

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

SKOKOMISH INDIAN TRIBE, a federally
recognized Indian tribe,

Plaintiff,

v.

PETER GOLDMARK, Washington State
Commissioner of Public Lands,
Administrator for the Department of Natural
Resources, and Member of the Board of
Natural Resources; LENNY YOUNG,
Supervisor for the Department of Natural
Resources; THOMAS DELUCA, Member of
the Board of Natural Resources; RANDY
DORN, Member of the Board of Natural
Resources; F. LEE GROSE, Member of the
Board of Natural Resources; DANIEL
BERNARDO, Member of the Board of
Natural Resources; JAY INSLEE, Member
of the Board of Natural Resources; BOB
FERGUSON, Attorney General for the State
of Washington; MICHAEL DORCY
Prosecutor for Mason County, State of
Washington; RUSSELL D. HAUGE
Prosecutor for Kitsap County, State of

NO:

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF

COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

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Washington; SCOTT W. ROSEKRANS
Prosecutor for Jefferson County, State of
Washington; H. STEWARD MENEFEE
Prosecutor for Grays Harbor County, State of
Washington; DEBORAH KELLY
Prosecutor for Clallam County, State of
Washington; JON TUNHEIM Prosecutor for
Thurston County, State of Washington; PHIL
ANDERSON, Director of the Washington
Department of Fish and Wildlife; BRUCE
BJORK, Assistant Director of the
Washington Department of Fish and Wildlife
and Chief of WDFW Enforcement; JAY
KEHNE, Member of the Washington Fish
and Wildlife Commission; LARRY
CARPENTER, Member of the Washington
Fish and Wildlife Commission; BRADLEY
SMITH, Member of the Washington Fish
and Wildlife Commission; ROLLAND
SCHMITTEN, Member of the Washington
Fish and Wildlife Commission; CONRAD
MAHNKEN, Member of the Washington
Fish and Wildlife Commission; DAVID
JENNINGS, Member of the Washington
Fish and Wildlife Commission.

Defendants.

INTRODUCTION

1. Plaintiff, Skokomish Indian Tribe, at Hahdskus, or Point No Point, Suquamiah Head, in the Territory of Washington on January 26, 1855 concluded treaty negotiations with Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, who was acting on the part of the United States, ("Treaty of Point No Point of January 26, 1855"). 12 Stat. 933 (Ratified March 8, 1859 and Proclaimed April 29, 1859). The Treaty of Point No Point of January 26, 1855 is the supreme law of the law. U.S. Const. art. VI, cl. 2.

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2. Plaintiff, Skokomish Indian Tribe, brings this action to protect the privilege of hunting and gathering roots and berries on open and unclaimed lands, guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855, ("Privilege"). 12 Stat. 933.

3. Plaintiff, Skokomish Indian Tribe's territory as related to the Privilege of hunting and gathering includes:

- a. All lands within the Twana territory; and
- b. All lands within the ceded area boundaries established in Article 1 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933); and
- c. All lands within the exterior boundaries of Plaintiff, Skokomish Indian Tribe's Reservation; and
- d. All lands within Plaintiff, Skokomish Indian Tribe's traditional use areas; and
- e. All other lands not within the exclusive hunting and gathering territories of other Indian tribes or bands recognized by the Secretary of the Interior.

("Territory").

4. Defendants have and continue to unlawfully interfere with Plaintiff, Skokomish Indian Tribe's lawful exercise of this Privilege.

5. This unlawful interference, includes but is not limited to, Defendants' conduct and promulgation of policies, procedures, rules, regulations and laws, however characterized, which resulted and continue to result in denial of lawful access to Plaintiff, Skokomish Indian Tribe's Territory and use of resources located thereon.

1 giving rise to the claim occurred, or a substantial part of property that is the subject of the action
 2 is situated within the judicial district.

3 4 **PLAINTIFF**

5 12. Plaintiff, Skokomish Indian Tribe, is an Indian tribe with a governing body duly
 6 recognized by the Secretary of the Interior. 77 Fed. Reg. 155 (Aug. 10, 2012). Plaintiff,
 7 Skokomish Indian Tribe, is re-organized under the Indian Reorganization Act of June 18, 1934.
 8 48 Stat. 984, 25 U.S.C. § 476. Plaintiff, Skokomish Indian Tribe, operates under its Constitution
 9 and by-laws first adopted on April 2, 1938, and approved by the Secretary of the Interior May 3,
 10 1938, amended January 15, 1980, as approved by the Secretary of the Interior March 17, 1980.
 11 Plaintiff, Skokomish Indian Tribe, is the successor in interest to the Skokomish and Twana
 12 people. In the Treaty of Point No Point of January 26, 1855, the name of the Skokomish was
 13 spelled Sko-ko-mish and name of the Twana was spelled Too-an-hooch. The Twana were
 14 people of the distinctive Coast Salish language group comprised of nine village communities.
 15 The village communities included Dabop, Dosewallips, Duckabush, Duhlelap, Hoodsport,
 16 Quilcene, Skokomish, Tahuya and Vance Creek. Plaintiff, Skokomish Indian Tribe, is a
 17 signatory to the Treaty of Point No Point of January 26, 1855, ("Treaty of Point No Point"). 12
 18 Stat. 933 (Ratified March 8, 1859 and Proclaimed April 29, 1859). The Plaintiff, Skokomish
 19 Indian Tribe's Reservation is further defined by the Executive Order of February 25, 1874.
 20 Exec. Order (Feb. 25, 1974).

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DEFENDANTS

13. The Department of Natural Resources for Washington State (“DNR”) was created pursuant to RCW 43.30.030 and consists of an Administrator (“Administrator for DNR”), a Supervisor (“Supervisor for DNR”) and Board of Natural Resources (“Board”). DNR is authorized by statute to exercise all of the powers, duties and functions now vested in the Washington State Commissioner of Public Lands. RCW 43.30.411.

14. RCW 43.12.065 further authorizes:

- (1) For the promotion of the public safety and the protection of public property, the department of natural resources may, in accordance with chapter 34.05 RCW, issue, promulgate, adopt, and enforce rules pertaining to use by the public of state-owned lands and property which are administered by the department.
- (2)(a) Except as otherwise provided in this subsection, a violation of any rule adopted under this section is a misdemeanor.
 - (b) Except as provided in (c) of this subsection, the department may specify by rule, when not inconsistent with applicable statutes, that violation of such a rule is an infraction under chapter 7.84 RCW. However, any violation of a rule relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.
 - (c) Violation of such a rule equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.
- (3) The commissioner of public lands and those employees as the commissioner may designate shall be vested with police powers when enforcing:
 - (a) The rules of the department adopted under this section;
 - (b) The civil infractions created under RCW 79A.80.080; or
 - (c) The general criminal statutes or ordinances of the state or its political subdivisions where enforcement is necessary for the protection of state-owned lands and property.
- (4) The commissioner of public lands may, under the provisions of RCW 7.84.140, enter into an agreement allowing employees of the state parks and recreation commission and the department of fish and wildlife to enforce certain civil infractions created under this title.

1 15. Defendant Peter Goldmark is the Washington State Commissioner of Public
2 Lands, Administrator for DNR and member of the Board. Defendant Peter Goldmark is sued in
3 his official capacity. Defendant Peter Goldmark's authority is derived in part from W.A. Const.
4 art. III, § 1 and 23, RCW Ch. 7.84, 43.12.010, 43.12.065, 43.30.030, 43.30.105, 43.30.155,
5 43.30.215, 43.30.411, 43.30.421, Ch. 43.30 and Ch. 37.12.

6 16. Defendant Peter Goldmark as the Washington State Commissioner of Public
7 Lands is authorized to, "exercise such powers and perform such duties as are prescribed by law."
8 W.A. Const. art. III, § 1 and 23; RCW 43.12.010.

9 17. Defendant Peter Goldmark serves as the Administrator for DNR. RCW
10 43.30.105. The Administrator for DNR has responsibility for performance of all the powers,
11 duties, and functions of the department except those specifically assigned to the Board. In the
12 performance of these powers, duties, and functions, the Administrator for DNR shall conform to
13 policies established by the Board, and may employ and fix the compensation of such personnel
14 as may be required to perform the duties of this office. RCW 43.30.421.

15 18. Defendant Lenny Young is the Supervisor for the Department of Natural
16 Resources for the State of Washington and is sued in his official capacity. Defendant Lenny
17 Young's authority is derived in part from RCW Ch. 7.84, 43.12.065, 43.30.030, 43.30.155,
18 43.30.411, 43.30.430, Ch. 43.30 and Ch. 37.12. The Supervisor for DNR is appointed by the
19 Administrator for DNR with the advice and consent of the Board. RCW 43.30.155. The
20 Supervisor for DNR serves at the pleasure of the Administrator for DNR. *Id.* The Supervisor for
21 DNR is charged with the direct supervision of DNR's activities as delegated by the administrator;

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organizing DNR, with approval of the Administrator for DNR; employing personnel; and delegating by order any assigned powers, duties, and functions to one or more deputies or assistants, as desired. RCW 43.30.430.

19. Defendant Peter Goldmark is a member of the Board of Natural Resources for the State of Washington and is sued in his official capacity.

20. Defendant Thomas DeLuca is a member of the Board of Natural Resources for the State of Washington and is sued in his official capacity.

21. Defendant Randy Dorn is a member of the Board of Natural Resources for the State of Washington and is sued in his official capacity.

22. Defendant F. Lee Grose is a member of the Board of Natural Resources for the State of Washington and is sued in his official capacity.

23. Defendant Daniel Bernardo is a member of the Board of Natural Resources for the State of Washington and is sued in his official capacity.

24. Defendant Jay Inslee is a member of the Board of Natural Resources for the State of Washington and is sued in his official capacity.

25. Defendant Peter Goldmark, Defendant Thomas DeLuca, Defendant Randy Dorn, Defendant F. Lee Grose, Defendant Daniel Bernardo and Defendant Jay Inslee, members of the Board, derive their authority in part from RCW Ch. 7.84, 43.12.065, 43.30.030, 43.30.155, 43.30.205, 43.30.215, 43.30.411, 43.30.421, Ch. 43.30 and Ch. 37.12. The Board performs duties relating to appraisal, appeal, approval, and hearing functions as provided by law; establishes policies to ensure that the acquisition, management, and disposition of all lands and

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resources within DNR's jurisdiction; and adopts and enforces rules as may be deemed necessary and proper for carrying out the powers, duties, and functions imposed upon it. RCW 43.30.215.

26. Defendant Bob Ferguson is the Attorney General for the State of Washington and is sued in his official capacity. Defendant Bob Ferguson's authority is derived in part from W.A. Const. art. III, § 1 and 21, RCW 43.10.030 and Ch. 37.12. Defendant Bob Ferguson is authorized to represent the state; consult with and advise prosecuting attorneys in matters relating to the duties of their office; consult with and advise the governor, members of the legislature, and other state officers, and when requested, give written opinions upon all constitutional or legal questions relating to the duties of such officers; prepare proper drafts of contracts and other instruments relating to subjects in which the state is interested; and give written opinions, when requested by either branch of the legislature, or any committee thereof, upon constitutional or legal questions. RCW 43.10.030; W.A. Const. art. III, § 1 and 21.

27. Defendant Michael Dorcy is the Prosecutor for Mason County, State of Washington and is sued in his official capacity.

28. Defendant Russell D. Hauge is the Prosecutor for Kitsap County, State of Washington and is sued in his official capacity.

29. Defendant Scott W. Rosekrans is the Prosecutor for Jefferson County, State of Washington and is sued in his official capacity.

30. Defendant H. Steward Menefee is the Prosecutor for Grays Harbor County, State of Washington and is sued in his official capacity.

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1 31. Defendant Deborah Kelly is the Prosecutor for Clallam County, State of
2 Washington and is sued in her official capacity.

3 32. Defendant Jon Tunheim is the Prosecutor for Thurston County, State of
4 Washington and is sued in his official capacity.

5 33. Defendants Michael Dorcy, Russell D. Hauge, Scott W. Rosekrans, H. Steward
6 Menefee, Deborah Kelly and Jon Tunheim derived their authority in part from RCW Ch. 36.27
7 and Ch. 37.12. RCW 36.27.020, empowers the prosecutors to serve as legal advisers to county
8 officers and prepare all instruments of an official nature for their use; represent state and county
9 officials; prosecute and defend all criminal and civil actions in which the state or the county may
10 be a party; and seek to reform and improve the administration of criminal justice and stimulate
11 efforts to remedy inadequacies or injustice in substantive or procedural law.

12 34. The Washington Department of Fish and Wildlife (“WDFW”) consists of the
13 State Fish and Wildlife Commission (“Commission”) and the Director (“Director of WDFW”).
14 RCW 77.04.20. The Commission may delegate to the Director of WDFW any of the powers and
15 duties vested in the Commission. *Id.*

16 35. Defendant Phil Anderson is the Director of the Washington Department of Fish
17 and Wildlife and is sued in his official capacity. Defendant Phil Anderson’s authority is derived
18 in part from RCW Title 77, Ch. 7.84 and Ch. 37.12. The Director of WDFW supervises the
19 administration and operation of the WDFW and performs the duties prescribed by law and
20 delegated by the Commission. RCW 77.04.080. The Director of WDFW carries out the basic
21 goals and objectives prescribed under RCW 77.04.055. *Id.* The Director of WDFW may
22

1 appoint and employ necessary personnel. *Id.* The Director of WDFW may delegate, in writing,
 2 to WDFW personnel duties and powers necessary for efficient operation and administration of
 3 WDFW. *Id.*

4 36. Defendant Bruce Bjork is the Assistant Director of the Washington Department of
 5 Fish and Wildlife and Chief of the Washington Department of Fish and Wildlife Enforcement
 6 and is sued in his official capacity. Defendant Bruce Bjork's authority is derived in part from
 7 RCW Title 77, Ch. 7.84 and Ch. 37.12.

8 37. Defendant Jay Kehne is a member of the Washington Fish and Wildlife
 9 Commission and was appointed on December 6, 2011 with a term commencing January 1, 2011
 10 and ending December 31, 2016. Defendant Jay Kehne is sued in his official capacity.

11 38. Defendant Larry Carpenter is a member of the Washington Fish and Wildlife
 12 Commission and was appointed on December 6, 2011 with a term commencing January 1, 2011
 13 and ending December 31, 2016. Defendant Larry Carpenter is sued in his official capacity

14 39. Defendant Bradley Smith is a member of the Washington Fish and Wildlife
 15 Commission and was appointed on June 18, 2009 with a term commencing June 18, 2009 and
 16 ending December 31, 2014. Defendant Bradley Smith is sued in his official capacity.

17 40. Defendant Rolland Schmitten is a member of the Washington Fish and Wildlife
 18 Commission and was appointed on June 18, 2009 with a term commencing June 18, 2009 and
 19 ending December 31, 2014. Defendant Rolland Schmitten is sued in his official capacity.

41. Defendant Conrad Mahnken is a member of the Washington Fish and Wildlife Commission and was appointed on June 7, 2011 with a term commencing January 1, 2011 and ending December 31, 2016. Defendant Conrad Mahnken is sued in his official capacity.

42. Defendant David Jennings is a member of the Washington Fish and Wildlife Commission and was appointed on June 18, 2009 with a term commencing June 18, 2009 and ending December 31, 2014. Defendant David Jennings is sued in his official capacity.

43. Defendant Jay Kehne, Defendant Larry Carpenter, Defendant Bradley Smith, Defendant Rolland Schmitten, Defendant Conrad Mahnken, Defendant David Jennings, as members of the Commission, derive their authority in part from RCW Title 77, Ch. 7.84 and Ch. 37.12, RCW 77.04.030 and 77.04.040. The Commission's duties are codified in RCW 77.04.055:

- (1) In establishing policies to preserve, protect, and perpetuate wildlife, fish, and wildlife and fish habitat, the commission shall meet annually with the governor to:
 - (a) Review and prescribe basic goals and objectives related to those policies; and
 - (b) Review the performance of the department in implementing fish and wildlife policies.

The commission shall maximize fishing, hunting, and outdoor recreational opportunities compatible with healthy and diverse fish and wildlife populations.
- (2) The commission shall establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy game fish and wildlife.
- ...
- (4) The commission shall have final approval authority for tribal, interstate, international, and any other department agreements relating to fish and wildlife.
- (5) The commission shall adopt rules to implement the state's fish and wildlife laws.
- ...

(7) The commission shall select its own staff and shall appoint the director of the department. The director and commission staff shall serve at the pleasure of the commission.

The Commission has rule making authority under RCW 77.04.090.

FACTUAL BACKGROUND

44. Plaintiff, Skokomish Indian Tribe, has existed from time immemorial, having continuously exercised the rights of self-governance.

45. Central to this right of self-governance is a common principal shared by the Plaintiff, Skokomish Indian Tribe, and all citizens of the United States of America. This common principal is expounded upon in the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness

Declaration of Independence ¶ 2 (U.S. 1776).

46. Plaintiff, Skokomish Indian Tribe, holds sacred these truths to protect the lives of the Skokomish People, guaranteeing their liberty, and right to pursue happiness through preserving traditional practices including the right to hunt and gather.

47. For thousands of years, long before the signing of the Treaty of Point No Point of January 26, 1855 to the present day, Plaintiff, Skokomish Indian Tribe, has hunted and gathered native foodstuffs, food resources and subsistence resources.

(Pre-Treaty Hunting and Gathering)

48. Plaintiff, Skokomish Indian Tribe is the successor in interest to the Skokomish (Sko-ko-mish) and Twana (Too-an-hooch). The Twana were people of the distinctive Coast Salish language group comprised of nine single or extended village communities. The village communities included Dabop, Dosewallips, Duckabush, Duhlelap, Hoodsport, Quilcene, Skokomish, Tahuya and Vance Creek.

49. William W. Elmendorf, an expert in Twana culture, spent many years documenting the Plaintiff, Skokomish Indian Tribe, eventually authoring *The Structure of Twana Culture* and *Twana Narratives*, which are frequently cited learned treatises, from which much of this factual background is drawn. William W. Elmendorf, *The Structure of Twana Culture* (1960); William W. Elmendorf, *Twana Narratives* (1993).

50. The Plaintiff, Skokomish Indian Tribe, was not an agrarian society, but rather hunted and gathered “all native foodstuffs”. These native foodstuffs or food resources included fish, sea mammals, mollusks, waterfowl, land game and vegetable products.

51. Fish and mollusks, as native foodstuffs or food resources, were and currently are addressed in other federal litigation. See *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *United States v. Washington*, 626 F. Supp. 1405 (W.D. Wash. 1985); *United States v. Skokomish*, 764 F.2d 670 (9th Cir. 1985); *United States v. Washington*, 393 F. Supp.2d 1089 (W.D. Wash. 2005); *United States v. Washington*, 573 F.3d 701 (9th Cir. 2009).

52. The Twana that hunted sea mammals, as native foodstuffs or food resources, were considered specialists possessing guardian spirit powers. For example, traditional stories tell of

1 h^wax^{wi}'yəł' who went up to dušu'yay, Tekiu Point, a point about nine miles north of Dewatto,
 2 intending to either gain these special powers or die in the attempt to obtain them. In this pursuit,
 3 h^wax^{wi}'yəł' weighed himself down with some rocks wrapped up in cedar bark and dove into the
 4 water. When he reached the bottom, a door was opened for him. Through the door, he saw a
 5 beautiful land filled with sunlight. Then, mysteriously h^wax^{wi}'yəł' was transported to a canoe
 6 and waves were rolling and rocking him. Two porpoises appeared on opposite sides of the canoe
 7 signifying that h^wax^{wi}'yəł' would now have the power to be a sčə'c'us (porpoise hunter).

8 53. The methods of hunting sea mammals included: spearing and harpooning
 9 porpoises from canoes; trapping, netting and harpooning seals with the Hoodspout people
 10 (čtslal'ałta'təbəx^w), using slaves to gather seals; harpooning sea lions; and beaching whales on
 11 the flats or tidelands as by ta'dəłct and cəl'q^we'l'q^wαB and/or harpooning whales with the big
 12 whale-harpoon shaft Da'k'əwəd.

13 54. Waterfowl hunters also possessed special spirit powers in order to hunt geese,
 14 brant and several species of duck. The methods of hunting waterfowl often consisted of jack
 15 lighting from a canoe at night with a multiple-prong, flat-shafted spear or a square net frame on
 16 the end of a pole spear. Canoes concealed in a brush disguise were frequently employed in duck
 17 hunting.

18 55. Land game hunters were specialists, as well, possessing a guardian-spirit.
 19 Traditional stories tell that during the fall community elk hunts, land game hunters utilized their
 20 spirit power that enabled them to weaken and "slow down" the game.

56. The hunter's chief land game animals included elk and bear (such as hunted by tčə'l'qəd), deer, black bear, beaver, mountain beaver and muskrat. The methods of hunting varied, but some hunters used dogs. These special hunting dogs could be given as payment for services rendered, such as with sx^wa'x^wacał, a Skokomish chief and shaman.

57. Gathered vegetable products principally included fern roots, camas and a number of other roots and tubers, and a wide variety of berries. More specific examples included stinging nettle, spring beauty (miner's lettuce), salmon berry, cattail, sorrel and fiddlehead fern. Often Twana women would also pick blueberries (sł'ı'q'ład) at the south fork (dəx^wsı'q^w) of the Skokomish River during elk hunts.

58. Food-preserving techniques were well developed, and a large portion of all foodstuffs were dried (by means of sun or fire) and/or smoked for winter use. Winter food was almost entirely preserved, the principal winter staples being smoked salmon, smoked and dried salmon and herring roe, smoked seal meat, dried venison (elk and deer), and various preserved vegetable products and clams. Cooking techniques included roasting, stone boiling in cooking baskets (spə'ču), frying on hot rocks and earth-oven baking.

59. The Plaintiff, Skokomish Indian Tribe, also hunted and gathered subsistence resources which included everything from medicines, materials to craft clothing and jewelry, cosmetics and tools, games and toys, houses, household and family items, hunting and fishing gear, musical instruments, tools, trade goods, funeral items and weaponry. Specific examples include:

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- a. Medicines: oil from goose fat as cough medicine; oil from bear grease used for anointing baby's skin; licorice fern as an anti-inflammatory or laxative; salmon berry leaves and bark used to make astringents; and salmon berry leaves to treat burns; sorrel leaves for poultice to treat skin conditions; skunk cabbage roots for a poultice for sore muscles and sprains; boiled skunk cabbage roots as a blood purifier;
- b. Clothing and Jewelry: woven and skin clothing; men's cedar-bark breechclout, cedar-bark or rush vests or sleeveless shirts; men's buckskin shirts, buckskin trousers or leggings, leggings of bearskin, fur caps of bearskin or sewed coonskin; women's short aprons of shredded inner bark of cedar, one-piece fiber skirts of shredded inner cedar bark, square capes of shredded bark; men's and women's moccasins and mittens made of deerskin; necklaces of bone beads, animal claws and teeth;
- c. Cosmetics and Tools: deer fat or marrow from game animals for anointing faces; extracted marrow as hair oil; tweezers of deer horn;
- d. Games and Toys: deer bone buzzer; beaver teeth dice; hand game bones (slaha'l) crafted from deer bones;
- e. Houses: permanent housing constructed from cedar planks and frame; summer houses built around a frame covered with cattail matting; potlatch houses (large mat-covered structures); cedar plank shelving;

- f. Household and Family Items: butt-end elkhorn or maple wood spoons; maple wooden dishes; inner cedar bark as napkins; cedar plank household water containers; fur blankets including those for babies; bear skin infant hammocks; and cedar cradleboards;
- g. Hunting and Fishing Gear: weirs partially constructed with cedar-limb cord (sti'dəwəs); crafted dipnets with cattail fiber string; hand crafted basket traps made with fir poles, cedar-limb cord and vine-maple; pole net shaft made out of fir with a net of sinew, nettle fiber or cattail rush fiber used by waterfowl hunters; composite head harpoons crafted from fir, ironwood, bone, horn with a lashing of wild cherry bark and pitch from jack pine; duck spears crafted with an ironwood prong lashed with wild cherry bark and pitch; paddles made from maple or yew; snowshoes made of vine maple or other pliable wood with rawhide netting used typically for hunting in the Olympic foothills;
- h. Musical Instruments: deer hoof rattles; skin drums of deer hide with a wood frame (usually a vine-maple hoop);
- i. Tools: woodworking wedge crafted from horn or yew; woodworking chisel which was a stone celt set in wood or elkhorn;
- j. Trade Goods: anything crafted; anything hunted or gathered that could be traded to obtain other materials;
- k. Funeral Items: canoe coffins supported on a framework five to six feet above ground;

1 1. Weaponry: war clubs crafted from the lower-leg bone of an elk; short sleeve
2 buckskin shirts, buckskin caps or headbands set about with feathers; Twana yew
3 bows (sta'pcod); cedar and split fir arrow shafts; and ironwood, bone or stone
4 arrow points.

5 60. This hunting and gathering of all native foodstuffs, food resources and subsistence
6 resources took place within Plaintiff, Skokomish Indian Tribe's Territory.

7 61. George Gibbs, a lawyer, whom assisted in the drafting of the Stevens Treaties
8 wrote "Property.—As far as I can gather the views of the Sound tribes, they recognize no
9 individual right to land except actual occupancy. This seems to be respected to this extent, that if
10 a man has cleared a spot of land for cultivation, he can hold it on the return of the season for
11 planting from year to year, as long as he sees fit. . . ***Tribes are, however, somewhat tenacious of***
12 ***territorial right, and well understand their respective limits*** . . . [t]heir local attachments are
13 very strong, as might be inferred with regard to a race having fixed abodes, and they part from
14 their favorite grounds and burial-places with the utmost reluctance." George Gibbs, *Part II*
15 *Tribes of Western Washington and Northwestern Oregon* 186-187 (1877) (Emphasis Added).

16 62. Later, William W. Elmendorf through his extensive research concluded that
17 "Twana attitudes toward ownership of land depended on two principal factors: degree of use,
18 and geographic configurations of watercourses and drainage areas." William W. Elmendorf, *The*
19 *Structure of Twana Culture* 270 (1960).

20 63. An early historical reference to the Plaintiff's, Skokomish Indian Tribe's Territory
21 can be found in George Gibbs' notebook from 1854-1855, which is attached hereto and
22

1 incorporated herein as Exhibit A. George Gibbs wrote as to Skokomish territory, it extends
2 “from Wilkes’ portage N.W. across to the arm of Hood’s Canal, up to the old limits of the
3 Tchimakum, then westerly to the summit of the Coast range, thence southerly to the head of the
4 west branch of the Satsop, down the branch to the main fork, then east to the summit of the
5 Black Hills, then N & E to the place of beginning.” George Gibbs, *Cascade Road-Indian Notes*
6 *1854–1855* (1855).

7 64. An accurate historical map and cite reference key partially detailing the territory
8 and traditional use areas of the Twana, generated by William W. Elmendorf, is attached hereto
9 and incorporated herein as Exhibit B. William W. Elmendorf, *The Structure of Twana Culture*
10 32-55 (1960).

11 65. A color historical map partially detailing the territory and traditional use areas of
12 the Twana is also attached hereto and incorporated by reference herein as Exhibit C. *Skokomish*
13 *Tribe of Indians v. United States of America*, Ind. Cl. Comm. Docket No. 296 (1956) (Claimant’s
14 Exhibit 135).

15 66. In generating the watershed boundaries detailed in Exhibit B and C, William W.
16 Elmendorf found that among the Twana-speaking groups there was concept of “a common
17 Twana Territory which coincided with the drainage area of Hood Canal. Since peoples to the
18 east and southeast also lived on inlets and drainage systems, the Twana felt that one should go
19 ‘halfway to their waters’ in these directions before considering oneself in ‘foreign’ country.
20 There was no concept of clearly defined linear boundaries or frontiers to the Twana country;

boundaries corresponded generally to sometimes extensive watershed areas.” William W. Elmendorf, *The Structure of Twana Culture* 266 (1960).

67. This is consistent with William W. Elmendorf’s testimony before the Indian Claims Commission in 1956, in which he restated a phrase expressed by Twana, “‘We, the Twana, should go halfway to the other people’s waters in hunting,’ or use of the land in berry picking, for example, or any of these other uses for which this interior territory was used. ‘We should go halfway to their waters.’” (Elmendorf Tr. 38:1-5, March 21, 1956, *Skokomish Tribe of Indians v. United States of America*, Ind. Cl. Comm. Docket No. 296).

68. Later in a deposition, William W. Elmendorf restated the watershed territorial principal, “you hunt halfway to their territory, which turned out to mean in specific areas. And one of these was between Suquamish and Hood Canal, the drainage area.” (Elmendorf Dep. 45:25-28, Feb. 25, 1982, *United States v. Washington*, Civil No. 9213 – Phase I).

69. Within this watershed there are numerous historical references to hunting and gathering, including the stories of: h^wax^{wi}’yǝǝ’ whom went up to dušu’yay, Tekiu Point, a point about nine miles north of Dewatto, where he gained the power to be sčǝ’c’us (porpoise hunter); sdǝhu’ytǝd whom had a house at the falls of the Skokomish River on the North Fork where there was good hunting for deer, elk and bear; Skokomish people hunting geese near the mouth of the Skokomish River or Skokomish flats; tčǝl’qǝd whom hunted elk and bear and was čtq’^wǝlq’^we’li; and ta’dǝlct and cǝl’q’^we’l’q’^wǝB whom hunted a whale at the head of Hood Canal.

70. The following specific map points depicted on Exhibit B further link hunting and gathering to geographic constructs:

COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

Skokomish Indian Tribe v. Peter Goldmark et al.

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Skokomish Legal Department
Skokomish Indian Tribe
N. 80 Tribal Center Road
Skokomish Nation, WA 98584
elees@skokomish.org (Email)
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360.877.2104 (Fax)

- a. 20 $\text{dux}^{\text{w}}\text{st}'\text{q}'^{\text{w}}$. The south fork of the Skokomish River. No one lived up this stream, but the Skokomish in a group went up to its headwaters in the autumn for elk hunting. A valley, termed $\text{cul}'\text{i}'\text{q}'^{\text{w}}\text{ət}$, at the head of the south fork was the principal site of these Skokomish community hunts in August and later.
- b. 29 qelqo' , “was a river.” A dry channel said to run from near the mouth of no. 27 to Shelton on Oakland Bay. It was a good place for blueberries.
- c. 33 $\text{t}'\text{b}\alpha'\text{x}^{\text{w}}\text{ay}$, “gooseberry bush.” A site on the canal shore nearly 1 mile west of no. 32, anciently a summer camping place.
- d. 52 $\text{iya}'\text{qs}$, “good point.” Ayock Point and camping site on the north side of the point at the (1939) Stetson Camping Grounds, a little over a mile north of no. 51. This was a good locality for summer hunting, berrying and clam digging.
- e. 54 $\text{dux}^{\text{w}}\text{x}\alpha\text{bxa}'\text{bay}$, “place of horsetail rush”. Hamma Hamma River and a large summer settlement near the mouth, at the site of Eldon. Houses here extended along a sandspit and around a point to the south of the river mouth.
- f. 55 $\text{habi}'\text{bi}\alpha\text{lqo}$, “cascara creek” ($\text{habi}'\text{bay}$, “cascara plant”; $\text{habi}'\text{b}$, “pigeon,” which eats the cascara berries). A small creek and camping site at its mouth, just north of no. 54, near Cummings Point.
- g. 95 $\text{dux}^{\text{w}}\text{si}'\text{k}^{\text{w}}\text{a}'\text{bac}$, (from $\text{si}'\text{k}^{\text{w}}\text{i}'\text{d}$, “pulled bark off tree,” as in getting cedar bark). A good beach and camping site in Dabop Bay, 1 mile north of no. 94.
- h. 99 $\text{sc}\alpha\text{b}'\text{co}'\text{obi}$, “crabapples.” A point south of no. 98, on the east shore of Dabop Bay, with adjacent pleasant camping sites.

- i. 110 c'oyo'k^wələs, "Oregon grape rock" (from c'oyo'x^w, "Oregon grape"). This name may be misrecorded; the correct term for Oregon grape is č'u'yu'x^wələs, and for the plant č'u'yu'x^way'si. A large rock in the canal off the point immediately west of Union.
- j. 131 bəsc'ä'wəł, "having black bear" (cf. no. 177). Bear Creek, the first branch stream to the left, going up no. 130. The entire drainage area of the Union River was Twana berry and hunting territory, as far as the Black Hills back of Bremerton. The latter termed ba'ba'•dit, diminutive of sba'•dit.
- k. 132 slə'lqe' (from ləlqay', "thimbleberry bush"). A stretch of shore on the northside of the south arm of Hood Canal, extending west about ½ mile from a point ½ mile west of the mouth of the Union River (no. 129).
- l. 135 sk'əl•ä', "bogey man, dangerous being." A stretch of shore territory about ½ mile long, running west from a point ¼ mile west of no. 133. The chief feature of this country was a small, dense forest. Human beings had to wait until the little people had finished hunting before they went out themselves.
- m. 140 bəs•əl'α'x^walkut, "having rushes" (səl•α'x^walkut, a long, slim, round-stemmed rush growing in swampy ground, used for mats; not cattail), cf. no. 171. A small point 1 ½ miles west of no. 139, with adjoining shore territory; the point was a camping site. Rushes were gathered there in swampy ground.

- n. 153 q^wəlq^we'li, “cedar trees” (first given as bəsq^we'li, “having cedar tree”; cf. no. 26). Musqueti Point, ½ mile north of no. 152, and the nearby shore territory on either side of the point.
- o. 154 bəsda'k'əwəd, “having a harpoon.” A point (sandbar) and small creek, about 1 mile north of no. 153. The term includes considerable territory on either side of the point. There was an ancient graveyard here where a porpoise hunter was buried with a harpoon stuck upright beside his burial canoe.
- p. 170 yia't•a'w̄di, “salmonberry place” (plural of yita'w̄di, “salmonberry bush”). A locality on and near the shore, 1 mile north of no. 169, where salmonberries were obtained in abundance.
- q. 171 bəs•əla'x^walkut, “having rushes” (cf. no. 140). A small lagoon ½ mile or less south of Misery Point (no. 172). There was a temporary potlatch house of rush mats here at one time, but no winter settlement.
- r. 177 bəsc'ä'w̄l, “having black bear” (cf. no. 131). Salsbury Point, 1 mile west of Port Gamble.

71. In generating the western boundaries detailed in Exhibit B and Exhibit C, William W. Elmendorf concluded “[t]o the west the limits of Twana territory were the sources of the eastward-running streams and the east side of the Olympic watershed.” William W. Elmendorf, *The Structure of Twana Culture* 267 (1960).

72. Further historical accounts establish, the Skokomish and Dosewallips community leaders functioned as leaders (s̄ci'čəla) of communal elk hunts held in the fall by these

1 communities, in the Olympic Mountains. The Dosewallips community is part of the greater
2 Twana Community.

3 73. The Skokomish used to go up the south fork (dəx^wsr'q^w) of the Skokomish River
4 to hunt elk. “Way up past the head of the fork there is a mountain and the elk come down this
5 mountain—good hunting there in August at a place called cɪl'i'q^wət. People would go up as far as
6 they could in canoes and then pack in; it would take two or three days to get in there. And there
7 they camped in a valley, a kind of a prairie between mountains.” William W. Elmendorf, *Twana*
8 *Narratives* 99 (1993).

9 74. While at the south fork (dəx^wsr'q^w) of the Skokomish River during the elk hunt,
10 the women picked blueberries (sɬ'i'q'λad).

11 75. The Skokomish and Dosewallips also “sometimes met and camped together in the
12 same mountain locale and even shared these same spots with parties of Quinault from the west
13 side of the watershed, without any question of delimited community or ‘tribal’ territories being
14 involved.” William W. Elmendorf, *The Structure of Twana Culture* 267 (1960).

15 76. Legend also supports Twana travel to the Olympics, specifically, the “[t]hunder
16 bird was an enormous creature that nested in the Olympic Mountains, caught whales, and carried
17 them to its nesting young. Twana hunters had occasionally happened on old thunder bird nests
18 in the high Olympics and described them as areas littered with the bones of whales.” William
19 W. Elmendorf, *The Structure of Twana Culture* 534 (1960).

20 77. William W. Elmendorf previously testified that “[f]inally I would conclude that a
21 large amount of inland territory was used for relatively few economic operations; berry picking,
22

bear hunting, deer hunting, and elk hunting, supplemented by the hunting of other smaller animals being the principal occupations that went on in any amount in large inland territory.” .” (Elmendorf Tr. 80-81, March 21, 1956, *Skokomish Tribe of Indians v. United States of America*, Ind. Cl. Comm. Docket No. 296).

78. William W. Elmendorf examined territorial and traditional use access and concluded “[a]ny Twana was free to hunt where he pleased within Twana territory. There was no clearly expressed village or individual ownership of hunting lands. On the other hand certain inland areas were customarily made use of for hunting only by personnel of a particular community. These were tracts conveniently located in relation to that community’s winter-village or summer-camp sites.” William W. Elmendorf, *The Structure of Twana Culture* 266 (1960).

79. “Much the same attitude existed toward economic use of the canal and of canal-shore sites as toward hunting on inland territory. Hood Canal was ‘the Twana’s salt water’ (tuwa’duxqlsi ‘dak^w), and members of any Twana group were free to use any part of it, notwithstanding the customary summer use of certain shore sites by personnel of particular villages.” William W. Elmendorf, *The Structure of Twana Culture* 266 (1960).

80. “Since territorial limits of the speech community were not clearly defined and corresponded only in a general way with the Hood Canal watershed, there were considerable inland areas where the question of trespass by neighboring non-Twana did not arise. Twana and Sahewamish hunters, for example, used the same country between the south arm of the canal and Oakland Bay without question or conflict. There was, however, a definite dislike of ‘outsiders’

1 persistently intruding, for hunting, on Twana territory far outside their own drainage area. Such
 2 intruders were ‘impolite,’ they ‘didn’t know how to act,’ ‘they hadn’t been brought up right’ . . .
 3 If persistent, intruders might be told to ‘get out and use their own country.’ William W.
 4 Elmendorf, *The Structure of Twana Culture* 267 (1960).

5 81. In a deposition taken in 1982, William W. Elmendorf restated “people that
 6 persistently hunted outside their territory -- and this was land hunting -- were ill bred; they didn’t
 7 know how to behave. And you might very well tell them to go home. There was no indication
 8 in any way of this that there had occurred encroachment on territory which led to fighting.”
 9 (Elmendorf Dep. 46:5-9, Feb. 25, 1982, *United States v. Washington*, Civil No. 9213 – Phase I).
 10 Additionally, he added: “I do have references in my data to people not intruding on other
 11 territory or hurting other people’s feeling for fear of starting what we referred to several times as
 12 a magic fight.” (Elmendorf Dep. 119:17-20, Feb. 25, 1982, *United States v. Washington*, Civil
 13 No. 9213 – Phase I).

14
 15 **(Treaty Negotiation and Conclusion: Reservation of Rights by Treaty)**

16 82. On Thursday, January 25, 1855 a draft treaty was read and interpreted to the
 17 Plaintiff, Skokomish Indian Tribe. A copy of the transcript of the negotiations is attached and
 18 incorporated herein as Exhibit D.

19 83. On Thursday, January 25, 1855, Mr. Shaw the Interpreter “explained to them that
 20 they were not called upon to give up their old modes of living and places of seeking food, but
 21 only to confine their house to the spot.” (Treaty Tr., Jan. 25, 1855).

84. On Friday, January 26, 1855, Governor Stevens addressed the Plaintiff, Skokomish Indian Tribe, as follows: “. . . I trust that from today we shall all be good friends, and you prosperous and happy. The Treaty was read to you last night, you have talked it over. We will now consider it. I think the paper is good and that the Great Father will think so. Are you not my children and also children of the Great Father? What will I not do for my children and what will you not for yours? Would you not die for them? This paper is such as a man would give his children and I will tell you why. This paper gives you a home. Does not a father give his children a home? This paper gives you a school? Does not a father send his children to school? It gives you mechanics and a Doctor to teach and cure you. Is not that fatherly? This paper secures your fish. Does not a father give food to his children? Besides fish *you can hunt, gather roots and berries*. Besides it says you shall not drink whiskey and does not a father prevent his children from drinking the fire water? Besides all this, the paper says you shall be paid for your lands as has been explained to you. In making this paper, I know the Great Father was good to his children, and did not wish to steal their lands. I think the Treaty is good. . . .” (Treaty Tr., Jan. 26, 1855) (Emphasis added).

85. Plaintiff, Skokomish Indian Tribe, at Hahdskus, or Point No Point, Suquamiah Head, in the Territory of Washington on January 26, 1855 concluded treaty negotiations with Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, who was acting on the part of the United States. 12 Stat. 933.

86. The Treaty of Point No Point of January 26, 1855, a copy of which is attached and incorporated by reference herein as Exhibit E, was ratified March 8, 1859, proclaimed April 29, 1859 and is the supreme law of the land. 12 Stat. 933; U.S. Const. art. VI, cl. 2.

87. The United States Constitution provides that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

88. In Article 1 of the Treaty of Point No Point of January 26, 1855, the signatory tribes and bands of Indians, including Plaintiff, Skokomish Indian Tribe, ceded, relinquished, and conveyed 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: “[c]ommencing at the mouth of the Okeho River, on the Straits of Fuca; thence southeastwardly along the westerly line of territory claimed by the Makah tribe of Indians to the summit of the Cascade Range; thence still southeastwardly and southerly along said summit to the head of the west branch of the Satsop River, down that branch to the main fork; thence eastwardly and following the line of lands heretofore ceded to the the United States by the Nisqually and other tribes and bands of Indians, to the summit of the Black Hills, and northeastwardly to the portage known as Wilkes' Portage; thence northeastwardly, and following the line of lands heretofore ceded to the United States by the Dwamish, Suquamish, and other tribes and bands of Indians, to Suquamish Head; thence northerly through Admiralty Inlet to the Straits of Fuca; thence westwardly through said straits to

the place of beginning; including all the right, title, and interest of the said tribes and bands to any land in the Territory of Washington.” 12 Stat. 933.

89. In Article 2 of the Treaty of Point No Point of January 26, 1855, however, certain lands were reserved for present use and occupation by the signatory tribes and bands of Indians, including Plaintiff, Skokomish Indian Tribe, described as: “[t]he amount of six sections, or three thousand eight hundred and forty acres, situated at the head of Hood's Canal, to be hereafter 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 said tribes and bands, and of the superintendent or agent; but, if necessary for the public convenience, roads may be run through the said reservation, the Indians being compensated for any damage thereby done them. It is, however, understood that should the President of the United States hereafter see fit to place upon the said reservation any other friendly tribe or band, to occupy the same in common with those above mentioned, he shall be at liberty to do so.” 12 Stat. 933.

90. President Ulysses S. Grant further issued the Executive Order of February 25, 1874, providing for the creation of the Skokomish Reserve (aka Skokomish Reservation) which was a : “. . . tract of country on Hood's Canal in Washington Territory, inclusive of the six sections situated at the head of Hood's Canal, reserved by treaty with said Indians January 26, 1855 (Stats. at Large, vol. 12, p. 934), described and bounded as follows: Beginning at the mouth of the Skokomish River; thence up said river to a point intersected by the section line between sections 15 and 16 of township 21 north, in range 4 west; thence north on said line to a corner common to sections 27, 28, 33, and 34 of township 22 north, range 4 west; thence due east to the

1 southwest corner of the southeast quarter of the southeast quarter of section 27, the same being
 2 the southwest corner of A. D. Fisher's claim; thence with said claim north to the northwest corner
 3 of the northeast quarter of the southeast quarter of said section 27; thence east to the section line
 4 between sections 26 and 27; thence north on said line to corner common to sections 22, 23, 26,
 5 and 27; thence east to Hood's Canal; thence southerly and easterly along said Hood's Canal to the
 6 place of beginning.” Exec. Order (Feb. 25, 1974) (President Ulysses S. Grant).

7 91. It was also guaranteed in Article 4 of the Treaty of Point No Point of January 26,
 8 1855 that “[t]he right of taking fish at usual and accustomed grounds and stations is further
 9 secured to said Indians, in common with all citizens of the United States; and of erecting
 10 temporary houses for the purpose of curing; together with the privilege of hunting and gathering
 11 roots and berries on open and unclaimed lands. Provided, however, That they shall not take
 12 shell-fish from any beds staked or cultivated by citizens.” 12 Stat. 933.

13 92. After signing of the Treaty of Point No Point of January 26, 1855, M.T. Simmons
 14 in a letter to Governor Isaac I. Stevens dated October 1, 1856 wrote: “. . . The fisheries, the great
 15 source of their support, was their main reliance, and as in all cases their fisheries were confirmed
 16 to them, *besides the privilege of hunting that they before enjoyed, in addition to the land on*
 17 *which the whites were not allowed to encroach*, they seemed to look upon the treaties in the
 18 light they should properly be viewed – *a great gain without a loss*; that is they were *still the*
 19 *possessors of what they before enjoyed*, and the recipient of an annuity sufficient for their wants
 20” M.T. Simmons, *34th Congress 3d Session House of Representatives Ex. Doc. 37*
 21 *Supplemental Estimates – Indian Services* 74 (1857) (Emphasis Added).

93. For many years, the State of Washington failed to honor Plaintiff, Skokomish Indian Tribe's "right of taking fish at usual and accustomed grounds and stations . . . in common with all citizens of the United States", as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 which resulted in historic and on-going litigation to protect it. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

94. Plaintiff, Skokomish Indian Tribe through litigation further defined its rights over other Indian tribes within its usual and accustomed fishing grounds and stations. *United States v. Washington*, 626 F. Supp. 1405 (W.D. Wash. 1985); *United States v. Skokomish*, 764 F.2d 670 (9th Cir. 1985); *United States v. Washington*, 393 F. Supp.2d 1089 (W.D. Wash. 2005); *United States v. Washington*, 573 F.3d 701 (9th Cir. 2009).

(Post-Treaty Hunting and Gathering)

95. Hunting and gathering are self-regulated by the Plaintiff, Skokomish Indian Tribe.

96. The Plaintiff, Skokomish Indian Tribe, enacted various laws for the protection of natural resources including the *Skokomish Tribal On-Reservation and Treaty Hunting Ordinance* along with Annual and Emergency Regulations. S.T.C. 7.03; S.T.C. 7.3.006; S.T.C. 7.3.007.

97. The Skokomish Natural Resources Department is staffed by trained professionals, responsible for: the development and implementation of the standards for the protection of natural resources including fish and wildlife; oversight in forestry, flood control and watershed planning; and compliance with all applicable laws and regulations.

1 98. The Skokomish Public Safety Department is staffed by trained law enforcement
2 professionals and is tasked with civil and criminal enforcement of all applicable laws and
3 regulations.

4 99. The prosecutor and judges for the Skokomish Tribal Courts are licensed attorneys
5 with years of practice experience.

6 100. The Plaintiff, Skokomish Indian Tribe, and its members continue to hunt and
7 gather all native foodstuffs, food resources and subsistence resources unless specifically limited
8 by Plaintiff, Skokomish Indian Tribe's laws and regulations.

9 101. Plaintiff, Skokomish Indian Tribe's Territory as related to the Privilege of hunting
10 and gathering includes:

- 11 a. All lands within the Twana territory; and
12 b. All lands within the ceded area boundaries established in Article 1 of the Treaty
13 of Point No Point of January 26, 1855 (12 Stat. 933); and
14 c. All lands within the exterior boundaries of Plaintiff, Skokomish Indian Tribe's
15 Reservation; and
16 d. All lands within Plaintiff, Skokomish Indian Tribe's traditional use areas; and
17 e. All other lands not within the exclusive hunting and gathering territories of other
18 Indian tribes or bands recognized by the Secretary of the Interior.

**(Defendants' Conduct and Promulgation of Policies, Procedures, Rules, Regulations
and Laws – etc.)**

102. The Washington State Supreme Court in *State v. Buchanan* considered the Treaty of Point Elliot, as applicable to the Nooksack Tribe, and created a tool for analyzing the scope of the privilege of hunting on open and unclaimed lands. *State v. Buchanan*, 138 Wash.2d 186, 207, 978 P.2d 1070, 1080-81 (1999). In summary, that Court concluded that the geographic scope of the hunting right cannot be resolved from the language of a treaty alone and the application of the reservation of rights doctrine is the more legally sound approach to interpreting the hunting rights provision of a treaty. *Id.* Under such an analysis, open and unclaimed lands within the aboriginal hunting grounds of a tribe are reserved under a treaty for hunting by tribal members, so long as the lands remain open and unclaimed. *Id.* The geographic area available for hunting would certainly include the territory ceded to the United States and described in a treaty, and may include other areas if those areas are proven to have been actually used for hunting and occupied by a tribe over an extended period of time. *Id.*

103. The decision in *State v. Buchanan* has created considerable confusion, with even WDFW acknowledging “[t]he court did not provide a formal mechanism to evaluate and determine traditional hunting areas.” Washington Department of Fish and Wildlife, *Tribal Hunting & Co-Management – Geographical Scope of Off-Reservation Hunting Rights*, available at http://wdfw.wa.gov/hunting/tribal/treaty_history.html (lasted visited Jan. 31, 2013).

1 104. WDFW promulgated a map entitled, Tribal Ceded Areas in Washington State,
2 which is attached hereto and incorporated by reference herein as Exhibit F. The map is
3 inaccurate.

4 105. As to “open and unclaimed lands” contained within the exterior boundaries
5 established in Exhibit F, upon which hunting and gathering are permitted, the Washington State
6 Supreme Court has further limited access to publicly-owned lands. *State v. Buchanan*, 138
7 Wash.2d 186, 209, 978 P.2d 1070, 1081-82 (1999); citing *State v. Miller*, 102 Wash.2d 678, 680
8 n. 2, 689 P.2d 81, 82 (1984) (the court held that national forest land is “open and unclaimed”
9 land within the meaning of the treaty); citing *State v. Chambers*, 81 Wash.2d 929, 934, 506 P.2d
10 311, 314 (1973) (this court approved a jury instruction defining “open and unclaimed lands” as
11 “lands which are not in private ownership”). This definition of “open and unclaimed lands” is
12 inaccurate.

13 106. In regards to allocation, “[w]ildlife, fish, and shellfish are the property of the
14 state. . . .” RCW 77.04.012. This claim of absolute ownership by the State of Washington is
15 contrary to existing state and federal law.

16 107. Additionally, the treaty right to hunt, like the treaty right to fish, may only be
17 regulated by the state “in the interest of conservation, provided the regulation meets appropriate
18 standards and does not discriminate against the Indians.” *State v. Buchanan*, 138 Wash.2d 186,
19 208, 978 P.2d 1070, 1081 (1999) (citations omitted).

20 108. The “appropriate standards” requirement obligates the state to prove that its
21 regulation is a “reasonable and necessary conservation measure, and that its application to the
22

Indians is necessary in the interest of conservation.” *State v. Buchanan*, 138 Wash.2d 186, 208, 978 P.2d 1070, 1081 (1999) (citations omitted).

109. *State v. Buchanan*, *State v. Miller*, *State v. Chambers*, and other court decision and laws fail to clearly and accurately define the scope of the Privilege of hunting and gathering roots and berries on open and unclaimed lands as applicable to the Plaintiff, Skokomish Indian Tribe. This lack of and/or inaccurate definition has contributed to and/or resulted in Defendants, in the performance of their official duties, having and continuing to unlawfully interfere with Plaintiff, Skokomish Indian Tribe’s Privilege of hunting and gathering on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933).

110. This unlawful interference, includes but is not limited to, Defendants’ conduct and promulgation of policies, procedures, rules, regulations and laws, however characterized, which resulted and continue to result in denial of lawful access to Plaintiff, Skokomish Indian Tribe’s Territory and use of resources located thereon.

111. As noted, specific instances of unlawful interference include failure to promulgate accurate maps; misclassification of or denial of access to “open and unclaimed lands” within Plaintiff, Skokomish Indian Tribe’s Territory; reduced allocation of resources; failure to protect and conserve resources from overharvest by non-Indians; promotion of a discriminatory scheme of regulating hunting and gathering in favor of non-Indians; and civil and criminal sanctions against Plaintiff, Skokomish Indian Tribe’s members.

FIRST CLAIM FOR RELIEF

(Unlawful Interference with Privilege of Hunting on Open and Unclaimed Lands)

112. Plaintiff, Skokomish Indian Tribe, incorporates by reference, re-alleges and re-states paragraphs 1 through 111.

113. The Defendants have and continue to unlawfully interfere with Plaintiff, Skokomish Indian Tribe's Privilege of hunting on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933).

114. Defendants' conduct and promulgated policies, procedures, rules, regulations and laws, however characterized, which unlawfully interfere with this Privilege are invalid as a matter of federal law.

SECOND CLAIM FOR RELIEF

(Unlawful Interference with Privilege of Gathering Roots and Berries on Open and Unclaimed Lands)

115. Plaintiff, Skokomish Indian Tribe, incorporates by reference, re-alleges and re-states paragraphs 1 through 111.

116. The Defendants have and continue to unlawfully interfere with Plaintiff, Skokomish Indian Tribe's Privilege of gathering roots and berries on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933).

117. Defendants' conduct and promulgated policies, procedures, rules, regulations and laws, however characterized, which unlawfully interfere with this Privilege are invalid as a matter of federal law.

PRAYER FOR RELIEF

118. WHEREFORE Plaintiff, Skokomish Indian Tribe, prays the Court grant the following relief for all claims:

a. A declaratory judgment, pursuant to 28 U.S.C. § 2201:

i. Declaring Plaintiff, Skokomish Indian Tribe, retains the Privilege of hunting and gathering roots and berries on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933); and

ii. Declaring the scope of the Privilege of hunting and gathering roots and berries on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933); and

iii. Declaring the Territory of the Plaintiff, Skokomish Indian Tribe, as to the Privilege of hunting and gathering roots and berries on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933); and

iv. Declaring the exclusive and co-concurrent management authority of Plaintiff, Skokomish Indian Tribe, as to the Privilege of hunting and

gathering roots and berries on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933); and

v. Declaring the allocation of game, roots and berries to Plaintiff, Skokomish Indian Tribe, as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933); and

vi. Declaring any conduct or actions interfering with Plaintiff, Skokomish Indian Tribe's exercise of the Privilege of hunting and gathering roots and berries on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933) to be unlawful; and

b. An injunction, pursuant to 28 U.S.C. § 2202, prohibiting the Defendants, directly or indirectly, from interfering with Plaintiff, Skokomish Indian Tribe's exercise of the Privilege of hunting and gathering roots and berries on open and unclaimed lands as guaranteed by Article 4 of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933) and declared by the Court; and

c. The Court retain jurisdiction to enforce any judgment it granted, including jurisdiction to order the issuance of warrants, incarceration for contempt and award monetary damages; and

d. An award of Plaintiff, Skokomish Indian Tribe's attorney's fees, costs and expenses for prosecution of this action; and

1 e. Relief for nonjoinder of parties; and

2 f. Such other and further relief as the Court deems just and proper.

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4 Dated this 31st day of January, 2013

5 Respectfully submitted,

6 s/Earle David Lees, III, WSBA No. 30017

7 Skokomish Legal Department

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23 COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

24 *Skokomish Indian Tribe v. Peter Goldmark et al.*

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