I would be happy to see what you folks come up with.

JENKINS: To assist you--we can give you two or three drafts which would assist you and save you a lot of time.

EMMONS: Sometimes heirship bills suggested are impractical but I say this-- that the individual Indians on their own reservations are the ones who could come up with a suggestion "How can we resolve this thing?" They are the people we want to satisfy. Let's get together and get our teeth in this thing and see what we can work out.

FOSTER: I think the suggestion these folks made here that they have their own attorney bring out their rough draft is a sensible one. It is psychologically sound because it stems the fears of some other people that the Bureau is trying to slip something over on them.

EMMONS: I will appreciate if you will get busy on that as quickly as possible.

JACKSON: We will get together with our attorney and get you drafts.

EMMONS: If we can get as many problems recorded--this will be sent to me in Washington. If you will proceed.

JACKSON: There is only one other thing we have got. That is roads. Mr. Emmons was speaking this morning--he said, "If we get industries along the edge of the reservation, you can't bring them in--you must have some decent roads to travel on to go to the job." Up there I go 40 miles--10 miles of that is on Indian service road. It takes more than half of my time to go the ten miles than the other thirty.

EMMONS: Where do you work?

JACKSON: I work in Idaho, Montana, Washington, and California--I am a timber estimator.

EMMONS: You are a housewife?

MRS. BOWECHOP: Yes.

EMMONS: And you?

CAPOEMAN: I am on my own--a fisherman.

EMMONS: I am impressed with you folks in this part of the country.

FOSTER: That ten miles on the reservation--you think should be blacktopped?

JACKSON: Yes.

RINGEY: The State road association is the one that is holding that up now.

They don't want a road that close to the ocean. They want one closer in.

That is why we can't justify blacktopping that one.

EMMONS: How far is that away from this present road?

RINGEY: Right adjacent to it.

FOSTER: Why don't we find out where we are. Send one of our road boys up there, either Mr. Sluyter or Mr. Lehlbach, and you go with him. You go to the State Highway Department and see where we stand. The Superintendent should go along too.

JACKSON: The general idea is the Indian service will put it in such condition and the State will take it over.

FOSTER: I don't think we ever raised that point.

RINGEY: They don't want the present location.

FOSTER: If you can get worked out with the State, Cleve, a location satisfactory with the State on the Reservation and we can go along with it without costing us a fortune, then we can get something done. I am hazy on it. I agree with you it is a terror.

JENKINS: I think this is involved in the coastal highway system.

RINGEY: That is right.

FOSTER: Isn't our problem, Cleve, getting from the present road alignment up to where the State wants to go?

JACKSON: What is the name of the road man in Portland?

RINGEY: Sluyter--it used to be Conway.

FOSTER: He is retired.

EMMONS: I wish you would look into this with the State and see what can be worked out there.

RINGEY: We are in a negotiating state with them all the time. This is too near the ocean--the bridges are in danger all of the time.

JACKSON: Even if the State now would start working on a highway which they have been talking about for years to extend 101 and go through the Queets Reservation, it would be ten or fifteen years before they would ever get it in shape and if it was just in--especially a hard mix--if we could get a plain mix black top--in the winter time it is mud. The expense of even keeping up the blacktop would pay it off. In the summertime, you can't see 20 feet for dust.

RINGEY: The Bureau of Public Roads won't permit us to surface that kind of a road.

FOSTER: Before we can put in a strip of roads, it has to be cleared with the Bureau of Public Roads. If we can get them to setup that alignment--we have had this thing--no road plan--for some time.

JACKSON: It is our only outlet.

FOSTER: What we will do--since we have a new man in our Roads Department--he has been very good--his duty is to get something done. When you get the chance where you can go to the State Highway Department with us, let us know--let Clarence (Ringey) know.



RINGEY: The Lummi succeeded in doing what they wanted to do by dealing with the County and State. They are giving up all their roads and requested that the County and State take over their entire road system.

JACKSON: It would not be wasted with the construction they would have to do to get away from that road ten or fifteen years before it will be in.

FOSTER: You do that and let Clarence (Ringey) know.

JACKSON: Many of our boys drive that road to work morning and night.

RINGEY: We keep a patrol on there continuously.

EMMONS: I hope you can work that out on a local basis.

FOSTER: If we can get the State to say the alignment will be right up there, and we can get up to it; it will take care of your problem.

JACKSON: Before they even go up there, what is holding up from much of the State's standpoint is there is going to be a \$6 million bridge across the Quinault River. They won't put up anything until they are sure of that appropriation. Just the road to the village is not what they are after. It is 25 miles to connect two sections of 101.

FOSTER: All right, sir, the ball is yours.

JACKSON: I'll keep going up there and getting in your hair.

FOSTER: You make an appointment with the State Department, and we will be there.

JACKSON: I'll get our state representative up there. He is on the bridges and roads committee--get him to have an appointment with the Highway Director and give you a ring.

FOSTER: Be sure to contact Mr. Ringey. These folks are capable of carrying the ball on the heirship thing, and there is possibility of bringing in other groups who wouldn't fit in otherwise.

EMMONS: I think we can get support from other tribes to work out their problems too.

RINGEY: Many problems are on a family level.

EMMONS: How about our children up there. Are they pretty well in school?

JACKSON: We have a fine school system. We are having trouble getting more money than was budgeted from levees and state funds. We haven't got quite enough for a new school plan.

EMMONS: You don't have much trouble with absenteeism?

JACKSON: Our high school children go out over this same road. At one time the school director pulled the school bus off. It was pulling it to pieces.

CAPOEMAN: We blame the State in a way because our road has been a public road. We feel the road had been put in by the Department and we did our part as far as the road situation. But we have any number of tourists come in there. We have a wide-open policy to the public on our roads. Naturally our people today are taxpayers. They support the State in every way on taxes. We have representatives and where Mr. Foster comes in I imagine he and Mr. Mack could come together on something and bring the figures out as to what the actual value of taxation that comes off from this reservation. Up in the Quinault as I recall a few years back, the Area--where a school was discussed--it was a matter of a short time that through the taxes on that timber that the school was erected. We have been five years trying to get a grammar school. The one we originally had is falling to pieces, and we have never made any headway. If we can get some assistance there, we would be grateful in every way.

FOSTER: We will try to give you that help. Are you going to get the right of way on this road?

JACKSON: You mean on the one we are talking about?

FOSTER: Yes. The new alignment where the State would run the road later on. We can't go in and blacktop the present alignment. We would have a fight with everybody but you. What we want to do is to get the State to indicate where the alignment will be for the permanent road. Can you get the right of way?

JACKSON: Yes. Where 101 is now--it was tribal timber from the edge of Quinault Lake to the Queets--and we gave it to them.

FOSTER: Then the right of way won't be a problem?

JACKSON: No.

EMMONS: I am interested in knowing what the ladies have to say.

MRS. BOWECHOP: I think the gentlemen are saying what I had in mind.

JACKSON: The general public uses it more than the residents. The upkeep wouldn't be half as much if it was just the residents who used it.

RINGEY: We tried to cut the speed and thought that would help.

MRS. BOWECHOP: Most of us make our living by fishing. They have a terrible time getting the fish out through that road--and so with the vegetables, milk, and other things. They have their troubles going through that bad road and we need those things.

FOSTER: It looks to me like we are building a lot of support that we can take to the State Highway Department.

MRS. BOWECHOP: We pay taxes for the cars we buy and the gas we buy. They should allow us a little for the many years we have been paying taxes through cars and gas.

JACKSON: Last week one of the liberty freighters came ashore right in front of the village and that thing drew more people than the county fair did over that road.

CAPOEMAN: One thing I would like to mention is our water system on the reservation. We realize and know that water is something very important to our life and the health of our people. Some years back the department built a water system at Taholah. At that time there weren't so many homes and the water system was built to accommodate only what homes were there at the time. In other words, the supply of water was sufficient but the construction wasn't built to handle any more than what ordinarily had been there at the time, and we feel that this system is obsolete at this time as far as supplying the majority of the tribe with water--water that would be suitable. We feel that maybe if there was any available way that we could improve our system--

JACKSON: That is local--we can take care of that through the agency.

EMMONS: I think the U. S. Public Health are very much concerned with that.

JACKSON: They have taken samples of the water and they recommended it very highly. The only thing is we need a bigger main.

CAPOEMAN: The supply will take construction to do it. The point is management and structure will have to be there to rebuild that system to accommodate the majority of homes being built.

FOSTER: You are concerned about plans for that. The Public Health Service has the people who can do that, and you should request the assistance from them. Their head office is in Portland. I think you have a worker in your area. Those folks are equipped and they have the money, the help, and the personnel.

RINGEY: Ray Sheldon is our man.

FOSTER: They know how to get the money, and they have the personnel. You get after them; they are in a position to give you that assistance.

JACKSON: They took samples and said they would send an engineer down.

JENKINS: You start writing them.

EMMONS: I want to congratulate the Tribe for sending you folks up here.  
With your leadership, I think your Tribe will have a very bright future.

Concluded at 2:45 p.m.

~~Sub 2-20-81~~  
Official File Copy

Enclosures Files

90-2-20

DEFENDANT'S EXHIBIT NO. H-200

Court of Claims

Docket No. \_\_\_\_\_

IN THE

UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, et al., )  
 )  
 Plaintiffs, )  
 )  
 VS. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Case Nos: 772-71, 773-71  
774-71, 775-71

Deposition Upon Oral Examination Of

JOHN W. LIBBY

Taken at 3006 Colby Avenue, Everett, Washington.

APPEARANCES:

For the Plaintiffs:

CHARLES A. HOBBS, ESQ. and  
JERRY R. GOLDSTEIN, ESQ.  
Wilkinson, Grayson & Barker  
The Octagon Building  
1735 New York Avenue N.W.  
Washington, D.C. 20006

For the Defendant:

By \_\_\_\_\_  
In the presence of \_\_\_\_\_

1 EVERETT, WASHINGTON; TUESDAY, JUNE 3, 1975

2 9:00 A.M.

3 --oOo--

4  
5 MR. MARSHALL: This is the third in a  
6 series of discovery depositions initiated at the  
7 plaintiffs' request which began yesterday.

8 These depositions are being taken pursuant  
9 to mutual informal arrangement between counsel for  
10 both plaintiffs and defendant.

11  
12 JOHN W. LIBBY,

witness herein, being first duly  
sworn on oath, was examined and  
13 testified as follows:

14  
15 EXAMINATION

16 BY MR. HOBBS:

17 Q Would you state your name and address for the record,  
please.

John W. Libby, 2117 Date St

Everett, Washington

(By Mr. Hobbs)

1 A Well, we wanted to see him get the best value he could,  
2 yes.

3 Q Sure you would, but would that be an independent basis  
4 for trying to switch him?

5 A The only reason I would recommend that is because I  
6 didn't figure he was competent to make a good deal  
7 for himself, and I know a couple of instances  
8 where I knew there were a couple of vultures  
9 waiting to pounce on the guy the minute he got the  
10 fee patent, and he didn't get the fee patent.

11 Q In those cases, he would come in at the behest  
12 of those vultures?

13 A I think so. I thought so at the time. I'm not  
14 mentioning names; they are both dead now anyway.

15 Q The vultures?

16 A Yes.

17 Q When an allottee sells through supervised sale,  
18 a lot of money is generated all at once. Is that  
19 money paid over to him without restrictions?

20 A It used to be. I don't know if it still is.

21 Q Referring to your tenure --

22 A Yes.

23 A -- were there occasions when an allottee was so  
24 damaged by alcoholism or squandering disposition  
25 that the Bureau did not pay over all his money at once



*Richard - draft Ju. 9*

**Official File Copy**

Enclosures Filed \_\_\_\_\_

EXHIBIT NO. H-207

Class of Claims \_\_\_\_\_

Docket No. \_\_\_\_\_

PHS 20x31

FILE COPY  
 Sylvania  
 2887 5-17  
 Indian

THE SECRETARY OF THE INTERIOR  
 WASHINGTON

AUG 30 1950

To Secretary  
 AUG 25 1950

*5-1  
 Taholah -  
 Timber  
 General*

Act'g Comr of Ind. Aff's

*[Handwritten signatures and initials]*

For Signature *My dear Senator Cain:*

INTERIOR DEPT.  
 SECRETARY'S  
 MAIL CENTER

AUG 28 1950

REGISTRATION

Reference is made to your letter of July 31 concerning Mr. David Baker's desire to purchase timber at the Quinault Indian Reservation in Washington.

There is attached a statement by the Commissioner of Indian Affairs which is based in part upon a report from the field. The statement reveals that Mr. Baker's wishes have been carefully considered and that he may not have understood fully the conditions of which he has complained.

INTERIOR DEPT.

AUG 28 1950

REGISTRATION

I believe you are aware of the technical and administrative problems confronting us in the management of the Quinault reservation forest. The problems are being solved in a manner that appears to be most advantageous to the greatest number of Indians concerned.

FROM SGA  
 AUG 26 1950  
 FOR SIGNATURE

As your request Mr. Baker's letter of July 31 is returned herewith.

Sincerely yours,

(sgd) Dale E. Doty,

Assistant Secretary of the Interior

SECRETARY'S  
 MAIL CENTER  
 AUG 29 1950  
 REGISTRATION DEPT.

Hon. Harry F. Cain  
 United States Senate  
 Washington 25, D. C.

Copy to: Secretary's Reading File  
 Portland 2  
 Forestry chron  
 Holdup  
 GSKephart:8-tjm-9  
 re/w:8-tjm-21

Office of Land  
 Utilization  
 AUG 29 1950

Redcedar Draft (4, 36 and 40)

Official File Copy

Average Stumpage Rates Paid

17-196

Western Redcedar

<u>Year</u>	<u>Combined CC-TAH</u>	<u>USFS Olympic NF Soleduc &amp; Quinault WC</u>	<u>State of Washington Forks District</u>
1950	12.42	11.99	
1951	12.47	15.56	
1952	10.35	15.26	
1953	10.66	13.20	
1954	10.85	18.64	
1955	13.45	15.91	
1956	14.90	18.97	
1957	15.68	26.49	
1958	14.47	24.00	
1959	14.98	18.73	
1960	14.59	16.60	
1961	10.17	17.52	
1962	9.65	10.23	15.19
1963	9.57	11.37	12.38
1964	10.47	7.77	17.31
1965	13.29	8.91	18.84
1966	15.79	9.11	21.00
1967	14.83	13.90	28.75
1968	20.41	15.45	34.23
1969	37.38	17.64	40.79
1970	48.02	27.56	53.59
1971	44.64	35.19	63.75
1972	49.27	24.27	74.14
1973	121.35	31.92	75.58
1974	153.07	41.78	66.54

Average Stumpage Rates Paid  
Hemlock

<u>Year</u>	<u>Combined Crane Creek-Taholah</u>	<u>USFS Olympic NF Soleduc &amp; Quinault WC</u>	<u>State of Washington Forks District</u>
1950	3.83	6.13	
1951	4.11	6.61	
1952	4.36	3.67	
1953	5.23	5.58	
1954	5.54	4.34	
1955	6.20	5.87	
1956	7.90	8.03	
1957	10.01	14.61	
1958	10.03	11.35	
1959	10.05	11.09	
1960	10.55	11.02	
1961	9.64	9.14	
1962	9.06	7.92	7.57
1963	9.29	8.12	6.75
1964	9.49	10.33	9.15
1965	12.06	8.26	11.49
1966	17.89	13.19	19.12
1967	17.60	19.40	27.74
1968	22.28	30.09	32.15
1969	37.23	43.30	48.98
1970	43.23	39.54	54.65
1971	41.69	43.50	54.74
1972	44.49	48.63	54.90
1973	129.21	42.36	83.04
1974	134.93	53.37	120.26

Presented by Charles A. Hobbs at April 11, 1977 pretrial conference

NONE TO ALLOTTEES (e.g. samples from 30 claims)	WHY BIA LIABLE	KNOWLEDGE REQUIRED BEFORE ALLOTTEES COULD HAVE BEEN AWARE OF CLAIM	APPLICABLE AREA	APPLICABLE TIME FRAME
Taholah and Crane Creek contracts:  umpage (BIA did not pay loggers pay fair market value for tim- ber logged)	-Trustee who sells cestui's property is liable if he sells for less than fair market value.	That they were not getting enough money. To know this, the allottees had to know the BIA's very complicated pricing methodology, the timber data for their own allotments, and how to compare what they were receiving with what was being paid for comparable timber outside the reservation, adjusting for differences in grade, cost and time.	Taholah and Crane Creek contract areas only	1950 to date, and still continuing.
Kup scale (BIA did not charge loggers for undervalued timber left be- hind)	-Negligent inspection of logging sites; negligent failure to report mer- chantable timber left on ground contrary to con- tract.	That merchantable logs were not being scaled. To know this, the allottees had to see what was left behind, know whether it was merchant- able under the contract, and know whether the BIA had scaled it.	ditto	ditto
Road mileage error (BIA charged allottees 26.0 miles whereas the charge should have been for 23.5 miles)	-Negligent failure to check distance between mill and point representing geo- graphical midpoint of unit.	To know this, the allottee would have had to know that he was paying a road mileage cost, how much it was, and how it was computed.	ditto	1950-1973 (error was corrected in 1973)
Administrative Fees (BIA collected more from the allottees than it spent on their account)	-Under 25 U.S.C. § 413, the BIA may not collect more than enough "to cover the cost".	To know this, the allottees would have had to know how much was being collected, and how much being spent, what it was being spent on, and what constituted allowable items.	ditto	1950 to date and still continuing
Advance Deposits (BIA deducted advance de- bits for timber cut but not scaled, and did not credit the interest to the allottees)	-The money equitably belonged to the allottees, and so they owned the income from it.	To know this, the allottees would have had to know that the advance deposits were being invested, that the allottees were not re- ceiving the interest, and how much was being earned.	ditto	ditto
Reforestation (BIA failed to insure that new trees were pro- perly growing back after fires and logging)	-Negligent failure to plant trees where (a) obviously there could be no proper natu- ral reforestation or (b) where natural reforestation could have occurred but in fact failed to. Proper reforesta- tion means: a. Right species b. Right density c. Planted soon after logging	To know this, the allottees would have had to see their allotments, know whether there was any regrowth, whether it was the proper species, whether it was the proper density, when each logging activity took place on their allotment, and how long after logging regrowth began.	Entire Reservation	1920 to date (note: bulk of claim arises prior to 1965)
Revised sales (BIA failed to obtain fair market value for land it sold for the allottees)	-Negligent appraisals. Also, negligent failure to reserve easements when adjacent land sold earlier.	To know this, the allottees would have had to know how to appraise timberland. Also, they would have had to know the depressing effect of earlier failure to reserve easements.	Almost entirely in Queets Unit	Almost all in 1955-1965 decade



MODIFICATION OF CONTRACT

TACOMA LOGGING UNIT

QUINAUULT RESERVATION

Contract No. I-101-Ind-1766

WHEREAS the Aloha Lumber Company, with principal place of business, Aloha, Washington, was purchaser of the timber on the Takohak Logging Unit, Quinault Indian Reservation, Washington, under contract approved by the Assistant Secretary of the Interior on July 12, 1950, which contract provides for the purchase of all merchantable timber on said unit on or before April 1, 1959, and

WHEREAS, the Aloha Lumber Company subsequently did enter into an agreement of merger with the Aloha Lumber Corporation whereby the Aloha Lumber Company was merged into the Aloha Lumber Corporation, with said merger being approved by the Secretary of State of the State of Washington on December 28, 1951, and

WHEREAS the Aloha Lumber Corporation with principal place of business, Aloha, Washington, is now the purchaser under the aforesaid contract, and

WHEREAS said contract provides for the sale to the purchaser of all merchantable timber on the sale area designated for cutting, comprising trees approximately fourteen inches and larger at a point four and one-half feet from the ground, and

WHEREAS the contract further provides that the purchaser pay for, as merchantable timber, pieces twelve feet and longer, utilized to a diameter of ten inches in the tops where straight and sound, and pay for all timber on the basis of a scale recognizing 32 feet as the maximum length of a single log, and

WHEREAS there is an unestimated volume of useable timber within the timber sale area covered by the contract with a diameter of less than 14 inches at breast height in standing trees subject to windthrow and trees already windthrown or broken and in logs and pieces of less than the designated merchantable size as defined in the contract, and

WHEREAS it is in the interest of the Quinault Tribe of Indians and the individual members thereof owning the allotments within the unit and the purchaser that such timber be acquired by the purchaser and removed from the sale area in order, (a) to insure the greatest possible

utilization of the forest materials on the land, (b) provide thereby increased revenue to the Indian owners thereof, (c) reduce the fire hazard thereon and (d) provide a better seed bed for establishment of forest reproduction on the area, and

WHEREAS there is also in the contract area a volume of timber in small trees, in addition with trees of large diameters and, with standard logging methods, much of the volume in these small trees would be lost by breakage and much of such breakage can be prevented by pre-logging operations to remove such trees prior to high-lead and/or other standard logging methods, and

AND WHEREAS production from salvage areas and from small timber is frequently not practicable in the form of cordwood, or other units, and

WHEREAS accomplishment of the contemplated salvage and pre-logging operations will require that Forest Officers of the Bureau of Indian Affairs administer the timber sale contract spend considerable time in supervision of such operations as in scaling or measuring products other than timber, and

WHEREAS the services of competent and impartial log scaling and grading bureaus are available for securing the scale of logs produced in the sale area,

FOR THE REASON, it is mutually agreed between the Aloha Lumber Corporation and the Secretary of the Interior that the terms of the contract No. 1-111-Ind-1714 are hereby modified by adding the following provisions:

1. The basic measurement for all timber produced on the sale area, excepting cedar poles, shall continue to be the Scribner Decimal C. Log Scale but products other than saw logs and cedar poles will be scaled or measured by the method or methods set forth in Section 2 of this modification in accordance with the following conversion table:

One cord equals 128 cubic ft. of stacked wood cut in pieces 8 ft or shorter.

Ninety cubic feet, Sorenson scale equals one cord.

One cord equals 500 board feet, Scribner Decimal C.

500 Shake boards equals one thousand board feet, Scribner Decimal C.

2. Products produced under this modification will be scaled, measured or tallied in accordance with the following procedure:

- a. Cordwood, including pulpwood, shingle bolts and other products, may be scaled prior to cutting, using Sorenson's cubic-foot log scale rule, when in the judgment of the Officer in Charge, it will not be practicable for cordwood, when cut, to be transported to a central check point. Otherwise all cordwood will be measured in cords at check points designated by the Officer in Charge. For the purpose of this provision, timber cut in lengths of eight feet or shorter will be considered as cordwood except pieces that are of select or peeler grade as defined under the rules of the

Croze Harbor Log Sealing and Grading Bureau and its affiliates. Pieces longer than eight feet may also be sealed as cordwood if they are of less than merchantable saw log diameter and are produced as a part of the salvage operation.

- b. Shake boards will be tallied and recorded by thousands of ~~pieces~~, at designated check points as determined by the Officer in Charge.
3. Salvage re-logging operations will not be commenced in any area until logging of merchantable timber as defined in the original contract has been complete and pick-up shall cease, after which the purchaser and the forest officer in charge shall designate the areas which are to be excluded from the provisions of this modification of the contract. In the event of disagreement between these representatives of the respective parties concerning the exclusion of such areas, the salvage operations provided for under this provision of the modified contract shall not be applicable. In all such excluded areas of the salvage operations the forest officer shall not scale the salvage material, and no obligations shall exist under this amendment to the contract for the purchaser to take or pay for the salvage material within such excluded areas. The said purchaser hereby agrees to purchase and remove such timber and material as may be so designated or otherwise marked by the forest officer in charge and to pay for such material at the rate of \$2.00 per cord for pulpwood, \$4.00 per cord for shingle bolts, and other cedar cordwood, excepting pulpwood, and \$17.00 per M boards for shake boards, which rates shall apply during the quarterly period during which this modification is approved.
4. The officer approving this modification of contract or his duly authorized representative, hereinafter called the Approving Officer, may review the stumpage values of forest products produced upon these salvage operations, either on his own initiative or upon submission by the purchaser of evidence satisfactory to the Approving Officer that such a review should be made. If, as a result of said review, the Approving Officer finds the established rates for such forest products no longer represent their true value, he shall give 30 days notice to the purchaser of his intention to establish new stumpage rates, during which time the purchaser may consult with the Approving Officer; PROVIDED, that the requirements of notice shall be satisfied when the new rates established under this authority are made effective upon the first day of any month which is not less than 30 days following notice by the Approving Officer to the purchaser that he intends to proceed under the authority of this section to change such rates; PROVIDED FURTHER, that there shall be no change in such stumpage rates until six months subsequent to the date of approval of this modification of contract; and PROVIDED FURTHER, that such stumpage rates shall not be changed oftener than once in any calendar year.
5. It is further agreed that in the event the purchaser does not concur with the Forest Officer in Charge as to re-logging of any particular cut-over area, the Superintendent of the Western Washington Indian Agency may proceed to make salvage sales on such areas to other purchasers under authority of section 5 of the General Timber Sale regulations.

6. It is further agreed that the purchaser and the Forest Officer in Charge shall designate areas to be pre-logged to effect the removal of small trees prior to logging of the remainder of the stand with high-load or other standard logging methods. Timber removed in such pre-logging operations may be produced in the form of cordwood from standing or down timber of any size and will be paid for at the contract rate per M board feet established for saw timber for each species. If two or more species are covered together in such a way that it is not practicable to determine the scale by species, the rate of the highest price species in the load or pile will be applied. It is further agreed that, at the request of the purchaser entire blocks of timber may be designated for production entirely as cordwood under the same provisions as for pre-logging operations as set forth in this section if, in the judgement of the Forest Officer in Charge, such procedure will result in more complete utilization and greater returns to the owners.
7. It is further agreed that in lieu of the scaling procedure stipulated in the General Timber Sale Regulations, the Commissioner of Indian Affairs, hereinafter called the Commissioner, in his discretion and for such periods as he may elect, may require that logs cut under this contract shall be scaled by the Grays Harbor Log Scaling and Grading Bureau, hereinafter called the Scaling Bureau. Scaling by the Scaling Bureau, shall not be exclusive so as to prevent scaling, by scalers employed by the Bureau of Indian Affairs, of material that is not delivered to the point of bureau scaling. Should the Commissioner intend to change from one scaling procedure to the other, he shall notify the purchaser in writing not less than thirty days prior to the effective date of such change. The following general conditions shall apply to bureau scaling. The purchaser shall furnish the Superintendent with a list of State registered log brands which shall be reserved for exclusive use on logs cut under this contract during the entire period the contract is in force, including all extensions thereof, and for six months after its termination. Sufficient brands shall be reserved to provide a separate brand for every allotment from which logs may be taken simultaneously during any period of operations.

Upon notification by the Commissioner that the services of the Scaling Bureau are required, the purchaser shall enter into an appropriate agreement with said Bureau for the performance of all necessary scaling and reporting services, and shall promptly submit to the Commissioner certified copies of such agreement in triplicate.

The agreement shall provide for the prompt scaling of all material upon delivery to the place of scaling. It shall also provide for prompt submission to the Superintendent of certified copies of each and every scale report, showing the species, volume, grade, and brand of each log scaled; with such safeguards being included in the agreement as the Commissioner may deem necessary to insure an accurate accounting to the Superintendent of all logs that are presented to the Scaling Bureau for Scaling.

The Scaling Bureau's rules respecting scaling, grading and merchantability shall apply.



The purchaser shall pay the Sealing Bureau for all services rendered by it under the agreement.

No logs shall be moved from the place of scaling until they have been scaled.

Customary methods employed by the Sealing Bureau for indicating completion of the scaling shall be accepted in lieu of the numbering and stamping of logs stipulated in Section 22 of the General Timber Sale Regulations.

8. It is further agreed that because of basic differences in scaling practices of the Sealing Bureau and the Bureau of Indian Affairs, adoption of Sealing Bureau scaling practices may result in a difference in volume of saw timber scales. Therefore, it is agreed that the Bureau of Indian Affairs will conduct a study to determine whether a difference in volume will result from adoption of Sealing Bureau practices and if it is found that an appreciable difference will result, the percentage relationships that the stumpage rates for saw timber bear to weighted average log prices, as set forth in Section 3 of the original contract, shall be revised to compensate for such difference in volume before Sealing Bureau services will be required.
9. It is further agreed that if ratios are revised as a result of studies made as provided in Section 3 of this modification of contract, the revised ratios shall be in effect after Bureau scale is adopted except as otherwise provided in Section 10 of the original contract and all saw timber cut under this contract after adoption of said Bureau Scale shall be scaled in accordance with Sealing Bureau practices whether scaled by the Sealing Bureau or by the Bureau of Indian Affairs.
10. It is further agreed that the definition of terms appended hereto is a part of this modification of contract.
11. It is mutually understood and agreed between the parties hereto, except as herein expressly modified and extended, the above original contract shall be in full force and effect and binding upon the parties thereto as though no modification of the contract had been made.

SIGNED AND SEALED in sextuplet this 15 day of November, 1955.

WITNESSES:

Madge C. Johnson

Catherine Logan

L. B. Greenstreet

Herbert C. Lauff

Josephine Karjosen

J. C. Williams

ALPHA LUMBER CORPORATION

By Paul R. Smith  
President

By W. K. Kury, Sr.

WESTERN WASHINGTON INDIAN AGENCY

By W. M. Price  
C. W. Kingey, Superintendent

APPROVED MAR 21 1955, 1955

Wesley A. Stewart

Secretary of the Interior

Definitions of Terms as Used in this  
Modification of Contract.

1. "RE-LOGGING" or "RELOGGING" or "RE-LOGGING" -

These terms are used synonymously. Re-logging is a clean-up operation following original logging operations to salvage residual material that is merchantable in some form of forest product but which was not suitable for sawtimber as defined in the original contract.

2. "PRE-LOGGING" - is the term applied to the harvesting of specified trees or classes of timber from a cutting block prior to regular logging operations.

3. "HI-LEAD" is the type of logging commonly used for harvesting timber in west coast logging operations. It consists of skidding logs to a central landing by means of cable, threaded through a block that is suspended near the top of a spar tree. The spar tree is supported by guy lines. As used in this report, hi-lead may also include skyline or skidder logging which also use a "hi-lead" at the landing.

4. "DISCOURAGED REMAINS" - is a scale, with Scribner Decimal 3 log rule, of material left on the ground after original logging operations have been completed. This scale is made by Bureau of Indian Affairs forestry personnel and includes all material left that, in the Forest officer's judgment, should have been logged as saw timber in accordance with the terms of the contract.

5. "PULPWOOD", as used in this report, is a term applied to material produced in the form of cordwood that is intended for manufacture into pulp. The primary species involved is western Hemlock, but any species may be included.

6. "SHINGLE BOLTS" are blocks of cedar, cut 4 feet 4 inches (4'4") in length, which are intended for manufacture into sawed shingles. Practically, shingle bolts are four-foot, cedar cordwood.

7. "SHAKE SHAPERS" are split cedar boards, 2 1/4" thick, 6" wide and 25" long. Width of boards may vary but 6 inches is the accepted standard.

GENERAL TIMBER SALE REGULATIONS

General Timber Sale Regulations:

Sections:

- |     |   |                          |   |  |
|-----|---|--------------------------|---|--|
| # 9 | - | <u>Officer in Charge</u> | - | designate areas to log in a season         |
| 10  | - | "                        | " | control cutting                            |
| 12  | - | "                        | " | fireweed, etc.                             |
| 13  | - | "                        | " | protect young growth                       |
| 14  | - | "                        | " | control stump height                       |
| 21  | - | "                        | " | check scaling                              |
| 22  | - | "                        | " | designate brands                           |
| 26  | - | "                        | " | control slash burning                      |
| 27  | - | "                        | " | suspend operations if slash unsatisfactory |
| 28  | - | "                        | " | (forest) call for fire suppression         |
| 30  | - | "                        | " | approve equipment                          |
| 31  | - | "                        | " | require watchman for fire control          |
| 32  | - | "                        | " | approve rigging                            |
| 33  | - | "                        | " | approve logging rail road R/W clearing     |
| 36  | - | "                        | " | Appraise damage                            |

Commissioner:

- 29 - permit donkey logging
- 39 - regulate improvements
- 41 - " " "
- 42 - prescribe terms for improvements remaining
- 53 - receive complaints

Officer in Charge:

- 37 - repair damages and charge purchasers
- 38 - telephone
- 42 - consent to leave improvements
- 51 - examine records
- 52 - suspend operations

Approving Officer:

- 43 - grant extension of time
- 45 - approve assignment
- 46 - refund overpayments
- 54 - change contract - modify
- 55 - require satisfactory bond
- 56 - may declare contract forfeit

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

## GENERAL TIMBER SALE REGULATIONS

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1. The word **superintendent** as used in these regulations signifies the Superintendent of the Indian Agency or School within the jurisdiction of which the land covered by any contract is included.

2. The term **officer in charge**, wherever used in these regulations, signifies the forest officer of highest rank assigned to the supervision of timberwork on the reservation within which the sale area is situated or such other officer as may be designated by the Commissioner of Indian Affairs to supervise a sale.

3. **Log scalers** will be appointed by the Commissioner of Indian Affairs and receive their instructions from the officer in charge.

4. **No timber** other than that sold may be cut by the purchaser on the sale area without a separate contract of sale therefor, and timber on allotments within a general sale area held under trust or restricted patents cannot be logged without a contract with the owners of the allotment approved by the proper officer.

5. **Other sales** within a sale area may be made of products and kinds of timber not sold under a previous sale, provided such sales will not, in the judgment of the officer having authority to make such sale, interfere with the operations of the previous purchaser. **Rights-of-way** may be granted through portions of the sale area during the contract period, provided they do not interfere with the operations of the previous purchaser.

6. **Title** to the forest products covered by any contract will not pass to the purchaser until such products are paid for.

7. **Cash deposits in advance** of cutting will be required. If at any time the stumpage value of the timber cut and unpaid for shall exceed the total amount then on deposit with the Indian Service, an additional deposit shall be required. At the close of each month a statement of all timber cut during the month will be rendered to the purchaser as a demand for payment of the full stumpage value of the timber covered by such statement. As soon as payment is made of the amount covered by such statement, the full amount previously deposited will become available as an advance deposit on timber cut subsequent to the period covered by such statement. At any time that the stumpage value of the timber cut shall exceed the amount of advance deposit cutting operations shall be suspended.

8. The **general advance deposits** required by a contract which includes both allotted and unallotted land will be credited so far as necessary on allotments cut during the period covered. The fact that **special advance payments** have been made on allotments which are about to be cut will not operate to reduce the size of the required **general advance deposit**, but rather will postpone the necessity of making demand for it until the advance payments on the particular allotments being cut have also been exhausted. The deposit made with the bid for the timber will be applied as a general advance deposit.

9. The **areas** to be logged in any season may be designated by the officer in charge when in his judgment this is necessary to prevent deterioration from fire, worms, or other cause or

to insure the logging of the sale unit in such manner as to fully protect the interests of the United States and the Indians. When logging is begun on an allotment or natural logging unit, it will not be discontinued and started elsewhere without the written consent of the officer in charge.

10. Selective logging, or the logging of areas in such manner as to preserve a part of the merchantable timber, promote the growth of young trees, or preserve the forest cover, will be practiced on all lands chiefly suitable for the production of timber crops. Live trees of diameters below those named in the contract may be designated for cutting, and larger trees may be reserved from cutting in the discretion of the officer in charge. If live trees which are not designated for cutting are cut, or are seriously injured through lack of care, they will be double scaled and so charged and paid for. In the discretion of the officer in charge, a strip not exceeding 300 feet in width on each side of streams, roads, and trails, and in the vicinity of camping places and recreation grounds may be reserved, in which little or no cutting will be allowed.

11. All dead trees standing or fallen which contain one merchantable log or more will be logged for their merchantable contents, and wherever selective logging is required by the contract the purchaser will fell all other dry trees before the slash is burned.

12. Firewood and improvements will be made as far as possible from unmerchantable material, and material so used will not be charged to the purchaser. The use of such material from allotments may be restricted in the discretion of the officer in charge. Wood and improvements taken from merchantable material will be scaled or measured, charged, and paid for at its maximum value.

13. Young growth will be protected as far as possible in every branch of the logging operations, and its use in the construction of improvements may be restricted by the officer in charge.

14. Stumps will be cut low so as to avoid waste, and the mean height of any stump will not exceed one-half its diameter, except where because of defect or deformity this height is considered impracticable by the officer in charge, provided that the minimum height required will be 12 inches.

15. Waste in high stumps, butts, tops, breaks, skids, and partially sound logs and all trees designated for logging which are not logged and all trees which are left felled or lodged or badly damaged by the logging operations will be scaled for their merchantable contents and charged against the purchaser. All cutting shall be done with a saw when possible.

16. Carelessness on the part of fellers or other employees of the purchaser that results in unnecessary breaking of trees will be penalized by scaling such trees full as if they had not been broken.

17. The log lengths and products taken from each tree will be such as to completely utilize the merchantable material in the tree and to yield the maximum stumpage value. Trees improperly cut into lengths or products of a lesser value shall be scaled, counted, or measured as if cut so as to yield the maximum value.

18. The Scribner Decimal C log rule will be used in scaling logs. The rule will be read to the nearest inch on the average top diameter inside bark. Logs exceeding the maximum length allowed by a contract will be scaled as two or more logs, with proper allowance for the increase in diameter at the points of division.

19. The overlength allowed on logs for trimming will not exceed 1 inch to each 4 feet of length. Logs which overrun this allowance will be scaled as if cut 2 feet longer. Logs longer than the maximum scaling length named in the contract will be scaled as if bucked into two or more shorter logs and with the top diameters they would actually have if so cut.

20. Proper deductions will be made for rot, shake, hollow, and other defects which make a log partially unmerchantable, including sweep exceeding 1 inch in each 4 feet of log length, but deductions will not be made for any defect or damage due to the act or neglect of the purchaser or his employees.

21. A check scaler employed by the purchaser may at hours convenient to the scaler and with the consent of the officer in charge compare his scale of logs with that of the scaler. A copy of the regular scale reports will be furnished to the purchaser through the officer in charge.

22. For convenience in scaling the logs or other products will be bunched as the scaler may direct on the land where cut or at the landing or point of shipment and will not be moved therefrom until he has scaled, numbered, and stamped them. Logs that are moved contrary to the scaler's instructions will be double scaled. Where a separate record of the scale of timber from an allotment or other area is necessary, the logs cut from such area will be marked by the purchaser with a distinctive brand as prescribed by the officer in charge.

23. A merchantable log is any log that will manufacture one-third or more of its total contents into sound lumber 8 feet and longer, except as special provision is made in a particular contract. More defective logs and logs smaller than the merchantable size set in the contract will be culled if left in the woods, but any such logs that are taken for manufacture or sale will be scaled for their actual sound contents of lumber of any length. Any logs taken by the purchaser which are smaller than the minimum scaling length or diameter given on the log-scale rule will be scaled for their merchantable contents.

24. Railroad ties taken by the purchaser under a contract in which tie prices and specifications are not fixed will be scaled or counted as follows:

Eight-foot ties made from logs 9 to 12 inches top diameter will be counted as 30 to the thousand feet board measure and 6½-foot ties as 38 to the thousand. Ties made from logs over 12 inches top diameter and long ties will be scaled. Ties made from logs less than 9 inches top diameter will be counted 60 ties 8 feet long and 75 ties 6½ feet long to the thousand feet.

25. The slash resulting from the logging operations, including all branches up to 4 inches in thickness lopped from tops and logs, will at the time of skidding be piled compactly and away from reserved trees on the whole area to be selectively logged and on a strip at least 10 rods wide around all other logging areas in units not larger than quarter sections, unless some other method of slash disposal is provided in the contract.

26. Burning of the slash by the purchaser will be done at such times and in such manner as may be required by the officer in charge, who may at that time assume direct charge of the crew of the purchaser engaged at the work of burning. Slashing will not be burned during any period of fire danger. Whenever fire runs through a slashing, except in compliance with the instructions of the officer in charge, the purchaser may be required to lop or to pile and reburn the slash.

27. Unsatisfactory disposal of the slash will be cause for the officer in charge to suspend all operations of the purchaser until the unsatisfactory condition is corrected.

28. Forest fires on the sale area or adjacent lands during the contract period will be prevented or suppressed by the purchaser, his employees, and subcontractors whenever possible. When called upon by an authorized forest officer, they will work under his directions to suppress fires. If the purchaser or his employees or subcontractors were not directly or indirectly responsible by act or neglect for the origin or the spread of the fire, reimbursement will be made, except that such reimbursement shall not exceed one-half the cost of suppression within the sale area or within one-half mile of the same.



29. Donkey logging may be permitted in the discretion of the Commissioner of Indian Affairs. The ground around the donkey engine will at each setting be cleared of dry trees for a distance of 10 rods and of all other combustible material for a distance of 50 feet in all directions during the season from May 1 to September 30 and any other season of fire danger.

30. All steam engines not burning oil for fuel during the period from May 1 to October 15 and all other seasons of fire danger will be equipped with spark arresters acceptable to the officer in charge, and, excepting locomotives, will have a steam force pump with not less than 1-inch discharge, 100 feet of serviceable 1-inch hose, 6 12-quart pails, 6 shovels, and a constant supply of not less than the equivalent of 12 barrels of water. This equipment will be suitable for fire-fighting purposes and kept in serviceable condition and used when necessary for fighting fires.

31. A watchman employed by the purchaser and kept on duty during the noon hour at each engine in actual use and not burning oil, and during the night if fires are kept up, may be required by the officer in charge during the period from May 1 to October 15 and any other period of fire danger.

32. Rigging will not be slung on trees reserved from cutting without the use of bushing, and only in a manner satisfactory to the officer in charge.

33. Clearing the right-of-way of the logging railroad and its spurs and the careful burning of all combustible material for a distance of 50 feet on each side of the track is required of the purchaser unless the officer in charge shall, in writing, prescribe a lesser width. And the purchaser shall for such periods as may be required by the said forest officer in charge patrol all railroad tracks after the passage of each locomotive.

34. The vicinity of logging camps and stables will be kept in a clean and sanitary condition, and rubbish will be removed and properly burned or buried during the occupancy and upon the removal of the camps and stables.

35. Streams will not be obstructed by felled trees or otherwise except by the improvements hereinbefore provided for, nor will they be polluted by sawdust, manure, or any other refuse from a camp or mill.

36. Damage to land or other property of the Indians or the Government resulting from rights-of-way, dams, and other improvements or operations of the purchaser will be appraised by the officer in charge, and if not offset by the value of the permanent improvements made by the purchaser will be charged against the purchaser.

37. Existing telephone lines, fences, roads, trails, and other improvements will be protected as far as possible in the logging operations, and whenever they are broken or obstructed the purchaser will promptly repair the damage. If he fails to make the repairs promptly, the officer in charge may make the repairs and purchaser may be charged with double the expense thereof.

38. Telephone lines constructed by the purchaser within the Indian reservation will be open to the free use of all Indian Service officers for official business, and the purchaser may for their construction and repair cut and use free of charge all necessary poles which are not otherwise merchantable and subject to regulation by the officer in charge.

39. Improvements necessary to execute his contracts, such as camps, sawmills, railroads, roads, telephone lines, chutes, bridges, sluices, and dams, may be constructed and maintained by the purchaser on and across the contracted area and other tribal lands, subject to regulation by the Commissioner of Indian Affairs.

40. Free transportation of Indian Service employees engaged in official business will be allowed over all such railroads, and such employees may, at their own risk, operate hand cars or speeders over the track in such manner as not to interfere with the use of the railroad by the purchaser.

41. Improvements already on the area or on other lands of the reservation and which are necessary for logging purposes may be used by the purchaser subject to regulation by the Commissioner of Indian Affairs.

42. The time limit for the removal of the improvements and other property of the purchaser is 1 year after the expiration of the contract. After that time the title to improvements, including camps, will attach to the land, and no personal property of the purchaser will thereafter be removed except with the written consent of the officer in charge: *Provided*, That improvements necessary for the logging of other Indian timber may be left for such time and on such terms as may be prescribed by the Commissioner of Indian Affairs.

43. Extension of time for the performance of any contract may be granted the purchaser by the officer approving the contract, in his discretion and subject to such conditions as he may impose.

44. If extension of time to cut and remove the timber is not granted by the officer approving a contract, the purchaser can cut no timber after the expiration of the contract, but he may remove the timber, previously cut and paid for, within 1 year of the expiration of the contract. If not removed within the time allowed, the title will revert to the vendor notwithstanding the purchaser may have paid for the timber.

45. Assignment of any contract in whole or in part by the purchaser will not relieve him of his contract obligations unless the assignment is approved by the officer approving the contract nor until the bond is satisfactorily renewed.

46. Refunds of overpayments will be made to the purchaser by the approving officer provided all terms of the contract have been fulfilled, and the approving officer may also, in his discretion, reduce the amount of timber that is required by the contract to be paid for and removed in any one year.

47. Indian labor will be employed by the purchaser at the same wages as other labor and in preference to other labor not already in his employ whenever the Indian labor seeks employment and is competent.

48. All regulations relative to the maintenance of order on Indian reservations and the introduction of intoxicating liquors will be complied with by the purchaser.

49. In compliance with law and Executive order, no Member of Congress or any Delegate thereto shall have any interest, direct or indirect, in the contract of which these regulations are a part (sec. 3741, R. S., and secs. 114-116, act of Mar. 4, 1909, 33 Stat. L., 1109), and no person undergoing a sentence of imprisonment at hard labor shall be employed in carrying out any contract (Executive order, May 18, 1905). The cutting or removal of timber from Indian lands in breach of the terms of any contract and without other lawful authority, or the leaving of fires unextinguished, will render the offenders liable to the penalties prescribed by section 6 of the act of June 23, 1910 (36 Stat. L., 857). Section corners, quarter section corners, or meander posts on any Government line of survey shall not be destroyed, defaced, changed, or removed to any other place, nor shall any witness trees or any tree blazed to mark the line of a Government survey be cut down in the carrying out the provisions of this agreement. (See sec. 57, act of Mar. 4, 1909, 33 Stat. L., 1099.)

50. The expenses of examining, advertising, marking, scaling, and protecting the timber and of general supervision of the sale will be paid out of a timber expense fund, for which purpose not over 10 percent of the gross proceeds of the sale will be set aside.

51. All the records of the purchaser and his subcontractors pertaining to the logging operation and the manufacture and sale of the products thereof will be open to inspection at any reasonable time by the officer in charge or other officer designated by the Commissioner of Indian Affairs, and the information so obtained will be regarded as confidential. The purchaser will

furnish the officer in charge, at such times as he may request, the amount of lumber sold and the average grade prices received f. o. b. the mill during certain periods; also the amount of box lumber sold, with average price per M; the amount of ties and timber sold, with average price per M; and the amount of byproducts sold and the total receipts for same.

52. Suspension of the purchaser's operations may be made by the officer in charge if any requirements of the contract and of these regulations are disregarded and until there is satisfactory compliance. Persistent failure to comply with any one of the requirements of the contract or regulations after written notice addressed to the purchaser by the superintendent or the officer in charge will be ground for revocation by the officer approving the contract of all rights of the purchaser under this and other contracts and the forfeiture of his bond and of all moneys paid, and the purchaser will be liable for all damage resulting from his breach of contract.

53. Complaints by the purchaser arising from any action taken by the forest officer in charge under the terms of any contract will not be considered unless made in writing to the Commissioner of Indian Affairs within 30 days of the alleged unsatisfactory action.

54. The decision of the officer approving any contract will be final in the interpretation of the contract and of the regulations, and the terms of the contract or regulations cannot be varied in any detail without the written approval of the officer approving the sale.

55. Whenever any bond furnished to guarantee obligations under a sale shall be unsatisfactory to the officer approving the sale he may require a new bond which shall be satisfactory to him.

56. Failure of the purchaser to complete his contract or to log promptly an area damaged by fire, wind, insects, or other causes, or the commission by him of any act for which the officer approving his contract shall declare the contract forfeited, will render the purchaser and his bondsmen liable for the depreciation in the value of the remaining timber on an estimate of value and quantity to be made under the direction of the officer approving this contract.

The above General Timber Sale Regulations are hereby prescribed for use in all contracts for the sale of timber from Indian lands except as special provision shall be made by the Commissioner of Indian Affairs or the Secretary of the Interior in particular sales.

SAMPLE OF  
ALLOTMENT TIMBER CONTRACTS  
AND  
POWER OF ATTORNEY

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

Taholah Logging Unit

Contract No. I-101-Ind-2765 (22)

TIMBER CONTRACT

THIS AGREEMENT, made and entered into at the Taholah Indian Agency, Hoquiam, State of Washington, this \_\_\_\_\_, under authority of the act of Congress of June 25, 1910 (36 Stat. L., 855,957), and General Timber Contract No. I-101-Ind-\_\_\_\_\_, covering the \_\_\_\_\_ Logging Unit, between the Superintendent, Taholah Indian Agency, for and in behalf of \_\_\_\_\_, an Indian under the jurisdiction of the Superintendent of the Taholah Indian Agency, party of the first part, and \_\_\_\_\_, part of the second part.

WITNESSETH, That the party of the first part agrees to sell to the party of the second part, upon the terms and conditions hereinafter stated, all the dead timber standing or fallen and all the living timber marked or otherwise designated by the Officer in charge for selective logging estimated to be \_\_\_\_\_ feet B. M. of western red cedar, \_\_\_\_\_ feet B. M. of Sitka spruce, \_\_\_\_\_ feet B. M. of Douglas fir, \_\_\_\_\_ feet B. M. of amabilis fir, \_\_\_\_\_ feet B. M. of western white pine, \_\_\_\_\_ feet B. M. of western hemlock and other species, and \_\_\_\_\_ linear feet of western red cedar poles, more or less, on the following-described lands, to wit: \_\_\_\_\_ within the limits of the Quinalt Indian Reservation, situated in the County of \_\_\_\_\_, State of Washington, the same being lands which have been allotted to \_\_\_\_\_ under the provisions of the act of February 8, 1887 (24 Stat. L., 288, 291).

FOR AND IN CONSIDERATION of the foregoing the party of the second part agree to pay to the Superintendent of the Taholah Indian Agency, Hoquiam, State of Washington, the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), more or less, as shall be determined by the actual scale, measurement, or count for the said timber at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per M feet B. M. Scribner Decimal C log scale for western red cedar; \$\_\_\_\_\_ per M feet B. M. for Sitka spruce; \$\_\_\_\_\_ per M feet B. M. for Douglas fir; \$\_\_\_\_\_ per M feet B. M. for amabilis fir; \$\_\_\_\_\_ per M feet B. M. for western white pine; \$\_\_\_\_\_ per M feet B. M. for western hemlock and other species; and \$\_\_\_\_\_ per linear foot for western red cedar poles, until such rates are revised as provided by the general contract covering the \_\_\_\_\_ Logging Unit, in trust for said party of the first part.

The party of the second part further agree to pay twenty-five percent (25%) of the estimated value, at the stumpage rates stipulated in section \_\_\_\_\_ of the general contract, of the timber sold within thirty (30) days from the date of the approval of this contract by the Superintendent, Taholah Indian Agency; to pay fifteen percent (15%) additional within three (3) years from the date of approval of the contract and to pay an additional ten percent (10%) within six (6) years from the date of approval of the contract, and to make advance deposits as shall be necessary to cover all timber prior to cutting as required by the attached Indian Service General Timber Sale Regulations which are made a part of this contract, and as provided in the general contract covering the \_\_\_\_\_ Logging Unit.

The party of the second part further undertake and agree that \_\_\_\_\_ will cut and remove the said timber in strict accordance with the following specifications and the attached Indian Service General Timber Sale Regulations which are prescribed by the Department of the Interior as to the sale of timber from Indian lands:

1. THE APPROXIMATE MINIMUM DIAMETER LIMIT at a point 4 1/2 feet from the ground to which living trees are to be cut is 14 inches.

2. THE MAXIMUM SCALING LENGTH of all logs will be 32 feet. Timber will be considered MERCHANTABLE as provided in the attached regulations except that western hemlock and amabilis fir must be one-half or more sound.

3. Unless extension of time is granted by the officer approving this contract, all timber will be cut and removed on or before April 1, 19.....

4. The cost of examination, advertisement, marking, and scaling of timber, and the expenses of general supervision and protection of the sale and adjacent areas from fires by United States officers shall be paid from the proceeds of the sale of timber.

It is further understood and agreed that this contract shall be void and of no effect until approved by the Superintendent, Taholah Indian Agency.

Signed and sealed in sextuplet this May 16, 1952

[ CORPORATE SEAL  
IF CORPORATION ]

ALOUJA LUMBER CORPORATION

(Name of corporation or partnership)

Attest:

[Signature]  
Secretary.

By

[Signature]  
(President if Purchaser is a corporation)

WITNESSES:

TWO WITNESSES TO EACH SIGNATURE ARE REQUIRED

(P. O. Address)  
(P. O. Address)  
(P. O. Address)  
(P. O. Address)  
(P. O. Address)  
(P. O. Address)  
[Signature]  
[Signature]  
[Signature]  
[Signature]

[SEAL]  
(Purchaser--Not a corporation)  
(P. O. Address)  
[SEAL]  
(Purchaser--Not a corporation)  
(P. O. Address)  
[Signature]  
Superintendent, as authorized by attached power-of-attorney,  
Houma, Wash.  
(P. O. Address)

Wherever referred to in this contract as the Indian Agency, it is understood and agreed that such agency is now a part of the Western Washington Agency under authority of an Order of the Secretary of the Interior dated July 7, 1950.

The above contract is approved this MAY 23 1952, 19....., under the conditions stated therein.

[Signature]  
Superintendent.

POWER OF ATTORNEY FOR SALE OF ALLOTMENT TIMBER

QUINCIETT

INDIAN RESERVATION,

WASHINGTON

KNOW ALL MEN BY THESE PRESENTS, that I the undersigned, hereby request, authorize, and empower the Superintendent of the Taholah Indian Agency to enter into contract for the sale of the timber upon the following described lands;

1/2 Sec. 22, T. 22 N., R. 32 W., 1st. 1st. N.W. 1/4

(Description of land)

the same being the allotment of Wm. Lockhart Leach, deceased

Quincielt allottee No. 7115 and authorize him to perform every act necessary and requisite to the consummation of such sale with the same validity as if I

were personally present. Provided that no such contract shall be made hereunder at stumpage rates per thousand feet board measure of less than the following:

SPRUCE	\$4.00	DOUGLAS FIR	\$4.25	HEMLOCK	\$1.00
CEDAR	\$3.50	WHITE PINE	\$3.50	WHITE FIR	\$1.00

Stumpage is to be paid for on Scribner's Decimal C. Log scale. Sale of timber is authorized on a selective cutting plan. And I do also agree to grant any contractor holding any contract hereunder and in conformity herewith, reasonable right-of-way over the above-described lands, or any other lands in which I hold any interest, provided I shall receive reasonable compensation for any damage done or incurred through such right-of-way. The Commissioner of Indian Affairs or his representative shall definitely determine what shall be considered reasonable damages.

I furthermore agree that the proceeds arising from the sale of this timber may be disposed of in accordance with the regulations of the Department of the Interior, including those providing for the payment of the cost of administration.

Place Olympia Washington Dto December 5, 1951  
(City or town) (State)

WITNESSES:

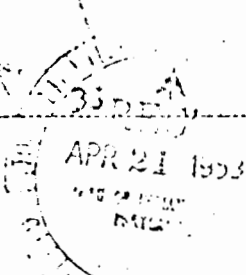
1. Harold A. Henry

2. Arthur Foster

Ralph C. Swanson  
(Commissioner of Indian Affairs, Taholah Agency, Washington, D.C., appointed by Executive Order under authority of Act of August 14, 1951)

5-159a  
(Approved 10-23-19-  
Quinalt Indian Reservation)

ALLOTMENT NO. \_\_\_\_\_



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

Taholah Logging Unit

Contract No. I-101-Ind-1000 (49)

TIMBER CONTRACT

THIS AGREEMENT, made and entered into at the Taholah Indian Agency, Hoquiam, State of Washington, this \_\_\_\_\_, under authority of the act of Congress of June 25, 1919 (40 Stat. L., 855,357), and General Timber Contract No. I-101-Ind-\_\_\_\_\_, covering the \_\_\_\_\_ Logging Unit, between the Superintendent, Taholah Indian Agency, for and in behalf of \_\_\_\_\_, an Indian under the jurisdiction of the Superintendent of the Taholah Indian Agency, party of the first part, and \_\_\_\_\_, part \_\_\_\_\_ of the second part.

WITNESSETH, That the party of the first part agrees to sell to the party \_\_\_\_\_ of the second part, upon the terms and conditions hereinafter stated, all the dead timber standing or fallen and all the living timber marked or otherwise designated by the Officer in charge for selective logging estimated to be \_\_\_\_\_ feet B. M. of western red cedar, \_\_\_\_\_ feet B. M. of Sitka spruce, \_\_\_\_\_ feet B. M. of Douglas fir, \_\_\_\_\_ feet B. M. of amabilis fir, \_\_\_\_\_ feet B. M. of western white pine, \_\_\_\_\_ feet B. M. of western hemlock and other species, and \_\_\_\_\_ linear feet of western red cedar poles, more or less, on the following-described lands, to wit: \_\_\_\_\_ within the limits of the Quinalt Indian Reservation, situated in the County of \_\_\_\_\_, State of Washington, the same being lands which have been allotted to \_\_\_\_\_ under the provisions of the act of February 8, 1857 (24 Stat. L., 333, 391).

FOR AND IN CONSIDERATION of the foregoing the party \_\_\_\_\_ of the second part agree to pay to the Superintendent of the Taholah Indian Agency, Hoquiam, State of Washington, the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), more or less, as shall be determined by the actual scale, measurement, or count for the said timber at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_ per M feet B. M. Scribner Decimal C log scale for western red cedar; \$\_\_\_\_\_ per M feet B. M. for Sitka spruce; \$\_\_\_\_\_ per M feet B. M. for Douglas fir; \$\_\_\_\_\_ per M feet B. M. for amabilis fir; \$\_\_\_\_\_ per M feet B. M. for western white pine; \$\_\_\_\_\_ per M feet B. M. for western hemlock and other species; and \$\_\_\_\_\_ per linear foot for western red cedar poles, until such rates are revised as provided by the general contract covering the \_\_\_\_\_ Logging Unit, in trust for said party of the first part.

The party \_\_\_\_\_ of the second part further agree to pay twenty-five percent (25%) of the estimated value, at the stumpage rates stipulated in section \_\_\_\_\_ of the general contract, of the timber sold within thirty (30) days from the date of the approval of this contract by the Superintendent, Taholah Indian Agency; to pay fifteen percent (15%) additional within three (3) years from the date of approval of the contract and to pay an additional ten percent (10%) within six (6) years from the date of approval of the contract, and to make advance deposits as shall be necessary to cover all timber prior to cutting as required by the attached Indian Service General Timber Sale Regulations which are made a part of this contract, and as provided in the general contract covering the \_\_\_\_\_ Logging Unit.

The party \_\_\_\_\_ of the second part further undertake and agree that \_\_\_\_\_ will cut and remove the said timber in strict accordance with the following specifications and the attached Indian Service General Timber Sale Regulations which are prescribed by the Department of the Interior as to the sale of timber from Indian lands:



1. THE APPROXIMATE MINIMUM DIAMETER LIMIT at a point 4 1/2 feet from the ground to which living trees are to be cut is 14 inches.

2. THE MAXIMUM SCALING LENGTH of all logs will be 32 feet. Timber will be considered MERCHANTABLE as provided in the attached regulations except that western hemlock and amabilis fir must be one-half or more round.

3. Unless extension of time is granted by the officer approving this contract, all timber will be cut and removed on or before April 1, 1951.

4. The cost of examination, advertisement, marking, and scaling of timber, and the expenses of general supervision and protection of the sale and adjacent areas from fires by United States officers shall be paid from the proceeds of the sale of timber.

It is further understood and agreed that this contract shall be void and of no effect until approved by the Superintendent, Taholah Indian Agency.

Signed and sealed in sextuplet this AUG 30 1951, 1951.

[ CORPORATE SEAL  
IF CORPORATION ]

ALPHA LUMBER COMPANY

*Paul ...*  
(Name of corporation or partnership)

Attest:

By

(President if Purchaser is a corporation)

*Richard ...*  
Secretary

WITNESSES:

TWO WITNESSES TO EACH SIGNATURE ARE REQUIRED)

(P. O. Address)  
(P. O. Address)  
(P. O. Address)  
(P. O. Address)  
(P. O. Address)

[SEAL]  
(Purchaser—Not a corporation)  
(P. O. Address)  
[SEAL]  
(Purchaser—Not a corporation)  
(P. O. Address)

*John H. Libby*  
*Hogiam Wash.*  
(P. O. Address)  
*Jessie ...*  
*Hogiam Wash.*  
(P. O. Address)

*Samuel H. ...* [SEAL]  
Superintendent, as authorized by attached power-of-attorney,  
Hogiam, Wash.  
(P. O. Address)

Wherever reference is made above to the Indian Agency it is understood and agreed that such agency is now a part of the Western Division of the Bureau of Indian Affairs.

601 1 1951

The above contract is approved this \_\_\_\_\_, 19\_\_\_\_, under the conditions stated therein.

*Samuel H. ...*  
Superintendent.

POWER OF ATTORNEY FOR SALE OF ALLOTMENT TIMBER

QUINAIELT

INDIAN RESERVATION,

WASHINGTON

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ the undersigned, hereby request, authorize, and empower the Superintendent of the Taholah Indian Agency to enter into contract for the sale of the timber upon the following described lands; \_\_\_\_\_

\_\_\_\_\_  
(Description of land)

the same being the allotment of \_\_\_\_\_

Quinaielt allottee No. \_\_\_\_\_ and authorize him to perform every act necessary and requisite to the consummation of such sale with the same validity as if \_\_\_\_\_

were personally present. Provided that no such contract shall be made hereunder at stumpage rates per thousand feet board measure of less than the following:

SPRUCE	\$4.00	DOUGLAS FIR	\$4.25	HEMLOCK	\$1.00
CEDAR	\$3.50	WHITE PINE	\$3.50	WHITE FIR	\$1.00

Stumpage is to be paid for on Scribner's Decimal C. Log scale. Sale of timber is authorized on a selective cutting plan. \_\_\_\_\_ do also agree to grant any contractor holding any contract hereunder and in conformity herewith, reasonable right-of-way over the above-described lands, or any other lands in which \_\_\_\_\_ hold any interest, provided \_\_\_\_\_ shall receive reasonable compensation for any damage done or incurred through such right-of-way. The Commissioner of Indian Affairs or his representative shall definitely determine what shall be considered reasonable damages.

I furthermore agree that the proceeds arising from the sale of this timber may be disposed of in accordance with the regulations of the Department of the Interior, including those providing for the payment of the cost of administration.

Place Quinaielt Date June 29, 1951  
(City or Town) (State)

WITNESSES:

John M. Libby  
Edward E. Allen

Cleveland Jackson  
Special Agent in Charge

QUINAULT

INDIAN ADMINISTRATION,

WASHINGTON

KNOW ALL MEN BY THESE PRESENTS, that X the undersigned, hereby request, authorize, and empower the Superintendent of the Taholah Indian Agency to enter into contract for the sale of the timber upon the following described lands;

1, 133, 000 acres

(Description of land)

the same being the allotment of Quinault (Quinault) Quinault allottee No. 10 and authorize him to perform every act necessary and requisite to the consummation of such sale with the same validity as if Z were personally present. Provided that no such contract shall be made hereunder at stumpage rates per thousand feet board measure of less than the following:

SPRUCE	\$4.00	DOUGLAS FIR	\$4.25	HELMCK	\$1.00
CEDAR	\$3.50	WHITE PINE	\$3.50	WHITE FIR	\$1.00

Stumpage is to be paid for on Scribner's Decimal C. Log scale. Sale of timber is authorized on a selective cutting plan. And X do also agree to grant any contractor holding any contract hereunder and in conformity herewith, reasonable right-of-way over the above-described lands, or any other lands in which X hold any interest, provided X shall receive reasonable compensation for any damage done or incurred through such right-of-way. The Commissioner of Indian Affairs or his representative shall definitely determine what shall be considered reasonable damages.

X furthermore agree that the proceeds arising from the sale of this timber may be disposed of in accordance with the regulations of the Department of the Interior, including those providing for the payment of the cost of administration.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
at \_\_\_\_\_ (City or Town) \_\_\_\_\_ (State)

WITNESSES:  
Oliver Carson, Clerk of the Court  
Edwin Williams, Clerk of the Court

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

..... Logging Unit

Contract No. I-101-Ind-.....

TIMBER CONTRACT

THIS AGREEMENT, made and entered into at the Western Washington Indian Agency, Hoquiam Sub-Station, Hoquiam, State of Washington, this ....., under authority of the act of Congress of June 25, 1910 (36 Stat. L., 855,857), and General Timber Contract No. I-101-Ind-....., covering the ..... Logging Unit, between the Superintendent, Western Washington Indian Agency, for and in behalf of ....., an Indian under the jurisdiction of the Superintendent of the Western Washington Indian Agency, party of the first part, and ....., party of the second part.

WITNESSETH, That the party of the first part agrees to sell to the party of the second part, upon the terms and conditions hereinafter stated, all the dead timber standing or fallen and all the living timber marked or otherwise designated by the Officer in charge for selective logging estimated to be ..... feet B. M. of western red cedar, ..... feet B. M. of Sitka spruce, ..... feet B. M. of Douglas fir, ..... feet B. M. of amabilis fir, ..... feet B. M. of western white pine, ..... feet B. M. of western hemlock and other species, and ..... linear feet of western red cedar poles, more or less, on the following-described lands, to wit: ..... within the limits of the Quinalt Indian Reservation, situated in the County of ..... State of Washington, the same being lands which have been allotted to ..... under the provisions of the act of February 8, 1857 (24 Stat. L., 388,391).

FOR AND IN CONSIDERATION of the foregoing the party of the second part agree to pay to the Superintendent of the Western Washington Indian Agency, Hoquiam, State of Washington, the sum of ..... dollars (\$.....), more or less, as shall be determined by the actual scale, measurement, or count for the said timber at the rate of ..... dollars (\$.....) per M feet B. M. Scribner Decimal C log scale for western red cedar; \$..... per M feet B. M. for Sitka spruce; \$..... per M feet B. M. for Douglas fir; \$..... per M feet B. M. for amabilis fir; \$..... per M feet B. M. for western white pine; \$..... per M feet B. M. for western hemlock and other species; and \$..... per linear foot for western red cedar poles, until such rates are revised as provided by the general contract covering the ..... Logging Unit, in trust for said party of the first part.

The party of the second part further agree to pay twenty-five percent (25%) of the estimated value, at the stumpage rates stipulated in section ..... of the general contract, of the timber sold within thirty (30) days from the date of the approval of this contract by the Superintendent, Western Washington Indian Agency; to pay fifteen percent (15%) additional within three (3) years from the date of approval of the contract and to pay an additional ten percent (10%) within six (6) years from the date of approval of the contract, and to make advance deposits as shall be necessary to cover all timber prior to cutting as required by the attached Indian Service General Timber Sale Regulations which are made a part of this contract, and as provided in the general contract covering the ..... Logging Unit.

The party of the second part further undertake and agree that ..... will cut and remove the said timber in strict accordance with the following specifications and the attached Indian Service General Timber Sale Regulations which are prescribed by the Department of the Interior as to the sale of timber from Indian lands:

1. THE APPROXIMATE MINIMUM DIAMETER LIMIT at a point 4 1/2 feet from the ground to which living trees are to be cut is 14 inches.

2. THE MAXIMUM SCALING LENGTH of all logs will be 32 feet. Timber will be considered MERCHANTABLE as provided in the attached regulations except that western hemlock and amabilis fir must be one-half or more sound.

3. Unless extension of time is granted by the officer approving this contract, all timber will be cut and removed on or before April 1, 19.....

4. The cost of examination, advertisement, marking, and scaling of timber, and the expenses of general supervision and protection of the sale and adjacent areas from fires by United States officers shall be paid from the proceeds of the sale of timber.

It is further understood and agreed that this contract shall be void and of no effect until approved by the Superintendent, Western Washington Indian Agency.

Signed and sealed in sextuplet this 22 15, 1953

[ CORPORATE SEAL  
IF CORPORATION ]

RAYONIER INCORPORATED

(Name of corporation or partnership)

Attest:

By

[Signature]  
(President if Purchaser is a corporation)

Secretary.

Manager Land Division

WITNESSES:

TWO WITNESSES TO EACH SIGNATURE ARE REQUIRED

Witness signature lines with P. O. Address labels.

Purchaser signature lines with P. O. Address labels and [SEAL] markers.

The above contract is approved this stated therein.

22 15, 1953, under the conditions  
[Signature]  
Superintendent.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

Logging Unit

Contract No. I-101-Ind-\_\_\_\_\_

TIMBER CONTRACT

THIS AGREEMENT, made and entered into at the Taholah Indian Agency, Hoquiam, State of Washington, this \_\_\_\_\_, under authority of the act of Congress of June 25, 1910 (36 Stat. L., 853,857), and General Timber Contract No. I-101-Ind-\_\_\_\_\_, covering the \_\_\_\_\_ Logging Unit, between the Superintendent, Taholah Indian Agency, for and in behalf of \_\_\_\_\_, an Indian under the jurisdiction of the Superintendent of the Taholah Indian Agency, party of the first part, and \_\_\_\_\_, part, \_\_\_\_\_ of the second part.

WITNESSETH, That the party of the first part agrees to sell to the party \_\_\_\_\_ of the second part, upon the terms and conditions hereinafter stated, all the dead timber standing or fallen and all the living timber marked or otherwise designated by the Officer in charge for selective logging estimated to be \_\_\_\_\_ feet B. M. of western red cedar, \_\_\_\_\_ feet B. M. of Sitka spruce, \_\_\_\_\_ feet B. M. of Douglas fir, \_\_\_\_\_ feet B. M. of amabilis fir, \_\_\_\_\_ feet B. M. of western white pine, \_\_\_\_\_ feet B. M. of western hemlock and other species, and \_\_\_\_\_ linear feet of western red cedar poles, more or less, on the following-described lands, to wit: \_\_\_\_\_ within the limits of the Quinalt Indian Reservation, situated in the County of \_\_\_\_\_, State of Washington, the same being lands which have been allotted to \_\_\_\_\_ under the provisions of the act of February 8, 1887 (24 Stat. L., 288, 291).

FOR AND IN CONSIDERATION of the foregoing the party \_\_\_\_\_ of the second part agree to pay to the Superintendent of the Taholah Indian Agency, Hoquiam, State of Washington, the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), more or less, as shall be determined by the actual scale, measurement, or count for the said timber at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_ per M feet B. M. Scribner Decimal C log scale for western red cedar; \$\_\_\_\_\_ per M feet B. M. for Sitka spruce; \$\_\_\_\_\_ per M feet B. M. for Douglas fir; \$\_\_\_\_\_ per M feet B. M. for amabilis fir; \$\_\_\_\_\_ per M feet B. M. for western white pine; \$\_\_\_\_\_ per M feet B. M. for western hemlock and other species; and \$\_\_\_\_\_ per linear foot for western red cedar poles, until such rates are revised as provided by the general contract covering the \_\_\_\_\_ Logging Unit, in trust for said party of the first part.

The party \_\_\_\_\_ of the second part further agree to pay twenty-five percent (25%) of the estimated value, at the stumpage rates stipulated in section \_\_\_\_\_ of the general contract, of the timber sold within thirty (30) days from the date of the approval of this contract by the Superintendent, Taholah Indian Agency; to pay fifteen percent (15%) additional within three (3) years from the date of approval of the contract and to pay an additional ten percent (10%) within six (6) years from the date of approval of the contract, and to make advance deposits as shall be necessary to cover all timber prior to cutting as required by the attached Indian Service General Timber Sale Regulations, which are made a part of this contract, and as provided in the general contract covering the \_\_\_\_\_ Logging Unit.

The party \_\_\_\_\_ of the second part further undertake and agree that \_\_\_\_\_ will cut and remove the said timber in strict accordance with the following specifications and the attached Indian Service General Timber Sale Regulations which are prescribed by the Department of the Interior as to the sale of timber from Indian lands:

1. THE APPROXIMATE MINIMUM DIAMETER LIMIT at a point 4½ feet from the ground to which living trees are to be cut is 14 inches.

2. THE MAXIMUM SCALING LENGTH of all logs will be 32 feet. Timber will be considered MERCHANTABLE as provided in the attached regulations except that western hemlock and amabilis fir must be one-half or more sound.

3. Unless extension of time is granted by the officer approving this contract, all timber will be cut and removed on or before April 1, 19.....

4. The cost of examination, advertisement, marking, and scaling of timber, and the expenses of general supervision and protection of the sale and adjacent areas from fires by United States officers shall be paid from the proceeds of the sale of timber.

It is further understood and agreed that this contract shall be void and of no effect until approved by the Superintendent, Taholah Indian Agency.

Signed and sealed in sextuplet this \_\_\_\_\_, 19.....

[ CORPORATE SEAL  
IF CORPORATION ]

Attest:

By

(Name of corporation or partnership)

(President if Purchaser is a corporation)

Secretary.

WITNESSES:

(TWO WITNESSES TO EACH SIGNATURE ARE REQUIRED)

(P. O. Address)

(P. O. Address)

(P. O. Address)

(P. O. Address)

(Purchaser—Not a corporation)

(P. O. Address)

(Purchaser—Not a corporation)

(P. O. Address)

Superintendent, as authorized by attached power-of-attorney,

Hoquiam, Wash.

(P. O. Address)

wherever reference is made to Taholah Indian Agency is understood to mean that said agency is now a part of the Western Washington Agency under authority of an Order of the Secretary of the Interior dated July 7, 1900.

The above contract is approved this \_\_\_\_\_, 19....., under the conditions stated therein.



POWER OF ATTORNEY FOR SALE OF ALLOTMENT TIMBER

QUINAULT INDIAN RESERVATION, WASHINGTON

KNOW ALL MEN BY THESE PRESENTS, that I, the undersigned, hereby request, authorize, and empower the Superintendent of the Taholah Indian Agency to enter into contract for the sale of the timber upon the following described lands;

Tract 2 ... (Description of land)

the same being the allotment of ... Quinalt allottee No. ... and authorize him to perform every act necessary and requisite to the consummation of such sale with the same validity as if I were personally present. Provided that no such contract shall be made hereunder at stumpage rates per thousand feet board measure of less than the following:

SPRUCE	\$4.00	DOUGLAS FIR	\$4.25	HILLOCK	\$1.00
CEDAR	\$3.50	WHITE PINE	\$3.50	WHITE FIR	\$1.00

Stumpage is to be paid for on Scribner's Decadal C Log scale. Sale of timber is authorized on a selective cutting plan. And I do also agree to grant any contractor holding any contract hereunder and in conformity herewith, reasonable right-of-way over the above-described lands, or any other lands in which I hold any interest, provided I shall receive reasonable compensation for any damage done or incurred through such right-of-way. The Commissioner of Indian Affairs or his representative shall definitely determine what shall be considered reasonable damages.

I furthermore agree that the proceeds arising from the sale of this timber may be disposed of in accordance with the regulations of the Department of the Interior, including those providing for the payment of the cost of administration.

Place Hagaman Wash Date Sept 9, 1953  
(City or Town) (State)

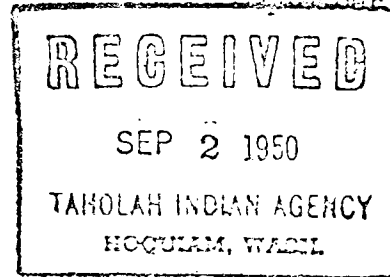
WITNESSES: Carl E. Brown Level Armstrong  
J. Harrison

1950 LOGGING PLAN GUIDELINES

PRESENT LOGGING PLAN GUIDELINES

UNITED STATES Forest & Range Management  
DEPARTMENT OF THE INTERIOR 27058-48BUREAU OF INDIAN AFFAIRS  
Area Office  
Portland 18, Oregon

September 1, 1950

Mr. F. A. Cross  
Acting Superintendent  
Western Washington Agency  
Hoquiam Sub-Station  
Hoquiam, Washington

Dear Mr. Cross:

During the course of an official visit of Mr. Earle R. Wilcox, Forester, to this Area Office last week he left a preliminary draft of a proposed "Plan of Logging Operations" with the request for our review and comments before issuance in final form. This plan consisted of instructions to a timber contractor concerning the contractual requirement for preparation and submission of logging plans in advance of operations.

We have carefully reviewed the plan and are in general agreement with it and its purposes. However, in view of past experience we question the advisability of issuing any sort of formal plan of this kind which might conceivably be interpreted as supplemental to or a modification of the contract. If in the event of a lawsuit the Court would uphold such an interpretation the surety might thereby obtain relief on the grounds that surety had not consented to the modifying of the contract terms.

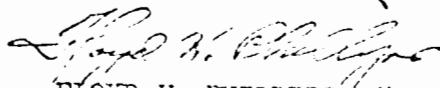
To avoid such a contingency we suggest that the desires with respect to the submission of an annual operation plan and the manner in which it is to be presented be submitted in the form of a letter to the contractor over the signature of the Superintendent. Such letter should be so written as to avoid any suggestion that it modifies or supplements the contractual agreement, and should be presented rather as an interpretation indicating standards of performance and what will constitute compliance with the contract terms.

It is entirely within the authority of the officer in charge to designate the areas for cutting within a logging unit, and such designation could be made within reasonable limits without reference to the operator's plan. However, in order to make selective logging by blocks successful it should be done with the cooperation of the operator. This of necessity will require the preparation

of advance logging plans, which though not necessarily specific beyond a year in advance should foresee subsequent operations several years ahead. There is some question in our minds whether the operator can make his complete logging plans a year in advance without the collaboration of the forest officer in charge. We would suggest, therefore, that the letter make some provision for joint work on the plan particularly during its initial phases.

Except for these suggestions we find no disagreement with the plan and believe the tentative standards are satisfactory as a starting point. Subsequent experience may, of course, develop the need for smaller cutting blocks or wider reserve strips.

Sincerely yours,

  
FLOYD H. PHILLIPS  
Area Forester

cc: Western Washington Agency  
Tulalip, Washington

P. S. We are enclosing Mr. Wilcox's "Plan of Logging Operations" in order that he may have the benefit of the pencil corrections which have been made thereon. We shall appreciate a copy of the suggested letter to the contractor when it has been prepared in final form.

  
F.H.P.

Enclosure

PLAN OF LOGGING OPERATIONS

RECEIVED

SEP 2 1950

(Instructions to Operator concerning requirements for the preparation and submission of Plan of Logging Operations Logging Unit.)

HOQUIAM, WASH.

In order to comply with Section 2 of the General Contract covering the sale of timber from the \_\_\_\_\_ Logging Unit the following procedure will be asked of the operator to facilitate the designation by the Forest Officer of the timber to be cut, and yet to allow the operator a maximum of leeway in the choice and order of areas to be cut.

(1) A detailed plan of operations for a full calendar year will be submitted to the Forest Manager of the Western Washington Agency before December 1 of the year preceding the year covered by the plan.

(2) The Forest Manager will review the plan, and if it meets with the requirements designated hereinafter will approve the plan, or will suggest changes or modifications as needed.

(3) Such approval of the plan of operations by the Forest Manager will be given to the operator in written form.   
 This Such approval will constitute the designation of those areas as set forth in the approved plan as the areas to be cut during the year for which planned, and in the order in which they are indicated in said plan.

(4) No deviation from the approved plan of operations shall be made during the course of a calendar year without the prior approval of the Forest Manager. It is intended that the administrative control of the operations shall be made as adjustable as possible to meet the desires of the operator. Accordingly, immediate attention will be given to supplemental plans submitted during the course of a given year in order to expedite desirable changes in the plan.

The following suggestions concerning the plan of operations and the requirements in methods of logging are set forth as a guide to the operator in the preparation of plans which will be acceptable:

(1) Two copies of the plan should be submitted in map form in scale of four inches to the mile or larger.

(2) The map should show allotment lines, allotment names and numbers, the outline of settings to be logged, the approximate area of each setting, the location of roads and other improvements, and the method and sequence of logging each setting.

(3) Written explanations or justifications for methods of logging should be entered on the map as notes or should be shown on separate pages to be made a part of the plan.

*to be employed in*  
(4) The method of logging this unit is specified as clear cutting in blocks unless it is deemed advisable to cut otherwise by the Forest Manager after consultation with the operator. The clear cut blocks will be staggered, with intervening strips or blocks of timber reserved until the cutover blocks are adequately restocked with reproduction and have become relatively fire-resistant.

(5) The settings shall be so planned that no single area of clear cutting shall exceed 120 acres in size until a minimum of ten years has elapsed between the cutting of one block and the cutting of a second contiguous block which will extend the clear cut area beyond 120 acres in size. (Except that such clear cut blocks up to 160 acres in size may be considered for approval where conditions of terrain or other factors make the cutting of such larger blocks the only economical way it can be logged.)

(6) Tractor logging will be employed wherever it is possible to do so economically.

(7) Special attention should be given <sup>in</sup> to planning <sup>to</sup> the immediate logging of areas of blowdown, fire-killed timber, or other timber subject to deterioration whenever such timber is economically accessible.

*the same*  
(8) Reserve areas of timber between blocks will normally be of size sufficiently large to provide economical logging settings when the operation returns to that portion of the unit in a second cycle of cutting. When such a reserve stand is considered non-merchantable, the width of such reserve strips or blocks must be sufficiently large to safeguard against complete destruction from windthrow or fire. The minimum width of such non-merchantable reserve strips will be 500 feet.

(9) Deviations from the standards prescribed herein may be considered. However, in order to eliminate delays in approval of plans it is advisable to discuss such deviations with the Forest Manager before making them a part of the plan.

The foregoing instructions are subject to change or modification by the Forest Manager on written notice to the operator.

\_\_\_\_\_  
Forest Manager

CRANE CREEK TIMBER CONTRACT

AND

MODIFICATION

CRANE CREEK

Secretary:

Approving Officer\*\* 6/30/52

Contract Sections:

- #10 - Review Rates, change ratios
- #11 - Review Rates, Trend
- #18 - Fire damage rate
- #27 - Approve Contract

Commissioner:

- #15 - May relieve cut
- #17 - Relief from minimum
- #21 - Designate Sealing Bureau
- #26 - Approve form of financial statement
- Modif. # 6 - Approving Officer of Modif. - 10/14/59  
Review Salvage Rates

Area Director:

- # 7 - Schedule of Guide Price Calculations FNMA
- # 9 - Calculate Average Log Prices FNMA
- #13 - May reduce cash deposit at end of season
- #14 - May revise volume estimate on allotment
- #16 - Consent to exceed yearly cut
- #22 - Logging Plan - approve
- #24 - Fire protection requirements
- #25 - Relieve Sec. 25 & 26 - Slash and Snag
- #26 - Set date and receive financial statement

Superintendent:

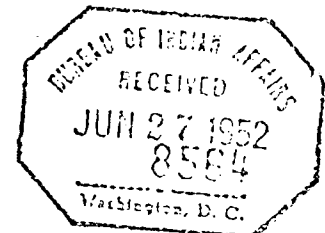
- #21 - Receive Scale Reports (tickets)
- Modif. # 7 - Supt. may make other salvage sales

Officer in Charge:

- #20 - Prescribe log brands
- Modif. # 4 - Re conducted sealing and shakes
- " # 5 - Designate excluded salvage areas
- " # 8 - Designate Prelog areas



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS



Contract No. I-101-Ind. 1012

**TIMBER CONTRACT**

**CRANE CREEK LOGGING UNIT**

1. THIS AGREEMENT, made and entered into at the Western Washington Indian Agency, Everett, Washington under authority of the Act of June 25, 1910 (36 Stat. 257; 25 USC 406, 407) between the Superintendent of the Western Washington Indian Agency, hereinafter called the Superintendent, for and in behalf of the Indian owners, party of the first part; and ~~the Indian owners of the Quinalt Indian Reservation,~~ hereinafter called the Purchaser, party of the second part.

2. WITNESSETH, that the Superintendent in consideration of the agreements by the Purchaser, agrees to sell to the Purchaser, and the Purchaser agrees to buy upon the terms and conditions herein stated, and the Indian Bureau General Timber Sale Regulations, approved April 10, 1920, by the Assistant Secretary of the Interior, which are attached to and made a part of this contract, all the merchantable dead timber, standing or fallen, and all the merchantable live timber, marked or otherwise designated by the officer in charge for selective logging, as required by said General Timber Sale Regulations, located on unallotted land, and on trust allotments covered by contracts entered into pursuant to the terms hereof, within a tract designated as the Crane Creek Logging Unit on the Quinalt Indian Reservation. The boundaries of the unit, which shall be marked on the ground, are shown approximately on the attached map which is made a part hereof, and are described approximately as follows:

Starting at a point on the northern boundary of the Quinalt Indian Reservation where the range line between Range 10 West and Range 11 West intersects said boundary, thence south along this range line to the North bank of the Quinalt River, thence southwesterly along the Quinalt River to a point 1/4 mile south of the center of Section 22, T. 22 N., R. 11 W., thence west along the south line of Indian Allotment No. 261 to the southwest 1/16 corner of said Section 22, thence North 1/4 mile to the quarter corner between Sections 21 and 22, thence West to the Quinalt River, thence westerly along the north bank of the River to the approximate quarter corner between Sections 20 and 21, thence west to a point 1/4 mile east of the center of Section 19, thence north 1/4 mile, thence west to the range line between Ranges 11 and 12 West, thence north along the range line to the Township Corner common to T. 22 N., R. 12 W., T. 23 N., R. 12 W., T. 22 N., R. 11 W., and T. 23 N., R. 11 W., W.M., Thence West one mile, thence north to the North boundary of the Quinalt Reservation, thence easterly along said boundary to the point of beginning.

3. THE SUPERINTENDENT AUTHORIZES THE PURCHASER, and the Purchaser obligates himself to enter into separate contracts on an approved form with such Indians holding trust patented allotments within the logging unit as desire to sell their timber, subject to the terms of this contract. THE PURCHASER FURTHER AGREES to enter into said allotment contracts within thirty days from the date of submission of such contracts to him by the Superintendent.

4. THE APPROXIMATE AREA of the logging unit, exclusive of alienated land, is:

	Timbered land
	<u>Acres</u>
Unallotted land	165
Allotted land	<u>35,216</u>
Total	35,382

The Purchaser acquires no rights or interest whatsoever in and to approximately 140 acres of alienated land lying within the boundaries of this logging unit.

5. THE ESTIMATED VOLUME OF TIMBER TO BE CUT IS:

Species	Unallotted	Allotted	Total
Western red cedar	2,200,000	327,000,000	329,200,000 cu. ft.
Sitka spruce	- - - -	16,000,000	16,000,000 " "
Douglas fir	100,000	9,900,000	10,000,000 " "
Amabilis fir	300,000	85,700,000	86,000,000 " "
Western white pine	- - - -	7,000,000	7,000,000 " "
Western hemlock and other species	500,000	164,500,000	165,000,000 " "
Total	3,100,000	610,900,000	614,000,000 " "
Cedar Poles	13,000	1,307,000	1,320,000 lineal ft.

It is mutually agreed that the foregoing are estimates only, and they shall not be construed as guarantees or limitations of the volumes of the several species of timber to be marked or otherwise designated for cutting under the terms of this contract. The actual volume of timber marked or otherwise designated for cutting shall be controlling, regardless of whether it is less or more than the above estimates.

6. FOR AND IN CONSIDERATION of the agreements by the Superintendent, the Purchaser agrees that prior to April 1, 1936 he will cut all timber covered by this contract, and will pay to the Indian Bureau Special Disbursing Agent for the Western Washington Indian Agency, hereinafter called the Special Disbursing Agent, for the use and benefit of the Indians entitled thereto, the full value of said timber as shall be determined on the basis of an actual log scale, at fixed rates per thousand feet, board measure, Scribner Decimal C Log Scale for saw timber which rates shall be established for each quarterly period beginning January 1, April 1, July 1, and October 1, PROVIDED, that the rates for the remainder of the quarterly period in which this contract is approved shall be the bid rates, as follows:

For western red cedar	Thirteen dollars and 20 cents
For Sitka spruce	Ten dollars and 00 cents
For Douglas fir	Fifteen dollars and 00 cents
For amabilis fir	Six dollars and 00 cents
For western white pine	Eight dollars and 00 cents
For western hemlock and other species	Six dollars and 00 cents
For cedar poles with not greater than 9" top diameter and no more than 18" butt diameter the initial rate shall be the bid rate of 35 cents per lineal foot.	

7. FOR THE PURPOSE of determining the stumpage rates to be paid for saw logs in each succeeding quarterly period of this contract it is understood and agreed that the Bureau of Indian Affairs has calculated, for each species, from information published by the Pacific Northwest Loggers Association, the grade percentages of logs sold in the combined Grays Harbor-Fuget Sound-Columbia River log markets during the five calendar years of 1946 to 1950 inclusive, excepting cedar which is calculated on a three-year average for the years 1948 to 1950 inclusive. It is further agreed that the Bureau of Indian Affairs has calculated, for each species, the average log grade prices in the same combined markets for the months of July, August, and September, 1951 from information published by the Pacific Northwest Loggers Association; and from the aforesaid calculations has determined the weighted average prices of logs for the months of July, August, and September, 1951 to be:

Western red cedar	\$56.74 per M ft. BM
Sitka spruce	\$51.05 per M ft. BM
Douglas fir	\$65.45 per M ft. BM
Amabilis fir	\$41.47 per M ft. BM
Western white pine	\$53.29 per M ft. BM
Western hemlock	\$39.61 per M ft. BM

A schedule of the aforesaid calculations and determination is on file at the Portland Area Office of the Bureau of Indian Affairs.

8. IT IS FURTHER AGREED That the stumpage rates for sawtimber appearing in Section 6 of this contract bear the following percentage relationships to the weighted average log prices appearing in Section 7 hereof:

Western red cedar stumpage to western red cedar log price	22%
Sitka spruce stumpage to Sitka spruce log price	22%
Douglas fir stumpage to Douglas fir log price	22%
Amabilis fir stumpage to amabilis fir log price	22%
Western white pine stumpage to Western white pine log price	22%
Western hemlock stumpage to western hemlock log price	22%
Other species stumpage to western hemlock log price	22%

9. THE PORTLAND AREA DIRECTOR of the Bureau of Indian Affairs or his duly authorized representative, hereinafter called the Area Director, shall obtain from the Pacific Northwest Loggers Association, through its published reports or otherwise, the average sales prices of logs in the Grays Harbor, Fuget Sound, and Columbia River log markets for each quarterly period during the life of this contract or any extension thereof, and shall calculate the average log prices of each species on the same basis of log grade percentages as those used in determining the weighted average log prices stipulated in Section 7. In determining the stumpage rates for saw logs to be effective for any given quarterly period, the percentages stipulated in Section 8, or the percentages which may be subsequently established under the provisions of Section 10, shall be applied to the calculated Grays Harbor-Fuget Sound-Columbia River average log prices for the preceding quarterly period, and the saw timber stumpage rates for each species so determined shall be the rates to be paid for timber actually scaled during such given quarterly period.

10. THE OFFICER APPROVING THIS CONTRACT or his duly authorized representative, hereinafter called the Approving Officer, may review, the stumpage rates established by the procedure set forth in Sections 6 to 9 inclusive, either on his own initiative or upon submission by the Purchaser of evidence satisfactory to the Approving Officer that such a review should be made. If, as a result of said review, the Approving Officer finds that the character of the operation, changes in market conditions, or other factors have altered the situation to such an extent that, in his opinion, a change in the existing ratios between stumpage rates and the Grays Harbor-Puget Sound-Columbia River weighted average log prices is warranted, he shall give thirty days notice to the Purchaser and the Indians in General Council or their authorized representatives of his intention to establish new ratios between stumpage rates and the Grays Harbor-Puget Sound-Columbia River weighted average log prices, during which time the Purchaser and the Indians may consult with the Approving Officer; PROVIDED, That the requirements of notice of this section shall be satisfied when the new ratios established under this authority are made effective upon the first day of a quarterly adjustment period which is not less than thirty days following notice by the Approving officer to the Purchaser and the Indians that he intends to proceed under the authority of this section to change such ratios; PROVIDED FURTHER, that there shall be no change in the ratio of any species until two years subsequent to the date of approval of this contract; and PROVIDED FURTHER, that the said ratio for any species shall not be changed oftener than once in any calendar year. The stumpage rate for cedar poles may be adjusted by the Approving Officer, at any time in accordance with the trend of the cedar pole market in the general locality of Grays Harbor. Notice of the new cedar pole stumpage rate will be furnished the Purchaser and the Indians at least thirty days prior to the date on which it will become effective.

11. NOTWITHSTANDING any other provisions of this contract it is mutually agreed that, in the event the said Pacific Northwest Loggers Association's Composite Sales Analyses are unavailable during any periods of this contract for use in connection with these stumpage adjustments, or in the opinion of the Approving Officer they do not properly reflect the true market value of the stumpage, the Approving Officer shall at any time, after giving thirty days notice to the Purchaser and to the Indians in General Council or their authorized representatives, during which time they may consult with the Approving Officer, proceed to revise stumpage rates in this contract as the trend of economic conditions in the West Coast forest products industries shall warrant; PROVIDED, that the requirements of notice in this section shall be satisfied when the new rates established under this authority are made effective thirty days after notice by the Approving Officer to the Purchaser and the Indians that he intends to proceed under the authority of this section to revise stumpage rates; PROVIDED FURTHER, that the requirements of quarterly adjustment of stumpage rates shall not apply to the procedure authorized by this section.

12. IT IS FURTHER UNDERSTOOD AND AGREED that stumpage rates will never, in any event, be reduced below the following:

\$3.50 per M feet, BM for western red cedar  
\$4.00 per M feet, BM for Sitka spruce  
\$4.25 per M feet, BM for Douglas fir  
\$1.00 per M feet, BM for Amabilis fir  
\$3.50 per M feet, BM for Western white pine  
\$1.00 per M feet, BM for Western hemlock and other species  
\$0.02 per lineal foot for cedar poles

13. THE PURCHASER FURTHER AGREES that prior to the time when the stumpage value of the timber cut from both allotted and unallotted lands shall exceed the cash deposit of \$190,000.00 submitted with his proposal to purchase timber, he will make another cash deposit of \$25,000.00 and subsequent deposits of \$25,000.00 at such times as may be necessary to insure that the stumpage value of the timber cut and not paid for at any time shall not exceed the cash deposit then in the hands of the Special Disbursing Agent, PROVIDED, that in the discretion of the Area Director, the last cash deposit in any logging season may be in the sum of not less than \$10,000.00.

14. THE PURCHASER FURTHER AGREES that within thirty days from the date of approval of the contract on each allotment he will pay twenty-five per cent of the estimated value of the timber thereon as an advance payment, and further, that within three years from the approval of such contract he will pay an additional fifteen per cent of the estimated value of the timber as an advance payment, and an additional ten per cent as an advance payment within six years of approval of the allotment contract; PROVIDED, that with respect to each allotment contract, no advance payment will be required in an amount that will make the sum of that payment, plus all previous advance payments, plus all advance deposits previously applied against timber cut from the allotment, exceed fifty per cent of the estimated value of the timber; PROVIDED FURTHER, that the estimated value of the timber shall be determined by multiplying the volumes of each species estimated to be cut by the following corresponding rates:

Western red cedar	\$13.30 per M ft. BM
Sitka spruce	\$10.80 " " " "
Douglas fir	\$15.00 " " " "
Amabilis fir	\$ 6.65 " " " "
Western white pine	\$ 8.80 " " " "
Western hemlock and other species	\$ 6.40 " " " "
Western red cedar poles	\$ 0.055 per lineal foot

PROVIDED FURTHER, that the stumpage rates governing at the time the timber is scaled shall be the rates charged for the timber actually cut. IT IS MUTUALLY UNDERSTOOD AND AGREED, that the Area Director, on his own initiative or upon submission by the Purchaser of evidence satisfactory to the Area Director, in his discretion may revise the estimated volume of timber on any allotment because of errors in estimate, or because of fire or other losses not due to any act or neglect of the Purchaser, but not because of depletion through cutting under authority of the allotment contract, PROVIDED, that in case the advance payments made on any allotment contract exceed the total value of timber cut and removed from the allotment by the Purchaser, it is mutually agreed that such advance payments are declared to be the value of such timber so cut and removed.

15. THE PURCHASER FURTHER AGREES that he will, unless relieved by the Commissioner of Indian Affairs, cut and pay for from some portion of the sale area, including allotments, at least 20,000,000 feet, board measure, Scribner Decimal C Log Scale, prior to April 1, 1964 and not less than 20,000,000 feet board measure in any twelve months ending March 31 thereafter during the life of this contract. PROVIDED, that all timber on this unit must be cut and paid for prior to the contract expiration date; that he will pay for, as merchantable timber, pieces twelve feet and longer, will utilize the trees to a diameter of ten inches in the tops where

straight and sound, and will pay for all timber, except cedar poles, on the basis of a scale recognizing 40 feet as the maximum length of a single log; and that all logs will be considered merchantable as provided in the attached General Timber Sale Regulations or as otherwise provided in Section 21 of this contract.

16. THE CUT in any contract logging year ending March 31, not including cutting deficiencies from any previous year or years, shall not exceed 35,000,000 feet board measure, Scribner Decimal C Log Scale, without the written consent of the Area Director. Logging performance in any contract logging year beyond the minimum required therefor shall not be applied against the cutting requirements of subsequent years without the written consent of the Area Director.

17. IT IS UNDERSTOOD AND AGREED, that the volume of timber cut under this contract in any contract logging year ending March 31 shall not be credited against the minimum cutting requirements of that year until the Purchaser has cut and made available for scaling in the usual manner a volume of timber equal to that of the existing unexcused deficiencies in cutting requirements of the preceding year or years; PROVIDED, that all timber cut during the quarter-annual period or periods in which there remains an unexcused deficiency in cutting requirements of a previous year, shall be paid for at the stumpage rates in effect at the time of scaling said timber or at the rates that were in effect on March 31 of the year in which the deficiency in cutting occurred, whichever are the higher. PROVIDED FURTHER, that the Commissioner of Indian Affairs may relieve the Purchaser in whole or in part from the minimum cutting and paying requirements because of adverse operating or market conditions, fire damage to the Purchaser's manufacturing plant, acts of God or Government control, or for other cause deemed sufficient by him.

18. THE PURCHASER FURTHER AGREES that if fire, for the starting or spread of which he, or any of his employees, his sub-contractors, or their employees, are responsible by act or neglect, shall destroy young growth under ten inches in diameter on any portion of the reservation, he will pay liquidated damages of twenty dollars (\$20.00) per acre for the area thus burned over unless a lesser rate of damages shall be approved by the Approving Officer; and he agrees that in addition to these liquidated damages, he will pay the damage that shall be caused to all timber ten inches and larger in diameter at four and one-half feet from the ground or to any other property of the Indians or the Government. Should merchantable timber be injured by a fire for the origin or spread of which the Purchaser, his agents, employees, sub-contractors or their employees, are in no way responsible, said Purchaser shall be accountable for the loss sustained only to the extent that such loss shall be due to his failure to cut and remove the injured timber as expeditiously as shall be possible under the existing circumstances and the terms of this contract.

19. IT IS UNDERSTOOD AND AGREED, that in addition to the provisions of Section 5 of the attached General Timber Sale Regulations, this contract is subject to any existing rights of way.

20. THE PURCHASER AGREES that he will re-establish individual allotment boundaries and corners, and will keep them clearly marked while logging is in progress. The re-established boundaries and corners shall be verified by the Officer in Charge before logging on an allotment is begun. THE PURCHASER ALSO AGREES to brand all logs and other forest products on each allotment, as prescribed by the Officer in Charge, in order to permit ready identification at the point of scaling, and for

this purpose he shall register with the State of Washington a sufficient number of brands to provide a separate brand for each allotment on which operations may be in progress at any one time, such brands to be designated for exclusive use on logs and other forest products cut under this contract.

21. IN LIEU OF THE SCALING PROCEEDURE stipulated in the General Timber Sale Regulations, it is mutually agreed that the Commissioner of Indian Affairs, hereinafter called the Commissioner, in his discretion and for such periods as he may elect, may require that logs cut under this contract shall be scaled by a log scaling organization, hereinafter referred to as the scaling bureau, to be designated by the Commissioner. The designated scaling bureau shall be one that is recognized as competent by the lumber industry. Scaling by a log scaling bureau shall not be exclusive so as to prevent scaling, in the manner stipulated in the General Timber Sale Regulations, of material that is not delivered to the point of bureau scaling. Should the Commissioner intend to change from one scaling procedure to the other he shall notify the Purchaser in writing not less than thirty days prior to the effective date of such change. The following general conditions shall apply to bureau scaling:

Upon notification by the Commissioner that the services of a log scaling bureau are required, the Purchaser shall enter into an appropriate agreement with the designated scaling bureau for the performance of all necessary scaling and reporting services, and shall promptly submit to the Commissioner certified copies of such agreement in triplicate.

The agreement shall provide for the prompt scaling of all material upon delivery to the place of scaling. It shall also provide for prompt submission to the Superintendent of certified copies of each and every scale report, showing the species, volume, grade, and brand of each log scaled; with such safeguards being included in the agreement as the Commissioner may deem necessary to insure an accurate accounting to the Superintendent of all logs that are presented to the scaling bureau for scaling.

The scaling bureau's rules respecting scaling, grading, and merchantability shall apply.

The Purchaser shall pay the scaling bureau for all services rendered by it under the agreement.

No logs shall be moved from the place of scaling until they have been scaled. Customary methods employed by the scaling bureau for indicating completion of the scaling shall be accepted in lieu of the numbering and stamping of logs stipulated in Section 22 of the General Timber Sale Regulations.

22. IT IS MUTUALLY AGREED that the Purchaser shall have all reasonable latitude in his logging operations consistent with the requirements of selective logging and the other requirements of this agreement. In order to assist in meeting these requirements, and in addition to Section 9 of the General Timber Sale Regulations, the Purchaser agrees to submit a plan of his logging operations for each contract logging year beginning April 1, said plan to be of a form satisfactory to the Area Director. The Purchaser further agrees that he will undertake no logging



operations in any contract logging year until the Area Director shall have approved, in writing, the plan of operations for such logging year; PROVIDED, that there shall be no departure from the approved plan of operations without the consent, in writing, of the Area Director.

23. THE PURCHASER FURTHER AGREES THAT on all roads constructed or improved by him in connection with the logging of timber under this contract, and all bridges, trestles, drainage structures and like improvements will be left intact at the completion of logging operations and will become the property of the United States for the use and benefit of the Quinalt Indians when the contract is completed. The Purchaser further agrees that, in the event he shall use existing Indian Service roads in connection with the logging of the timber under this contract, he will properly maintain such roads.

24. THE PURCHASER shall furnish and maintain in good and serviceable condition such fire fighting tools and equipment, and provide such fire protection personnel as may be required by the Area Director to meet the fire protection requirements of the contract, the General Timber Sale Regulations, and the existing fire danger hazards or risks. The requirements shall not be less than are required under laws of the State of Washington.

25. THE PURCHASER FURTHER AGREES that within one year from completion of logging on any spur or main logging road he will cause all snags more than fourteen inches in diameter at four and one-half feet from the ground and more than sixteen feet in height from the ground to be felled unless relieved by the Area Director. The Area Director may relieve the Purchaser in whole or in part of the requirements of Sections 25 and 26 of the General Timber Sale Regulations. Waivers of snag felling requirements or the requirements of Sections 25 and 26 of the General Timber Sale Regulations shall always be specific with respect to areas involved, and will not be considered valid unless made in writing.

26. IT IS UNDERSTOOD AND AGREED, that after the close of each calendar year, and in any event not later than the date specified by the Area Director, the purchaser will submit to the Commissioner of Indian Affairs, through the Area Director, a financial statement of operations and sales in triplicate for the calendar year just ended. Such statements shall be of a form satisfactory to the Commissioner of Indian Affairs, and shall be certified by a certified public accountant and the Purchaser.

27. IT IS FURTHER UNDERSTOOD AND AGREED that this contract shall be null and void and of no effect until approved by the Secretary of the Interior and until the latter shall approve a bond in the penal sum of \$100,000.00 conditioned on the faithful performance of all the terms of this contract and the General Timber Sale Regulations attached hereunto:



Signed and sealed in sextuplet this 10th day of June, 1952.

By [Signature]  
(Title) C. N. [Name], President

ATTEST:

[Signature]  
(Secretary) Robert L. [Name]

Witness:

[Signature]  
[Signature]

[Signature]  
(Supervisor)  
Raymond H. [Name], Superintendent,  
Western Washington Agency

Signed this 10th day of June, 1952, for the Quinaielt Tribal Council pursuant to the action of the council in a meeting held at the Taholah, Washington, on the 10th day of June, 1952.

[Signature]  
(Title) Cleveland Jackson, Chairman

ATTEST:

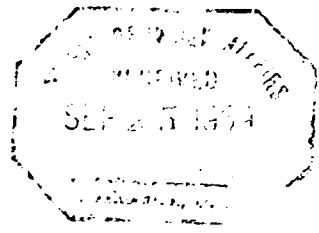
[Signature]  
(Secretary) Theodore [Name]

JUN 30 1952

Approved [Signature], 1952

[Signature]

Under Secretary of the Interior



STATEMENT OF CONTRACT

Grass Seed Laying Unit  
Contract No. 2111-1-1-137

This contract was entered into at the Western Washington Indian Agency, Everett, Washington, between the Superintendent of the Western Washington Indian Agency, hereinafter called the "Superintendent", for and in behalf of the United States, and Lawrence Incorporated, of Everett, Washington, hereinafter called the "Contractor".

WHEREAS: The contract covering the Grass Seed Laying Unit, No. 2111-1-1-137, dated June 30, 1953, between the Superintendent and Contractor, Incorporated, executed April 30, 1953, is hereby modified as follows:

1. Section 15 of said contract, which specifies the minimum cubic content requirements, is hereby amended by inserting the figure 21,000,000 in place of the figure 20,000,000 on line 1 and 2, it being understood and agreed that this change shall be effective in the contract year beginning April 1, 1954, and in each subsequent contract year. All other provisions of section 15 remain unchanged.

2. Section 16 of said contract, which specifies the minimum allowed annual cut, is hereby amended by inserting the figure 10,000,000 in place of the figure 9,000,000 on line 2. It being understood and agreed that this change shall be effective in the contract year beginning April 1, 1954, and in each subsequent contract year. All other provisions of section 16 remain unchanged.

3. The basic measurements for all timber produced on the sale area, including cord poles, shall continue to be the Western National C. & G. Scale but provisions other than the logs and cord poles will be scaled or measured by the method or methods set forth in Section 4 of this modification in accordance with the following conversion table:

- One cord equals 140 cubic feet of stacked wood cut in pieces 6 feet or shorter
- Twenty cubic feet, Western scale equals one cord.
- Two cord equals 280 board feet, Western National C.
- 500 cubic board equal one thousand board feet, Western National C.

4. Timbers produced under this modification will be scaled, measured or tallied in accordance with the following procedure:

a. Containers, including drums, 55-gallon drums and other receptacles, may be used prior to delivery, and the contractor shall be responsible for such use, when in the jurisdiction of the Officer in Charge, and will not be reimbursable for cost, when not, to be returned to a central stock point. Containers all covered will be returned in cords at stock points designated by the Officer in Charge. For the purpose of this provision, sticks cut in lengths of eight feet or shorter will be considered as covered unless pieces that are of equal or greater size as defined under the terms of the Great Harbor Log Scaling and Shrinkage Manual and its addendum. Pieces longer than eight feet may also be scaled as covered if they are of less than merchantable quality diameter and are produced as a part of the salvage operation.

b. Such items will be tallied and removed by the means of pieces, at designated stock points as determined by the Officer in Charge.

5. Salvage operations will not be commenced in any area until logging of merchantable timber as defined in the original contract has been completed and pile-down work done, after which the purchaser and the forest officer in charge shall designate the areas which are to be excluded from the provisions of this modification of the contract. In the event of disagreement between these representatives of the respective parties concerning the exclusion of such areas, the salvage operations provided for under this modification of the modified contract shall not be applicable. In all such excluded areas of the salvage operations, the forest officer shall not collect the salvage material, and no obligations shall exist under this contract to the contract for the purchase to take and pay for the salvage material within such excluded areas. The said purchaser hereby agrees to reimburse and remove such timber and material as may be so designated or otherwise marked by the forest officer in charge and to pay for such material at the rate of 2.50 per cord for redwood, 1.75 per cord for Sitka spruce, and other softwood species, including redwood, and \$15.00 per cord for white bark, which rates shall apply until and unless changed pursuant to section 6 of this modification.

6. The officer reporting this modification of contract on his duty authorized representatives, hereinafter called the Appraising Officer, may review the stumpage value of forest products produced under this salvage operation, either on his own initiative or upon submission by the purchaser of evidence satisfactory to the Appraising Officer that such a review should be made. If, as a result of said review, the Appraising Officer finds the established rates for such salvage products no longer represent their true value, he shall give 30 days' notice to the purchaser of his intention to establish new stumpage rates, during which time the purchaser may consult with the Appraising Officer; PROVIDED, that the provisions of notice shall be considered void if the new rates established under this authority are made effective upon the third day of any month which is not less than 30 days following notice by the Appraising Officer to the purchaser that he intends to proceed under the authority of this section to change such rates;

PROVIDED FURTHER, that there shall be no change in such otherwise rates until the coming subsequent to the date of approval of this modification of contract; and PROVIDED FURTHER, that such purchase prices shall not be changed oftener than once in any calendar year.

7. It is further agreed that in the event the purchaser does not contract with the Forest officer in charge as to re-logging of any particular contract area, the Departmentals of the Western Washington Indian Agency may proceed to make cut-over sales on such areas to other purchasers under authority of Section 5 of the General Timber Sale Regulations.
8. It is further agreed that the purchaser and the Forest officer in charge shall determine ways to be used to effect the removal of such trees prior to the use of the machinery of the stand with high-lead or other mechanical logging methods. When carried in such preliminary operations any trees to be removed in the form of cut-over stand or down timber of any kind not to be sold for at the contract price nor if found not suitable for any timber use shall be sold. If the or these species are wanted for other use and if it is not practicable to discharge the same by contract, the rule of the highest price species in the bid or pile will be applied. It is further agreed that, in the respect of the purchaser, under timber of timber may be designated for production primarily to contract under the same provisions as for saw-logging operations as set forth in this section if, in the judgment of the Forest officer in charge, such purchase will result in more complete utilization and further returns to the crown.
9. It is further agreed that the definition of trees specified hereto is a part of this modification or contract.
10. It is mutually agreed that sections 3 to 9 inclusive of this modification shall not apply to any individual allotment contract executed under authority of contract No. 1-111-1-1-1-1-1-1, prior to the approval of this modification, the time of approval of this modification to ensure the contract has been reviewed or a waiver in the to such allotment has been issued.
11. It is mutually agreed that all provisions and conditions stipulated in the contract and hereto especially modified shall continue in force and effect.
12. This modification shall become effective on the date of approval by the Commissioner of Indian Affairs.

EXHIBIT 478 BEING in compliance this 20th day of August, 1959.

WITNESSES, SUBSCRIBED

BY: J. W. Shook  
Executive Vice-President

WITNESSES:

W. L. Langlois  
Secretary

WITNESSES, SUBSCRIBED

BY: [Signature]  
Secretary

WITNESSES:

[Signature]

Anna Jackson

11 - 59  
T. Jackson  
Aug. 59

Witnesses to Superintendent's Signature.

[Signature]

[Signature]

Richard Jackson  
President

[Signature]

[Signature]

Witnesses:

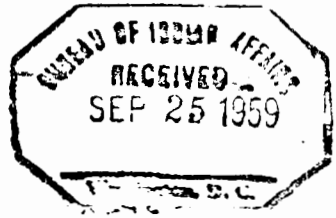
[Signature]

Secretary of the Board

End Page 1

Definitions of Terms as Used in This  
Qualification of Contract

1. "RESIDUAL" or "SAVING RESIDUAL" -  
These terms are used interchangeably. Resaving is a close-up operation following original logging operations to remove residual material that is marketable in some form of forest product but which was not suitable for saw timber as defined in the original contract.
2. "PRE-LOGGING" - is the term applied to the harvesting of specified trees or classes of timber from a cutting block prior to regular logging operations.
3. "HIGH-LEAD" - is the type of logging commonly used for harvesting timber in West Coast logging conditions. It consists of skidding logs to a central landing by means of cable, suspended through a block that is suspended near the top of a spar tree. The spar tree is supported by guy lines. As used in this report, high-lead may include skidding or skidder logging which also use a "high-lead" at the landing.
4. "SPARE LOGS" - is a scale, with 300-hour (actual) log rule, of material left on the ground after individual logging operations have been completed. This scale is made by Bureau or Indian Service forestry personnel and includes all material left that, in the forest officer's judgment, should have been logged as saw timber in accordance with the terms of the contract.
5. "WASTAGE" - as used in this report, is a term applied to material produced in the form of cutwood that is intended for manufacture into pulp. The primary species involved is Western hemlock, but any species may be included.
6. "SHINGLE BOLTS" - are blocks of cedar, cut 6 feet 6 inches (6'6") in length, which are increased for manufacture into cedar shingles. Practically, shingle bolts are four-foot cedar cutwood.
7. "WIDE BOARD" - are split cedar boards, 2" thick, 6" wide and 28" long. Width of boards may vary but 6 inches is the accepted standard.



CONTRACT NO. \_\_\_\_\_  
OF THE  
QUINCY INDIAN TRIBE

Wichita, Washington  
\_\_\_\_\_, 1959

Quincy Indian Tribe incorporated is the purchaser of timber on the  
Quincy Indian Reservation, Oklahoma, under contract No.  
100-100-100-100-100, and approved June 30, 1957, and

WHEREAS, it is now proposed to modify said contract to provide:

1. An increase in the required annual annual cut from 20 million to 25 million board feet.
2. An increase in the maximum allowable annual cut from 15 million to 50 million board feet.
3. Release of logging of non-sustainable material left on the ground following logging which is not defined as merchantable under the original contract, and other provisions.

THEY BEING OF THE OPINION that the proposed modification of  
contract is appropriate, and that the proposed modification of  
the Quincy Indian Tribe is hereby authorized to sign the Modification of  
Contract on behalf of the Quincy Indian Tribe.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1959.

QUINCY INDIAN BUSINESS COMMITTEE

*[Handwritten Signature]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

It is further stated that the Quincy Indian Tribe is hereby authorized to sign the Modification of Contract on behalf of the Quincy Indian Tribe.

TAHOLAH TIMBER CONTRACT

AND

MODIFICATION



ZANGLATI

Secretary:

Approving Officer-- 5/12/50

Contract Sections:

- § 9 - Adjust cedar pole rates
- 10 - Review stumpage rates
- 11 - Revise rates accordance to trend
- 27 - Approve bond and contract
- Modif. 4 - Review rates of salvage
- Modif. approval - 3/21/50

Commissioner:

- § 9 - Calculate MHA log prices
- 14 - Review volume estimates on allots.
- 15 - Grant relief minimum cut
- 16 - Consent to amend minimum
- 27 - Relieve minimum cut and pay
- 19 - Approve fire damage rates
- 20 - Approve fire equipment
- 22 - Relieve purchaser of Sec. 25 & 26
- 25 - Receive financial statement
- 26 - Approve logging in protected areas
- Modif. 7 - Determine sealing by bureaus

Area Director - Not Mentioned in Teholah Contract

Superintendent:

- § 3 - Approves allotment contracts
- 6 - Receives payment for owners
- Modif. 5 - Make other salvage sales

Officer in Charge:

- § 22 - Relieve snag falling
- 23 - Prescribe log brands
- Modif. 2 - Determine measure of cordwood and shakes
- " 3 - Exclude salvage areas
- " 6 - Designate prelog areas

DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

CONTRACT NO. I-101-Ind-1766

TIMBER CONTRACT

QUINCIETT LOGGING UNIT

1. THIS AGREEMENT made and entered into at the Toholah Indian Agency, Hoquiam, Washington, under authority of the Act of June 25, 1910 (36 Stat. 857), between the Superintendent of the Toholah Indian Agency, hereinafter called the Superintendent, for and in behalf of the Indian owners, party of the first part; and W. C. [Name] of Alsea, Washington hereinafter called the Purchaser, party of the second part.

2. WITNESSETH, that the Superintendent in consideration of the agreements by the Purchaser, agrees to sell to the Purchaser, and the Purchaser agrees to buy upon the terms and conditions herein stated and the General Timber Sale Regulations, approved April 10, 1920, by the Assistant Secretary of the Interior, which are hereto attached and made a part of this contract, all the merchantable dead timber, standing or fallen, and all the merchantable live timber, marked or otherwise designated by the officer in charge for selective logging, as required by the General Timber Sale Regulations, comprising trees approximately fourteen inches and larger at a point four and one-half feet from the ground, located on allotted lands covered by contracts entered into pursuant to the terms hereof, and on unallotted lands provided the Quinicielt Tribe or its representatives consent to the sale, within a tract designated as the QUINCIETT Logging Unit on the Quinicielt Indian Reservation, as shown on the attached map which is made a part hereof.

3. THE SUPERINTENDENT AUTHORIZES THE PURCHASER, and the Purchaser obligates himself to enter into separate contracts on the approved form with such Indians holding trust patented allotments within the logging unit as desire to sell their timber, subject to the terms of this contract. THE PURCHASER FURTHER AGREES to enter into said allotment contracts within thirty days from the date of submission of such contracts to him by the Superintendent.

4. The approximate area of the logging unit exclusive of alienated land, is:

Tribal Land	257	acres
Allotted Land	<u>50,034</u>	acres
Total Indian Land	30,521	acres

The Purchaser acquires no rights or interests whatsoever in and to approximately 907 acres of alienated land lying within the boundaries of this Logging unit.

5. THE ESTIMATED VOLUME OF TIMBER TO BE CUT, which estimate is not guaranteed is:

Western red cedar	360,000,000 feet, B.M.
Sitka spruce	43,000,000 feet, B.M.
Douglas fir	13,000,000 feet, B.M.
Amabilis fir	42,000,000 feet, B.M.
Western white pine	7,000,000 feet, B.M.
Western hemlock and other species	90,000,000 feet, B.M.
<b>TOTAL</b>	<b>545,000,000 feet, B.M.</b>

Cedar Poles 5,000,000 Linear feet.

6. FOR AND IN CONSIDERATION of the agreements by the Superintendent, the Purchaser agrees that prior to April 1, 1978, he will cut all timber covered by this contract, and will pay to the Superintendent for the use and benefit of the Indians entitled thereto, the full value of said timber which shall be determined on the basis of an actual scale at fixed rates per thousand feet board measure, Scribner Decimal C log scale for sawtimber, which rates shall be established for each quarterly period beginning January 1, April 1, July 1, and October 1; PROVIDED, that the rates for the contract logging year ending March 31, 1960, shall be as follows:

For Western red cedar	9 dollars and 75 cents
For Sitka spruce	8 dollars and 75 cents
For Douglas fir	10 dollars and 55 cents
For Amabilis fir	3 dollars and 50 cents
For Western white pine	6 dollars and 75 cents
For Western hemlock and other species	3 dollars and 50 cents
and for cedar poles, with not greater than 9" top diameter and no more than 18" butt diameter	three cents per linear foot.

7. FOR THE PURPOSE of determining the stumpage rates to be paid in the succeeding quarterly periods of the contract beginning April 1, 1960, it is agreed that the weighted average prices of logs on the combined Grays Harbor-Puget Sound log markets for the fourth quarter of 1948, as published by the Pacific Northwest Loggers Association in its "Composite Sales Analysis - Grays Harbor Logging Companies - October, November, and December 1948" and its "Composite Sales Analysis-Puget Sound Logging Companies - October, November, and December 1948" were as follows:

Western red cedar	\$48.52	Per M feet, B.M.
Sitka spruce	\$47.90	Per M feet, B.M.
Douglas fir	\$58.64	Per M feet, B.M.
Amabilis fir	\$39.12	Per M feet, B.M.
Western white pine	\$45.61	Per M feet, B.M.
Western hemlock	\$38.33	Per M feet, B.M.

8. IT IS FURTHER AGREED that the stumpage rates for sawtimber appearing in Section six of this contract bear the following percentage relationships to the weighted average log prices for the fourth quarter of 1948 as shown in Section 7 hereof:

Western red cedar stumpage to Western red cedar log prices	20.09 %
Sitka spruce stumpage to Sitka spruce log prices	18.27 %

Douglas fir stumpage to Douglas fir log prices	<u>28.00</u> %
Amabilis fir stumpage to amabilis fir log prices	<u>9.00</u> %
Western white pine stumpage to western white pine log prices	<u>22.00</u> %
Western hemlock and other species stumpage to western hemlock log prices	<u>10.00</u> %

9. THE COMMISSIONER OF INDIAN AFFAIRS or his duly authorized representative shall obtain from the Pacific Northwest Logger's Association, through its published reports or otherwise, the average sales prices of logs in the Grays Harbor and Puget Sound log markets for each quarterly period during the life of this contract or any extensions thereof, and shall calculate the average log price of each species on the same basis and using the same grade percentages on which the average log prices for the fourth quarter of 1942, as shown in Section 7 were determined. In determining the stumpage rates to be effective for any given quarterly period, the percentages stipulated in Section 8, or the percentages which may be subsequently established under the provisions of Section 10, shall be applied to the calculated average Grays Harbor-Puget Sound log prices for the preceding quarterly period, and the sawtimber stumpage rates for each species so determined shall be the rates to be paid for timber actually sealed during such quarterly period. The stumpage rates for cedar poles shall be adjusted by the Secretary or his duly authorized representative at any time in accordance with the trend of the cedar pole market in the general locality of Grays Harbor. Notice of the new schedule of cedar pole stumpage rates will be furnished the Purchaser at least 30 days prior to the date on which they shall become effective.

10. THE SECRETARY OF THE INTERIOR OR HIS DULY AUTHORIZED REPRESENTATIVE may, upon his own initiative, or upon submission by the Purchaser of evidence satisfactory to the Secretary or such representative, review the stumpage rates established by the procedure set forth in Sections 6 to 9 inclusive. If, as a result of such review, the Secretary or such representative finds that the character of the operation, changes in marketing conditions, or technological developments, have altered the situation to such an extent that a change in the existing ratios between stumpage rates and the Grays Harbor-Puget Sound log prices appears warranted, he shall give thirty days notice to the Purchaser of his intention to establish new percentage ratios between stumpage rates and the Grays Harbor-Puget Sound log prices during which time the Purchaser may consult with the Secretary or such representative; PROVIDED that the requirements of notice in this Section shall be satisfied when the new ratios established under its authority are made effective upon the first day of the quarterly period which is not less than thirty days following notice by the Secretary or such representative to the Purchaser that he intends to proceed under the authority of this Section to change such ratios. The ratio, however, for any species of sawtimber shall not be changed oftener than once in any calendar year.

11. NOTWITHSTANDING any other provisions of this contract, it is mutually agreed that, in the event the said Pacific Northwest Loggers Association's Composite Sales Analysis becomes unavailable for use in connection with these stumpage readjustments, or in the opinion of the Secretary or his duly authorized representative do not properly reflect the true market value of the forest products, the Secretary or such

representative shall at any time, after giving thirty days notice to the Purchaser, during which time the Purchaser may consult with the Secretary or such representative, proceed to revise stumpage rates in accordance with the trend of economic conditions in the west coast logging and lumbering industry, provided that the requirements of notice in this Section shall be satisfied when the new rates established under its authority are made effective thirty days after notice by the Secretary or such representative to the Purchaser that he intends to proceed under the authority of this Section to adjust such stumpage rates.

12. IT IS FURTHER UNDERSTOOD AND AGREED that stumpage rates will never, in any event, be reduced below the following:

\$3.50 per M feet, B.M. for western red cedar  
\$4.00 per M feet, B.M. for Sitka spruce  
\$4.25 per M feet, B.M. for Douglas fir  
\$1.00 per M feet, B.M. for amabilis fir  
\$3.50 per M feet, B.M. for western white pine  
\$1.00 per M feet, B.M. for western hemlock and other species  
\$0.02 per linear foot for cedar poles

13. THE PURCHASER FURTHER AGREES that prior to the time when the stumpage value of the timber cut shall exceed the cash deposit of \$10,000.00 submitted with his proposal to purchase timber, he will make another cash deposit of \$25,000 and subsequent deposits of \$25,000 at such times as may be necessary to insure that the stumpage value of timber cut and not paid for at any time shall not exceed the cash deposit then in the hands of the Superintendent; PROVIDED, that the last cash deposit in any logging season may be in the sum of not less than \$10,000.

14. THE PURCHASER FURTHER AGREES that within thirty days from the date of approval of the contract on each allotment he will pay twenty-five per cent of the estimated value of the timber thereon as an advance payment, and further, that within three years from the approval of such contract he will pay an additional fifteen per cent of the estimated value of the timber as an advance payment, and an additional ten per cent as an advance payment within six years of approval of the allotment contract; PROVIDED, that with respect to each allotment contract, no advance payments will be required in an amount that will make the sum of that payment, plus all previous advance payments, plus all advance deposits previously applied against timber cut from the allotment, exceed fifty per cent of the estimated value of the timber; PROVIDED FURTHER, that the estimated value of the timber shall be determined by multiplying the volumes originally estimated to be cut by the following rates:

\$ 9.75 per M feet, B.M. for western red cedar  
\$ 8.75 per M feet, B.M. for Sitka spruce  
\$ 10.25 per M feet, B.M. for Douglas fir  
\$ 3.00 per M feet, B.M. for amabilis fir  
\$ 6.75 per M feet, B.M. for western white pine  
\$ 3.00 per M feet, B.M. for western hemlock and other species  
\$ 0.02 per linear foot for cedar poles

PROVIDED FURTHER, That the stumpage rates governing at the time the timber is scaled shall be the rates charged for the timber actually cut. IT IS MUTUALLY UNDERSTOOD AND AGREED, That the Commissioner of Indian Affairs, on his own initiative

or upon submission by the Purchaser of evidence satisfactory to the Commissioner, in his discretion may revise the estimated volume of timber on any allotment because of errors in estimate; or because of fire or other losses not due to any act or neglect of the Purchaser, but not because of depletion through cutting under authority of the allotment contract, PROVIDED, That in case the advance payments made on any allotment contract exceed the total value of timber cut and removed from the allotment by the Purchaser it is mutually agreed that such advance payments are declared to be the value of such timber so cut and removed.

15. THE PURCHASER further agrees that he will, unless relieved by the Commissioner of Indian Affairs, cut and pay for, from some portion of the sale area, at least 10,000,000 feet, board measure, Scribner Decimal C log scale, prior to April 1, 1951, and not less than 20,000,000 feet, board measure, in any twelve months ending March 31 thereafter during the life of this contract. PROVIDED, that all timber on this unit must be cut and paid for prior to the contract expiration date; that he will pay for, as merchantable timber, pieces twelve feet and longer, will utilize the trees to a diameter of ten inches in the tops where straight and sound, and will pay for all timber except cedar poles on the basis of a scale recognizing 32 feet as a maximum length of a single log; and that all logs will be considered merchantable as provided in the attached General Timber Sale Regulations, except that hemlock and amabilis fir must be one-half or more sound.

16. THE MAXIMUM ALLOWABLE CUT of sawtimber in each three-year period of this contract beginning with April 1, 1950, shall not exceed 100,000,000 feet board measure, Scribner Decimal C log scale without the written consent of the Commissioner of Indian Affairs.

17. THE PURCHASER FURTHER AGREES that, if he fails to cut and make available for scaling in the customary manner the minimum of timber required by this contract to be cut in any contract logging year ending March 31, he shall make a special advance deposit to the Superintendent on or before the end of such contract logging year to cover such deficiency in cutting; this deposit to be calculated at the cedar sawtimber stumpage price that is in effect on March 31 of that contract logging year. Such advance deposits so made shall be applicable to timber cut in a subsequent year only after the Purchaser in such subsequent year has cut and paid for the minimum timber required to be cut that year under this contract. PROVIDED, that this special advance deposit shall be applied against timber cut in such subsequent year at the rates in effect during the subsequent year; and PROVIDED FURTHER That the Commissioner of Indian Affairs may relieve the Purchaser in whole or in part from the minimum cutting and paying requirements because of adverse operating or market conditions, fire damage to the Purchaser's manufacturing plant, acts of God or Government control, or for other cause deemed sufficient by the Commissioner of Indian Affairs.

18. IT IS FURTHER UNDERSTOOD AND AGREED THAT, in addition to the provisions of Section 5 of the attached General Timber Sale Regulations, this contract is subject to any existing rights of way.

19. THE PURCHASER FURTHER AGREES that if fires, for the starting or spread of which he, or any of his employees, his subcontractors, or their employees, are responsible by act or neglect, shall destroy young growth under ten inches in diameter on any portion of the reservation, he will pay liquidated damages of twenty

dollars per acre for the area thus burned over unless a lesser rate of damages shall be approved by the Commissioner of Indian Affairs; and he agrees that, in addition to these liquidated damages, he will pay the damage that shall be caused to all timber ten inches and larger in diameter at four and one-half feet from the ground or to any other property of the Indians or the Government. Should merchantable timber be injured by a forest fire for the origin or spread of which the Purchaser, his agents, employees, subcontractors, or their employees, are in no way responsible, said Purchaser shall be accountable for the loss sustained only to the extent that such loss shall be due to his failure to cut and remove the injured timber as expeditiously as shall be possible under the existing circumstances and the terms of this contract.

20. THE PURCHASER will furnish and maintain in good and serviceable condition such fire fighting tools and equipment, and provide such fire protection personnel as may be required by the Commissioner of Indian Affairs or his duly authorized representative to meet the fire protection requirements of the contract, the General Timber Sale Regulations, and the existing fire danger hazards or risks. The requirements shall not be less than are required under laws of the State of Washington.

21. THE PURCHASER FURTHER AGREES that all bridges, trestles, and drainage structures will be left intact at the completion of logging operations and will become the property of the United States for the use and benefit of the Quinalt Indians when the contract is completed.

22. THE PURCHASER FURTHER AGREES that within one year from completion of logging on any setting or landing or any spur or main logging road he will cause all snags more than fourteen inches in diameter at four and one-half feet from the ground and more than sixteen feet in height from the ground to be felled unless relieved in writing by the Forest Officer in charge. It is further understood that the Commissioner of Indian Affairs may in his discretion relieve the Purchaser entirely or in part of the provisions of Sections 25 and 26 of the General Timber Sale Regulations.

23. THE PURCHASER FURTHER AGREES that he will conduct the logging operations in such a manner as to permit scaling to be done economically, that he will keep the allotment boundaries clearly marked while logging is in progress, and that all logs from each separate allotment will be branded as prescribed by the officer in charge of the sale in order to be readily identified if the logs from different allotments are mixed at the point of scaling.

24. THE PURCHASER FURTHER AGREES that he and his subcontractors will fully comply at all times with the provisions of section 47 of the General Timber Sale Regulations dealing with the employment of Indian labor.

25. THE PURCHASER FURTHER AGREES that as soon as possible after the close of each calendar year, and in any event not later than April 15 following, he will submit to the Commissioner of Indian Affairs, through the Superintendent, a financial statement of operations and sales in triplicate for the calendar year just ended, such statements to be in a form satisfactory to the Commissioner of Indian Affairs, and to be certified to by a certified public accountant and the purchaser.

26. THE PURCHASER FURTHER AGREES that recreational, scenic, esthetic, and Indian ceremonial values will be protected and that the logging operations, when permitted in areas on which such values exist, will proceed only under authority of the Commissioner of Indian Affairs.

27. IT IS FURTHER UNDERSTOOD AND AGREED that this contract shall be null and void and of no effect until approved by the Secretary of the Interior and until the latter shall approve a bond in the penal sum of \$75,000.00 conditioned on the faithful performance of all the terms of this contract and the General Timber Sale Regulations attached herewith.

Signed and sealed in sextuplet this 26<sup>th</sup> day of April, 1950.

WITNESSES:

James J. Quinn

Earl R. Wilson

James J. Quinn

Earl R. Wilson

ALPHA LUMBER CO.

Purchaser

By

Paul A. Smith

President

By

Ed. Kurtz

Secretary

Wm. H. H. H.

SUPERINTENDENT  
ACTING SUPERINTENDENT

MAY 12 1950

Approved: \_\_\_\_\_ 1950 subject to the prompt furnishing of a  
~~Secretary of the Interior~~

bond satisfactory to the Secretary of the Interior in the amount of \$75,000 in accordance with Section 27 of the contract. Alpha Lumber Company also to furnish certified copy of its corporate charter and current bylaws.

William E. Gamm

Assistant Secretary of the Interior

Finckenger  
Quinn



Draft/Nesbitt/5-21-75

STAND IMPROVEMENT - DOCUMENT SUMMARIES

IM36.9 - Letter from Forest Supervisor James A. Howarth, Jr., to  
Supt. N. O. Nicholson, 10/8/36.

- This is a memo of an examination of logging on allotments within the Quinault Lake unit. On the trust patents, the timber was being marked and thinned, leaving a sufficient stand for growth and, hopefully, wind protection. This work was being done on allotment #496, part of which, at least, lay within the quarter mile limit against the Olympic Highway.

IA38.13 - Letter from Supt. N. O. Nicholson to Commissioner of Indian Affairs, 9/22/38.

- Discusses logging of the Lizzy Howeattle allotment, #277, and states from a silvicultural standpoint the timber is not crowded and there is no need of thinning.

IA39.19 - Letter by Forest Supervisor James A. Howarth, Jr., to  
Supt. N. O. Nicholson, 3/18/39.

- (This is the 2d attached letter).  
- Concerns logging which will be done by Mr. Yarkes on the Toby Saux allotment. States the cedar on this 40 acres is over-mature and the stand will be improved by removal of all the over-mature timber and so giving the younger timber with good growing tops a chance to make better growth.

IA39.24 - Letter from Capt. H. G. Nicholson to Commissioner of  
Indian Affairs, 7/12/39.

- Concerns timber sale of the John Johnson allotment.
- States that removal of 50 percent of the stand would improve the forest because of the over-maturity of the timber to be logged. The stand left will be over 7 M per acre.

IIS44.1 - Report by Forest Supervisor A. G. Hauge, 7/17/44.

- Concerns a tree selection cutting - sample plot on the William Butler allotment, #992. The area was tractor logged and done on a tree selection cutting plan in 1937. In August 1938 a sample plot was established as a basis of study of the residual stand as to growth, mortality, tree diseases, insect infestation, wind throw, etc.
- States that to date most of the trees show no indication of pickup or accelerated growth because of relief by cutting. Many of the cedar that were left were mature or spiked topped with sparse crowns, which will very likely show little in the way of increased annual increment.
- Concludes that the advisability of establishing a reserve stand containing a high percentage of mature or spiked top cedar trees and of trees damaged in logging is questionable.

IIS44.2 - Report by Forest Supervisor A. G. Hauge, 7/20/44.

- Concerns tree selection cutting sample plot on the Salakike allotment #1345.
- Makes basically the same finding as in IIS44.1.

IIS44.5 - Report by Forest Supervisor A. G. Hauge, 7/24/44.

- Concerns tree selection cutting sample plot on the Henry Cultee allotment #496.
- States that the reserve stand has a very thrifty appearance at the present time, and that in trees released by cutting new branches are forming which are increasing the crowns, indicating future increase in growth rate. This stand was made of second-growth Douglas fir with uniform coverage on the entire area.

IIA45.1 - Report by Forest Supervisor A. G. Hauge, 10/23/45.

- Concerns a sample plot of the removal of piling and logs in second growth Douglas fir stand on the Henry Cultee allotment #496. Found the growth rate 10 years previous to cutting was 1.34 inches and the growth rate 7 years since cutting is 1.09 inches, which is equivalent to 1.56 inches for a 10-year period. At the present time the crowns of the released trees are extending their width and length, indicating increased growth rate. Attaches table showing data on individual trees.

*on Rejuvenation IIA59.2 (a)*

IIA63.1 - Report by Don Clark, 8/63.

- Concerns the accelerated Public Works program on the Quinault during FY 1963. The thinning and pruning activity under the program was confined to second growth stands on tribal lands in the south portion of the reservation near the southeast boundary. 85 acres were thinned and pruned at a total cost of \$16,361., or a cost per unit of \$192.48. Pruning accounted for approximately 75 percent of the total cost. The

objective was to release potential crop trees in the crown canopy and to produce a clear bole 16 feet above stump height. Thinning was performed by girdling the trees with axes, pruning with pruning saws fixed to 12' extension poles. All removed trees were spotmarked with paint by BIA forestry personnel. The average basal area of the stand before thinning was 250 sq. ft., after thinning, 150 sq. ft. (Assume this is per acre.) Approximately 100-120 trees per acre were thinned. Growth plots will be established.

IIA68.8 - Report by Earl Wilcox, 9/18/68.

- This is an analysis of Indian contribution toward paying cost of forest management. On page 6, states that the disproportionately low expenditures (see summary of this document under Reforestation) for timber stand improvement has resulted in a staggering backlog of underdeveloped young timber.
- States it does not appear reasonable to expect the Indian people to bear the annual expense which would be required to maintain the same intensity of timber stand improvement activities as is being practiced on national forest lands.

IIA68.10 - Summary tables for special study of the Indian Forestry Program, 1968.

- (see summary of this document under Reforestation).
- On page 38, indicates that no thinning or pruning was accomplished on the Quinault Reservation during 1967, and there is a backlog of 11 units. (presumably acres)

VIIA69.1 - Proposed policy by USDA Regional Forester Charles A.

Connaughton, 3/27/69.

- States the beneficial effect of cleaning up slash on both precommercial and commercial thinning of young stands.

IIA71.2 -

(a) Report by Acting Supt. John Benedetto to Area Dir., 1/15/71.

- States that the timber stand improvement program during calendar year 1970 included chemically thinning 230 acres at a cost per acre of \$44.73.

(b) Report from Supt. George Felshaw to Area Dir., 6/24/70.

- Encloses report by Forest Mgr. Joe Jackson.
- Reports on a timber stand improvement project.
- States thinning will be carried out using mechanical and chemical means. Herbicides, silvisar 550, or Glowon will be used because of their extremely low toxicity and virtually nil translocation capabilities. Jackson's report states that several thousand acres of cutover lands are covered with reproduction stands that will respond to a release cutting. The project will consider thinning of overstocked stands of hemlock, spruce and fir to a level of 160 sq. ft. of basal area. Precommercial thinning will take place where the mean diameter is below 8" DBH. Thinning will be accomplished as outlined in the letter from Felshaw. There are approximately 6,400 acres in the area, and 3,400 acres that can be treated. The proposed allocation of \$10,000 for the project will cover approximately 373 acres.

IIA71.4 -

(a) Letter from Commissioner Lewis Bruce to Representative Julia Butler Hansen, 11/25/70.

- Advises her as to why the reforestation program has been discontinued on the Quinault Reservation.

- States that during the current fiscal year, only \$5,000 has been made available from forest pest control funds to remove mistletoe-infested trees.

- States there is a \$50,000,000 backlog in projects to develop Indian forests, such as reforestation and timber stand improvement.

(b) Letter from Acting Area Dir. A. W. Galbraith to Commissioner of Indian Affairs, 11/5/70.

- Contains essentially the same information as above.

VA71.2 - Report to the files by Foresters Ray Lowder and John Schneff, 12/7/71.

- A memo of the investigating committee tour of Taholah and Crane Creek units on December 1, 1971. In Block W, 25-22-13, the observation was made that it was overstocked and in need of thinning. Block was logged in 1956. In Block 15, 26-22-12, which was logged in 1962, it was observed that the restocking by commercial species is spotty, with brush patches evident to an undesirable extent.

*see Replantation II A71.5*

IA72.2 -

(a) Letter from Supt. signed by Forest Mgr. Joseph Jackson, to Commissioner of Indian Affairs, 3/20/72.

- Recommends that \$10,000 be made available in FY 1973 for a timber stand improvement project. The project was to thin the remainder of the

tribally owned spruce orchard before a commercial thinning is attempted.  
There is no (b) for this topic.

IA73.4 - Letter from Acting Supt. John Benedetto to Quinault Business  
Committee President Joseph DeLaCruz, 7/25/73.

- Requests a full report of the activities of his staff in conducting forest fertilization on the Quinault Reservation.
- States that timber stand improvement projects, as well as the use of chemicals on lands, must be approved by the Area Director.
- States one problem resulting from improper fertilization application is called fertilizer burn.
- Asks that future forest management projects conducted by his staff be brought to the attention of the Agency forest manager before implementation.

Draft - 5/6/75

DISEASE AND INSECT DAMAGE - DOCUMENT SUPPLEMENTS

IIA31.1 - Report by Forest Supervisor James A. Howarth, Jr., to  
Assistant Director of Forestry, Lee Mann, 2/10/31.

- On page 23, states that like all virgin stands, a large percentage  
of mature and hypermature timber is dying from age and fungus attack.

Insect damage is mostly confined to inferior limby spruce stands near  
the ocean.

IA34.7 - Letter from Supt. N. O. Nicholson to District Forester of  
the U.S. Forest Service, 1/10/34.

- Requests report of a survey by the Forest Service of damage by the  
spruce bud worm in the Grays Harbor area.

IA36.33 - Letter from Forest Supervisor James A. Howarth, Jr., to  
Commissioner of Indian Affairs, 6/30/36.

- Regards Indian logging contract for spruce on the John Shale allot-  
ment, #63. Spruce involved had been killed by spruce bud worm and  
overthrown by the changing channel of the Clearwater River some years  
back.

VIIIA54.1 - Management plan by Forester Kenneth Hodley, 3/26/54.

- On page 20, lists diseases and insects damaging timber on reservation.

1) Blister rust by rust fungi of the genus *Cronartium* is very  
destructive to white pine. White pine comprises less than 2 percent of  
the stand.



2) *Ribes bracteosum* is principal alternate host occurring in abundance over much of the area. Because of the dense brush in the streams and swampy areas, the eradication would be extremely difficult and expensive.

3) Red ring rot, ring scale, red heart or pecky heart rot, caused by the ring scale fungus *Fomes plai*, causes more losses than any other decay. It affects all conifers, principally old growth timber.

4) Infestation of the fir engraver beetle *Pseudohylesinus* app. has been detected one mile from northeast side of reservation, but has not been encountered on the reservation yet. The most serious damage of this infestation occurs in mixed stands with a high percentage of over-mature and decadent timber. Selective logging is the only practical method of control. Close contact is being kept with its spread. In the event the area is seriously attacked, cutting can be quickly initiated since logging operations at the present time are in the silver fir stands at the north end of the Crane Creek unit.

5) The black headed bud worm *Choristoneura variana* became prevalent in 1944. It attacks all conifers, preferring hemlock and then silver fir. Infestation of hemlock was noted in 1935 near the village of Queets.

6) Infestations of hemlock looper (*Chloroclypeus flavicornis*) occurred during 1937 and some damage noted near the village of Queets.

7) Damage of the Sitka spruce weevil (*Pissodes sitehensis*) has been noted in increasing abundance since 1950. Principally on spruce in the reproduction of poorly stocked stands. Trees between 5 and 30 years are principally affected.

8) Black bear have been very destructive to young pole-size stands of Douglas fir. Damage has been particularly severe on poorly stocked areas. Bear damage is greatly retarding restocking of the areas and rotation period. In the fall of 1951, the meat wastage regulation was waived concerning bear, and in 1952 bear was declared a predator in the general area of the Olympic Peninsula.

IIA64.1 - Report by Washington Zone Entomologist Leon F. Pettinger of the U.S. Forest Service, Oct. 1964.

- Reports the infestation of mountain pine beetle is downward. Damage is located on the north fork Moclips River and Upper Raft River drainages. Prevalence of white pine blister make control of beetle impractical. Recommends reducing beetle population and to log all infested white pine trees.

- Reports bear damage in immature stands of Douglas fir and hemlock is slightly higher than in 1963. All the damage is located along the southeast reservation boundary.

IIA65.1 - Report by Washington Zone Entomologist Leon F. Pettinger of the U.S. Forest Service and Forest Entomologist R. L. Johnson of the Washington State Dept. of Natural Resources, Oct. 1965.

- Reports infestation of mountain pine beetle. Trend is slightly upward. Location of damage and recommendation is the same as in IIA64.1.

- Reports trend of bear damage slightly downward. One area of damage was southeast of Chow Chow Prairie in an already understocked stand.

IIA66.1 - Report by Pettinger and R. L. Johnson, Sept. 1966.

- Reports intensity of infestation of mountain pine beetle is light to very heavy, reflecting an upward trend.
- States patches of tree killing are common throughout the reservation.
- Makes same recommendation as IIA64.1.
- Reports intensity of bear damage as light, with the trend being static.

Damage located in the same area as reported in IIA65.1.

IA68.8 - Report by Asst. Regional Forester C. G. Jorgensen, signed

by Benton Howard, to Director of Bureau of Indian Affairs, 8/6/68.

- Reports on review of forest insect and disease problems on reservations on the Olympic Peninsula.

- States the major disease problem on all areas is hemlock dwarf

mistletoe, which infects hemlock, true firs, and shore pine. Several stands are badly infested and growth loss is occurring.

- States it is difficult to do anything about mistletoe in an existing stand. Much can be done, however, at the time of harvest by making sure that all infected trees are killed. This should be done during or immediately following logging. If residuals are needed for regeneration, they should be destroyed as soon as reproduction is established, preferably before it reaches one foot in height. In many old clearcut areas, this was not done, and there are infected residual over-story and whips. Destroying these would help reduce mistletoe in the new stand.

- Recommends giving priority to the most recent clearcuts and those stands in which hemlock is of major importance. Because increased

light reaching the forest and decreased tree vigor strengthen mistletoe, they do not recommend thinning an infested stand.

- Enclosed a paper by Clark State entitled "Dwarf Mistletoe of Coastal Western Hemlock: Principles and Practices for Control."

Another problem in thinning stands of hemlock is the root disease *formosa annosa*. This fungus enters freshly cut stumps and rots the roots. It can move from stump to tree and cause mortality or butt rot in leave trees.

- States they do not have its full potential as a pathogen in thin stands. Enclosed copies of Forest pest leaflet No. 76 on this disease.

- States no insect epidemic infestations were seen during their inspection.

There are several potential insect infestations which may reach epidemic status in the future. Mentions the hemlock looper, the black headed bud

worm, and the hemlock woolly, all of which are easily controlled with insecticides. Also mentions silver fir beetles and other bark beetles

which can be minimized by salvage logging. Also mentions the balsam

woolly aphid which may invade the peninsula in the future and infest

Pacific silver fir, which would make it unmanageable as a commercial species.

IA55.9 - Insect Control, 1963. Area: Sitka, Wrangell Valley to Sept.

George Felchner, 8/28/63.

- Refers to IA55.9 and directs him to prepare a justification and project proposal through Don Clark to carry out the recommendation of using funds from the Forest Pest Act to control the mistletoe infection.

IIA71.3 - Report by Supt. George Felsher to Area Dir., 7/26/71.

- Reports on an insect infestation recently discovered on Douglas fir seedlings planted on the Raft River fire area. The insect is believed to be *Chermes cooleyi*.
- Requests more information on this insect and control of its infestation.

IIA71.4 - Letter from Commissioner Louis Bruce to Representative Julie Butler Hansen, 11/25/70.

- States that during the current fiscal year, \$5,000 has been made available from Forest Pest Control funds to remove mistletoe infested trees.

IA73.6 - Part of a letter from Region VI of the U.S. Forest Service to Greg Stevens of the BIA, 1/24/73.

- States that pathologists at the University of Washington have reported losses in westside Douglas fir to rhizina root rot. This disease is most commonly found on recently burned clearcut units.

## Slash Disposal Issue

### Plaintiff's Allegation

"Defendant permitted the logging contractors to engage in wasteful, damaging and potentially damaging logging practices, such as . . . not clearing away slash, thereby causing and increasing the risk of fire in valuable timber stands." Plaintiff's More Definite Statement 3(h), Dec. 30, 1971.

### Overview of Record

Contracts on the Quinault Reservation before 1926 provided for the burning of slash and presumably this was done and the slash was cleared. See III B20.1 p 4, III M22.1 p 7, III L22.1 p 6, and IA35.1. In 1926 BIA foresters suggested to the Commissioner that burning slash retarded reforestation and did not pose that much of a greater fire risk if the slash areas were protected long enough for area to "green-up." See IA26.3-4. In response to this advice the Commissioner directed the policy to leave slash unburned pending further study and to improve fire protection. See IA26.2. It is widely conceded that slash has not been disposed of by burning since that though there is some indication that there have been exceptions to this. See IR59.9. In 1970 it appears that the burning of slash

was being considered again. See VR70.1 p 7. That idea appears to have been rejected in favor of better utilization by using the slash for chip production. See IJ70.11 and IJ70.16. The economics of such salvage were not good and burning was again considered. See IJ71.18. Burnings plans have not been carried into effect because of continuing efforts to salvage it instead. See IR71.7, IJ71.21, VJ71.1.

Reasons for not burning slash:

- 1) better chance and cheaper reproduction.

IA26.3-4, IIA37.1 pp 4-5, IIA38.1 p5

contra: IJ70.11(a), IJ71.21

- 2) fire risk may not be as great as if it were burned.

IIA32.1, IIA37.1 pp 4-5, IIA38.1 p5

Contra: IA26.3, IJ70.11(a)

- 3) burns are seldom "clean"

IIA38.1 p 5

- 4) problem of air and stream pollution.

IJ70.11(c)

Contra: VR70.1 p7

Problems with salvaging slash:

- 1) getting cooperation between tribe and purchaser.

IJ70.11, IJ71.16, IR71.7

- 2) costs exceeding value

IJ70.11, IJ71.16, IJ71.18, IJ71.21

Areas for further research:

- 1) Copy of article and literature mentioned in IA26.4.
- 2) Results of burning from earlier contracts.
- 3) Discussions on Gualala Reservation mentioned in IA26.4.
- 4) What happened to study Steer was supposed to make? IA26.4.
- 5) How much more was expended for fire protection after 1926? IA26.2-3.
- 6) Did second-growth forms and fire weed make better fires? IIA32.1.
- 7) How many fires are deliberately set? Do they burn any more than the slash? IIA32.1.
- 8) Were any studies made to show delay in reproduction? IIA37.1.
- 9) How "clean" are slash burnings? IIA38.1 and IVA74.1.
- 10) Are there any pollution studies? Who objects? IJ70.11(c).
- 11) What were results of pilot projects on chip production? IJ71.21; IJ70.11(a), (c).
- 12) Why wasn't salvage sale expedited under 25 CFR 141.7(6)?
- 13) What happened to cooperation? IJ70.11(a)(b)
- 14) What is House Bill 1034? IJ71.16.
- 15) What were recommendations of Public Land Law Review Commission? IJ71.16.
- 16) What was discussed which halted burning plans in 1972? IJ71.18.
- 17) Where did Galbraith get his data? IJ71.21.
- 18) What is present policy? And why?



Slash Disposal

Summary of information contained in documents referred to in the index.

IIIB20.1 p 4 - Moclips K. directed slash to be burned.

Directed the times and manner in which it should be burned.

General Timber Sale Regs. attached p 9 Nos. 25-27 directed slash to be piled and burned. Burning directed by forestry officer. Unsatisfactory disposal of slash could suspend all operations of purchase until corrected.

IIIM22.1 p 7 - Quinault Lake K. directed slash to be burned. See above.

IIIL22.1 p 6 - Pt. Grenville K. directed slash to be burned. See above.

IA26.4 - Letter from Commissioner Chas. H. Burke to Supervisor of Forests Henry B. Steer, Aug. 7, 1926.

Refers to article in July, '25 "Timberman" by Frank H. Lamb concerning concerning burning of slash in West. Wash. and Oregon.

Comments - that dependence upon young growth for fire protection has been discussed for 2 or 3 decades; that Indian Services have always in regs. and K's provided large discretion as to method of disposal but that any method other than that generally approved by Fed. and State forest agencies be used only with express approval of Commissioner; that problem was discussed ten years before on the Tulalip Reservation and decided that burning was only safe method.

Authorizes that Steer make a study of slash disposal.

IA26.3 - Letter from J. P. Kinney and Lee Muck to Commissioner, Oct. 9, 1926.

Refers to IA26.4.

Report visit to logging operations on Quinault Reservation.

Observe that an unexpected amount of reproduction exists on logged off areas and that if fires can be kept out of slash areas in a few years the fire risk will be no greater than if burned over; that there is greater fire risk in an unburned slash area but that the probabilities of reforestation are greater if unburned and Indian Services should expend four times as much as in the past on fire protection.

Recommend that Superintendent of Taholah jurisdiction be instructed that policy is to leave slash unburned unless written permit from forest officer is given.

IA26.2 - Letter from Commissioner Burkes to Superintendent of Tahola Agency Sams, Oct. 19, 1926.

Refers to IA26.3 and letter from Steers June 28, 1926.

Instructs Superintendent that the policy will be as recommended in IA26.3, to leave slash unburned and to improve fire protection.

IIA32.1 - Report from Logging Engineer William Heritage to Commissioner, Sept. 26, 1932.

Comments that it has not been policy to run fire over logged areas because of belief that this causes ferns and fire weeds to grow which provide fuel for second and hotter fires.

States that Forest Service officials believe it necessary to run one fire over and try to keep second out.

Observes that there is a large area of slash unburned which contains considerable young growth, and that this presents a chance for incendiariism which was shown by number of fires set on July 1.

Reports that Supervisor Howarth's and Superintendent Nicholson's decision not to hire anyone to fight one of these fires took nerve as it burned for three days, but apparently worked since no more fires were set during the season.

IA35.1 - Letter from Howarth to Director of Forestry, U.S.I.S., Klamath Agency, Robert Marshall, Sept. 23, 1935.

Informs that K provisions for burning slash are found in identical language in the Quinault Lake, Mounts, Pt. Grenville, Moclips, Cook Creek, Hall, and Hatch Units. The same provision with the addition "if the Commissioner of Indian Affairs shall require it" appears in Upper Wreck Creek Unit K approved 9/17/27.

Quotes IA26.2

IIA27.1 p 4-5 - Report from Logging Engineer Patrick Gray, concurred by

Superintendent Nicholson to Commissioner, Oct. 21, 1937.

Observes that burning slash does not remove fire hazard and delays the start of new reproduction or makes planting necessary.

Recommends that no burning be permitted and to make further study.

IIA38.1 p 5 - Report from Logging Engineer Patrick Gray to Commissioner,  
April 2, 1938.

Comments that question of burning slash is an open one but his opinion is that it should not be permitted.

Observes that due to the amount of debris on the ground and the unusual amount of rainfall the burn is seldom clean and renders the fire hazard greater; that fire runs over slashing areas makes planting necessary; that the cheapest way of reforesting the land is to prevent all fires.

IR59.9 - Letter from Forest Manager John Libby to Allottee Claude Wain,  
Dec. 2, 1959.

Informs that James Ross would show Wain areas where salvage has been completed and the heavy debris has been burned.

VR70.1 p 7 - Forestry Conference with ITT Rayonier. Memo from Forest  
Manager Jackson to Superintendent, Feb. 3, 1970.

Discussed slash disposal and plan to bring in a fire control

specialist to study slash areas; the BIA's reliance on Certificates of Abatement to cover liability for uncontrolled slash fires; handling slash disposal as technical phase of operations under BIA supervision and responsibility; problem of environmental pollution as not being great.

Informed that Bayonier does very little slash disposal by burning on their own lands.

IJ70.11

- a) Letter from Forest Manager Jackson to Harold Stilson of Evans Products Company. July 21, 1970.

Comments that huge volumes of slash on Taholah Unit almost preclude regeneration by any method; that the fire hazard is a major problem.

Suggests that there is a possibility that slash may be utilized in chip production.

Informs that the Quinault Tribe is willing to attempt the salvage operation; that Mr. Guyon of Weyerhaeuser said his company could do a pilot logging project.

Requests that Evans Products look into possibility with the Quinaults; that they set up a meeting with him.

- b) Letter from H. M. Stilson, W. Wash. Div. Mgr. of Evans Products to Forest Manager Jackson, Aug. 12, 1970.

Agrees to cooperate to find solution to slash problem as mentioned in Letter (a) (IJ70.11).

- c) Memo from Acting Superintendent Bushman to Area Director,  
Sept. 30, 1970.

Reports that burning will be a last resort because of objections to air and stream pollution; that attempt will be made to dispose of slash by chipping; that slash residue is marginal or sub-marginal in value; that a study is being made by Weyerhaeuser of value of slash for pulp production; that entity purchasing residue would be encumbered to reforest the land.

Suggests that sale could be expedited under 25 CFR 141.7(b).

IJ71.16 - Letter from Aloha Timber Manager Elmer Parker to Joe Jackson of the BIA, June 18, 1971.

Expresses opinion that reduction of slash and not immediate money is in the best interest of Indians.

Refers to passage of House Bill 1034 and expresses belief that best disposal method is salvage.

Suggests that stumpage be set on a reasonable lump sum basis and that this is in accord with recommendation of Public Land Law Review Commission.

IJ71.18

- a) Memo from Joe Jackson to Supv. Forester Onnie Paakkonen, Sept. 29, 1971.

Reports that chances for selling slash are dim and that plans for burning slash in 1972 are being made.

Notation on bottom of letter indicates that "later discussions by OEP superseded these plans."

b) Letter from Acting Superintendent Beneditto to Elmer Parker of Aloha, Oct. 22, 1971.

Infomas that plans for burning slash are being made.

IR71.7 - Letter from Forest Manager Joe Jackson to Wilton Vincent of MIT Rayonier, Nov. 17, 1971.

Requests that Rayonier allow Mr. Brunfield to resume salvage operations and no longer prevent him from doing so, since his operations would reduce slash residue.

IJ71.21 - Memo from Asst. Area Director Galbraith to Emmet E. Willard, Acting Field Representative, Office of the Secretary, Dept. of the Interior, Dec. 7, 1971.

Reports estimates of values and costs of chip production of slash residue; acreage of slash areas not restocked; regeneration lag; cost of slash disposal by burning; other costs.

VJ71.1 - Meeting with Aloha, Tribe, and BIA Forestry. Memo from Asst.

Forest Manager Wil Carey to the Files, Dec. 28, 1971.

Reports that Allen Gould of Aloha said they are willing to build fire trails around logging block and burn if no other way is found to lessen slash.

IVA74.1 - Memo from Forest Manager Jackson to the Files, July 15, 1974.

Contains photos of slash area that was burned by DNR.



SLASH DISPOSAL ISSUE

Plaintiffs' Allegations

"Defendant permitted the logging contractors to engage in waste-ful, damaging and potentially damaging logging practices, such as ... not clearing away slash, thereby causing and increasing the risk of fire in valuable timber stands."

Plaintiffs' more definite statement 3(h), Dec. 30, 1971.

Overview of Record

Timber sale contracts on the Quinault Reservation before 1926 provided for burning of slash. See IIIB20.1, page 4, IIIM22.1, page 7, IIIL22.1, page 6, and IA35.1. Slash was indeed burned before 1926. See IA18.2, IA24.6, IA24.15, and IA26.6. In 1926 BIA foresters suggested to the Commissioner that burning slash retarded regeneration and did not pose that much of a greater fire risk than if the slash areas were protected long enough for the area to "green-up". See IA26.3-4. In response to this advice, the Commissioner directed the policy to leave slash unburned pending further study, and in the meantime improve fire protection over the slash areas. See IA26.2 and IA26.7. Fire protection plans were made pursuant to this policy. IIA28.1. Timber sale contracts made after 1926 waived paragraph 25 of General Timber Sale Regulations. See IA29.9, IIA43.3, IA60.1, and IJ71.27. Contra: IIA72.3. The opinion that slash burning retarded regeneration was based on studies by the Forest Service and others. See IA26.4, IIA30.2, IIA37.1, pp. 4-5, and IIA38.1, p. 5. This opinion has been questioned by BIA officials several times in the last 40 years. See IIR58.1, IIA59.2, IA59.1, IIA62.4, and IJ71.21. In fact, in the late 1950's,

*"Defendant misrepresented the long-term timber contracts on the T-1 district and Burne Creek Unit with resultant damage to plaintiffs by failing to require the logging to ... 2) disposal of all slash; ..."*  
*The preservation of conditions of fact and law = 72*  
*April 15, 1974*

slash burning was resumed experimentally, and as spot burning on the Taholah Unit. See IIR58.1, IIA59.2, and VIIIA62.1. At this and other times various BIA officials have recommended burning the slash. However, burning the slash is usually recognized to be a last resort or in certain very limited circumstances. See IIA59.2, IA59.1, IJ70.11, IJ71.18, IA71.7, IA71.12, VJ71.1, IA72.2.

Since it is generally conceded that because of lack of exposure of mineral soil the large slash accumulations do retard regeneration, it is recognized that disposal of the slash in some manner is desirable. See IJ57.2, IJ70.11, IA71.7, IJ71.12, and IA71.5. The ideal method for all concerned would be removal of the slash as salvageable material. This method has had the support of Government officials so long as it is economically feasible. See IJ57.2, IIR58.1, IIA59.2, IA69.1, IA70.2, IJ70.11, IJ71.16, VA71.1, IR71.7, IA71.4, IJ71.21, IIA72.4, and IJ72.6. However, efforts to salvage the slash have been frustrated by economic realities which have often made it an unprofitable operation. See IJ71.18, IIA72.3, IJ72.6, IJ72.21, and IA69.1. It is likely that the controversy over the satisfactory disposal of the slash will center around the economic feasibility of salvage of the slash for chips.

In summary, it is well known that in cedar areas of the type found on the Quinault Reservation, a great amount of defective material will be found even before logging, and will result from logging itself. BIA

officials were not convinced, however, that controlled burning of slash was the solution to the fire protection problem and has sought alternatives, mainly by greater effort in keeping fire out of slash areas and the suppression of fires when they do occur, and reduction of slash by salvage. See also the analysis of the record on fire protection.

Reasons for Not Burning Slash

1. Better chance and cheaper reproduction.  
IIA26.3-4, IIA30.2, IIA37.1, pp. 4-5, IIA38.1, p. 5.  
Contra: IJ70.11 (a), IJ71.21, IIR58.1, IIA59.2.
2. Fire risk may not be as great as if it were burned.  
IIA32.1, IIA37.1, pp. 4-5, IIA38.1, p. 5, IIA72.3.  
Contra: IIA26.3, IIR58.1, IA68.1, IIA68.1, IJ70.11(a).
3. Burns are seldom "clean."  
IIA38.1, p. 5, IA68.1.
4. Problem of air and stream pollution.  
IIA68.1, IJ70.11(c), IJ72.6.  
Contra: VR70.1, p. 7.
5. Burning would require planting and no funds were available.  
VA71.2, IIA72.3, see also Analysis of Reforestation.  
Contra: IIA72.4.
6. Leaving slash helped erosion control.  
IIA68.1, IIA72.3.

7. Large amounts of salvageable material in slash areas.  
IIR58.1, IIA59.2, IA68.1, IIA72.3-4, IIA72.6.
8. Too much slash to burn all of it.  
VQ68.1.
9. Ownership pattern and uncontrolled cutting in Queets area.  
IA68.1, VA67.1, IIA68.1.

Problems With Salvaging Slash

1. Getting cooperation between tribe and purchaser.  
IA69.1, IJ70.11, IJ71.16, IR71.7, IJ72.6.
2. Costs exceed value.  
IJ70.11, IJ71.16, IJ71.18, IJ71.21, IA71.2.  
Contra: IJ57.2, VA71.2, IA71.4, IIA72.6, IJ72.6.
3. Lack of market.  
VA71.2, IIA72.3.

Areas for Further Research

1. Copy of article by Frank H. Lamb in July 1925 Timberman and other literature mentioned in IA26.4.
2. The results of burning slash under contracts made prior to 1926.
3. The nature of the discussions concerning the Tulalip Reservation which were mentioned in IA26.4.
4. What happened to study that Steer was supposed to make?  
IA26.4.
5. How much more was expended for fire protection after 1926 than before?  
IA26.2-3.

I-11

6. Did second-growth ferns and fireweed make hotter fires?  
IIA32.1.
7. Were any studies made to show the delay in reproduction caused by burning the slash?  
IIA37.1.
8. How "clean" are slash burnings?  
IIA38.1 and IVA74.1.
9. Have there been any studies on the effect of burning slash on air and water pollution? Who has made objections?  
See IJ70.11(c).
10. What were the results of pilot projects on chip production?  
IJ71.21, IJ70.11.
11. Why wasn't salvage sale expedited under 25 CFR 141.7(b)?
12. What happened to the cooperation mentioned in IJ70.11?
13. What is House Bill 1034?  
IJ71.16.
14. What were the recommendations of the Public Land Law Review Commission?  
IJ71.16.
15. What was discussed which halted burning plans in 1972?  
IJ71.18.
16. Where did Meeker get his data?  
IA71.4 and IJ71.21.
17. What were the studies referred to by the Reforestation Committee of Grays Harbor Forestry Board?  
IIA30.2.

18. What percentage of slash accumulation is reduced by burning or other methods? Which are more effective? What are the factors involved?

19. Were the requests to repeal compulsory burning laws ever successful? Did the Washington State Legislature ever conduct hearings?

IIA30.2.

20. Was the policy against slash burning in the State of Washington total, or did it permit operators to burn off accumulations around landings, buildings, etc.?

21. What has been the result on similar forest lands where the state burning laws made burning compulsory? Is the damage to valuable timber by fire significantly less than on the Quinault Reservation where no controlled burning is done?

22. What are the state standards for declaring a slashing area a hazard under their laws? How would this have been applied to the Quinault Reservation if the state had jurisdiction?

IA37.10.

23. Were any studies done to support Ozette's contention that they were successful in reforesting without burning and thereby placing their lands in production 10 years earlier than if they had burned?

IA43.7.

24. What has been the slash policy of the right-of-ways?

IIA43.3.

25. Was controlled spot burning in heavy cedar slash areas ever carried out as recommended by Clark?

IIR58.1.

26. How much must debris be reduced in order to sufficiently expose soil? Can this be done by other methods than burning?

IIA59.2.

27. What were the results of burning on Taholah in 1959?

IIA59.2.

28. Why are poor sites with shallow soils not burned? How much would this apply to the Quinault Reservation?

IIA59.2(c).

29. How much must natural regeneration be established before the Forest Service decides not to burn?

IIA59.2(c).

30. Is there any way to determine how much slash is from logging, and how much is already on the ground? Does it make a difference?

IA59.5.

31. What are proper weather, moisture, etc., conditions under which slash may be burned? How often during a year is it possible to burn on the Quinault Reservation?

IA59.5.

32. What are the results from the United States Forest Service's burning on the Olympia National Forest?

IA59.1.

33. Where are the areas mentioned in IR59.9 by Libby in which the heavy debris has been burned?
34. Why was burning slash on the Taholah Unit discontinued?
35. What recommendations, if any, were made to the Washington office following meeting on disposal practices reported in VA67.1?
36. Why doesn't Crown Zellerbach burn in hemlock stands?  
VA67.1.
37. What is U.S. Forest Service and Weyerhaeuser experience in burning in hemlock stands?  
VA67.1, IIA72.3.
38. Is it true that the state would assume 100% of cost of suppression if fire occurs? Is that after the slash burning, or does it cover slash burning itself?  
IA68.1.
39. How much fire hazard risk is reduced by burning the slash?  
IA68.1.
40. What is the financial liability of the slash burning getting out of control? Is it insurable? How much would the premiums be?  
IIA68.2.
41. What is loss due to erosion following a slash burning? How could it be controlled and at what cost?  
IIA68.1.



42. What is the effect of receiving a slash clearance from the State Department of Natural Resources? Where are copies of clearances issued for the Quinault Reservation?  
IIA68.1.
43. Is it true that most slash within Queets area is on private land? Does this justify BIA in doing nothing to reduce slash or plant on trust lands in the Queets area?  
IIA68.1.
44. Has a plan ever been developed to provide firebreaks in the Queets area as suggested by the State Department of Natural Resources Field Supervisor Gockerell?  
VQ68.1, VA68.1.
45. How much reforestation is required before shading effect will significantly reduce fire risk?  
VQ68.1.
46. What became of Queets Forest Protection Association's effort to coordinate such a plan?  
VQ68.1, VA68.1.
47. What were U.S. Department of Agriculture's past practices? How did they hinder fire protection.  
VIIA69.1.
48. Was a fire control specialist ever brought in to study slash areas with Rayonier?  
VR70.1.

49. Is it true that BIA relies upon Certificates of Abatement to cover liability? What are they, how do they cover liability, and why does BIA rely on them?

VR70.1.

50. What was the basis for Forest Manager Jackson's conclusion that slash on the Taholah Unit precludes regeneration by any method?

IJ70.11(a).

51. What were the letters marked Exhibit B-9 from which Judge Goodwin concluded that the BIA forest manager was performing his trust duty?

VJ71.2.

52. Was any emergency action taken in response to warning by Superintendent Benedetto that hazard from slash was becoming extremely critical?

IA71.7.

53. Was a comparison ever made between Quinalt and State lands as mentioned in IA71.2(a)?

54. Did the Environmental Protection Agency have any concrete basis for conclusion that the contracts were not being complied with? Was a meeting ever set up?

IA71.20.

55. Is it possible to get research note PNW-163 by James Howard and research paper PNW-115 by Dell Ward from Pacific Northwest Forest and Range Experiment Station?

IA71.18.

56. Was one of the reasons for the lack of funds for planting the expectation that the land would pass into private ownership under fee patents?

IIA72.4.

57. Why was no provision requiring purchaser to reforest land put in contract?

IIA72.3.

58. Why were purchasers given 2 years under the contract to complete salvage operations? Doesn't this create a problem in disposing of slash, since 4 to 5 years may elapse before purchaser and owner have exhausted rights to salvage and by then some reforestation has been established which BIA would be reluctant to destroy by any disposal of slash?

IIA72.3

59. Where is the U.S. Forest Service study indicating regeneration of hemlock stands is more favorable if area is not burned?

IIA72.3.

60. Was disposal of slash by salvage for chips, etc., seriously considered before the 1970's? If not, why not? What changed in 1970? If so, were any studies done?

DRAFT  
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10/22/75

LOGGING PLANS ISSUE

Plaintiffs' Allegation:

"Defendant failed to develop comprehensive logging plans for the reservation allowing the contractors to initiate such plans." Plaintiffs' Contention of Fact and Law No. 18, 4/15/74.

Overview of Record

The concern of the plaintiffs here is probably in their opinion that if the purchasers have too much control over areas selected for logging, there is a resultant effect on average stumpage prices. See VA68.3 A memorandum by Forest Manager Joe Jackson in 1970 admits that Rayonier enjoyed excessive latitude in the cutting design on the Crane Creek Unit which came about mainly by omission on the part of the Bureau. VR70.1 Wilton Vincent of Rayonier seemed to accept this as true but argued that the contracts gave the operators this latitude. VR70.1 Apparently from that time on the BIA became a more active participant in the development of the plans and the tribe was also included in the effort. VR70.1, VJ71.1 and VIIA73.1 Also the plans became more comprehensive and included written specifications covering such things as stream treatment, roads, logging methods, erosion control, etc. IIA72.3, VIIA73.1 It appears there may also have been more joint effort

in developing plans during the initial phases of logging under the contracts in order to establish the selective block cutting method. VIIIJ50.1, IJ50.5 However, it also appears there were some problems with the contractors being too independent in their cutting plans. IJ53.1 Much of the input from the BIA over the years has been to request the companys to adjust their logging plans to accommodate allottees with special needs and hardships. IR58.4, IJ60.4, IJ60.5, IR62.7, IR67.3, IR73.4 A report to the Commissioner of Indian Affairs in 1972 is a more comprehensive analysis of this issue than we have here. See IIA72.3

#### Areas for Further Research

1. Obtain copies of all logging plans which have been submitted since the inception of the Crane Creek and Taholah contracts. See IIA72.3
2. Is there any record of the field examinations or other procedures which were followed to show the thoroughness of the BIA's examination of the logging plans submitted by the contractors?
3. Get expert opinion on what effect, if any, the plans of logging have had on stumpage prices or reforestation, etc.
4. Is there any evidence that even though not included in the written plans there were informal understandings as to how the logging blocks were to be logged, etc.?
5. Is there any other evidence or testimony as to the extent the contractors consulted the BIA in the process of developing the logging plans?

6. Obtain further documentary evidence of demands by allottees to include their allotments in the logging plans and the extent to which the BIA or the contractors made such adjustments.

Draft - 10/15/75

LOGGING PLANS - DOCUMENT SUMMARIES

ID.37.2 - Letter from Superintendent N. O. Nicholson to Commissioner of Indian Affairs, 4/14/37.

Proposes that the three Aloha units be logged by the system proposed for the Quinault Lake Unit, that is, by selective spot area of 100 acres more or less. States the system Aloha has followed in the past has been to lay out new logging areas for summer cutting with a stand of green timber left between the new and older cuttings for protection against fire of the new cutting area and later after fire season cutting out the intervening areas. States the Hall Unit is a spotted timber stand and lends itself well to the new plan. The Mounts Unit is different and spot logging would leave much good timber standing. Pending reply they will prepare forms for the bonding company and make plans for the selective areas.

IM38.1 - Letter from Superintendent N. O. Nicholson to Regional Forester, 12/22/38.

Enclosed map of the Quinault Lake Unit showing tentative plans for logging about two-thirds of the remaining area. States plans are still in the conversation stage between Arnold Polson and the agency as to the areas shown on the map. States opinion that a representative of the Regional Office should sit in on the discussions.

IIA43.3 - Report by Regional Forester Frank Lenzie, signed by Acting Forester Carthon Patrie to Commissioner of Indian Affairs, 12/13/43.

This is a report on suggested revisions of the general timber sale regulations. Regulation 9 entitled "The Areas to be Logged".

"The areas to be logged in any season may be designated by the officer in charge when in his judgment this is necessary to prevent deterioration or serious losses from fire, insects, wind throw, stain, worms or other cause or to insure the sale unit in such a manner as to fully protect the interests of the Indians and the United States. When logging is begun on a natural logging unit it will not be discontinued and started elsewhere except as made necessary because of unfavorable weather or ground conditions without the written consent of the officer in charge."

Explains that in the last sentence the words "on an allotment" were deleted because often it is not practicable for an operator to complete an allotment before proceeding elsewhere on a sale unit due to the topography.

ILJ46.1 - Report by Forester Carthon Patrie and Senior Forest Ranger L. C. McKeever, 8/31/46.

This forest officer's report on the proposed sale of the Taholah Unit. The proposed form of a general contract paragraph 21 provides that in order to conform with the requirements of selective logging, all road



construction and logging programs will be planned at least one year in advance and be approved by the forest officer in charge in writing and that no departure from the approved program will be permitted without written consent of the forest officer in charge.

VIIIJ50.1 - (a) Letter from Area Forester Floyd H. Phillips to Acting Superintendent F. A. Gross of the Western Washington Agency, 9/1/50.

Refers to (b). States they are in general agreement with it but in view of past experience question advisability of issuing any sort of formal plan which might conceivably be interpreted as a modification of the contract. To avoid such contingency suggest that the desires with respect to the submission of an annual operation plan and the manner in which it is to be presented be submitted in the form of a letter to the contractor so written as to avoid any suggestion that it modifies the contractual agreement. States it is entirely within the authority of an officer in charge to designate the areas for cutting within a logging unit and these could be made within reasonable limits without reference to the operators' plan. However, to make selective logging by blocks successful it should be done with the cooperation of the operator. This necessity requires preparation of advance logging plans. There is some question whether the operator can make his complete logging plans a year in advance without cooperation of the forest officer in charge. Suggest therefore that some provision be made for joint work on the plan during its initial phases.

(b) Preliminary Draft of a Proposed "Plan of Logging Operations" by  
Earl Wilcox.

Provides the following:

1. Detailed plan of operations for a full calendar year be submitted to Forest Manager before December 1 of the year preceding.
2. Forest Manager will review the plan.
3. Such approval by the Forest Manager be given in writing.
4. No deviation from approved approved plan will be made during the course of a calendar year without prior approval of the Forest Manager.

5. The plan submitted shall contain a map showing the outline of settings to be logged, location of roads and the method and sequence of logging of each setting. Setting shall be planned so that no single area of clear cutting shall exceed 120 acres in size until a minimum of ten years has elapsed between the cutting of contiguous blocks. Contains further details as well.

IJ50.3 - Letter from Acting Superintendent Fred Gross to Dave Kurtz of  
the Aloha Lumber Co., 9/11/50.

Refers to their request that a plan of logging operations be submitted to the agency before start of each year to cover logging to be done during the following year. The purpose of such a plan is to facilitate compliance with section 2 of the general contract providing for the purchase of all the merchantable timber and at the same time allow the company freedom and choice of areas to be cut, etc. Note this appears to be the "letter" form of Wilcox' plan of logging operations in VIIIJ50.1

IIIM50.1 - Stipulation for Extension of Contract for the Quinault Lake Unit Signed by President L. J. Forrest of the Ozette Railway Co., 8/15/50.

Provides that the company will submit in writing a plan of logging operations one year in advance for consideration of forest officer in charge and that no departure from approved plans will be made without written consent of the forest officer in charge.

IJ50.5 - Memorandum from Forester Earl Wilcox to Forest Manager John Libby, 9/25/50.

States that Dave Kurtz of Aloha requested to meet with members of the forestry staff to discuss what the submission of a plan for the logging of the Taholah Unit. Discussion at the meeting was confined mainly to specifications which the company wishes to have changed as to the method of logging in selective block cutting. States it appears there is much merit to the arguments the company has advanced as to the large expenses which are being incurred in the interior part of the unit where there are no unmerchantable areas or natural boundaries to rely on. States it appears necessary that much of the unit would have to be cut in a series of four cutting cycles to comply with methods of logging originally set forth in the letter of September 11. Since contract terminates in 29 years there could be a lapse of only seven years between cutting of one block and the cutting of a contiguous block in the following cycle. This would entail the enormous task of developing a road system to blanket the entire unit within a period of seven years. Encloses several diagrams illustrating alternatives in the cutting

cycles. Suggest modification to allow either staggering of cuttings as indicated in diagram 2 or the cutting of area in strips as in diagrams 3 and 4. Both methods would permit logging of the units in two cycles. The staggered setting plan would allow touching of blocks at points or permit their connection by narrowed strips of cutting. The last method however is considered more desirable by the company and BIA agency foresters, at least from an operational viewpoint. States should the modification recommended be acceptable to the area office request them to notify the company as quickly as possible as under even the best of conditions it will be impossible to make our desires for submission of plan fully effective during the first logging year because of the lack of basic engineering and forest stand information necessary for the company to prepare a plan covering the whole calendar year 1951.

IM53.1 - Letter from Superintendent Raymond Bitney to Area Director

E. Morgan Pryse, 2/11/53.

States members of forestry staff met with officials of <sup>RAYONIER</sup>~~Rainier~~ and Ozette Railway Co. regarding operational plans on Quinault Lake and Crane Creek Units. States plans for developing Crane Creek Unit so far present appear to be excellent from both forest management and administrative viewpoints. States plans for Quinault Lake present many administrative problems. States during the 30 years of logging operations on the unit no particular sequence of logging was followed. Rather logging shifted according to market conditions. Illustrates this on attached map. States officials of <sup>RAYONIER</sup>~~Rainier~~ or Ozette have pointed out they must conduct their operations to produce a balanced proportion of the different species to meet their manufacturing requirements. For this reason they are unwilling to defer operations in the Crane Creek Unit.

6

IJ53.1 - Letter from Superintendent Raymond Bitney to President Paul Smith of Aloha Lumber Corp., 8/3/53.

Complains that changes from the plan as submitted occasionally have been made without prior approval. Cites a specific example and states this setting was not included in the operation plans for 1953 and the agency was not notified of the addition until after the setting was laid out and much of the timber felled. States they must insist that future cutting plans be approved in advance. States during initial years of contract they have approved establishment of settings have been too close together. In many places reserve strips are much too narrow. States now that the road system is well extended and should be feasible to develop cuttings to provide for reserve blocks of sufficient size to assure that they will remain intact until scheduled for cutting ten or more years hence. Request that their engineers and logging superintendents work more closely with BIA forest officers. States it is their policy to allow the maximum possible freedom to the company in developing their own logging plans but must insist that such plans be submitted for review and approval well in advance of each year's operation and that any later change of plans be approved in advance and that no cutting be commenced on a setting until the plans for that setting have been approved.

IR58.4 - Letter from Acting Superintendent John Libby to Area Director Don Foster, 10/3/58.

Regards operations on Mary Petit allotment. States they have been

reluctant to bring pressure on the contractor earlier to complete logging because of the particular circumstances involved. It is their understanding that the allotments of Norris Ellis and Mary Petit were included in <sup>RAYONIER'S</sup> ~~Rainier's~~ plans as a special accommodation to the allottees. The allottees had secured fee patents with the understanding that <sup>RAYONIER</sup> ~~Rainier~~ would purchase them, which turned out to be a misunderstanding but that <sup>RAYONIER</sup> ~~Rainier~~ would agree to include the allotments in logging plans. After the timber was felled the cedar market dropped and <sup>RAYONIER</sup> ~~Rainier~~ curtailed logging on those allotments.

IR60.5 - (a) Letter from Acting Chief of the Branch of Forestry Henry Wershing to Area Director Don Foster, 5/13/60.

Refers to the logging plans submitted for the year 1951 in the Crane Creek Unit. States they are pleased by the proposed road construction which will extend operations into the west central portion. Refers to studies of the results on regeneration by the selective block cutting system.

(b) Letter from Acting Superintendent DeCelle to Area Director Don Foster, 4/21/60.

Enclosed request for modification of <sup>RAYONIER'S</sup> ~~Rainier's~~ logging plans for 1960. States they have been informed that <sup>RAYONIER</sup> ~~Rainier~~ has secured commitments for a large volume of cedar on Grays Harbor for the year 1960. Since cedar represents 60% of the volume in the unit believes that Rainier should be allowed to take advantage of their opportunities to dispose of a large volume of cedar. Notes that the roads to be constructed in

1961 are designed to develop the west portion of the unit which will provide access to considerable areas of marginal cedar. Recommends approval of the cutting plans as modified.

(c) Letter from Manager L. J. Forrest of <sup>RAYONIER</sup> ~~Rayner~~, Inc., to Superintendent C. W. Ringey, 4/12/60.

Requests approval for an increase in the maximum allowable cut and the approval of additional cutting areas on their logging plan.

IJ60.4 - Letter from Forest Manager John Libby to Allottee Thomas Mason, 8/3/60.

Replies to letter concerning his allotment but regrets they are unable to give him a favorable report. Note at the bottom to "Jim" makes a suggestion that perhaps Blocks 24 and 18 could be stretched to give Mason a little stumpage in excess of his advance payments.

IJ60.5 - Letter from Forest Manager John Libby to Allottee Thomas Mason, 8/12/60.

Gives him a fuller account of the advance payments to him than were in IJ60.4. States in view of his circumstances they will explore the possibility of revising the boundary of the cutting block to include a larger portion of his allotment. However, they give him no assurance that this can be done. Note at the bottom to "Don" states "this man is really in tough shape. Have Jim check this out with the law and see if either Block 18 or Block 24 can be stretched to include enough volume to liquidate the advance payments and leave a few thousand over." Signed JWL

IR62.7 - Memorandum from Forester Manager John Libby to Superintendent,  
5/14/62.

Regards situation of Allottee George Sanders. Because his allotment fell in a reserve area no logging on his allotment will be scheduled before 1970. The matter was discussed with <sup>RAYONIER</sup>~~Rainier~~ officials but they were reluctant to revise established approved cutting plans. They pointed out their cost would be increased appreciably if they had to move into log only a relatively small volume. Also the revision would upset the already established cutting pattern in the southwest. Points out Block 17 is already too large a slash area due in part to pressure from one of the allottees who gave assurance that if her entire allotment was included in the cutting block she would arrange to have it replaced under the agricultural conservation program. The allotment was logged but no planning has been done. States considering all the circumstances they do not feel justified in bringing pressure on <sup>RAYONIER</sup>~~Rainier~~ to require it to log a part of this allottee's timber at this time. States he is only one of hundreds of other allottees in like circumstances. Also his case is not as critical as many. States we give priority to real hardship cases when we can. States the files are full of letters from allottees wanting to have their timber cut to provide them with income in their old age. To illustrate this they have listed ten representative cases on an attached exhibit. States the situation cannot be resolved on the basis of individual needs. They cannot expect the contractor to revise his operating plans to meet the needs of each allottee.



IR67.3 - Letter from Forest Manager Don Clark to Superintendent George Felshaw, 9/25/67.

Regards situation of Allottee Floyd Hudson. States they discussed the matter with <sup>RAYONIER</sup> Rainier and as a result a logging road has been constructed into the portion of the tract that lies south of Highway 101. Also a logging block has been tentatively established which includes a large portion of his allotment. States they are hopeful this block will be submitted for approval along with others for 1968 logging. States they will continue to work with personnel from <sup>RAYONIER</sup> Rainier and stress the need for logging some of Hudson's timber during 1968.

VA68.3 - Memorandum from Area Forester Kenneth Hadley to Assistant Area Director for Economics Development, 11/18/68.

Refers to consultation with representatives from the Quinault Tribe. Among the views they expressed was that the purchasers have too much control over areas selected for logging with a resultant effect on average stumpage prices.

VR70.1 - Memorandum from Forest Manager Joe Jackson to Superintendent, 2/3/70.

Concerns forestry conference with ITT <sup>RAYONIER</sup> Rainier, Inc. On logging plans Jackson explained that historically BIA prepared cutting guidelines and block layout. Purchaser then selects his cutting blocks and those prepared by the BIA. This selection could be influenced by anticipated markets and road programs. Final approval rests with the approving officer. States <sup>RAYONIER</sup> Rainier enjoyed excessive latitude in the cutting design on the Crane Creek Unit. This came about mainly by omission

on the part of the Bureau. Wilton Vincent from ~~Reinier~~<sup>RAYONIER</sup> said his interpretation of the contract gave this latitude. Jackson insisted this was an error by omission on the BIA's part that final approval rests on the BIA anyway and he intended to exercise his prerogative to its fullest extent. States the cutting design is an integral part of forest management and the BIA is in no position to abrogate this responsibility by turning it over to a private company that stands to gain therefrom. Jackson stated he was for equal participation by the BIA and ~~Reinier~~<sup>RAYONIER</sup> in developing the cut for the remaining period of the contract. Vincent was agreeable to this but wished that it would be delayed for the 1972 logging plan since so much time and manpower had been invested in 1971 plan. Jackson insisted that this year would be the starting period. Vincent was reluctant to include Indians on the planning phase but Jackson insisted. They then discussed a number of elements of the logging program with which they were concerned.

VJ71.1 - Memorandum by Assistant Forest Manager Wilbur Carey, 12/28/71.

Regards meeting with representatives from Aloha Lumber Corp. Also present were representatives from the Tribe. They discussed stream clearance and protection, slash disposal, road maintenance, buffer strips and also discussed that the logging plan should contain areas of marginal timber along with areas of merchantable timber so that at the end of the contract all areas would be logged.

IIA72.3 - Report by Area Director Dale Baldwin to Commissioner of Indian Affairs, 4/28/72.

(Note: this report apparently the joint efforts of Neely and Meeker.)

Explains the difference in logging plan requirements between Crane Creek and Taholah. Encloses a copy of the guidelines for the preparation of logging plans which were developed from the inception of the contracts. Explains the flexibility of the plans. Encloses representative copies of plans and subsequent approvals. Explains foresters make field examinations of the proposed logging areas. Expresses the comprehensiveness of the current logging plans.

VIIA73.1 - Timber Sale Administration General Operating Procedures

Revised by Forest Manager Joe Jackson, 8/30/73.

Provides that the annual logging plan be a joint BIA-Tribal purchaser endeavor containing written specifications for each cutting block. The specifications will cover stream treatment, roads, yarding and falling, erosion control, fire lines, special problems, etc. Also includes land owners' special requests.

IR73.4 - Letter from Forest Manager Joe Jackson to Allottee Ken Payne,  
12/13/73.

Informs him they are including his allotment in the 1974 Crane Creek logging plan as a hardship case. Attached is letter from the allottee explaining his hardship.

REFORESTATION ISSUE

PLAINTIFFS' ALLEGATION

"Defendant ... has not provided adequately for reforestation ... ." Plaintiffs' Memorandum of Contentions of Fact and Law, No. 9, 4/15/74.

"The defendant's management of the plaintiffs' land, to the extent it failed to arrange for proper rehabilitation and reforestation of cut-over land, ... was in breach of its fiduciary duty to the allottees and the tribe. As a result, the volume of timber owned by the allottees and the tribe failed to increase from year to year at the rate it should; they suffered loss of property without just compensation, and were otherwise damaged." Plaintiffs' Petition (3rd Claim), No. 20.

The validity of the plaintiffs' claim on this issue first depends upon resolving the question of what is considered adequate stocking and how it is to be measured. There has been considerable controversy on this subject. If it is found that reforestation on the reservation is not adequate, it must also be determined whether this is a result of a breach of the fiduciary duty by the defendant. This will involve such questions as the reasonableness of the policies in light of the state of the science at the time, and under the conditions over which the government had no control. Finally, if it has been found that stocking is inadequate and that it is due to a breach of a duty by the defendant, then what would be the damages? This would be determined by the resolution of such questions as the rate of growth of the timber and the delay caused by the failure to adequately reforest the land.

OVERVIEW OF THE RECORD --  
ADEQUACY OF REFORESTATION

The first surveys of reproduction we find in the records are those done by Forest Supervisor A. G. Hauge in 1944. IIS4-3-6 JUN 1974  
were taken of sample plots on allotments located in the Quinault Lake

74-3
DEPARTMENT OF THE INTERIOR
3 - 6 JUN 1974
LANDS DIVISION
OVERVIEW CLAIM

logging unit which were logged in 1937 by tree selection cutting. They found that the dense vegetative cover, predominantly salal, which followed logging had caused serious problems in the establishment of reproduction. On plots where the ground cover was fairly open, they found a fair representation of reproduction consisting primarily of cedar and hemlock. By 1946, only about 20 percent of the cutover land had been surveyed. Thus far, their finding had been, where fires had been kept out, reproduction has been satisfactory to excellent. On burned areas, however, only 20 percent has been satisfactory and 80 percent unsatisfactory or unstocked. IIA46.2 . This survey work was

criticized in 1947 by Earl Wilcox. He found from examination of field notes that no definite procedure had been followed in executing the work. The procedure Wilcox used was more orderly and consistent.

They began with a light survey of the whole area by laying strips 1/2 mile apart in burned areas and 1 mile apart in unburned areas. In classifying their statistics, they used those recommended by the West Coast Forestry Procedures Committee. Their conclusion was that only about 13 percent of the cutover Indian land was nonstocked and about 18 percent poorly stocked. IIA47.1 . A survey was taken of the cutover lands on the Taholah unit in 1961 by Forester Wayne Turner, which found that 40 percent were nonstocked and 39 percent were poorly stocked. It was observed that the main factor contributing to this was the density of ground cover. The report recommended a program of seeding or planting immediately following logging. IIA61.3 . A similar survey was taken of the Crane Creek unit in 1962, which found that

6 percent of the cutover lands were nonstocked and 81 percent were poorly stocked. Both these surveys employed the mil-acre as a basis for determining stocking, because it was considered that 6.6 feet is favorable spacing for small seedlings. IIA62.4 . In arriving at this method, they compared the 1/250th acre and the mil-acre plots methods and consulted with foresters in the industry, the state and national forest services, and reviewed the literature. They concluded that while the 1/250th acre plot method is preferable for older reproduction, the mil-acre plots gave a better indication of desired stocking for small, young seedlings. IA62.5 . Using a 1/250th acre plot, they found that 34 percent of the cutover land was poorly stocked, and 6 percent nonstocked, whereas under the mil-acre plot, 6 percent would be nonstocked and 81 percent would be poorly stocked. IA62.5 .

However, a report by Ken Hadley in 1962 disagreed with the use of the mil-acre plot method in light of the recent realization that optimum stocking is considerably less than normal stocking. IIA62.5 . The next major survey taken was of Crane Creek and Taholah in 1971 by Forester Ralph Gustavson. The stocked quadrat method of sampling was used, as well as 1/250th acre plots. The results of this survey showed that adequate natural regeneration was occurring on the logged over lands and, in fact, stands 10 to 20 years of age may be overstocked. IIA71.5 . The Pierovich study group report commented on the disagreement of the criteria for adequate restocking. A report in 1971 by Dee Terry found a low percentage of good to medium stocking on Crane Creek and Taholah. He used a criteria of 8' x 8' spacing. The Pierovich

report states the general industrial objective is 400 trees per acre, whereas the 12' x 12' spacing used by the BIA results in 310 trees to the acre. Also points out that the Forest Service plants on a basis of 14' x 14' spacing. IIA72.6 . Gustavson later pointed out an error in the 1961 surveys in using the wrong percentage figures for determining the stocking classification. He cites as his authority the 1950 West Coast Forestry Procedures Committee report of the Western Forest and Conservation Association in Portland. He also brings into question whether alder should be considered nonstocked. IIA72.8 .

It is apparent that there has been a considerable controversy over the methods used to evaluate the degree of reproduction, and that the results obtained will vary greatly depending upon which of these methods is used.

If there is any problem of reforestation on the Quinault Reservation, it is clear that the most serious problem area is the cutover lands south of the Quinault River which were logged in the days prior to selective block cutting. These lands have been burned several times over, destroying reproduction and seed sources. IIA46.1, IJ46.1, IJ46.2, IJ46.3, IJ46.2, IIA47.2, IIA48.1, and IIA59.2 . It is conceded now that artificial reforestation will be necessary to become fully stocked. IA38.19, IIA46.1, IJ46.2, IIA47.1, IIA48.1, IIR50.2, IIA61.3-4, IIA62.1, IA67.3-4, IA68.10, IIA68.8, IIA68.2, VA68.2, IIA68.7, IA70.3, IA71.4, IJ71.22, and IIA71.3 .

The first planting on the reservation, and in fact the first planting of a sizable tract of land in Grays Harbor County, took place in 1929 on tribal land in the southeast corner which later became the Quinault Forest Experiment Station. IA29.27, IA29.14, IB29.1, IA29.22, IIA30.1,



VIA31.3, and IVA38.1 . This project, however, was limited to tribal land and had limited funds. IA29.19 . The planting in this area was completed as a CCC-ID program. IIA46.1 . The question of the authority of the BIA to use funds to benefit individual lands and the limited funding available have been the major obstacles to artificial reforestation projects on the reservation. On the question of authority to plant on allotments, see IA39.12, VA67.1, and IIA68.8 . On the lack of funds, see IA42.4, IJ46.2, IIA59.2(b), IIA61.4, IVA67.1, VA68.8, IIA68.2, IA69.2, IA70.3, IIA71.4, and IA72.2 .

Through the years various methods have been employed to obtain funding for reforestation projects, since funding did not seem to be forthcoming from regular channels. See, for example, IA69.2, IA70.3, and IA72.2 . Included in the alternatives considered over the years have been a plan to use conscientious objectors to plant (see IA42.5 and IA42.1), the agricultural conservation program (see IR59.9, IIA61.4), the accelerated public works program (IIA63.1), the agricultural stabilization program (IJ63.1), the emergency conservation work program (IA38.19 and IA39.10), the Civilian Conservation Corps program (IA39.11), the use of fire suppression funds (IA67.2), buy-Indian contracts (IIA72.4, IIA72.7, IIA73.1), providing in contracts for planting by the purchaser (IA69.5), and finally the use of the administrative fee (IA68.12, IIA68.7, IIA68.5, IIA71.4, IIA72.4, IA72.2). Another method has been to encourage the allottees to use their own funds to plant. IR72.1, IIA72.3 . To get around the question of the authority to plant on allotments, the BIA made an unsuccessful attempt to get allottees to deed over their cutover allotments to the United States

in trust for the Quinault Tribe for the purposes of reforestation. Seven allottees did transfer such deeds, and their allotments were planted in 1940. However, a fire destroyed the reproduction in 1941 and the lands were never replanted. As late as 1966, these allotments had neither been planted nor returned to the allottees. IA38.18, IA40.21, LJ46.2-3, IA55.1, IA66.2-3.

Absent the regular funding for planting or seeding projects, reforestation was encouraged in other ways. The primary one was to log by selective block cutting, which reserved blocks of seed sources until reproduction was well<sup>enough</sup> established on the adjacent cutover land to allow the reserved stand to be cut. The Tribe was in accord with this practice. See VJ36.1, ID37.3, IID37.1, IA37.12, IA43.2, IR54.1, IIA58.2, IJ66.7, LJ71.22, IIA71.5, IIA72.6, VIIA73.1. Another policy designed to encourage reforestation was the prevention of fire, either by accident or by deliberate burning of slash on the cutover lands. IA43.1, IIA68.1, IIA71.5. However, it has been proposed by some that the heavy accumulation of slash has retarded the reforestation and it is necessary to dispose of it in some manner, the most common of which is burning. On this problem, see IJ70.11, IA71.20, IA71.12, IA71.4, IJ71.22, IIA71.5, and IIA72.4. This has generated a great deal of controversy over whether to burn slash or not. Some consider that burning slash would destroy reproduction already germinating. On the other hand, some contend that slash needs to be removed in order to expose the soil for seeding. On this controversy, see Slash Disposal Issue and IA59.1, IIA59.2, IIA61.4, IIA62.4, VA67.1, IIA71.5, IIA72.4, and IIA72.6. The reliance on natural regeneration has been

justified by the fact that conditions on the Olympic Peninsula are so favorable to forest growth. See IIA30.2 .

Certain logging practices have also recently been regulated as destructive to reproduction. This includes tractor logging under conditions which tend to compact the soil. See IJ70.5, IR71.6, IIA71.5, and IR73.1 .

There has also been some question whether the costs of planting justify the benefits. Besides the obvious items, such things as loss during preparation of the site of reproduction already on the ground should be included as a cost, and control over the species should be included as a benefit. See IIA59.2, IIA68.2. For estimates of planting costs, see IIA46.1, IJ46.2, IIA59.2, IA62.5, IIA63.1, IA67.3, IA68.10, IIA68.1-2, IA71.4, and IIA71.2.

The primary damage caused by a breach of duty to reforest the land would be the resulting delay in timber growth. Some documents in the records suggest that reproduction has been delayed by as much as 20 years or so, on some portions of the reservation. See IJ46.1, IIA48.1, IIR50.2, IR53.2, IIA59.2, IIA62.4, IIA68.2, IA68.12, IIA68.5, IA71.20, IA71.12, IA71.4.

AREAS FOR FURTHER RESEARCH

1. What has been the record on sales of cutover land? Has the policy continued to hold these lands for reforestation, as indicated in IA29.25?

2. Is data available showing the growth of the trees on the Quinault Forest Experiment Station? See IA29.27.

3. When did planting or seeding projects begin on other timberlands on the Olympic Peninsula outside of Quinault?

4. Have any studies been done to determine the source of the reproduction found on the ground immediately after the logging?

See IIA30.2.

5. Has there been more recent surveys taken of the burned over areas south of the Quinault River? See IA38.19.

6. What is the source of the ruling which made it impossible to plant areas which are allotted? See IA38.19.

7. Why were the allotments which were deeded to the United States in trust for the Quinault Tribe not replanted after the 1941 fire?

8. To which past logging methods does Superintendent Nicholson point as the cause of the bad reforestation on burned areas mentioned in IA39.12?

9. What other improvements have been made by the Government on allotments? See IA39.12?

10. Was any action initiated by the office to secure the conscientious objector camp? See IA42.1.

11. Is there any data to support Polson's contention that lands are placed in reproduction earlier if the slash is not burned? See IA43.1.

12. Why is the Cook Creek unit the only extensive burned area with satisfactory stocking in 1946? See IIA46.1.

13. Where have federal funds been allowed to be used for tree planting or seeding projects? Are any of these a primary benefit to an individual? See IJ46.2.

14. What has been done with the area burned over by the 1941 fire? See IJ46.2.

15. Is there data to support Superintendent Hellander's contention that fires in cutover lands in this district set reproduction back 5 years? See IIA47.2.

16. Is there a report by the West Coast Forestry Procedures Committee which sets out the criteria for measuring stocking? See IIA47.1.

17. What is the distribution of age classes by areas, and does it still show an imbalance? See IIA48.1.

18. What is the normal length of time to wait before the second cutting cycle can begin? See IIA48.1.

19. Could the delays in the establishment of a satisfactory reproduction by reason of the recurring fires have been prevented or reduced by the actions of the Government? IIR50.2.

20. What has been the record of restocking of cutover lands since the selective block cutting practice began as compared to the clearcutting practiced before? See IIA58.2.

21. Were the blocks cut to date on the Taholah and Crane Creek units ever examined to assess the results of the size and location of the blocks' boundaries? See IIA58.2.

22. Has the question of the legal authority of the BIA to regulate the cut on fee patented allotments within the contract areas ever been answered? If so, why did it take so long to answer? See IA58.4.

23. What are the probabilities of having the right combination of a good seed year and favorable weather? See IIA59.2.

24. Do the Forest Service or BLM charge planting costs against the logging? SEE IIA59.2(c).

25. What, if any, is the stumpage value of red alder?

26. How many allottees have expressed a wish to have their allotments planted following logging? See IIA59.1.

27. Is Harold Weaver still convinced that slash should be burned on heavy cedar cuttings? See IA59.1.

28. Were allottees eligible for the Agricultural Conservation Assistance Program and how many took advantage of such programs? See IR59.9, IIA61.4(b).

29. Have there been any surveys since of the fee patent cutover lands?

30. What were the publications which were reviewed and analyzed in determining the method of surveying in 1961 and 1962? IA62.5.

31. What happened to the legislation proposed to amend the 1910 Act? Were there any hearings? IIA62.1.

32. Are allottees eligible for the Agricultural Stabilization Program, and how many have taken advantage of it? See IJ63.1.

33. What happened to the suggestion that fire suppression funds be made available for reforestation projects? See IA67.3.

34. What is the record of reforestation on the private tracts within the reservation?

35. Was there ever any official policy established as to use of the administrative fund for reforestation? See IIA68.8.

36. Were reports on the germination and survival of the aerial seeding program ever completed? See IA68.12.

37. Is there data to support Don Clark's contention that for every year of delay approximately 1,000 to 1,500 board feet per acre of growth is lost? See IIA68.5.

38. What happened to the recommendation that regulations be established to require the landowner to deposit an amount to be used for reforestation? See IIA68.7.

39. Why have the requests by BIA forestry for funds to reforest been consistently turned down over the years? See IA69.2.

40. Why was there no action taken on the 10-year rehabilitation plan submitted to the Commissioner? See IIA68.2 and IA69.5.

41. What was the reason for the substantial budget reduction between 1970 and 1971? See IIA71.4.

42. Have logging plans provided information regarding the regenerative aspects on each cutting block? See IJ71.22.

43. Have there been any studies as to the extent and effect of the damping-off fungus disease? See IIA72.6.

44. Obtain the 1950 West Coast Forestry Procedures Committee Report mentioned in IIA72.8.

45. Has the U.S. Forest Service made any comment as to the criteria used in the 1971 reproduction survey report? SEE IJ72.7.

46. What are the benefits and eligibility requirements for the Rural Environmental Assistance Program, and how many allottees have taken advantage of it? See IIA72.3.



6/16/75

STAND  
IMPROVEMENT ISSUE

Plaintiffs' Allegation

"Defendant ... has not ... properly cared for growing timber."  
Plaintiffs' Memo of Contentions of Fact and Law, No. 9 (4/15/74).

"The defendant's management of the plaintiffs' land, to the extent it failed to arrange for ... proper care of growing timber, was in breach of its fiduciary duty to the allottees and the tribe. As a result, the volume of timber owned by the allottees and the tribe failed to increase from year to year at the rate it should; they suffered loss of property without just compensation, and were otherwise damaged."  
Plaintiffs' Petition (3d claim), No. 20.

Overview of Record

By the time cutting began on the Quinault Reservation, the stand of timber had reached a stage of over-maturity. Apparently some thinning of the over-mature timber was done on the Quinault Lake unit and individual allotments in the 1930's. IM36.9, IA39.19, and IA39.24.

However, studies on sample plots in the Quinault Lake unit in 1944 showed that there was no indication of accelerated growth in the residual stand because of relief by tree selection cutting. It concluded that the advisability of reserving a stand containing a high percentage of mature trees is questionable. IIS44.1-2.

On the other hand, the 1944 study showed that in second-growth Douglas fir stands, the growth rate does increase as a result of relief by cutting. IIS45.1.

At least by 1959, BIA foresters were aware of the potential stagnation problem caused by the density of the second-growth stand. IIA59.2(a). There was very little funding for timber stand improvement activities in Indian forests, and so a staggering backlog of underdeveloped young timber resulted. IIA68.8. Forest Manager Joe Jackson reported in 1970 that several thousand acres of cutover land would respond to a release cutting. IIA71.2(b).

Some thinning and pruning activities took place in the stands on tribal land on the south portions of the reservation during the 1960's under the Accelerated Public Works Program. IIA63.1. Some chemical thinning took place on 230 acres in 1970. IIA71.2(a). In the early 1970's, funds have been requested and some have been appropriated and expended for stand improvement projects to be performed by the Quinault Company (see IA72.2 and IIA72.7). The problem here, as well as in Reforestation, is the lack of funding. IIA71.4.

The protection of the growing timber from disease, pests and other infestations has included the attempt to detect any infection or damage from pests, the salvage logging of infected trees, and the attempt to control mistletoe. See Disease and Insect Damage - Document Summaries. Some of the problems in the past have been the spruce bud worm, the mountain pine beetle, and bears. IIA31.1, VIIIA54.1, and IIA66.1. In 1968 a report identified the major disease problem on the reservation as being hemlock dwarf mistletoe. IA68.8. The most effective time to control mistletoe is at the time of cutting by making sure all infected trees are killed. Because increased light reaching

mistletoe and increased tree vigor strengthen mistletoe, it was not recommended to thin infected stands. IA68.8. Funds were requested in order to carry out the recommendations of this report. IA68.9. Apparently funds were obtained. IIA71.4.

#### Areas for Further Research

1. Documentation on this subject in the files which were reviewed seems to be overly sparse. Perhaps there are other files which have more material on this subject?

2. Has there been any greater incidence of mistletoe infection among stands which have been thinned? IA68.8

3. What is the intensity of timber stand improvement activities on national forest land or on state or private lands? IIA68.8

4. Were growth plots established on the lands thinned under the APA programs? IIA63.1

5. Are there studies which show optimum time to thin and to what extent? See IIA71.2

6. There is some indication that the Quinalt Business Committee has been doing some stand improvement activities on its own. What have they been doing? IA73.4

7. Has the BIA done any spraying of insecticides or any other eradication efforts other than salvage logging of the damaged timber? See Disease and Insect Damage - Document Summaries.

8. Can we get a copy of Keith Shea's paper on dwarf mistletoe? IA68.8

9. Has rhizina root rot been a problem on burned over areas?

Would this be another reason not to burn slash? IA73.6

*Quinalt Reservation*  
*Washington Territory*  
*1855*

QUINALT RESUME  
Prepared for Review Board  
November 1971

The Quinalt Reservation was established following a treaty negotiation in 1855 between Territorial Governor Stevens and the leaders of several bands and tribes of the Quinalt and Quileute Indians.

Allotment of land to individual Indians was initiated about 1907, under provisions of the General Allotment Act of February 8, 1887 (24 STAT 388) and other subsequent acts.

Allotting was stopped in 1914 because the Commissioner of Indian Affairs became convinced that the land was suitable principally for continued production of timber, not for agriculture. A timber cruise was conducted during 1915-1917, in contemplation of a plan for management of the reservation as an integral forest property.

Tommy Payne (in common with other Indians) brought suit in the United States District Court to compel the Secretary of the Interior to allot him in severalty the land that he had selected as an allotment. The United States appealed the decision of this court to the Circuit Court of Appeals, and finally to the Supreme Court of the United States. On April 7, 1924 (264 US 446) the Supreme Court affirmed the decision of the lower courts, that Tommy Payne should be granted his allotment. The court noted that references to "agricultural lands" and to "grazing lands" in the General Allotment and in subsequent

acts were ". . . meant not to preclude an allotment of timbered lands capable of being cleared and cultivated . . ." (Underlining supplied.)

With the above decision, allotting of the Quinault timber lands was resumed and plans for management of the forest as a single unit were abandoned.

Recipients of allotments on the Quinault Reservation received greatly disparate shares, for value of these properties has attached almost solely to volume and value of standing timber, and to subsequent timber producing potentialities.

The Indian Reorganization Act of June 18, 1934 (48 STAT 984) stopped all further allotting on Indian reservations. On September 30, 1933, preceding, however, the last of the Quinault allotments had been granted, with the notation that ". . . The allotments exhaust all available land on the Quinault Reservation . . ."

*only Per completed*

*97% allotted*

In the meantime, during the period 1920-1923, several large timber units had been advertised and sold to highest bidders, and large scale timber harvesting operations were initiated south of the Quinault River. Subsequent allotting of these tracts severely complicated timber sales administration, as it did the administration of subsequent units that were sold.

These operations resulted in accumulation of large, contiguous logging slash areas. Uncontrollable fires destroyed subsequent forest tree

reproduction over extensive areas. <sup>many</sup> Thousands of acres are still unstocked. It has been considered in the past that the Bureau has no authority for expenditure of public funds in replanting of these individually-owned trust properties.

By the mid-1940's about one-half of the reservation had been logged. It was estimated that approximately two billion board feet of timber remained to be cut. Practically all of this timber was located north of the Quinault River. The allottees or their heirs, whose allotments were uncut, had now waited some 20 years or more without receiving any income. They were demanding that their timber be sold as soon as possible to secure some financial return from their property. They showed no sympathy for any further delay. For such reasons, their leaders urged the immediate sale of all remaining timber on the reservation and its cutting within a 10-15 year period so that the owners would receive their timber receipts within a comparatively short time.

#### Proposals for Solving the Problem

Many proposals were considered by the Department, Bureau, and tribal officials in an effort to reach a satisfactory compromise that would bring to the allottees an immediate income without violating the legal requirements of sustained yield. Among these, legislation which would permit the Government to purchase the reservation at an appraised value with immediate cash payment to all allottees was proposed. This

met with so much opposition from the Indian residents on the reservation that it was dropped. Another proposal was for the allottees to form a corporation, pool their allotment interest, and receive shares based upon the cruised value of their timber. They would then receive an annual income from timber cutting operations based on their proportionate shares regardless of whether their timber was cut immediately or 40 years hence. This plan required approval of a majority of the allottees in order to work successfully and was abandoned when the allottees, as a group, expressed their unwillingness to participate.

A number of other possible solutions were also considered. There was the proposal to establish a tribal sawmill enterprise, pay a substantial advance payment to all allottees with financing borrowed from the Reconstruction Finance Corporation. Unfortunately, the large amount of the loan, the extended term of 40 years or more, the ultimate total of the interest payments, even at very low rates, and the lack of Indian interest and support of a tribal business, were all reported to have combined to discourage the plan. There was also a proposal by a prominent Grays Harbor logging operator to purchase all the remaining timber and to pay the owners a proportion of the log sales price after the timber was cut and sold. The plan had some tribal leader support and was considered as a possible combination with the corporation of allottees referred to above. The proposal was eventually rejected by the allottees when the operator refused to make advance payments, even



of a small proportion of the estimated value on the ground that he could not afford to tie up funds for so long a period.

After long deliberation, the decision was made in Washington to divide the remaining timber into not more than four units under timber contracts. To guarantee that the owners would receive some immediate income, advance payments amounting to 25 percent of the estimated value were to be paid within 30 days of approval of each individual allotment contract with additional payments of 15 and 10 percent to be paid at 3- and 6-year intervals, respectively. Thus, each owner would receive within 6 years a minimum of 50 percent of the estimated value of timber on his allotment. Four timber sale units were advertised for sale at different dates during the Summer of 1949. These sales included the Boulder Creek, Queets, Taholah, and Crane Creek Units. No bids were received in response to the advertisements except for a single bid by Rayonier Incorporated for the Crane Creek timber. Rayonier failed to execute the contract for this unit, and the \$163,000 submitted as a deposit with bid was retained as liquidated damages and distributed to the allottees.

Regulations permit the acceptance of bid proposals within a 1-year period following the date of an advertised timber sale. Subsequently, contracts covering the Boulder Creek and Taholah Logging Units were executed in April and May of 1950.

The Crane Creek and Queets sales were readvertised and a contract finally executed on the Crane Creek Unit in June 1952. No acceptable bid was ever submitted for the Queets Unit offerings.

The Boulder Creek Unit was a relatively small sale with the contract completed in 1957. As indicated, the Queets area was never sold as a unit; however, numerous small sales and special allotment timber cutting permits have been completed over the years. The most significant development within the Queets area, however, has been the loss of trust status of the land. As of January 1, 1968, records indicate 214 allotment fee patents and 137 supervised land sales have resulted in about 25,000 acres going out of Indian trust ownership.

The history of Quinault logging in the last two decades has been largely that of the Crane Creek and Taholah Units. The following departs from the historical form to the description of the major factors which assumed importance.

1. REVISION OF STUMPAGE RATES.

Both of the long-term contracts had quarterly stumpage adjustment features related to log prices reported by the Pacific Northwest Loggers Association (PNLA). The base stumpage rates were established by a stumpage-to-log price ratio method which was subject to periodic review and change.

In 1964 the PNLA log price report was no longer available and the 1964 stumpage revision and the subsequent revisions used Section 11

of the contracts wherein stumpage rates are revised in accordance with the trend of economic conditions in the West Coast forest industry.

PNLA Period

The stumpage-to-log price ratios were adjusted for effective dates of October 1, 1955, April 1, 1957, April 1, 1958, July 1, 1960, and April 1, 1961. Requests for ratio adjustment by the purchasers for effective date of January 1, 1969, were denied by the Commissioner. Rayonier Incorporated appealed this decision and the appeal was denied by the Secretary of the Interior. The July 1, 1960, ratio adjustments were also appealed by both purchasers. These appeals were also denied and the decision of the Commissioner affirmed.

The period was one of continuing contention and controversy as to the processes used, conclusions reached, and changes made; but a usable procedure for adjustment of stumpage rates was hammered out of the many exchanges. The contracts were also modified to provide for salvage operations aimed at increasing the utilization of the timber stands.

The following are individual matters generating contention:

(a) Allowance of an interest cost on advance payments in the logging costs and a one dollar (\$1.00) error in the cost calculations. These became the issue of Civil Cases 3168 and 3169 which were settled out of court in 1970.

(b) Use of the bid profit ratio to determine the profit ratio used in stumpage rate calculations.

(c) Initially, the Bureau of Indian Affairs scaled the logs and change was made to provide for scaling by the Grays Harbor Scaling Bureau.

(d) Withholding of stumpage rate increase increment was initiated in the 1960 appeal.

(e) Use of and accumulation of actual grade recovery.

(f) Modifications of timber contracts under authority of the power of attorney obtained prior to contracting.

In 1955 and 1957, Congressional Committees held hearings on Federal and Quinault timber sale policies. These recommendations had subsequent effect on the administration of the long-term contracts and the timber sale program. Because of the many criticisms, the Bureau of Indian Affairs dropped all plans to sell timber on the Queets area as one unit. A small sales program was embarked upon and the restrictions pertaining to fee patenting or supervised sale of forested allotments was considerably relaxed.

Suggested References:

- \* 1. Timber Contracts, Modifications, and Stumpage Rates  
Crane Creek and Taholah  
General Timber Sale Regulations
2. Stumpage Adjustment Files Numbered 1 - 5, Portland Area Office.
3. Indian Forest & Range - J. P. Kinney, p. 171-176
4. Federal Timber Sale Policies  
Joint Hearings Legislative - 1955  
Oversight Functions - 84th Congress  
Part 2, p. 1289 - 1330  
p. 1556 - 1603

(\* ) Copies attached

5. Timber Sales - Quinault Indian Reservation  
Hearings Subcommittee on Indian Affairs - 1957  
85th Congress
6. Civil Cases 3168 and 3169  
U.S. Dist. Court, Western District of Washington - 1964

Section 11 Period

With the dissolution of the PNLA, Section 11 of the timber contracts became the authority for the revision of stumpage rates. Fortunately, log market prices published by the Industrial Forestry Association became available to carry forward the established stumpage rate calculations based on log prices. Under Section 11, stumpage rates have been revised for effective dates of December 1, 1964, January 1, 1966, January 1, 1968, January 1, 1969, July 1, 1969, and August 1, 1971. The stumpage rate calculations had incorporated U.S. Forest Service cost guides into the method early in the ratio adjustment process and became more firmly established in each succeeding stumpage revision. The 1964 revision was accepted by both purchasers, not without contention, and became a precedent for subsequent revisions. The 1966 revision was appealed by Aloha Lumber Corporation (Evans Products Company, the parent organization). A Secretarial decision of March 10, 1967, generally upheld the Commissioner's action; however, Aloha proceeded to the courts with an appeal which culminated in a Memorandum Order dated September 2, 1969. This did not settle the matter and settlement was made in an agreement between Aloha and Quinault representatives dated May 28, 1970. The settlement was accepted by the Secretary with amplification of two features of the agreement. Aloha

also appealed all the revisions made while their initial appeal was unsettled. ITT Rayonier Incorporated (successor to Rayonier Incorporated) appealed the rates for effective date July 1, 1969, and the appeal was denied by the Secretary. In these appeals large amounts of withheld timber monies were involved, along with interest accrued, and became another point of controversy until paid out upon disposal of the appeals.

Rates have currently been revised for effective date of August 1, 1971.

*Rayonier was a party to the hearing, and there were discussions with*  
As opposed to other revisions under Section 11, the stumpage rates

were reduced. The reduction triggered the current appeal by the Quinault representatives which encompasses the entire timber sale administration process. Until this appeal, the contentions on stumpage rates had revolved around the specific items of cost allowance and the derivation of log prices used to calculate the revised stumpage rates. The Quinault representatives have introduced the precept of using comparative sales.

Suggested References:

1. Stumpage Revision Files Numbered 6-11, Portland Area Office.
2. Transcript of Proceedings in Matter of Appeal of Aloha Lumber Corp.
- \* 3. Secretarial Decision, March 10, 1967.
- \* 4. Memorandum Order No. 7198, U.S. District Court, Western District of Washington, Sept. 2, 1969.
- \* 5. Agreement May 28, 1970, between Quinault Representatives and Evans Products Company.  
Secretary's Memorandum of Acceptance, August 7, 1970.  
Arbitration Board Decision, August 2, 1971.
- \* 6. Secretarial Briefing Memos - May 14, 1971, Oct. 29, 1971.

(\* ) Copies attached

2. SLASH TREATMENT

Slash is currently being treated much as it always has been since logging commenced in the early 1920s with one basic exception. This exception is that immediately after primary logging, salvage of cedar shake material commences either by the purchaser or allotment owner. This salvage is provided for under the modifications of the Taholah and Crane Creek Contracts. Stumpage rates are adjustable similar to rates for sawlogs.

South of the Quinault River wildfire consumed much of the slash left by the earlier logging operations. However, these same fires also destroyed the reproduction that existed or that had become established after logging. Bracken fern immediately takes over an area burned and makes it difficult for natural seeding of conifers. Furthermore, the fern is highly flammable when it dries out each year and subsequent fires in fern patches have wiped out tree seedlings on a large scale. The Bureau is planting these poorly stocked areas.

The detrimental effects of slash are considered to be threefold. The most obvious one is the fire hazard liability; secondly, cedar slash retards regeneration; and, thirdly, there is some consensus that decaying slash adversely affects fisheries habitat.

The volume of slash left on the ground after logging in the Coastal rain forest <sup>and particularly cedar stands</sup> is immense compared to that experienced in other forests.

Standing timber volumes per acre range from 25,000 to 150,000 board feet on the Quinault Reservation. Very few forests outside the Redwood Regions of California can begin to compare with this wood fiber volume. Slash residue develops almost in direct proportion to the volume of timber logged. Nearly 40 percent of the <sup>merchandise</sup> standing cedar on the Quinault <sup>much of this volume is found in the form of trees that fell</sup> is dead. <sup>many are dead but standing</sup> When these dead trees are felled, they are prone to shatter into many pieces, <sup>much of it is</sup> most of which are considered unmerchantable. Only logs and large slabs are then removed. Live trees do not present as great a slash residue. The purchaser pays the same stumpage rate for dead cedar as for live cedar when it is removed in the main logging operation.

*due to natural causes in the past 300 years*

The modification of contract mentioned above was developed in an effort to encourage salvage of cedar shakes and shingles from the slash, thus reducing slash volume, providing additional income and jobs, and possibly encourage regeneration of a new forest. ~~No time limit had been imposed until recently on completion of salvage.~~

The liability associated with burning such high volumes of fuel consists of destroying adjacent timber, igniting slash in areas where yarding of down timber was not completed, danger to cold decks of logs, possible ignition of old slash in areas where reproduction was fairly advanced, and a possible runaway fire covering adjacent non-Indian lands. Immediate burning would preclude salvage of cedar and pulpwood. Planting



would have to follow the burning; otherwise, brush and fern would take over the area. The cost, exceeding two million dollars, would have been paid by the lumber owners by reduction of stumpage rates, as well as the cost of burning.

The decision not to burn was also influenced by the fact that the Quinault Reservation had not had a serious fire problem for many years. High humidities and abundant rainfall contribute to low fire hazard and rapid decomposition of logging slash, except cedar. As a rule of thumb, hemlock, fir, and spruce slash reach advanced decomposition in three years. Cedar slash takes from 7 to 10 years to reach a condition where fire hazard has abated to a fairly safe stage. This is usually augmented by the advanced greening up of the area. Finally, burning removes only the small fuels, leaving a residue of ash and large, charred chunks and logs; however, the fire hazard has been reduced. On steep slopes, erosion may occur.

Suggested References on Slash:

- \*1. Raft River Fire Conference, Sept. 18, 1967 - Summary by R. Hickman, Forester
  - \*2. Slash Problems - Don Clark, Forester, Sept. 16, 1968
  - \*3. Timber Operator's Meeting, Hoquiam, Wash., Nov. 13, 1968
  - \*4. Agency File on Slash Disposal since 1969
  - \*5. Allot. No. 444 (Claude Wain) Reports - 1959  
Gockerell Report  
Chief Forester Kephart Report
- (\* ) Copies attached

### 3. REFORESTATION.

The problem of regeneration of cutover lands on the Quinault Reservation is complicated by the ownership problem and by the dense slash remaining on the ground after logging. In the thirties, an attempt was made to have cutover allotments deeded to the tribe so that the areas could be planted. It was generally held at that time, and for many years after, that Federal funds could not be expended on private land, including allotments, for reforestation. The area known as the "Spruce Orchard," or Quinault Experimental Forest resulted and was successfully reforested.

Under the Crane Creek and Taholah Contracts, natural regeneration is provided for by location of cutting blocks to provide an adjacent seed source. This was controlled by review of annual logging plans and revision, when necessary, to provide consideration for successful regeneration. In 1961, a Reproduction Survey of the Taholah Unit revealed that 40 percent of the area sampled was nonstocked. A recent survey by the Forestry Branch indicates that much of the logged area in the Crane Creek and Taholah Units is satisfactorily stocked. The unstocked is mainly areas of recent logging. The major emphasis to be made in reforestation is ~~this~~ <sup>to</sup> certain old cutover areas, south of the Quinault River <sup>and some recent cutover areas</sup> ~~adjacent seed sources are not available~~. Planting has been accomplished under the early-day Emergency Conservation Work Program, as mentioned above, and under the Accelerated Public Works

Program in 1963-64 when 780 acres were reforested. About 9,000 acres of land in need of planting were reported by the agency in a Reforestation Report, Quinault Indian Reservation, 1969-1971.

The regeneration-reforestation problem and the funding required has been the object of innumerable observations, discussions, and memorandums. An illustration of these is a 1968 letter to the Commissioner of Indian Affairs requesting \$455,380 for a 10-year rehabilitation program. In 1969, \$90,000 was allocated to reforestation, and \$20,000 was made available in 1971. The work was accomplished by means of a Buy-Indian Contract with the Quinault Company. Some planting was on the two large units.

*... a total of 177 acres of land was planted in 1971. The work was accomplished by means of a Buy-Indian Contract with the Quinault Company.*

Suggested References:

1. Reforestation Report, Quinault Indian Reservation, 1969-1971, By Forester Myron C. Hall.
2. Report of Reproduction Survey on the Taholah Logging Unit, Quinault Indian Reservation, Wash., By Wayne D. Turner, Forester, March 28, 1961.
3. Regeneration Survey, 1971.

4. FISHERIES MANAGEMENT.

Beginning in about mid-1963, a considerable amount of attention began to be focused on the effect of logging activity on the capacity of Quinault streams to produce fish. This attention very soon found itself directed toward a relatively few basic facts:

(1) Most of the Reservation was allotted with the Indian owners and their heirs desirous of securing the maximum dollar return from their timber holding.

(2) A considerable number of fee patent "areas" existed within the Reservation boundaries and were situated astride fishery water courses. The logging activities on these lands were apparently outside the purview of the Bureau of Indian Affairs. Indeed, this factor is still awaiting a solution through legal interpretation.

(3) About 89 percent of the allottees and/or allotment heirs live away from the Reservation; consequently, their only return from the land holding seems to be in timber and residual land value. They do not actively share in the Quinault fishery and cannot be required by the Bureau to contribute a portion of the value of their holdings to the fishery.

(4) If problems (1), (2), and (3), above, did not exist, or were considered irrelevant; even then, Foresters and loggers had no clear guidelines toward which to direct their efforts in fisheries protection. Indeed, neither did Fish Biologists within the Federal Government or the State of Washington have anything to offer--other

than the broad rules of thumb and a series of "after-the-fact inspections."

Mid-1963 saw a considerable concern develop within the Bureau of Indian Affairs over fisheries. While this may have existed previously, this is where our file record begins, and it does show a great flurry of activity surrounding the above four problems. (See chronological extraction from file documents attached.) Finally, after several meetings with Fish Biologists, loggers, and Forestry personnel, Forest Manager Libby found himself under criticism by tribal representatives and SFWS representatives for a stream cleanup, which they considered inadequate. As a result of this criticism, a conference was called for all interested parties to meet and to establish mutually agreed upon standards for performance. To this point in time all parties had on occasion indicated a willingness to cooperate in whatever way possible toward achieving the goal of preserving the elements of the fishery.

On August 16-17 of 1965, a conference was held with BIA Area and Agency personnel, U.S. Forest Service representative, Bureau of Sports Fisheries and Wildlife Fish Biologist, Washington State Game Department, Makah Tribal Council Members, Rayonier Incorporated, Aloha Lumber Corporation, Anderson and Middleton Logging Company, Taylor Bros. Logging Company, Esses Bros. Logging Company, and Womer Bros. Logging Company in attendance. Altogether, 34 interested people whose stated purpose was to resolve problems common to land and timber managers and determine how best to protect all natural

resources. Emphasis was upon protection of the Quinault fisheries through cooperative efforts between Fisheries Specialists, Foresters, and loggers. This conference resulted in a gradual but rapid erosion of Item (4) above as a contributing problem factor, as evidenced by a letter from Fishery Management Biologist Heckman to the now Forest Manager Don Clark. This was altogether complimentary to BIA Forestry on the condition of several logged areas on the Taholah Unit and to the cooperative spirit exhibited by Rayonier loggers on the Crane Creek Unit. This conference established a "working together" approach before the fact of stream damage, rather than criticism afterward.

Much mention is made of trying to resolve the problems of Item (1) above. One of the stated hopes of Fisheries Biologists was to have established the principle of 50- or 100-foot buffer strip set-asides on each side of a waterway in order to protect water courses and stream banks. While this plan met with considerable enthusiasm on the part of Biologists, it defied implementation. While Forestry was concerned about the prospect of massive stream-clogging blowdown occurring in these narrow strips (which might very well only serve to aggravate the problem), the allottees could not, by BIA administrative edict, be deprived of the value of this timber without some means of reimbursement. These same problems apply directly to

Item (3) above. However, Forestry did agree to try leaving trees 10-inch DBH and less as a possible solution (letter of 5/11/65 from Forest Manager John Libby to Superintendent Felshaw). Toward this goal of buffer strips (assuming blowdown problems to be minimal), there still is no satisfactory solution.

In May of 1971, the Bureau of Sport Fisheries and Wildlife prepared a report entitled "Special Report of Preliminary Investigations of the Raft River System," authored by Charles E. Osborn, approved by Richard J. Navarre, and reviewed by James L. Heckman. Once more, the subject of fisheries management was attacked. Here again, the breakdown seems to be in the areas of Points (1), (2), and (3) above. This generated the June 17, 1971, reply from Assistant Area Director Galbraith to Superintendent Felshaw, in which these complications were reiterated. Mr. Galbraith suggested that the Superintendent review these matters with the tribe and determine their desires for a program goal. Then, with the assistance of legal advice from the Solicitor's Office, determine what can be done to accomplish them. He also indicates the possibility of attempting to secure necessary funding to achieve these goals.

Suggested Reference:

- \* Review of file "Fish and Stream Problems, Western Washington Agency" with attention to Quinault Indian Reservation.

(\* ) Copies attached

MITCHELL v. UNITED STATES

Docket Nos. 772-71---775-71

Court of Claims

Defendant's List of Cases on the Jurisdictional  
Statute of Limitations Issue



MITCHELL v. UNITED STATES

Docket Nos. 772-71---775-71

Court of Claims

Defendant's List of Cases on the Jurisdictional  
Statute of Limitations Issue

- I. The six-year statute of limitations of the Court of Claims, 28 U.S.C. Sec. 2501, is a jurisdictional statute of limitations.

The jurisdiction of the Court of Claims is only by consent of Congress and it is dependent on compliance with the conditions specified by Congress. The six-year limitation is in derogation of the sovereign immunity of the United States. Therefore, it must be strictly construed. Sec. 2501 is not a mere statute of limitations. Nor are suits in the Court of Claims ordinary suits. They are distinctive in that the United States is the defendant. The Court of Claims does not have general jurisdiction over claims against the United States. It can hear only those committed to it by an Act of Congress. Accordingly, the six-year statute of limitations as a condition of the Government's consent to be sued is strictly interpreted. Because of the Government's sovereign immunity from suit, the Court of Claims jurisdiction is not to be expanded beyond the letter of the precise limits set by Congress. The six-year statute of limitations is to be observed. Exceptions are not to be implied. The jurisdictional requirement of Sec. 2501 is a condition precedent to the maintenance of claims in the Court of Claims. It cannot be waived by the United States.

\*Kendall v. United States, 107 U.S. 123 (1882).<sup>1/</sup>

\*Finn v. United States, 123 U.S. 227, 229, 232-233  
(1887).

Johnson v. United States, 160 U.S. 546, 549 (1896).

Blackfeather v. United States, 190 U.S. 368, 376 (1903).

Thurston v. United States, 230, 232 U.S. 469, 476 (1914).

\*Camacho v. United States, 204 Ct.Cl. 248, 257-258, 259,  
494 F.2d 1363, 1368 (1974).

\*Mann v. United States, 399 F.2d 672 (C.A. 9, 1968).

\*Soriano v. United States, 352 U.S. 270, 276 (1952).

United States v. Testan, et al. 424 U.S. 392, 397, 399  
(1976).

United States v. King, 395 U.S. 1, 4 (1969).

\*Simon v. United States, 244 F.2d 703 (C.A. 5, 1957).

Stanton v. United States, 434 F.2d 1273, 1275 (C.A. 5,  
1970).

Hall v. E.I. DuPont De Nemours and Company, 312 F.Supp.  
358 (E.D.N.Y. 1970).

\*Szyka v. United States Secretary of Defense, 525 F.2d  
62 (C.A. 2, 1975).

\*Pringle v. United States, 419 F.Supp. 289, 291 (D.S.C.  
1976).

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<sup>1/</sup> Citations marked with an asterisk have a xerox copy attached. The compilation of cases will be arranged in alphabetical sequence and the pages of the compilation will be numbered in numerical sequence. The alphabetical list will precede the compilation. That alphabetical list will indicate the page in the compilation on which that case begins.

\*Roberts v. United States, 498 F.2d 520, 526  
(C.A. 9, 1974).

\*Carr v. Veterans Administration, 522 F.2d 1355, 1357  
(C.A. 5, 1975).

Miller v. United States, 418 F.Supp. 373, 375, 376  
(D.Minn. 1976).

Eastman v. United States, 118 F.2d 421, 423  
(C.A. 9, 1941), cert. den. 314 U.S. 635.

Ashley v. United States, 413 F.2d 490, 492  
(C.A. 9, 1969).

\*Childers v. United States, 442 F.2d 1299, 1303  
(C.A. 5, 1971).

Kirby v. United States, 201 Ct.Cl. 527, 539 (1973)  
cert. den. 417 U.S. 919.

Lunsford v. United States, 418 F.Supp. 1045, 1048,  
1049, 1050 (D.S.D. 1976)..

\*Horton Capoeman v. United States, 194 Ct.Cl. 664, 671  
440 F.2d 1002 (1971).

\*Caldwell v. United States, 197 Ct.Cl. 1063 (1972).

\*Jessie Short, et al. v. United States, 209 Ct.Cl. 777  
(1976); earlier phases are reported in 202 Ct.Cl. 873,  
486 F.2d 561 (1973), and 207 Ct.Cl. 964 (1975).

\*Fort Mojave Tribe of Indians v. United States, 210 Ct.Cl.  
(1976); Dkt. No. 267-75, order entered June 25, 1976.

\*Federal Indian Law (GPO, 1958), pp. 344-345.

\*51 Am Jur 2d, Limitation of Actions, Secs. 397  
and 398.

II. The jurisdictional statute of limitations issue is a  
fundamental issue which may be raised at any time.

The threshold question of jurisdiction is so vital  
that it is to be treated as a separate issue. It may be  
raised at any point in the litigation by either the parties  
or the Court. Once raised, the Court should proceed no  
further until the issue is resolved. \*Matson Navigation  
Company v. United States, 284 U.S. 352, 359 (1932), aff'g  
72 Ct.Cl. 210 (1931).

\*Page v. Wright, 116 F.2d 449 (C.A. 7, 1940).

\*Horton Capoeman v. United States, 194 Ct.Cl. 664,  
667, 440 F.2d 1002 (1971).

\*Kendall v. United States, 107 U.S. 123, 125 (1882).

\*Miller v. United States, 418 F.Supp. 373, 376  
(D.Minn. 1976).

III. The basic purpose of the statutes of limitations is to  
assure uniformity as an indispensable prerequisite to  
impartially.

\*Prather v. Neva Paperbacks, Inc., 446 F.2d 338,  
339-340 (C.A. 5, 1971).

\*Winston Bros. Co. v. United States, 371 F.Supp 130,  
134 (D. Minn. 1973).

\*Swarthout v. Michigan Bell Telephone Co., 504 F.2d  
748 (C.A. 6, 1974).

IV. Indians are subject to general laws applicable to litigants generally.

United States v. Seminole Nation, 299 U.S. 417, 421-422 (1937).

Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99, 115-118, 120 (1960).

Navajo Tribe v. N.L.R.B., 288 F.2d 162, 164-165 n. 4 (C.A.D.C., 1961); cert. denied, 366 U.S. 928 (1961).

Commissioner v. Walker, 326 F.2d 261, 263 (C.A. 9, 1964).

\*Mann v. United States, 399 F.2d 672, 673 (C.A. 9, 1968).

\*Horton Capoeman v. United States, 194 Ct.Cl. 666, 668-677 (1971).

Davis v. Morton, 469 F.2d 593, 597 (C.A. 10, 1972).

United States v. Burns, 529 F.2d 114, 117 (C.A. 9, 1975).

\*Fort Mojave Tribe of Indians v. United States, 210 Ct.Cl. (1976), Dkt. No. 267-75, order entered June 25, 1976.

V. The burden of proof is on the plaintiffs to establish jurisdiction throughout the course of the litigation.

A. The burden rests on the plaintiffs to prove that their alleged causes of action must have accrued by, or did not exist before, October 18, 1965, which is six years before October 18, 1971 when the first petitions were filed herein.

In respect to plaintiffs who became such after suit was filed, the 6 year period would begin 6 years before they became plaintiffs. \*Matson Navigation Company v. United States, 284 U.S. 352, 359 (1932), aff'g 72 Ct.Cl. 210 (1931).

\*Lukenas v. Bryce's Mountain Resort, Inc., 538 F.2d 594, 597 (C.A. 4, 1976).

B. The plaintiffs must sustain their burden of proof by a preponderance of the evidence.

This was not accomplished by the plaintiffs. See the transcript of the jurisdictional trial in Seattle on January 20 through February 3, 1977, and the exhibits referred to in that transcript.

\*McNutt v. General Motors, 298 U.S. 178, 187-189 (1936).

C. The status of plaintiffs as allottees does not relieve them from the burden of proving jurisdiction.

\*United States and Walker River Paiute Tribe v. Southern Pacific Transportation Company, 543 F.2d 676, 682 (C.A. 9, 1976).

VI. Jurisdictional requirements must be met by each plaintiff allottee individually.

Lunsford v. United States, 418 F.Supp. 1045, 1048-1050 (D. S. Dak. 1976).

\*Lukenas v. Bryce's Mountain Resort, Inc., 538 F.2d 594 (C. A. 4, 1976).

VII. Neither possible hardship nor the merits of the litigation have any bearing in determining jurisdiction.

Hardship is irrelevant to the issue of jurisdiction.

\*Goldstone v. Payne, 94 F.2d 855, 857 (C.A. 2, 1938), cert. den. 304 U.S. 585.

\*Mann v. United States, 399 F.2d 672 (C.A. 9, 1968).

\*Roberts v. United States, 498 F.2d 520, 526 (C.A. 9, 1974).

\*Carr v. Veterans Administration, 522 F.2d 1355, 1358 (C.A. 5, 1975).

Fort Sill Apache Tribe of Oklahoma v. United States, 201 Ct.Cl. 630, 643 (1973).

\*Osman Sharrieff, et al. v. United States, 205 Ct.Cl. 830 (1974).

The merits are irrelevant to the issue of jurisdiction.

\*Davidson v. Rafferty, 34 F.2d 700 (E.D.N.Y., 1929), aff'd 39 F.2d 1022 (C.A. 2, 1930).

VIII. The blameless ignorance theory is a minority view which is not so applicable to the instant litigation as to except plaintiffs from the bar of the statute of limitations as to claims before October 18, 1965.

A. \*Prather v. Neva Paperbacks, Inc., 446 F.2d 338, 339-340 (C.A. 5, 1971).

B. Plaintiffs' blameless ignorance theory is the minority view.

51 Am Jur 2d, Limitation of Actions, Sec. 146.

C. Ignorance, lack of knowledge, mistake do not toll the six-year Court of Claims statute of limitations. (25 U.S.C. sec. 2501).

\*Talmadge v. United States Shipping Board, 54 F.2d 240, 243-244 (C.A. 2, 1931). Justice Learned Hand stated, " a man may not let time slip by while he learns whether his wrongs are to be measured by tens, or hundreds, or thousands."

\*Hebern v. United States, 132 Ct.Cl. 344, 346, 348 (1955).

\*Art Center School v. United States, 136 Ct.Cl. 218, 227 (1956).

\*Japanese War Notes Claimants Ass'n v. United States, 178 Ct.Cl. 630, 634-635, 373 F.2d 356, 359 (1967), cert. den. 389 U.S. 971.

\*Prather v. Neva Paperbacks, Inc., 446 F.2d 338, 341 (C.A. 5, 1971).

\*Affiliated Ute Citizens of Utah v. United States, 199 Ct.Cl. 1004 (1972).

Dan Andrade v. United States, 202 Ct.Cl. 988, 996-997, 485 F.2d 660 (1973).

\*Camacho v. United States, 204 Ct.Cl. 248, 260, 495 F.2d 1363 (1974).

\*Hupp v. Gray, 500 F.2d 993, 996 (C.A. 7, 1974).

\*Lukenas v. Bryce's Mountain Resort, Inc., 538 F.2d 594, 597 (C.A. 4, 1976).



D. Leisurely discovery does not toll the six-year statute of limitations.

The fact that the plaintiffs refrained from doing what it was within their power to do does not toll the statute of limitations.

\*Duham v. United States, 133 Ct.Cl. 360 (1955).

E. Even the conventional, or real, disabilities, much less the so-called Indian status of noncompetency, or incompetency, do not toll the six-year statute of limitations. The cases listed for the most part focus on either minority or mental impairment.

\*Kendall v. United States, 107 U.S. 123, 125 (1882).

(This case holds that the Court of Claims cannot add to or expand upon the disabilities enumerated in its jurisdictional statute of limitations.)

\*Pittman v. United States, 341 F.2d 739 (C.A. 9, 1965).

\*Mann v. United States, 399 F.2d 672 (C.A. 9, 1968).

Ashley v. United States, 413 F.2d 490, 492

(C.A. 9, 1969).

Hall v. E.I. DuPont De Nemours and Company, 312 F.Supp. 358, 360, 361 (E.D.N.Y. 1970).

\*Winston Brothers Company v. United States, 371 F.Supp. 130, 135 (D.Minn. 1973).

\*Roberts v. United States, 498 F.2d 520, 526 (C.A. 9, 1974).

\*Pringle v. United States, 419 F.Supp. 289.  
(D.S.C. 1976).

\*Casias v. United States, 532 F.2d 339 (C.A. 10, 1976).

Miller v. United States, 418 F.Supp. 373, 378  
(D.Minn. 1976).

F. The malpractice cases.

In citing malpractice cases dealing with statutes of limitation, the defendant does not concede merit to plaintiffs' argument as based on the malpractice cases listed by plaintiffs. The intimate, confidential, and privileged relationship of doctor and patient is unique. It is so radically different from the relationship between the plaintiffs and the Bureau of Indian Affairs as to be irrelevant. Lindquist v. Mullen, 45 Wash.2d 675, 277 P.2d 724 (1954).

Ashley v. United States, 413 F.2d 490, 493  
(C.A. 9, 1969).

\*Carr v. Veterans Administration, 522 F.2d 1355  
(C.A. 5, 1975).

\*Casias v. United States, 532 F.2d 1339  
(C.A. 10, 1976).

\*Pringle v. United States, 419 F.Supp. 289, 291  
(D.S.C. 1976).

G. Patent Cases.

\*Hebern v. United States, 132 Ct.Cl. 344, 346, 348  
(1955).

This case has far more relevancy than does the case

upon which the plaintiffs relied, Spevack v. United States, 182 Ct.Cl. 884, 889-890, 390 F.2d 977 (1968). The factual situation in the instant litigation is nothing like that in Spevack.

H. Stockbrokerage cases.

Silence is not such an act of concealment as to toll the six-year statute of limitations. In order to toll there must be "\* \* \* the use of a trick or artifice designed to prevent inquiry, investigation and discovery or mislead or hinder the plaintiffs sufficiently to explain the prolonged ignorance."

\*Morgan v. Koch, 419 F.2d 993, 998-999 (C.A. 7, 1969).

\*Hupp v. Gray, 500 F.2d 993, 996-997 (C.A. 7, 1974).

Goldstandt v. Bear, Stearns and Company, 522 F.2d 1265, 1268-1269 (C.A. 7, 1975).

IX. For fraud to toll the six-year statute of limitations, plaintiffs must allege and prove affirmative acts of fraudulent character which frustrated the plaintiffs in diligently trying to discover their cause of action. Fraud of such a kind is not alleged in the petitions filed October 18, 1971 herein and was not proved at the January 20 - February 3, 1977 Seattle trial herein.

A. Mere nondisclosure is not fraud or deceit.

\*Morgan v. Koch, 419 F.2d 993, 988-999 (C.A. 7, 1969).

Hall v. E.I. DuPont De Nemours and Company, 312 F.Supp. 358, 362 (E.D.N.Y. 1970).

Dan Andrade v. United States, 202 Ct.Cl. 988, 996 (1973).

\*Swarthout v. Michigan Bell Telephone Company, 504 F.2d 748 (C.A. 6, 1974).

\*Lukenas v. Bryce's Mountain Resort, Inc., 538 F.2d 594, 597 (C.A. 4, 1976).

B. Mistake is not fraud.

\*Soukaras v. United States, 135 Ct.Cl. 88, 92 (1956).

C. Fraud of such a nature as to toll a statute of limitations would convert plaintiffs' claims into an action in tort.

Sec. 1491 under which the 1374 individual plaintiffs<sup>1/</sup> sue does not confer jurisdiction on the Court of Claims as to torts. This Court has only limited appellate jurisdiction over torts under 28 U.S.C. Sec. 2504. Were the plaintiffs to bring their tort action in a United States District Court under the Federal Tort Claims Act, 28 U.S.C. Sec. 2680, they would confront a two year statute of limitations. Plaintiffs by basing on fraud their attempt to avoid the six-year statute of limitations thereby cause their claims to sound in tort and, therefore, outside the jurisdiction vested in this Court by Sec. 1491.

\*Soukaras v. United States, 135 Ct.Cl. 88, 140 F.Supp. 797 (1956), cert. den. 352 U.S. 918.

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<sup>1/</sup> This was the number as of February 23, 1976.

Basso v. United States, 239 U.S. 602 (1916).

Williams v. United States, 166 Ct.Cl. 239, 244-245 (1964).

McCreery v. United States, 161 Ct.Cl. 484, 487-488 (1963).

Clark v. United States, 198 Ct.Cl. 593, 597-598, 461 F.2d 781 (1972), cert. den. 409 U.S. 1028.

X. A fiduciary relationship is insufficient to toll a statute of limitations.

\*Hupp v. Gray, 500 F.2d 993, 996, 997 (C.A. 7, 1974).

\*Mann v. United States, 399 F.2d 672 (C.A. 9, 1968).

\*Horton Capoeman v. United States, 194 Ct.Cl. 664, 676-677, 440 F.2d 1002 (1971).

\*Caldwell v. United States, 197 Ct.Cl. 1063 (1972).

Dan Andrade v. United States, 202 Ct.Cl. 988, 991-992 (1973).

XI. The relationship between the plaintiffs and the United States is neither an express trust nor a type of relationship which would except the plaintiffs from the six-year statute of limitations.

\*Fort Mojave Tribe of Indians v. United States, 210 Ct.Cl. (1976).

\*Horton Capoeman v. United States, 194 Ct.Cl. 664, 668, 669-672, 675-677, 440 F.2d 1002 (1971).

Fort Peck Indians v. United States, 132 Ct.Cl. 373, 374, 132 F.Supp. 222, 223 (1955).

Skokomish Indian Tribe v. France, 269 F.2d 555, 560 (C.A. 9, 1959).

Gila River Pima-Maricopa Indian Community v. United States, 135 Ct.Cl. 180, 189, 140 F.Supp. 776, 780 (1956).

Gila River Pima-Maricopa Indian Community v. United States, 190 Ct.Cl. 790, 427 F.2d 1194 (1970).

Federal Indian Law (GPO, 1958) pp. 557-566.

XII. Plaintiffs' derivative sovereign immunity theory.

Plaintiffs have so expanded their derivative sovereign immunity theory as to nullify the jurisdictional six-year statute of limitations. Plaintiffs' effort to enlarge the jurisdiction of the Court of Claims is in direct conflict with the congressional consent. That consent specifically made the Court of Claims jurisdiction dependent on the condition precedent of the claims sued on having arisen within six years of the filing of the petition.

A. Plaintiffs use El Capitan Grande Band of Mission Indians v. Helix Irrigation District, 514 F.2d 465 (C.A. 9, 1975), and Narragansett Tribe v. Southern Rhode Island Land Development Corporation, 418 F.Supp. 798, 804-806 (D.R.I. 1976), to hypothesize that because the United States as plaintiff is not subject to a statute of limitations, then Indians as plaintiffs in suits against the United States are likewise not subject to a statute of limitations. Both cases are distinguishable in that (a) state, not federal, statutes of limitation were in issue, (b) in neither was the United States

a defendant, and (c) an Indian tribe was the plaintiff, not 1374 individual allottee plaintiffs as in the instant litigation.

B. Assuming arguendo that plaintiffs' derivative sovereign immunity theory might have some trace of validity in respect to the six-year statute of limitations, it would at the most be applied solely to the Quinault tribe as plaintiff. The tribe's interest in the instant litigation is small in comparison to that of the 1374 plaintiffs.

C. The United States has been said to hold the public lands as guardian for all the people. Were plaintiffs' theory to be applied to its logical conclusion, the absurd result would be that any citizen could sue the United States for mismanagement of the public lands regardless of any statute of limitations.

Light v. United States, 220 U.S. 523, 537 (1911).

United States v. California, 332 U.S. 19, 39-40 (1947).

D. Exemption of the sovereign from statutory bars does not extend to any citizen in litigation between himself and the sovereign. An individual citizen, Indian or otherwise, cannot be soundly regarded under any circumstances as entitled to exclude himself from the impact of the six-year statute of limitations by purporting to wrap himself in the cloak of sovereign immunity. The 1374 private litigants herein simply cannot walk in the shoes of the sovereign.

\*Stanley v. Schwalby, 147 U.S. 508, 517 (1893).

The Supreme Court there held (p. 517):

It is obvious that the ground of the exemption of governments from statutory bars or the consequences of laches has no existence in the instance of individuals, and we think the proposition cannot be maintained that because a government is not bound by statutes of limitation therefore the citizen cannot be bound as between himself and the government.

\*51 Am Jur 2d, Limitation of Actions, Sec. 397.

E. Had Congress intended to extend to Indian plaintiffs the prerogatives of sovereign immunity, it would have specified that in suits in which Indians were plaintiffs and United States were the defendant, the six-year limitation of Sec. 2501 would be waived.

\*Horton Capoeman v. United States, 194 Ct.Cl. 664, 676, 440 F.2d 1002 (1971).

XIII. Any claim by each individual allottee plaintiff under either of the two long term contracts became subject to the six-year jurisdictional statute of limitations when payments were disbursed to, or credited to the Individual Indian Money account of, such plaintiff.

The Taholah unit contract is dated April 26, 1950 and runs for about 29 years until April 1, 1979. It covers 30,321 acres of which 30,034 acres are allotted and only 287 acres are tribal land. The Crane Creek unit contract of June 18, 1952 terminates on April 1, 1986, just 2 1/2 months short of 34 years. Within that contract are 35,382



acres comprising 35,216 acres in allotments and 166 acres tribally owned. A copy of the two contracts is in the accompanying compilation of cases. The Taholah contract is marked Exhibit "A". The Crane Creek contract is Exhibit "B".

Each contract is between the Superintendent of the Western Washington Indian Agency for and in behalf of the allottees and the purchaser of the timber. The purchaser was to cut and pay for the timber at rates to be established for each quarterly period beginning January 1, April 1, July 1, and October 1. Payment was to the Bureau of Indian Affairs for the use and benefit of the allottees whose timber was cut in the quarter preceding the payment. The BIA in turn promptly disbursed the payments to each allottee or credited such to that allottee's IIM account.

The jurisdictional six-year statute of limitations began to run as to each plaintiff allottee as to his allotment, or as to the part thereof from which timber was cut during the quarter, when the BIA disbursed to him, or credited his IIM account with, the timber proceeds for the quarter. This is in accord with decisions that compensation payable periodically involves multiple causes of action. Each successive failure to pay adequate compensation creates a new cause of action. Because the purchaser's obligations under each of the two long term contracts in respect to each plaintiff allottee pertain only to the specific allotment in

which the particular allottee owns an interest, the claims can be appropriately divided on a time basis. It is plaintiffs' burden to prove by a preponderance of the evidence which plaintiff, which allotment, and which claim of that plaintiff fell within either six years before filing of the petitions on October 18, 1971 or six years before a particular plaintiff became such plaintiff in the suit after filing.

Burich v. United States, 177 Ct.Cl. 139 (1966).

Russell v. United States, 161 Ct.Cl. 183, 186 (1963).

Friedman v. United States, 159 Ct.Cl. 1 (1962),  
cert. den. 373 U.S. 932.

Irving Air Chute, Inc. v. United States, 117 Ct.Cl. 799, 93 F.Supp. 633 (1950).

\*Hebern v. United States, 132 Ct.Cl. 344 (1955).

Calhoun v. United States, 173 Ct.Cl. 893, 896 (1965).

Western Oil Fields, Inc. v. Pennzoil United, Inc.,  
421 F.2d 387, 390 (C.A. 5, 1970).

Gruca v. United States Steel Corporation, 360 F.Supp. 38, 48 (E.D.Pa. 1973).

\*Art Center School v. United States, 136 Ct.Cl. 218, 227 (1956),

#### XIV. Litigation Minded Plaintiffs

Awareness by Plaintiffs Generally of the Advantages of Seeking Redress through Access to the Courts is Shown by the Following Cases:

United States v. Payne, 284 F. 827 (C.A. 9, 1922),  
aff'd 264 U.S. 446 (1924). Def. Ex. A-25.

Pape v. United States, 19 F.2d 219 (C.A. 9, 1927),  
cert. den. 275 U.S. 532.

Mitchell v. United States, 22 F.2d 771 (C.A. 9, 1927).

United States v. Halbert, and Eleven Other Cases,  
38 F.2d 795 (C.A. 9, 1930, rev'd by Halbert v. United States,  
283 U.S. 753 (1931)) Def. Ex. A-22; 41  
plaintiffs are listed at 38 F.2d 795, pages 798-799.  
See also Def. Ex. A-50 and Def. Ex. A-114.

United States v. Provoe, 38 F.2d 799 (C.A. 9, 1930).

United States v. Walkowsky, 38 F.2d 805 (C.A. 9, 1930).

United States v. Rolfson, 38 F.2d 806 (C.A. 9, 1930).

Eastman, et al. v. United States, 28 F.Supp. 807  
(W.D: Wash., 1939), rev'd, 118 F.2d 421 (C.A. 9, 1941),  
cert. denied, 314 U.S. 635 -- there were many plain-  
tiffs, 28 F.Supp. at page 808.

Squire v. Capoeman, 110 F.Supp. 924 (W.D. Wash., 1952),  
aff'd 202 F.2d 349 (C.A. 9, 1955), aff'd, 351 U.S. 1  
(1956).

Horton Capoeman v. United States, 194 Ct.Cl. 664 (1971).

Quinault Allottee Association and Individual Allottees  
v. United States, 197 Ct.Cl. 134, 140, 453 F.2d 1272  
(1972).

Quinault Allottee Association and Individual Allottees  
v. United States, 202 Ct.Cl. 625, 628, 485 F.2d 1931  
(1973).

Quinaielt Tribe of Indians, et al. v. United States,  
7 Ind.Cl.Comm. 1 (1958), 13 Ind.Cl.Comm. 556 (1964).

Quinaielt Tribe of Indians v. United States, 102 Ct.Cl.  
822 (1945), and 118 Ct.Cl. 220 (1951).

Litigation Minded Plaintiffs (continued)

Quileute Tribe on its own behalf and on behalf of the Hoh Tribe, et al. v. United States, 7 Ind.Cl.Comm. 31 (1958), 10 Ind.Cl.Comm. 427 (1962), and 13 Ind.Cl. Comm. 552 (1964).

Mason v. Sams, 5 F.2d 255 (W.D. Wash. 1925).

Taylor v. United States, 44 F.2d 531 (C.A. 9, 1930).

Pioneer Packing Co., v. Winslow, 159 Wash. 655, 294 P. 557 (1930).

Fowler v. Bright, 4 F.Supp. 565 (W.D. Wash. 1933).

United States ex rel. Charley et al. v. McGowan, 62 F.2d 955 (C.A. 9, 1933).

Moore v. United States, 157 F.2d 760 (C.A. 9, 1946) aff'g 62 F.Supp. 660 (W.D. Wash. 1945), cert. den. 330 U.S. 827.

United States v. State of Washington, 233 F.2d 811 (C.A. 9, 1956).

State v. Bertrand, 61 Wash.2d 333, 378 P.2d 427 (1963).

State of Washington v. Gallagher, 368 F.2d 648 (C.A. 9, 1966), cert. den. 387 U.S. 907.

Comenout v. Bardman, 84 Wash.2d 192, 525 P.2d 217 (1974), app. dismissed 420 U.S. 915.

United States v. State of Washington, 520 F.2d 616 (C.A. 9, 1975), cert. den. 423 U.S. 1086.

Upper Chehalis Tribe v. United States, 4 Ind.Cl.Comm. 301 (1956), rev'd 140 Ct.Cl. 192, 155 F.Supp. 226 (1957), 8 Ind.Cl.Comm. 436 (1960), 12 Ind.Cl.Comm. 644 (1963), and 16 Ind.Cl.Comm. 199 (1965).

United States v. Chehalis County, 217 Fed. 281 (W.D. Wash. 1914).

State v. Quigley, 52 Wash.2d 234, 324 P.2d 827 (1958).

Litigation Minded Plaintiffs (continued)

Makah Tribe v. United States, 1 Ind.Cl.Comm. 466 (1951), 7 Ind.Cl.Comm. 477 (1959), aff'd 151 Ct.Cl. 701 (1960), cert. den. 365 U.S. 879; 23 Ind.Cl.Comm. 165 (1970), aff'd 195 Ct.Cls. 539 (1971); and 39 Ind.Cl.Comm. 88 (1976).

United States v. The James G. Swan, 50 Fed. 108, (N.D. Wash. 1892).

Neah Bay Fish Co. v. Krummel, 3 Wash.2d 570, 101 P.2d 600 (1940).

McCauley v. Makah Indian Tribe, 128 F.2d 867, (C.A. 9, 1942).

Makah Indian Tribe v. Schoettler, 192 F.2d 224, (C.A. 9, 1951).

Makah Indian Tribe v. Clallam County, 73 Wash.2d 677, 440 P.2d 442 (1968).

Makah Indian Tribe v. State, 76 Wash.2d 485, 457 P.2d 590 (1969), app. dismissed 397 U.S. 316.

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David M. Marshall  
Attorney