

07- 35633

**FILED**

OCT 15 2007

CHRISTY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ELAINE L. CHAO, Secretary of Labor, United States Department of  
Labor,

Plaintiff-Appellee,

v.

PAUL MATHESON, an individual dba BABY ZACK'S SMOKE SHOP,  
CATHY MATHESON, an individual, FELICIA MATHESON, an  
individual, and NICK MATHESON, an individual;

Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

NO. 3:06-cv-05361-RBL

THE HONORABLE RONALD B. LEIGHTON  
UNITED STATES DISTRICT COURT JUDGE

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**OPENING BRIEF OF APPELLANTS**

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individual, and NICK MATHESON, an individual;

Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

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**INTRODUCTION**

The Mathesons request that this court find reversible error in  
the trial court's ruling that their Indian owned retail business on  
trust land within the Puyallup Indian Reservation, can be

regulated and sold for failure to obey the wage and hour mandates of the United States government.

### **STATEMENT OF JURISDICTION**

The jurisdiction of the District Court was invoked pursuant to 28 U.S.C. § 1345. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

### **STATEMENT OF ISSUES**

1. Whether the Secretary of Labor of the United States had authority to enter Defendants on-reservation Indian business to audit Defendants' employee's time records?
2. Does the Secretary of Labor have subject matter jurisdiction to apply the United States' Fair Labor Standards Act to on-reservation Indian owned retail business?
3. Did the judgment of the Court appointing a Receiver to collect the judgment violate treaties and federal statutes exceeding the relief requested in the Complaint?
4. Does the federal court or the Puyallup Tribal Court have jurisdiction to enforce collection from an enrolled Indian on a

federally recognized Indian reservation?

5. Did the Court's judgment on collection violate the provisions of federal law and the Puyallup Tribal Code?

### **STATEMENT OF THE CASE**

The essential facts are not disputed. Paul Matheson, a member of the Puyallup Tribe, operates a retail store on trust land within the Puyallup Indian Reservation. He employs a staff of retail clerks, some of the employees are Indians. None of the employees work off the reservation. The Secretary of Labor's employee subpoenaed Matheson's books and computed a deficiency against his business based on the overtime provisions of the Federal Labor Standards Act, 29 U.S.C. § 201 et seq. The trial court awarded a judgment against Matheson and others. The court also provided that a Receiver would be appointed by the court if Matheson did not pay the court's judgment. It further provided that the Receiver could sell Matheson's assets if he didn't pay.

This appeal challenges the Secretary of Labor's authority under 29 U.S.C. § 201 et seq, to regulate and, if necessary, liquidate Matheson's on-reservation Indian business.

## **ARGUMENT**

### **A. Standard of Review.**

The District Court's grant of summary judgment is reviewed de novo. *Horphag Research Ltd v. Garcia*, 475 F.3d 1029, 1035 (9<sup>th</sup> Cir. 2007). The focus of the appellate court in employment cases is when viewing the evidence in a light most favorable to the non-moving party, whether there are genuine issues of material fact that remain in dispute. *Shotgun Delivery, Inc. v. United States*, 269 F.3d 969, 971 (9<sup>th</sup> Cir. 2001).

### **B. Summary Judgment in Favor of the Secretary of Labor was Reversible Error.**

The critical issue in this appeal is to determine whether the Puyallup Tribe of Indians has subject matter jurisdiction of the retail business located on trust land owned by a tribal member within the reservation. The trial court rejected the case of *National Labor Relations Board v. Pueblo of San Juan*, 276 F.3d 1186 (10<sup>th</sup>



Cir. 2002), a case holding that treaty tribes are excluded from all federal laws affecting Indian employers.

*San Juan* aligns with the later United States Supreme Court case of *United States v. Lara*, 541 U.S. 193, 200, 204, 124 S.Ct 1628, 158 L.Ed.2d 420 (2004), holding that tribes possess inherent power to control events that occur on the tribe's own land and that Indian tribes are domestic dependent nations with sovereignty over its members. The trial court would not extend the holding of *Lara* or *Pueblo of San Juan*. *Lara* also observed that cases on tribal authority are confined to the time the Supreme Court issued its decisions. *Lara*, 541 U.S. at 206.

Of great importance, *Lara* announced a new standard that Congress could not enact laws modifying tribal inherent power. *Lara*, 541 U.S. at 208.

This court, in *United States v. Smiskin*, 487 F.3d 1260, 1264 (9<sup>th</sup> Cir. 2007) held that federal laws of general application that fail to mention Indian tribes cannot abrogate Indian treaty rights. The Puyallup Indian Tribe is one of the twenty Pacific Northwest tribes

who signed six treaties negotiated in the 1850s in the Washington Territory. They are known as the “Stevens Treaties.” *Midwater Trawlers Cooperative v. Department of Commerce*, 282 F.3d 710, 714 (9<sup>th</sup> Cir. 2002). *Smiskin*, 487 F.3d at 1264, construed the Yakama Treaty, 12 Stat 951 (June 9, 1855). The treaty that applies to the Puyallup Tribe is the Treaty of Medicine Creek, 10 Stat 1132 (Dec. 26, 1854).

**1. Treaty Rights Prevail over General Federal Statutes.**

*Smiskin* also teaches two principles that apply to this case. The first is “the text of a treaty must be construed as the Indians would naturally understood it at the time of the treaty, with doubtful or ambiguous expressions resolved in the Indians favor.” *United States v. Smiskin*, 487 F.3d 1260, 1264 (9<sup>th</sup> Cir. 2007).

The second principle is that the provisions of each treaty can dictate results different from other treaties. This principle applies to this case. *Smiskin*, 487 F.3d at 1267. In this appeal, the Appellants contend that the trial court committed reversible error in relying on *Donovan v. Coeur d’Alene Tribal Farm*, 751 F.2d 1113

(9<sup>th</sup> Cir. 1985). The *Donovan* case involved the Coeur d'Alene Tribe that had no treaty to follow. *Donovan* states (751 F.2d at 1117), "In this case, however, there is no treaty between the Coeur d'Alene Tribe and the United States government. Nor can the Farm point to any document to which the United States is a signatory that specifically guarantees the Tribes's right to exclude non-Indians." *Reich v. Great Lakes Indian Fish and Wildlife Commissioner*, 4 F.3d 490, 495 (7<sup>th</sup> Cir. 1993), a fair labor standards case, also makes the treaty-non-treaty distinction.

The trial court quoted from *Donovan*, 715 (sic) 751 F.2d at 116, at page 3 of its opinion, discussing federal taxes on businesses run by tribes. The discussion is wrong as Indian tribes are immune from federal taxes. 26 U.S.C. § 7871. Some Indian businesses are free of federal income taxes. 26 U.S.C. § 7873; *Squire v. Capoeman*, 351 U.S. 1, 76 S.Ct 611, 100 L.Ed 883 (1956).

Paul Matheson, employer and owner of the business, is a Puyallup Indian. The business is an outgrowth of trading with whites on the reservation, an activity that has been chronicled as

existing for over 200 years. The employees all worked on the reservation. The Secretary of Labor never asked whether the employees were Indian or non-Indian. These facts prevent the application of the overtime provisions of the federal wages and hour law, 29 U.S.C. § 201.

*Reich v. Great Lakes Indian Fish and Wildlife Commission*, 4 F.3d 490, 493 (7<sup>th</sup> Cir. 1993) followed the Indian treaty exemption and the principle that the Fair Labor Standards Act does not mention Indians. The Court, through Judge Posner, also stated at 495, "The court was rectifying an oversight. We do the same today, actuated by the same purpose of making federal law bear as lightly on Indian tribal purgatives as the leeways of statutory interpretation allow." The *Reich* decision, on the same federal law with the same reasoning should be followed to preserve uniformity among the circuits.

*Snyder v. Navajo Nation*, 382 F.3d 892 (9<sup>th</sup> Cir. 2004) followed *Reich* in dismissing tribal law officers' overtime pay from the Fair Labor Standards Act on the basis that the activities of the law

enforcement officers are within the “intramural affairs exception.”

*Snyder*, 382 F.3d at 896.

## **2. The Medicine Creek Treaty Rejects Time and a Half Pay Rates of Matheson’s Employees.**

The Treaty of Medicine Creek, (Appendix 1) has provisions that control this case. At Article 11, the provision states, “The said tribes agree to free all slaves now held by them, and not purchase or acquire others thereafter.” The practice of workers albeit in a crude form was addressed. *Keweenaw Bay Indian Community v. Naftaly*, 452 F.3d 514, 527 (6<sup>th</sup> Cir. 2006) applies common sense to treaties. The case also notes that the object of treaties is to establish a permanent home for the treaty Indians free of restrictions. In plain language, this case addresses employment rights to pay overtime.

If employment of an Indian employee by an Indian employer to work on the reservation, federal law does not apply as it is an internal tribal matter. *EEOC v. Fond du Lac Heavy Equipment and Construction, Inc.*, 986 F.2d 246, 249 (8<sup>th</sup> Cir. 1993). In this case,

the Secretary of Labor stipulated some employee tribal membership.

Article 2 of the Medicine Creek Treaty reserved lands for the "exclusive use" of Indians, "nor shall any white man be permitted to reside on the same without the permission of the Tribe and the Superintendent."

At Article 10, the United States agreed to pay expenses of employees of the Tribe.

If the treaty is construed as the Indians would have understood at the time, freely allowing any federal employee to go onto the Puyallup Reservation to quiz the tribal Indians' relationship with their helpers would never happen as the two years following the treaty resulted in a war between the Puyallup Indians and the U.S. government employees. Hubert Howe Bancroft, *History of Washington, Idaho and Montana*, Volume XXXI, San Francisco Company 1890, (available to download on Google books). This contemporary history book of the period indicates that "savages" including the Puyallups, were dissatisfied with the

extent of their reservation. *Bancroft*, Indian Wars, Page 170. Chief Leshi was hanged for a killing in Pierce County. Pages 172, 174. Indians were reported to kill 700 whites in the war. Page 178.

The right to occupy and exclude is the element that provides regulatory authority over non-Indians. *Strate v. A-1 Contractors*, 520 U.S. 438, 454-56, 117 S.Ct 1404, 137 L.Ed.2d 661 (1997).

Normally, an Indian tribe does not retain regulatory authority over non-members who traverse the reservation. *Montana v. United States*, 450 U.S. 544, 101 S.Ct 1245, 67 L.Ed.2d 493 (1981). One of the exceptions is those who enter into consensual relationships with tribal members. *Montana*, 450 U.S. at 565. *McArthur v. San Juan County*, 497 F.3d 1057, 1071 (10<sup>th</sup> Cir. 2007) states, "There is no doubt than an employment relationship between two parties is contractual in nature." "Consequently, *Montana's* consensual relationship applies to an non-member who enters into an employment relationship with a member of a tribe."

*McArthur* sums up the rule on tribal inherent power. It states at page 1068:

Congress's 'plenary and exclusive' powers in respect to the tribes derive from the Indian Commerce Clause (U.S. Const. Art I, § 8, cl. 3), treaties entered into by the Executive Branch, and pre-constitutional powers necessarily inherent in any federal government. *See Id* at 200-01, 124 S.Ct 1628. The upshot of Congress's plenary power over the tribes is that it may 'enact legislation that both restricts, and in turn, relaxes . . . restrictions on tribal sovereign authority.' *Id.* at 202, 124 S.Ct 1628.

The Puyallup Tribal Judicial Code applies to disputes involving tribal members "and those who have dealings on the reservation." (Agreement between the Puyallup Tribe and Local Governments, pages 1, 2 and 19 attached as Appendix 2). The Plaintiffs' judgment collection provisions, are completely out of thin air and are not contained in any allegations in the Complaint.

**3. The Secretary of Labor Cannot Forfeit Matheson's Business Operated on Trust Land.**

The trial court also ignored Article IV of the Medicine Creek Treaty, which incorporates the provisions of Article Sixth of the Treaty with the Omahas. So far as the same may be applicable.



Article Sixth of the Treaty with the Omahas of 1854, 10 Stat 1043, 1044-5 (1854) provides that Indian lands "shall be exempt from levy, sale or forfeiture." This restraint on alienation is also codified at 25 U.S.C. § 177 (Appendix 3). Congress must expressly provide that the United States can levy on the land by statute. *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 110, 80 S.Ct 543, 4 L.Ed.2d 584 (1960). No authorization has been statutorily given to the Secretary of Labor.

The judgment entered in this case divested the Indian tribe of the inherent right to regulate collection from members. *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, 596 (9<sup>th</sup> Cir. 1983) holds that powers not granted to the federal government were retained by the tribes. The Court also held that the treaties conferred the same rights to individual Indians as it does to tribes. (*Babbitt*, 710 F.2d at 594). Among these rights are immunity from debts. Matheson owns the improvements on the land, including removable buildings, inventory, trade name, signs and goodwill. The business is located on trust land. Cohen's *Handbook of*

*Federal Indian Law*, 2005 Edition, LexisNexis 16.03[4][d](i) states:

Involuntary transfers of trust and restricted allotments by state or federal action are void, unless specifically authorized by federal law. Congress has authorized some forms of involuntary transfers, including condemnation, but has not provided general authority for other forms, such as adverse possession, bankruptcy, or tax sales.

16.01[4] states:

Both federal law and many tribal laws recognize and protect the rights of Indians to their improvements that were sold or confiscated. Many allotment acts provided that Indian improvers were entitled to select their improved lands as allotments. Some statutes involving land cessions by tribes provided that Indians in possession of tribal or allotted land who cultivated the land and had homes on it could not be removed without their consent. In addition, the Solicitor of the Department of Interior opined that Indian improvers owned their improvements on tribal land and thus were entitled to lease rentals from the improvements. In other situations not subject to secretarial approval, disputes over improvements turn on tribal law, which often recognized improver's rights.

The Court's judgment ignored the immunity. Freedom from levy and involuntary alienation is a key provision of treaty making with Indians. *Keweenaw Bay Indian Community v. Naftaly*, 452 F.3d 514, 527 (6<sup>th</sup> Cir. 2006). Even federal tax authorities prohibit liens.

for income taxes on “incompetent Indians.” Regs. § 301.6321-1. The code section, 26 U.S.C. § 6321 illustrates the implied preemption it does not mention the Indian exception therefore the general rule applies. The Labor Department has no comparable section.

The trial court’s opinion failed to consider this separate issue of immunity of trust lands from collection or apply Indian law. The collection provisions are beyond the jurisdiction of the court. *Yukon-Kuskokwim Health Corp v. NLRB*, 234 F.3d 714, 718 (C.A.D.C. 2000).

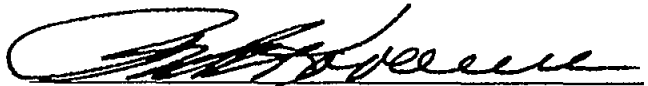
### **Conclusion.**

The object of the Indian treaties was to remove the Indians to an area where they would be free to live and rule themselves. It is another breach of trust for the federal government to go onto Matheson’s Indian owned retail business on trust land within the Puyallup Reservation and dictate how he should pay his employees, including Indian employees, who work for him on the reservation. Independently, it is illegal for the Secretary of Labor

to appoint a receiver to sell his business for any perceived non-compliance. The trial court's decision must be reversed.

DATED this 12<sup>th</sup> day of October 2007.

Respectfully Submitted,

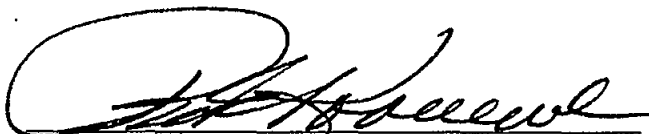
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## STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, counsel hereby certifies that, to the best of his knowledge and belief, there are no cases pending in his Court involving closely related issues.

DATED this 12<sup>th</sup> day of October 2007.

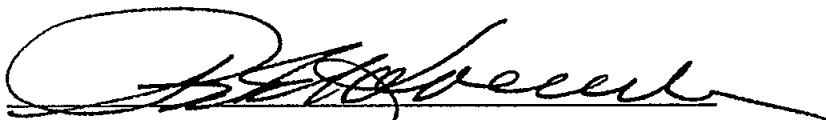
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**BRIEF FORMAT CERTIFICATION PURSUANT TO  
CIRCUIT RULE 32(a)(7)**

Pursuant to Fed.R.App.P. 32(a)(7), I hereby certify that the  
OPENING BRIEF OF APPELLANTS is: proportionately spaced, has  
a typeface of 14 point or more, contains fewer than 6,900 words  
and does not exceed 30 pages (opening and answering briefs).

DATED this 12<sup>th</sup> day of October, 2007.

A handwritten signature in black ink, appearing to read "Robert E. Kovacevich", written over a horizontal line.

ROBERT E. KOVACEVICH

Attorney for Appellants

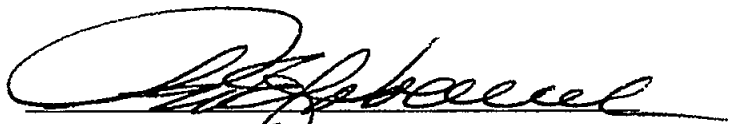
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## **CERTIFICATE OF SERVICE**

I certify that two copies of Appellants' Opening Brief and Excerpts were served on Counsel for Appellee, by mailing the same by regular mail on October 12, 2007, in a postage-paid envelope addressed as follows:

Paul L. Frieden  
U.S. Department of Labor  
Office of Solicitor  
Fair Labor Standards Division  
200 Constitution Ave, N.W., Room N-2716  
Washington, D.C. 20210

Dated this 12<sup>th</sup> day of October, 2007.



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**ADDENDUM**

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ADDENDUM INDEX

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## FRANKLIN PIERCE,

Dec. 26, 1854.

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

Title.

WHEREAS a treaty was made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, on the twenty-sixth day of December, one thousand eight hundred and fifty-four, between the United States of America and the Nisqually and other bands of Indians, which treaty is in the words following, to wit:—

Articles of agreement and convention made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, this twenty-sixth-day of December, in the year one thousand eight hundred and fifty-four, by Isaac I. Stevens, governor and superintendent of Indian affairs of the said Territory, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the Nisqually, Puyallup, Steilacoom, Squawksin, S'Homamish, Steh-chass, T'Peeksin, Squi-aitl, and Sa-heh-wamish tribes and bands of Indians, occupying the lands lying round the head of Puget's Sound and the adjacent inlets, who, for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them.

Cession to  
United States.

Article I. The said tribes and bands of Indians hereby cede, relinquish, and convey to the United States, all their right, title, and interest in and to the lands and country occupied by them, bounded and described as follows to wit: Commencing at the point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott bays; thence running in a southeasterly direction, following the divide between the waters of the Puyallup and Dwamish, or White rivers, to the summit of the Cascade Mountains; thence southerly, along the summit of said range, to a point opposite the main source of the Skookum Chuck Creek; thence to and down said creek, to the coal mine; thence northwesterly, to the summit of the Black Hills; thence northerly, to the upper forks of the Satsop River; thence northeasterly, through the portage known as Wilkes's Portage, to Point Southworth, on the western side of Admiralty Inlet; thence around the foot of Washou Island, easterly and southeasterly, to the place of beginning.

Reservation for  
said tribes.

Article II. There is, however, reserved for the present use and occupation of the said tribes and bands, the following tracts of land, viz.: The small island called Klah-che-min, situated opposite the mouths of Hammersley's and Totten's inlets, and separated from Hartstene Island by Peale's Passage, containing about two sections of land by estimation; a square tract containing two sections, or twelve hundred and eighty acres, on Puget's Sound, near the mouth of the She-nah-nam Creek, one mile west of the meridian line of the United States land survey, and a square tract containing two sections, or twelve hundred and eighty acres, lying on the south side of Commencement Bay; all which tracts shall be

A-1

set apart, and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the tribe and the superintendent or agent. And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them. In the mean time, it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied with the permission of the owner or claimant. If necessary for the public convenience, roads may be run through their reserves, and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them.

Removal there-  
to.Roads may be  
constructed.

ARTICLE III. The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands: *Provided, however,* That they shall not take shell fish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding horses, and shall keep up and confine the latter.

Rights to fish.

ARTICLE IV. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of thirty-two thousand five hundred dollars, in the following manner, that is to say: For the first year after the ratification hereof, three thousand two hundred and fifty dollars; for the next two years, three thousand dollars each year; for the next three years two thousand dollars each year; for the next four years fifteen hundred dollars each year; for the next five years twelve hundred dollars each year, and for the next five years one thousand dollars each year; all which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

Payments for  
said cession.

How applied.

ARTICLE V. To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land, for cultivation, the United States further agree to pay the sum of three thousand two hundred and fifty dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve.

Expense of re-  
moval, &c.

ARTICLE VI. The President may hereafter, when in his opinion the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands. And he may further, at his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President, and payment be made accordingly therefor.

Removal from  
said reservation.

Art. VI. p. 1044.

ARTICLE VII. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

Annuities not  
to be taken for  
debts.

Stipulations respecting conduct of Indians.

ARTICLE VIII. The aforesaid tribes and bands acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and other Indians to the government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as that prescribed in this article, in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

Intemperance.

ARTICLE IX. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same; and, therefore, it is provided, that any Indian belonging to said tribes, who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Schools, shops, &c.

ARTICLE X. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support, for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands, in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer, for the term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said general agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of the said school, shops, employees, and medical attendance, to be defrayed by the United States, and not deducted from the annuities.

Slaves to be freed.

ARTICLE XI. The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

Trade out of the limits of the U. S. forbidden.

ARTICLE XII. The said tribes and bands finally agree not to trade at Vancouver's Island, or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

Foreign Indians not to reside on reservation.

ARTICLE XIII. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

Treaty, when to take effect.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian Affairs, and the undersigned chiefs, headmen, and delegates of the aforesaid tribes and bands, have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS,

[L. S.]

Governor and Superintendent Territory of Washington.

QUI-EE-METL,  
SNO-HO-DUMSET,  
LESH-HIGH,

his x mark. [L. S.]  
his x mark. [L. S.]  
his x mark. [L. S.]

SLIP-O-ELM,	his x mark.	[L. S.]
KWI-ATS,	his x mark.	[L. S.]
STEE-HIGH,	his x mark.	[L. S.]
DI-A-KEH,	his x mark.	[L. S.]
HI-TEN,	his x mark.	[L. S.]
SQUA-TA-HUN,	his x mark.	[L. S.]
KAHK-TSE-MIN,	his x mark.	[L. S.]
SONANO-O-YUTL,	his x mark.	[L. S.]
KL-TEHP,	his x mark.	[L. S.]
SAHL-KO-MIN,	his x mark.	[L. S.]
T'BET-STO-BEE-BIT,	his x mark.	[L. S.]
TCHA-HOOS-TAN,	his x mark.	[L. S.]
KE-CHA-HAT,	his x mark.	[L. S.]
SPEE-PEH,	his x mark.	[L. S.]
SWE-YAHEM,	his x mark.	[L. S.]
CHAH-ACHSE,	his x mark.	[L. S.]
PICH-KEHD,	his x mark.	[L. S.]
S'KLAH-O-SUM,	his x mark.	[L. S.]
SAH-LE-TATL,	his x mark.	[L. S.]
SEE-LUP,	his x mark.	[L. S.]
E-LA-KAH-KA,	his x mark.	[L. S.]
SLUG-YEH,	his x mark.	[L. S.]
HI-NUK,	his x mark.	[L. S.]
MA-MO-NISH,	his x mark.	[L. S.]
CHEELS,	his x mark.	[L. S.]
KNUTCANU,	his x mark.	[L. S.]
BATS-TA-KOBE,	his x mark.	[L. S.]
WIN-NE-YA,	his x mark.	[L. S.]
KLO-OUT,	his x mark.	[L. S.]
SE-UCH-KA-NAM,	his x mark.	[L. S.]
SKE-MAH-HAN,	his x mark.	[L. S.]
WUTS-UN-A-PUM,	his x mark.	[L. S.]
QUUTS-A-TADM,	his x mark.	[L. S.]
QUUT-A-HEH-MTSN,	his x mark.	[L. S.]
YAH-LEH-CHN,	his x mark.	[L. S.]
TO-LAHL-KUT,	his x mark.	[L. S.]
YUL-LOUT,	his x mark.	[L. S.]
SEE-AHTS-OOT-SOOT,	his x mark.	[L. S.]
YE-TAHKO,	his x mark.	[L. S.]
WE-PO-IT-EE,	his x mark.	[L. S.]
KAH-SLD,	his x mark.	[L. S.]
LA'H-HOM-KAN,	his x mark.	[L. S.]
PAH-HOW-AT-ISH,	his x mark.	[L. S.]
SWE-YEHM,	his x mark.	[L. S.]
SAH-HWILL,	his x mark.	[L. S.]
SE-KWAHT,	his x mark.	[L. S.]
KAH-HUM-KLT,	his x mark.	[L. S.]
YAH-KWO-BAH,	his x mark.	[L. S.]
WUT-SAH-LE-WUN,	his x mark.	[L. S.]
SAH-BA-HAT,	his x mark.	[L. S.]
TEL-E-KISH,	his x mark.	[L. S.]
SWE-KEH-NAM,	his x mark.	[L. S.]
SIT-OO-AH,	his x mark.	[L. S.]
KO-QUEL-A-CUT,	his x mark.	[L. S.]
JACK,	his x mark.	[L. S.]
KEH-KISE-BE-LO,	his x mark.	[L. S.]
GO-YEH-HN,	his x mark.	[L. S.]

SAH-PUTSH, . . . his x mark. [L. S.]  
 WILLIAM, . . . his x mark. [L. S.]

Executed in the presence of us:—

M. T. SIMMONS,  
*Indian Agent.*  
 JAMES DOTY,  
*Secretary of the Commission.*  
 C. H. MASON,  
*Secretary Washington Territory.*  
 W. A. SLAUGHTER,  
*1st Lieut. 4th Infantry.*  
 JAMES McALISTER,  
 E. GIDDINGS, jr.,  
 GEORGE SHAZER,  
 HENRY D. COCK,  
 S. S. FORD, jr.,  
 JOHN W. McALISTER,  
 CLOVINGTON CUSHMAN,  
 PETER ANDERSON,  
 SAMUEL KLADY,  
 W. H. PULLEN,  
 P. O. HOUGH,  
 E. R. TYRALL,  
 GEORGE GIBBS,  
 BENJ. F. SHAW, *Interpreter,*  
 HAZARD STEVENS.

And whereas the said treaty having been submitted to the Senate of the United States, for its constitutional action thereon the Senate did, on the third day of March, one thousand eight hundred and fifty-five, advise and consent to the ratification of its articles by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,

"March 3, 1855.

Consent of  
 Senate.

"Resolved, (two-thirds of the senators present concurring) That the Senate advise and consent to the ratification of the articles of agreement and convention made and concluded on the She-nah-nam, or Medicine Creek in the Territory of Washington, this twenty-sixth day of December, in the year one thousand eight hundred and fifty-four, by Isaac I. Stevens, governor and superintendent of Indian affairs of the said Territory, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the Nisqually, Puyallup, Stehacom, Squawkin, S'Homamish, Steh-chass, T'Peeksin, Squi-aitl, and Sa-heh-wamish tribes and bands of Indians occupying the lands lying round the head of Puget's Sound and the adjacent inlets, who, for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them:

Attest:

ASBURY DICKINS,

"Secretary."

Now, therefore, be it known that I, FRANKLIN PIERCE, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the third day of March, one thousand eight hundred and fifty-five, accept, ratify, and confirm the said treaty.

TREATY WITH NISQUALLY, &c. Dec. 26, 1854.

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In testimony whereof, I have caused the seal of the United States to be hereto affixed, having signed the same with my hand.

[L. S.] Done at the city of Washington, this tenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth.

FRANKLIN PIERCE.

By the President:

W. L. MARCOT, *Secretary of State.*

VOL. X. TREATY.—143.

# Agreement

between

the Puyallup Tribe of Indians,  
local Governments in Pierce County,  
the State of Washington,  
the United States of America,  
and certain private property owners.

August 27, 1988

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## AGREEMENT

### PURPOSE AND SCOPE OF AGREEMENT; PARTIES

This Agreement establishes a framework for cooperation and a mutually beneficial future for the community. The Agreement: (1) adds to the Tribe's land base and provides resources for economic development; (2) provides each enrolled adult member of the Tribe with funds to meet personal needs, (3) provides resources for the Tribe to meet its members' health, education, and social needs; (4) provides for substantial restoration of the fishery resource, and allows for future development while lessening impacts on fisheries; (5) provides for significant employment and training opportunities for Puyallup Tribal members; (6) provides funds for land acquisition and development, and small business assistance; (7) provides for construction of Blair Project; (8) resolves conflicts over governmental jurisdiction; and (9) resolves all land claims by the Puyallup Indian Tribe, except as reserved in this Agreement.

This is an agreement between the Puyallup Indian Tribe and the United States, the State of Washington, and the signatory local governments and private parties. The Agreement will become effective when the steps shown in Section X. have been completed. At that time, this document and the documents specified in Section X. will become the Agreement of the parties.

Throughout the negotiations leading to this Agreement, both sides had the benefit of legal counsel and technical consultants. It is therefore agreed that all parties had the necessary resources to understand and make the difficult decisions required.

The following are the parties to this Agreement:

1. United States of America,
2. Puyallup Indian Tribe
3. State of Washington
4. Port of Tacoma
5. Pierce County
6. City of Tacoma
7. City of Fife
8. City of Puyallup
9. Union Pacific Railroad Company
10. Burlington Northern Inc.
11. Commencement Bay Tideland Owners Committee, a non-profit corporation
12. Riverbed Owners Committee



All parties recognize that this Agreement cannot reverse or erase all of the injustices and problems that have occurred, and no one pretends that it does. Instead, the parties, although mindful of the past, have negotiated this Agreement to allow the Tribe and its members to provide themselves a secure future, to give greater certainty to Indians and non-Indians alike, and to encourage a cooperative relationship which will reduce the danger of continued injustice and continuing conflicts in the future.

I. SETTLEMENT LANDS

A. Property Conveyed Other Than Current Riverbed

The Tribe will receive an estimated 899 acres of land. Those properties and certain improvements have an estimated current value of \$37,460,000. Legal descriptions, improvements, restrictions and encumbrances are contained in Document 1. Two location drawings of the properties are included in this section.

Blair Waterway Property

The Tribe will receive 43.4 acres fronting on the Blair Waterway. The value of this property will increase substantially with completion of the Blair Project.

Blair Backup Property

The Tribe will receive 85.2 acres located between Taylor Way and Alexander Avenue, together with the buildings on the property. This property will retain its current designation as a Foreign Trade Zone. The value of this property will increase substantially with completion of the Blair project.

Inner Hylebos Property

The Tribe will receive 72.9 acres of property on the Inner Hylebos, including a marina and a log storage site.

Upper Hylebos Property

The Tribe will receive 5.9 acres of property located at the head of the Hylebos Waterway.

Union Pacific Property (Fife)

The Tribe will receive 57 acres, subject to an easement for a roadway of approximately 4 acres. The Tribe will have an option to buy an additional 22 acres of land at its appraised fair market value.

jurisdiction shall be determined as provided in federal law.

b. Except as otherwise provided in this Agreement, the Tribe agrees not to assert or attempt to assert any type of jurisdiction and governmental authority, existing or potential, including but not limited to the power to tax, as to (a) non-trust lands; (b) any activity on non-trust lands; (c) any non-Indian individual or business, on non-trust lands.

c. The settlement lands, including the Outer Hylebos parcel conveyed to the Tribe by the Terminal-3 Agreement with the Port, shall have on-reservation status; forest, recreation and cultural lands shall have off-reservation status. The reservation status of other lands shall be as provided in federal law.

d. The parties agree that all claims of ownership and governmental jurisdiction by the Tribe over the Initial Reservation or Intended Reservation on the south side of Commencement Bay will be terminated and extinguished by this Agreement.

e. The Tribe retains its authority under the Indian Child Welfare Act.

f. Notwithstanding any other provision of this Agreement, application of criminal law, family law and the Tribe's authority over its members and other Indians remains unchanged.

g. The Tribe retains and nothing in this Agreement shall affect the Tribe's status as an Indian Tribal government for purposes of the Indian Governmental Tax Status Act, 26 U.S.C. §7871, et seq, including for purposes of issuing tax exempt bonds.

2. Tribal Jurisdiction and Governmental Authority - Fisheries

a. This Agreement does not limit the Tribe's authority to prevent negative impacts on the fishery through the federal courts or federal, State and local permitting procedures, subject to Section IV of the Agreement. However, the Tribe will not exercise jurisdiction and governmental

Effective: [See Text Amendments]

United States Code Annotated Currentness

Title 25. Indians

Chapter 5. Protection of Indians

→ § 177. Purchases or grants of lands from Indians

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of \$1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

CREDIT(S)

(R.S. § 2116.)

HISTORICAL AND STATUTORY NOTES

Codifications

R.S. § 2116 was from Act June 30, 1834, c. 161, § 12, 4 Stat. 730.

CROSS REFERENCES

Inapplicability of this section to--

Catawba Indian tribe, see 25 USCA § 941K.

Indians in State of Maine, see 25 USCA § 1724.

Patents to be held in trust; descent and partition, see 25 USCA § 348.

LAW REVIEW COMMENTARIES

Aboriginal title: the special case of California. Bruce S. Flushman and Joe Barbieri. (1986) 17 Pac.L.J. 391

Implications of *Summa Corporation* on the property rights of the eastern American Indians. Note, 22 Cal.W.L.Rev. 385 (1986).

Leasing Indian water off the reservation: A use consistent with the reservation's purpose. Lee Herold Storey, 76 Cal.L.Rev. 179 (1988).

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