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The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

STATE OF WASHINGTON

Defendants.

Case No. C70-9213
Subproceeding: 24-sp-01 RSM

**SAUK-SUIATTLE INDIAN TRIBE’S
REQUEST FOR DETERMINATION
FOR USUAL AND ACCUSTOMED
FISHING GROUNDS NOT
SPECIFICALLY DETERMINED BY
FINAL DECISION #1**

I. NATURE OF THE ACTION

1. This Request for Determination arises from Paragraph 25(a)(6) of the Court’s Permanent Injunction in this case as amended August 24, 1993. *United States v. Washington*, 18 F. Supp. 3d 1172, 1213 (W.D. Wash. 1991). Pursuant to the Permanent Injunction “[t]he parties . . . may invoke the continuing jurisdiction of this court in order to determine: . . . (6) The location of any

1 tribe’s usual and accustomed fishing grounds not specifically determined by Final Decision #1.”
2 *Id.*

3 2. Some of the Usual and Accustomed fishing grounds and stations (“U&A”) of the Sauk-
4 Suiattle Indian Tribe (“Sauk-Suiattle” or “Tribe”) were described in Final Decision #1 at
5 Finding of Facts 129–132. *United States v. Washington*, 384 F. Supp. 312, 375–76 (W.D. Wash.
6 1974) (“Final Decision #1). Regarding the Tribe’s freshwater U&A, Finding of Fact 131 noted
7 that the non-exhaustive list of the Tribe’s U&A “included Sauk River, Cascade River, Suiattle
8 River and the following creeks which are tributary to the Suiattle River— Big Creek, Tenas
9 Creek, Buck Creek, Lime Creek, Sulphur Creek, Downey Creek, Straight Creek, and Mill
10 Creek. Bedal Creek, tributary to the Sauk River, was also a Sauk fishing ground.” *Id.* Whether
11 Sauk-Suiattle U&A also included the Skagit River and Baker River was not specifically
12 determined in Final Decision #1. Regarding U&A in the Puget Sound, Finding of Fact 132
13 stated that the Tribe “traveled to the saltwater to procure marine life unavailable in their own
14 territory.” *Id.* at 376. However, the exact locations of the Tribe’s saltwater (also referred to as
15 “marine water”) U&A were not specifically determined in Final Decision #1.
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19 3. The Tribe respectfully requests that the Court exercise its authority under the continuing
20 jurisdiction of this case to determine that the Usual and Accustomed fishing grounds and
21 stations of the Sauk-Suiattle Indian Tribe include the Skagit River, the Baker River, and
22 saltwater areas including from Warm Beach to the mouth of the Stillaguamish River, the South
23 Fork of the Skagit Delta and Skagit Bay, the west and north sides of Hat Island, both sides of
24 Camano Island (including Saratoga Passage and Port Susan), Samish Bay, Chuckanut Bay,
25 Padilla Bay, Fidalgo Bay, the east side of Whidbey Island (including Penn Cove, Oak Harbor,
26 Crescent Harbor, and Holmes Harbor), Snee-oosh Beach, Similk Bay, Turner Bay, and from
27

1 Deception Pass west to Lawson’s Reef. *See* Map of U&A Claims of the Sauk-Suiattle Indian
2 Tribe (Ex. 1).

3 **II. PARTIES**

4 4. Petitioner is the Sauk-Suiattle Indian Tribe, a federally recognized Indian tribe with a
5 governing body recognized by the United States Federal Government. *See* Indian Entities
6 Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,
7 89 Fed. Reg. 944, 946 (Jan. 8, 2024). The Tribe is the successor-in-interest to the Sah-Ku-Mehu
8 Tribe, signatory to the Treaty of Point Elliott of January 22, 1855, ratified March 8, 1859, and
9 proclaimed April 11, 1859. 12 Stat. 927.

10 5. Respondent is the State of Washington.

11 6. There are several other parties included in this long-running case. The Tulalip Tribes,
12 Suquamish Tribe, Swinomish Indian Community, and the Upper Skagit Indian Tribe have
13 previously identified themselves as parties that may be directly affected by this Request and that
14 intend to appear as Respondents in this case. Several other Tribes with adjudicated or disputed
15 U&A in or near the requested area attended the meet-and-confer process in this matter, but it is
16 not known whether any of those parties will appear in this subproceeding, nor what position
17 they may take.

18 **III. CONTINUING JURISDICTION**

19 7. In Final Decision #1, Judge Boldt found that “[t]his Court should retain continuing
20 jurisdiction of this case to grant such further relief as may be found by the court to be
21 appropriate.” *United States v. Washington*, 384 F. Supp. 312 at 405. To that end, it was held
22 that “the court does hereby reserve continuing jurisdiction of this case without limitation at this
23 time.” *Id.* at 347.

1 8. In order to invoke the Court’s continuing jurisdiction, the parties must comply with the
2 pre-filing requirements found at Paragraph 25 of the permanent injunction, including later
3 modifications. *United States v. Washington*, 20 F. Supp. 3d 899, 982 (W.D. Wash. 2008).
4 Counsel for the Tribe has filed with this request a declaration attesting that the Tribe has
5 complied with the pre-filing requirements of Paragraph 25.
6

7 IV. STATEMENT OF FACTS

8 9. At treaty time, the Sah-ku-mehu, the predecessor tribe to the modern Sauk-Suiattle Indian
9 Tribe, occupied an extended village network, including a village, known as i’li’locid, based at
10 the confluence of the Sauk River and Skagit River, and extending downstream on the Skagit
11 River to just south of modern Van Horn.
12

13 10. By 1852, the Sah-ku-mehu were one of the largest recorded groups on the Skagit or
14 Stillaguamish drainages. In 1877, Special Agent Edmond Mallet of the Tulalip Special Agency
15 referred to the Sah-ku-mehu as “the most important tribe on the [Skagit] river.”
16

17 11. From the mouth of the Sauk River, the Sauk-Suiattle enjoyed fishing access to the Skagit
18 and Baker Rivers. Such was the political power of the Sah-ku-mehu that in 1880 when a
19 conflict between United States government surveyors and Indian peoples broke out at the Baker
20 River—the Sah-ku-mehu Chief John Wawatkin was one of the principal negotiators for peace
21 and affirmatively granted the surveyors the right to continue surveys up to the mouth of the
22 Sauk River. Renowned anthropologist Barbara Lane concluded that the “principal fisheries of
23 the Sakhumehu were the headwaters of the Skagit River, including the Baker River.”
24

25 12. Barbara Lane’s comment regarding the Sakhumehu’s *principal* fisheries did not address
26 where the Tribe customarily traveled to obtain marine resources. Like nearly all Puget Sound
27 tribes, including other Upper Skagit tribes, Sah-ku-mehu tribal members participated in a

1 seasonal round of movement as part of the ever-present food quest. Tribal members would go
2 from concentrated winter villages, located in the Tribe’s central territory, to more loosely
3 aggregated and dispersed summer camps to procure the abundant marine resources not available
4 at their upriver villages. As stated succinctly by Judge Boldt, Sah-ku-mehu “traveled to the
5 saltwater to procure marine life unavailable in their own territory.” *United States v. Washington*,
6 384 F. Supp. 312 at 376.

8 13. The Tribe acquired rights to these saltwater fishing locations largely through an intricate
9 web of intermarriage, which gave tribal members the right to acquire marine resources from
10 their extended kin network and provided a reciprocal right for the harvest of prairie resources
11 from Sah-ku-mehu territory, in particular from the well-known abundance at Sauk Prairie.
12

13 14. The Sah-ku-mehu produced several skilled canoe-makers. The Tribe travelled in canoes
14 to the Puget Sound from its home territory on the banks of the Skagit, Sauk, Suiattle, and
15 Cascade Rivers down the Skagit River to Skagit Bay, sometimes portaging the Skagit River to
16 Padilla Bay, or portaging from the Sauk River to the Stillaguamish River and taking the
17 Stillaguamish River to Port Susan. From there, Tribal members would continue to disperse
18 throughout the Puget Sound based on kinship ties and the availability of marine resources.
19

20 15. That the Sah-ku-mehu travelled extensively to the salt water is well documented.
21 According to anthropologist Sally Snyder in testimony before the Indian Claims Commission,
22 “the Sauk, in order to get to the salt water, used [the] portages I have indicated; one close to
23 Arlington and the other at the head of the South Fork of the Stillaguamish River, in order to get
24 to the salt water.” Meanwhile anthropologist Carroll Riley noted that the “The North Fork [of
25 the Stillaguamish River] seemed to have been, to some extent, a highway for people from the
26 Upper Skagit and particularly from Sauk River.” Amateur historian Nels Bruseth noted that “if
27

1 [Sauks] wanted clams they would probably go down to the Kikiallus and either barter or trade,
2 or dig them up themselves.”

3 16. When temporarily relocated during the Indian War to reservations at Penn Cove and
4 Holmes Harbor, one of the first acts of the Sah-ku-mehu Chief recorded at Holmes Harbor was
5 to request a permit to collect and dry clams—a practice that was already familiar to Sah-ku-
6 mehu people.

7
8 17. Through oral traditions, primary sources including journals, maps, and censuses, and
9 early ethnographic works of the Skagit River tribes, family trees and other evidence of kinship,
10 it is apparent that the Sah-ku-mehu travelled to the salt water and around the Puget Sound
11 through an extended kin network. This network took the Tribe along the Skagit River and the
12 Baker River, and to the salt water, from Warm Beach to the mouth of the Stillaguamish River,
13 the South Fork of the Skagit Delta and Skagit Bay, the west and north sides of Hat Island, both
14 sides of Camano Island (including Saratoga Passage and Port Susan), Samish Bay, Chuckanut
15 Bay, Padilla Bay, Fidalgo Bay, the east side of Whidbey Island (including Penn Cove, Oak
16 Harbor, Crescent Harbor, and Holmes Harbor), Snee-oosh Beach, Similk Bay, Turner Bay, and
17 from Deception Pass west to Lawson’s Reef.

18
19 18. Today the Tribe’s adjudicated U&A does not specifically provide for any fishing rights at
20 their usual and accustomed fishing grounds and stations on the Skagit River, Baker River, and
21 marine waters. Without such an adjudication, the Tribe has been unable to fully exercise its
22 reserved rights under the Treaty of Point Elliott.

23 24 25 **V. PRAYER FOR RELIEF**

26 WHEREFORE, the Sauk-Suiattle Indian Tribe hereby respectfully requests the following
27 relief:

28 REQUEST FOR DETERMINATION FOR USUAL AND ACCUSTOMED mctlaw
FISHING GROUNDS NOT SPECIFICALLY DETERMINED BY FINAL 1325 4TH AVENUE, SUITE 1730
DECISION #1 SEATTLE, WA 98101
(CASE NO. 70-9213) PAGE 6 888-952-5242

1 A. An order declaring that in addition to the U&A adjudicated in Final Decision #1, the
2 Usual & Accustomed fishing grounds and stations of the Sauk-Suiattle Indian Tribe includes the
3 Skagit River and the Baker River, and the salt water, from Warm Beach to the mouth of the
4 Stillaguamish River, the South Fork of the Skagit Delta and Skagit Bay, the west and north
5 sides of Hat Island, both sides of Camano Island (including Saratoga Passage and Port Susan),
6 Samish Bay, Chuckanut Bay, Padilla Bay, Fidalgo Bay, the east side of Whidbey Island
7 (including Penn Cove, Oak Harbor, Crescent Harbor, and Holmes Harbor), Snee-oosh Beach,
8 Similk Bay, Turner Bay, and from Deception Pass west to Lawson’s Reef. *See* Map of U&A
9 Claims of the Sauk-Suiattle Indian Tribe (Ex. 1).
10

11 B. An order declaring that the Sauk-Suiattle Indian Tribe may immediately begin exercising
12 its treaty rights in these waters in a manner consistent with other orders of this Court; and
13

14 C. Other such and further relief as the Court may deem just and proper.

15 RESPECTFULLY SUBMITTED this 17th day of September, 2024

16 */s/ Kehl Van Winkle*

17 Kehl A. Van Winkle, WSBA # 53762

18 **mctlaw**

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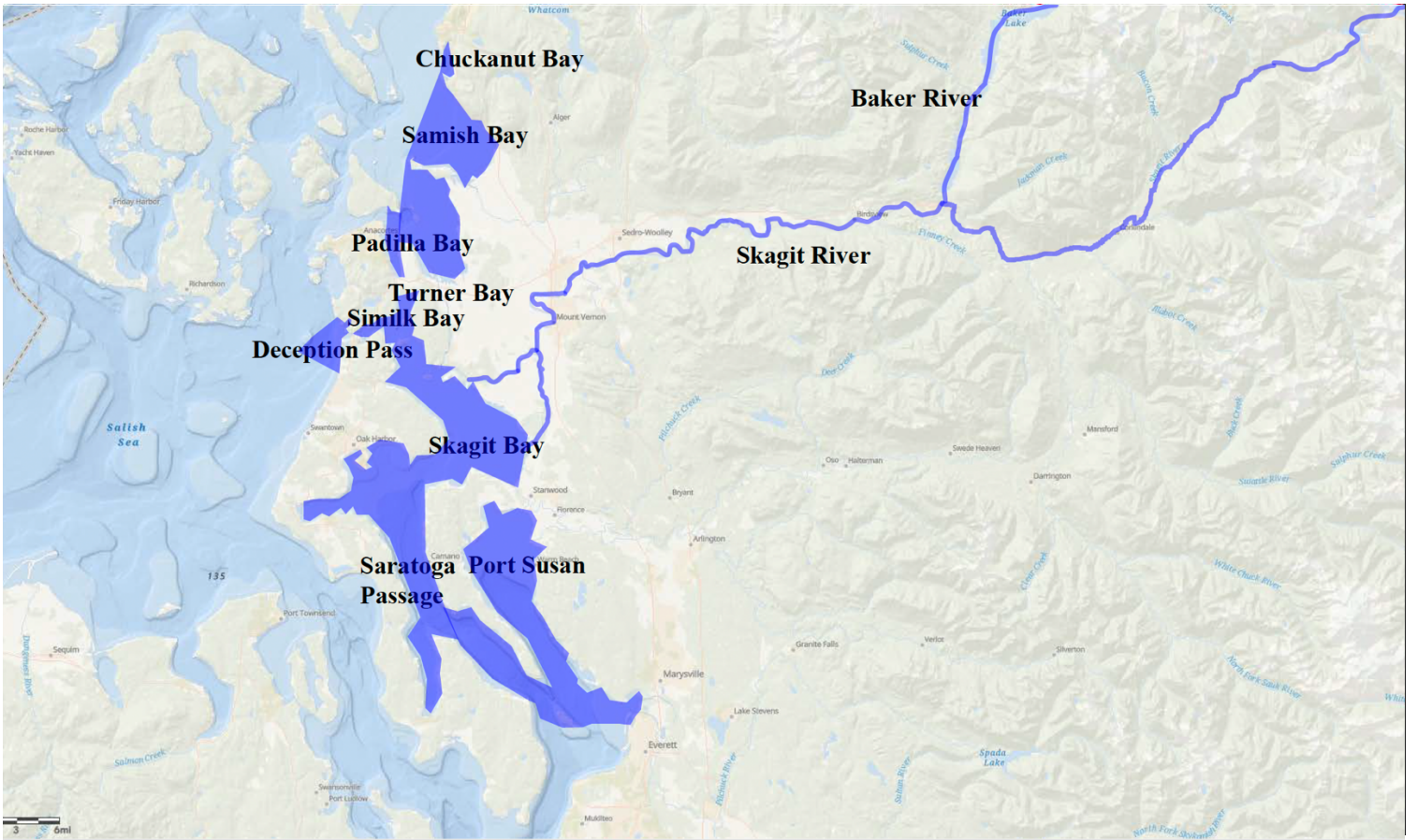
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EXHIBIT 1

Map of U&A Claims of the Sauk-Suiattle Indian Tribe



Map of U&A Claims of the Sauk-Suiattle Indian Tribe