

## Merrill, Hannah

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**From:** pearl hewett [REDACTED]  
**Sent:** Saturday, March 17, 2012 11:44 AM  
**To:** zSMP; burt reid  
**Cc:** Sandy Rains; [Judv Miller](#); Vi; Don  
**Subject:** PATENT LAND GRANTS ISSUED PRIOR TO STATEHOOD

PATENT LAND GRANTS ISSUED PRIOR TO STATEHOOD  
I submit this as my public comment #61  
On the Clallam County SMP Update

AMIOTTE, LALENA (DNR) [Lalena.Amiotte@dnr.wa.gov]

**Sent:** Wednesday, August 31, 2011 11:58 AM

**To:** Merrill, Hannah

**Subject:** WA DNR Comments to Draft ICR

**Attachments:** ICRCommentsClallamCounty2011-08-31.pdf

In answer to my questions at the April 6, 2012 SMP Advisory meeting, regarding patent land grants issued prior to statehood, a partial answer is found on pages 16-17 of the 17 page SMP public comment submitted by DNR Lalena Amiotte on August 31, 2011, please review it.

**Please see Clallam County Assessors maps** Volume 3, page 3 and 4. Parcel #05300810, Section 8, Township 30N Range 5W and adjoining maps for 53009 SW. I have a copy of the Clallam County Assessors maps with the government survey of the documented meander lines prior to statehood This is in the Bagley Creek and Auckland Addition area, it includes the tidelands, shore lands and non- navigable Bagley Creek.

Additional information.

(Taken out of context)

U.S. Supreme Court. The high

court held that because Mrs. Hughes' predecessor in title had received the **property from the U.S. prior to Washington statehood**, her right to accretions to her land was governed by federal, not state law. According to the Court, under federal common law Mrs. Hughes was entitled to the accretions to her property.<sup>209</sup>

b. Lands Exempt from the Public Trust Doctrine

There are also several categories of land that may be exempt from the public trust doctrine.

These fall under three categories: **1) lands conveyed prior to statehood**, 2) federal acquisitions of state public trust lands and 3) lands covered by Indian treaties.

First, it is possible that tidelands and shorelands conveyed prior to statehood may not be subject to the public trust. Extinguishment of the trust could only occur where the words of the original grant expressly and unequivocally expressed that intent.<sup>222</sup> Given the federal government's responsibility to hold lands in trust, the amount of federal grants that extinguish the public trust interest is likely to be small.

The history of federal grants in Washington, however, indicates that the public trust

continues to apply to pre-statehood grants in this state. **Many pre-statehood grants to private parties suggest that the boundary of their lands extended out to the meander line. The government meander line, when compared to the line of mean high tide, is often far out in the water. Government surveyors in the 1870s and 1880s were paid**

**by the mile, and often did not adhere to the actual contours of the shoreline, but followed the path of least resistance.**<sup>223</sup>

The federal government, however, generally had no right to convey lands below the high water mark, but held those lands in trust for future states under the equal footing doctrine.

Nevertheless, the Washington State Constitution provided that this section [declaring public ownership] **shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.**<sup>224</sup>

While on its face, this phrase appears to be **only a disclaimer of ownership to lands that the federal government validly conveyed into private hands**, the Washington Supreme Court early in its history held that this provision of the Constitution was a present grant of the State's interest in lands that had been previously patented.<sup>225</sup> As the court wrote in *Scurry v. Jones*:

The Washington Supreme Court's opinions in *Orion* and *Caminiti* suggest, however, **that the geographical scope of the public trust doctrine extends at least to the tidelands and shorelands that the state held title to at the time of statehood**

Mrs. Hughes appealed the case to the U.S. Supreme Court. The high court held that because Mrs. Hughes' predecessor in title had received the **property from the U.S. prior to Washington statehood**, her right to accretions to her land was governed by federal, not state law. According to the Court, under federal common law Mrs. Hughes was entitled to the accretions to her property.<sup>209</sup>

Pearl Rains Hewett

Trustee George C. Rains Sr. Estate

Member SMP Advisory Committee