

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

|                             |   |                               |
|-----------------------------|---|-------------------------------|
| SWINOMISH TRIBAL COMMUNITY, | ) |                               |
|                             | ) |                               |
| Plaintiff,                  | ) | No.                           |
|                             | ) |                               |
| v.                          | ) |                               |
|                             | ) |                               |
| BURLINGTON NORTHERN, INC.,  | ) | COMPLAINT FOR INJUNCTIVE      |
|                             | ) | <u>AND DECLARATORY RELIEF</u> |
| Defendant.                  | ) |                               |
|                             | ) |                               |

The plaintiff, Swinomish Tribal Community, alleges:

1. This Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1362 and 1331. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000.00).

2. Declaratory and injunctive relief is requested pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Plaintiff Swinomish Tribal Community is the successor in interest to certain tribes, bands, and groups of Indians which were parties to the Treaty of Point Elliott. The Swinomish Tribal

1 Senate is duly recognized by the Secretary of the Interior as the  
2 governing body of the Swinomish Indian Reservation and is organized  
3 pursuant to § 16 of the Indian Reorganization Act of June 18, 1934,  
4 48 Stat. 987, 25 U.S.C. § 476.

5 4. Defendant Burlington Northern, Inc. is a corporation  
6 incorporated under the laws of the State of Delaware and is duly  
7 licensed and doing business within the State of Washington as a  
8 railway carrier.

9 5. The Swinomish Indian Reservation was established by  
10 the Treaty of Point Elliott between the United States and the  
11 Dwamish, Suquamish, and other allied and subordinate tribes of  
12 Indians in Washington Territory, dated January 22, 1855, ratified on  
13 March 8, 1859, proclaimed by the President on April 11, 1859.  
14 12 Stat. 927. The Treaty of Point Elliott (Article 2) secured and  
15 confirmed the Swinomish Tribal Community's predecessors in the  
16 possession of a portion of their aboriginal lands described as "the  
17 peninsula at the southeastern end of Perry's Island called  
18 Sh'ais-quihl". The Reservation includes, at a minimum, the western  
19 one-half of the Swinomish Channel on the east and all surrounding  
20 and adjacent tidelands.

21 6. During all times since 1855, the tidelands surrounding  
22 and adjacent to the upland portions of the Swinomish Indian  
23 Reservation were, and are, held in trust by the United States on  
24 behalf of the Swinomish Tribal Community.

25 7. A railway and bridge and appurtenant facilities were  
26 constructed across the Swinomish Channel and the tidelands on the

1 northern portion of the Swinomish Indian Reservation by the Seattle  
2 and Northern Railway Company in 1890. Burlington Northern, Inc. is  
3 the successor in interest to the Seattle and Northern Railway  
4 Company. The railway is presently in use and is maintained and  
5 operated by Burlington Northern, Inc.

6 8. No grant of a right-of-way across the tribally owned  
7 tidelands has been made by the Swinomish Tribal Community or the  
8 United States to defendant Burlington Northern, Inc. or its  
9 predecessors. Burlington Northern, Inc. and its predecessors have  
10 been trespassing on these lands from 1890 to the present.

11 9. By constructing the railway through tribal lands, the  
12 defendant gained the benefit of greatly reduced cost in the  
13 construction and annual maintenance of the railway. Such benefit  
14 would not have been gained if the railway facilities had been  
15 constructed north of the Reservation. As a result of said wrongful  
16 use and occupation of tribal lands, Burlington Northern, Inc. and  
17 its predecessors have been unjustly enriched.

18 10. By constructing the railway through these tribal  
19 tidelands, the defendant severely damaged a prime traditional mussel  
20 and shellfish gathering grounds of the Indians residing on the  
21 Swinomish Indian Reservation.

22 11. Plaintiff has no adequate remedy at law to protect  
23 itself from said future and presently continuing trespasses except  
24 by filing a multiplicity of suits. In addition, there is a grave  
25 danger of irreparable damage to the land and the fishery in Padilla  
26 Bay and the Swinomish Channel, upon which the Swinomish Tribal

1 Community relies as their major source of economic stability, should  
2 a derailment or accident occur.

3 WHEREFORE, plaintiff Swinomish Tribal Community prays for  
4 the following relief against defendant Burlington Northern, Inc.:

5 1. A permanent injunction against the continuing trespass  
6 by defendant;

7 2. A judgment against defendant for the possession of  
8 said tidelands and channel;

9 3. Monetary damages for trespass, unjust enrichment of  
10 the defendant and/or restitution for use and occupation of the land;  
11 and

12 4. For costs and such further and additional relief as  
13 the Court may deem necessary.

14 DATED: July 18<sup>th</sup>, 1978.

15 Respectfully submitted,

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