

No. 17-35336

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

SKOKOMISH INDIAN TRIBE, a federally recognized Indian Tribe, on its own
behalf and as *parens patriae* of all enrolled members of the Indian Tribe,

Plaintiff-Appellant,

v.

LEONARD FORSMAN, Chairman of the Suquamish Tribal Council; et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Western District of Washington

No. 3:16-cv-05639-RBL
The Honorable Ronald B. Leighton
United States District Court Judge

**OPENING BRIEF OF PLAINTIFF-APPELLANT
SKOKOMISH INDIAN TRIBE**

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CORPORATE DISCLOSURE STATEMENT

Appellant Skokomish Indian Tribe, (“Skokomish”), is an Indian tribe with a governing body duly recognized by the Secretary of the Interior. 82 Fed. Reg. 4915, 4918 (January 17, 2017). Accordingly, a corporate disclosure statement is not required by Rule 26.1 of the Federal Rules of Appellate Procedure.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	vi
I. JURISDICTIONAL STATEMENT	1
II. STATEMENT OF ISSUES PRESENTED FOR REVIEW	2
III. ADDENDUM	3
IV. STATEMENT OF THE CASE.....	3
A. Procedural History and Rulings Presented for Review.....	3
B. Treaty History and Interpretation; Statement of Facts.....	4
1. The Treaty of Point No Point.....	5
a. The Treaty of Point No Point Ceded Area.....	6
i. S’Klallam (or Clallam) Territory at Treaty-times	7
ii. Skokomish (or Twana) Territory at Treaty-times.....	8
iii. Chimakum Territory at Treaty-times.....	9
b. Reservation of Rights under the Treaty of Point No Point.....	9
i. Under Article IV the rights and privileges to fish, hunt and gather were secured	10

ii.	Primary Right of Regulation and Exclusion reserved under the Treaty of Point No Point	11
2.	Treaty of Point Elliott and Other Stevens Treaties	13
V.	SUMMARY OF THE ARGUMENT	14
VI.	ARGUMENT	16
A.	Standard of Review	16
B.	The district court erred by determining that the Suquamish Tribal Council Members “are entitled to legislative immunity”	17
C.	The district court erred by dismissing the Suquamish Tribal Council Members from the action on sovereign immunity grounds	26
1.	This action does not operate against the sovereign, nor does it require affirmative actions by the sovereign.....	27
2.	The Suquamish Tribal Council Members engaged in unlawful conduct through actual enforcement and negotiations; this is not merely a “generalized duty”	29
3.	This action is not about the disposition of unquestionably sovereign property	33
D.	The district court erred by granting a dismissal under Rule 19	36
1.	Skokomish’s rights and privileges under the Treaty of Point No Point are fully preserved	37
a.	The Skokomish Indian Tribe reserved rights and privileges under the Treaty of Point No Point.....	39

b.	The boundaries of Skokomish (or Twana) Territory are determined.....	40
c.	Skokomish (or Twana) Territory was long used and occupied by the Skokomish and Twana people	44
d.	Skokomish’s control extends to all of Skokomish (or Twana) Territory	45
e.	Skokomish’s Primary Right is fully preserved	48
2.	The district court erred in its application of Rule 19(a).....	48
a.	The district court can accord complete relief among existing parties	48
b.	No other Indian tribe may legitimately claim an interest in Skokomish (or Twana) Territory	49
3.	The district court erred in its application of Rule 19(b).....	51
a.	There is no prejudice.....	51
b.	The relief is sufficiently narrowly tailored	51
c.	A judgment would be adequate.....	52
d.	No other adequate remedy appears available	52
E.	The district court erred by denying the Skokomish Indian Tribe leave to amend its Complaint	52
VII.	CONCLUSION.....	53
	STATEMENT OF RELATED CASES	55

CERTIFICATE OF COMPLIANCE (FORM 8)

ADDENDUM

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases

<i>Alto v. Black</i> , 738 F.3d 1111 (9th Cir. 2013)	17, 36
<i>AT&T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2011).....	16
<i>Beauchamp v. Anaheim Union High School Dist.</i> , 816 F.3d 1216 (9th Cir. 2016)	39
<i>Bechard v. Rappold</i> , 287 F.3d 827 (9th Cir. 2002)	19, 20
<i>Bowsher v. Synar</i> , 478 U.S. 714 (1986).....	18, 20, 25
<i>Burlington Northern & Santa Fe Ry. Co. v. Vaughn</i> , 509 F.3d 1085 (9th Cir. 2007)	30
<i>Community House, Inc. v. City of Boise, Idaho</i> , 623 F.3d 945 (9th Cir. 2010)	19, 20, 25
<i>Cook et al. v. Northern California Collection Service Inc.</i> , 911 F.2d 242 (9th Cir. 1990)	52
<i>Dawavendewa v. Salt River Project Agr. Imp. and Power Dist.</i> , 276 F.3d 1150 (9th Cir. 2002)	28, 33
<i>Ex parte Young</i> , 209 U.S. 123 (1908).....	26, 29, 32
<i>Free Enterprise Fund v. Public Co. Accounting Oversight Bd.</i> , 561 U.S. 477 (2010).....	18, 20, 24, 25
<i>Green v. Mansour</i> , 474 U.S. 64 (1985).....	27, 32

<i>Hart v. Massanari</i> , 266 F.3d 1155 (9th Cir. 2001)	38, 39, 48, 50
<i>Hoh Indian Tribe et al. v. Baldrige</i> , 2:81-cv-00742 (W.D. Wash. 1981)	49
<i>I.N.S. v. Chadha</i> , 462 U.S. 919 (1983).....	17
<i>Kaahumanu v. County of Maui</i> , 315 F.3d 1215 (9th Cir. 2003)	16
<i>L.A. Cnty. Bar Ass’n v. Eu</i> , 979 F.2d 697 (9th Cir. 1992).	30
<i>Medellin v. Texas</i> , 552 U.S. 491 (2008).....	40
<i>Michigan v. Bay Mills Indian Community</i> , 134 S.Ct. 2024 (2014).....	27, 33, 49, 53
<i>Muckleshoot Tribe v. Lummi Indian Tribe</i> , 141 F.3d 1355 (9th Cir. 1998)	42, 43, 44
<i>Muckleshoot v. Lummi</i> , 234 F.3d 1099 (9th Cir. 2000)	41, 42, 44
<i>Owens v. Kaiser Foundation Health Plan, Inc.</i> , 244 F.3d 708 (9th Cir. 2001)	38
<i>Pistor v. Garcia</i> , 791 F.3d 1104 (9th Cir. 2015)	16, 26
<i>Ruiz v. Snohomish County Public Utility District No. 1</i> , 824 F.3d 1161 (9th Cir. 2016)	38
<i>Salt River Project Agr. Imp. and Power Dist. v. Lee</i> , 672 F.3d 1176 (9th Cir. 2012)	27

<i>State v. Miller</i> , 102 Wn.2d 678, 689 P.2d 81 (1984).....	10
<i>Tulalip v. Suquamish Indian Tribe</i> , 794 F.3d 1129 (9th Cir. 2015)	42, 44
<i>United States v. Adair</i> , 723 F.2d 1394 (9th Cir. 1983)	9, 33, 34, 40, 46
<i>United States v. Confederated Tribes of the Colville Indian Reservation</i> , 606 F.3d 698 (9th Cir. 2010)	16
<i>United States v. Lower Elwha Tribe</i> , 642 F.2d 1141 (9th Cir. 1981)	11, 12, 15, 33, 35, 40, 46, 47, 50
<i>United States v. Muckleshoot Indian Tribe</i> , 235 F.3d 429 (9th Cir. 2000)	43, 44
<i>United States v. Washington</i> , 20 F. Supp. 3d 986 (W.D. Wash. 2013).....	13, 14, 34
<i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash. 1974).....	5, 37, 40
<i>United States v. Washington</i> , 459 F. Supp. 1020 (W.D. Wash. 1975).....	5, 33
<i>United States v. Washington</i> , 626 F. Supp. 1405 (W.D. Wash. 1985).....	5, 7, 9, 35, 47
<i>United States v. Washington</i> , 626 F. Supp. 1405, <i>aff'd</i> , 764 F.2d 670 (9th Cir. 1985).....	8, 9, 11, 12, 15, 22, 33, 34, 41, 42, 43, 44, 45, 46
<i>United States v. Washington</i> , 764 F.2d 670 (9th Cir. 1985)	11, 12, 13, 33, 44, 46, 47, 50
<i>United States v. Washington</i> , 794 F.3d 1129 (9th Cir. 2015)	14, 34

<i>United States v. Winans</i> , 198 U.S. 371 (1905).....	9, 33, 34, 37, 40, 46, 50
<i>Vann v. Kempthorne</i> , 534 F.3d 741 (D.C. Cir. 2008)	29
<i>Verizon Maryland, Inc. v. Public Service Comm’n of Maryland</i> , 535 U.S. 635 (2002).....	27
<i>Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n</i> , 443 U.S. 658 (1979).....	5
<i>Washington v. Washington State Commercial Fishing Vessel Ass’n</i> , 443 U.S. 658 (1979), quoting, <i>Jones v. Meehan</i> , 175 U.S. 1 (1899).....	46
<i>Whole Woman’s Health v. Hellerstedt</i> , 136 S.Ct. 2292 (2016)	38

Statutes and Treaties

10 Stat. 1132	13
12 Stat. 927	13, 33
12 Stat. 927 art. I.....	14, 33
12 Stat. 933	5, 33
12 Stat. 933 art. I.....	6
12 Stat. 933 art. IV	10, 40
12 Stat. 933 art. XIV	6, 40
12 Stat. 939	13
12 Stat. 945	13
12 Stat. 951	13

12 Stat. 957	13
12 Stat. 971	13
25 U.S.C. § 5123	18
28 U.S.C. § 1291	1
28 U.S.C. § 1331	1
28 U.S.C. § 1362	1
28 U.S.C. § 2201	1
28 U.S.C. § 2202	1
Suquamish Code § 14.3.6(b).....	30
Suquamish Code § 14.3.8	30
Suquamish Code § 14.3.11	29
Suquamish Code § 14.3.11(d).....	24, 31
Suquamish Code § 14.3.15	30

Rules

Fed. R. App. P. 4.....	1
Fed. R. Civ. P. 15(a)(2).....	52
Fed. R. Civ. P. 19	16, 36, 48, 49, 51, 52, 53
Fed. R. Civ. P. 25(d)	21
Fed. R. Civ. P. 60	39

Ninth Circuit Rule 28-2.7	3
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Regulations

82 Fed. Reg. 4915 (January 17, 2017)	5
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Constitutional Provisions

Suquamish Const. art. III	18, 19, 20, 25, 31, 32
Suquamish Const. art. VI	18, 20, 21, 31
U.S. Const. art. I, § 1	17, 19
U.S. Const. art. II, § 1, cl. 1	18, 20
U.S. Const. art. II, § 2, cl. 2	20, 25
U.S. Const. art. II, § 3	18, 20
U.S. Const. art. VI, cl. 2	6, 27, 40

Other Authorities

<i>Webster's New Universal Unabridged Dictionary</i> 592 (2 nd ed. 1983)	41
<i>Webster's New Universal Unabridged Dictionary</i> 598 (2 nd ed. 1983)	41

I. JURISDICTIONAL STATEMENT

The District Court for the Western District of Washington had and continues to have jurisdiction pursuant to: 28 U.S.C. § 1331, as this was and is a civil action arising under the Constitution, laws, and/or treaties of the United States; and 28 U.S.C. § 1362, as this also was and is a civil action brought by an Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, and/or treaties of the United States. The district court furthermore had and continues to have jurisdiction to grant a declaratory judgment and injunctive relief, 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

This Court has jurisdiction pursuant to 28 U.S.C. § 1291, as this is an appeal from a final order and/or judgment of the district court. The *Order Granting Defendants' Motion to Dismiss* was filed on March 23, 2017. ER 14. The *Judgment in a Civil Case* was filed on April 20, 2017. ER 10. The *Skokomish's Notice of Appeal* was filed on April 20, 2017 and *Skokomish's Amended Notice of Appeal* was filed on April 21, 2017, both within the time allowed by Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure. ER 11, 7.

The appeal was remanded and the district court entered an *Amended Judgment* on July 24, 2017. ER 4. The *Skokomish's Second Amended Notice of Appeal* was likewise timely filed on July 27, 2017. ER 1.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the district court err by determining that the Suquamish Tribal Council Members “are entitled to legislative immunity because . . . there is no evidence that they engaged in non-legislative functions,” even though, “as the governing body,” they affirmatively acted in their executive capacities, for example, Leonard Forsman (Chairman) on behalf of the Suquamish Tribal Council, executed the laws by directing staff and negotiating with the Washington Department of Fish and Wildlife (“WDFW”) to facilitate the unlawful opening of hunting within portions of Skokomish’s territory that include the Olympics and Hood Canal?

2. Given that collectively the Suquamish Tribal Council Members are “[t]he governing body of the Suquamish Indian Tribe” with direct enforcement authority under Article III of the Suquamish Constitution and they in fact utilized that authority to execute the law and negotiate with WDFW, did the district court err by dismissing, on sovereign immunity grounds, the Suquamish Tribal Council Members from the action because “the Councilmembers’ generalized duty to enforce ordinances is insufficient to subject them to suit under *Ex Parte Young*” and “they lack the requisite enforcement connection to the challenged regulation”?

3. Because it is settled law that Indian Tribes under the Stevens Treaties “reserved rights,” including a primary right over their territories, did the district court

err in dismissing the Complaint for failure to join indispensable parties under Rule 19 of the Federal Rules of Civil Procedure?

4. Did the district court err by denying the Skokomish Indian Tribe leave to amend its Complaint, when the Skokomish Indian Tribe could in fact join additional tribal officers from neighboring Indian tribes or narrow the scope of relief requested?

III. ADDENDUM

Pursuant to Ninth Circuit Rule 28-2.7, pertinent constitutional provisions, treaties, statutes, ordinances, regulations and/or rules are set forth verbatim in an addendum introduced by a table of contents and attached at the end of this brief.

IV. STATEMENT OF THE CASE

A. Procedural History and Rulings Presented for Review

The Appellees (“Suquamish Tribal Council Members,” “Suquamish Fisheries Director” and collectively, “Suquamish Officers”) unlawfully opened hunting within the Treaty of Point No Point Ceded Area and portions of the Olympics and Hood Canal located within Skokomish’s territory. In response to this violation of the Skokomish Indian Tribe’s primary right over its territory, the Skokomish’s *Complaint for Declaratory Judgment and Injunctive Relief* was filed on July 20, 2016. ER 150-171.

The *Defendants' Motion to Dismiss* was filed on September 9, 2016. Dkt. No. 15. Briefing followed, with the *Plaintiff, Skokomish Indian Tribe's Response to Defendants' Motion to Dismiss* being filed on October 3, 2016. Dkt. No. 19. On October 7, 2016, *Defendants' Reply in Support of the Motion to Dismiss* was filed. Dkt. No. 22. Oral argument was held on March 10, 2017 and the transcript was later prepared. Dkt. Nos. 33, 35; ER 30. The district court issued its *Order Granting Defendants' Motion to Dismiss* on March 23, 2017. ER 14. The Suquamish Tribal Council Members were dismissed from the action based on sovereign immunity and legislative immunity grounds. *Id.* The Skokomish Indian Tribe's claims were also dismissed for "failure to join indispensable parties." *Id.* Leave to amend was denied. *Id.* An appeal was timely taken on all of the issues. ER 11, 7, 1.

B. Treaty History and Interpretation; Statement of Facts

Between 1854 and 1856 the United States entered into a series of treaties with Indian tribes ("Stevens Treaties"), securing the rights and privileges to fish, hunt and gather. The Indian tribes also reserved all other rights and privileges, not specifically granted to the United States. In exchange, the Stevens Treaties required that the signatories cede to the United States vast tracts of land ("Ceded Areas"). These Ceded Areas were comprised of the separate territories occupied by each of the signatory Indian tribes.

1. The Treaty of Point No Point

The Skokomish, Twana, Chimakum and S’Klallam 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. Addendum 1; 12 Stat. 933; *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 675 (1979) (“A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations.”). The Skokomish Indian Tribe is the successor in interests to the Skokomish and Twana people. *United States v. Washington*, 384 F. Supp. 312, 376-377 at Finding Nos. 133-134 (W.D. Wash. 1974). The Lower Elwha Tribe, Jamestown S’Klallam Tribe and Port Gamble S’Klallam Tribe are the successors in interests to the S’Klallam (or Clallam) people. *United States v. Washington*, 459 F. Supp. 1020, 1039-1040 at Finding Nos. 256-257 (W.D. Wash. 1975); *United States v. Washington*, 626 F. Supp. 1405, 1433 at Finding No. 326 (W.D. Wash. 1981). The Chimakum are not federally recognized as a separate and distinct Indian tribe and successorship has not yet been determined in *United States v. Washington* (C70-9213). 82 Fed. Reg. 4915 (January 17, 2017).

The product of these negotiations, the self-executing Treaty of Point No Point, was ratified March 8 and proclaimed April 29 in 1859. Addendum 1; 12 Stat. 933;

12 Stat. 933 art. XIV (“This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President of the United States”); U.S. Const. art. VI, cl. 2 (“all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”).

a. The Treaty of Point No Point Ceded Area

The S’Klallam (or Clallam), the Skokomish (or Twana) and the Chimakum (or Tchimakum) each held dominion over three separate and distinct territories during Treaty-times. These successors to signatories to the Treaty of Point No Point, in Article I, ceded title to the lands comprising their territories to the United States, the Ceded Area being described as follows:

. . . the lands and country occupied by them, bounded and described as follows, viz: Commencing 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.

Addendum 2; 12 Stat. 933 art. I.

i. S’Klallam (or Clallam) Territory at Treaty-times

Within the Treaty of Point No Point Ceded Area, the S’Klallam (or Clallam) at Treaty-times resided in S’Klallam (or Clallam) Territory along the shores of the Straits of Juan de Fuca. *United States v. Washington*, 626 F. Supp. at 1469 (“The Clallam villages were situated at the mouths of rivers draining into the Strait of Juan de Fuca.”). It was also determined that “[t]he present day Lower Elwha and Port Gamble Bands of Klallam Indians are descendents of the Klallam groups who, at treaty times, shared a common language and a common culture and inhabited a dozen or more villages along the northern shore of the Olympic Peninsula.” *United States v. Washington*, 626 F. Supp. at 1442 at Finding No. 339. Additionally, “[t]he largest Clallam community lived in the area near the Dungeness River and Sequim Bay.” *United States v. Washington*, 626 F. Supp. at 1433 at Finding No. 330. “The Jamestown Clallam Tribe has evolved directly and without a break from that community, although some Jamestown families came from Clallam Bay and from Port Discovery.” *Id.* Most significantly, “[t]he only reservation specifically set aside by the Point No Point Treaty was located at the southern end of Hood Canal in Skokomish territory, far removed from the Clallam villages and fishing grounds. . . the S’Klallam Tribe never took up residence on that reservation but instead remained basically in or near their aboriginal homeland and fishing grounds.” *United States v. Washington*, 626 F. Supp. at 1433 at Finding No. 329.

ii. Skokomish (or Twana) Territory at Treaty-times

This geographic boundary of Skokomish (or Twana) Territory was expressly and unambiguously determined, as follows:

In his 1854–55 journal, George Gibbs, a lawyer, ethnographer and secretary to the 1855 Treaty Commission, described Skokomish (or Twana) territory as:

extend[ing] from Wilkes’ Portage northwest across to the arm of Hood Canal up to the old limits of the Tchimakum, thence westerly to the summit of the Coast Range, thence southerly to the head of the west branch of the Satsop, down that branch to the main fork, thence east to the summit of the Black Hills, thence north and east to the place of beginning.

(Tr. at Hearing, p. 29–30.) Gibbs’ description of Twana territory embraces Hood Canal and its drainage basin northward along the canal to the point on the west shore now known as Termination Point, which was the southern limit of the Tchimakum shown on a map prepared by Gibbs in 1856. (Ex. SK–SM–4; *see also* Ex. SK–SM–5 for contemporary names.) Gibbs’ description of Twana territory was based on information gathered from Indians at and before the treaty councils and at contemporaneous meetings. The court finds it to be the best available evidence of the treaty-time location of Twana territory.

United States v. Washington, 626 F. Supp. at 1489 at Finding No. 353, *aff’d*, 764 F.2d 670 (9th Cir. 1985). George Gibbs’ description of Skokomish (or Twana) Territory includes a portion of the Hood Canal drainage basin (south of the Tchimakum) and other areas outside of that drainage basin, such as, portions of the Satsop watershed. It was furthermore determined “that the areas within the Skokomish (or Twana) territory described by Gibbs were long used and occupied by the aboriginal Twana people.” *United States v. Washington*, 626 F. Supp. at 1489 at

Finding No. 354, *aff'd*, 764 F.2d 670. These prior findings were supplemented, the court finding “that the foregoing description of Twana territory is also consistent with the customary Indian understanding of territory at treaty times.” *United States v. Washington*, 626 F. Supp. at 1490 at Finding No. 355, *aff'd*, 764 F.2d 670.

iii. Chimakum Territory at Treaty-times

The Chimakum (or Tchimakum) Territory was located “to the north at the mouth of Hood Canal.” *United States v. Washington*, 626 F. Supp. at 1488 at Finding No. 350, *aff'd*, 764 F.2d 670. Their territory, thus, was bounded on the north and northwest by S’Klallam (or Clallam) Territory and on the south by Skokomish (or Twana) Territory. *United States v. Washington*, 626 F. Supp. at 1433, 1442, 1469; *United States v. Washington*, 626 F. Supp. at 1489 at Finding No. 353, *aff'd*, 764 F.2d 670.

b. Reservation of Rights under the Treaty of Point No Point

The Treaty of Point No Point, like the other Stevens Treaties, “was not a grant of rights to the Indians, but a grant of right from them,—a reservation of those not granted.” *United States v. Winans*, 198 U.S. 371, 381 (1905). Additionally, “when a tribe and the Government negotiate a treaty, the tribe retains all rights not expressly ceded to the Government in the treaty so long as the rights retained are consistent with the tribe’s sovereign dependent status.” *United States v. Adair*, 723 F.2d 1394, 1413 (9th Cir. 1983).

i. Under Article IV the rights and privileges to fish, hunt and gather were secured

Article IV of the Treaty of Point No Point provides that:

[t]he right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States; and of erecting temporary houses for the purpose of curing; together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. *Provided, however*, That they shall not take shell-fish from any beds staked or cultivated by citizens.

Addendum 3; 12 Stat. 933 art. IV; *State v. Miller*, 102 Wn.2d 678, 685, 689 P.2d 81, 85 (1984) (“For treaty purposes, there is no operative distinction between the terms ‘right’ and ‘privilege.’”). Regarding Treaty resources that were harvested in Skokomish (or Twana) Territory, it was determined that:

At and before treaty times, the Twana engaged in a variety of fishing and hunting activities in and around Hood Canal and the streams flowing into it. These activities included river and stream fishing for salmon and other species; saltwater fishing in the canal by trolling, spearing and other methods; clamdigging and other shellfish gathering on the tidal zone of the canal; herring-roe harvesting in canal waters; and water-fowl hunting and marine-mammal hunting and trapping on the waters and tide flats of the canal. (Ex. SK–SM–1, pp. 32–35; Ex. 2 to Ex. SK–SM–1, pp. 56–84.) The Twana assigned some of these activities, such as water-fowl and marine-mammal hunting, to specialists who possessed “guardian spirit power” giving them unusual prowess in the activity. (Ex. SK–SM–1, p. 37.) Although river fishing was the most important source of fish for the Twana, all of the other fishing and marine hunting activities noted above were also important to them. (384 F. Supp. at 377; Ex. SK–SM–1, pp. 32–38; Ex. USA 23, p. 8.)

United States v. Washington, 626 F. Supp. at 1489 at Finding No. 352, *aff'd*, 764 F.2d 670. This Court affirmed the lower court's findings, and summarized in its opinion that:

The district court found that all areas of the Hood Canal, and the rivers and streams draining into it were easily accessible by canoe to the Twana and were intensively used by and of great importance to them for food-gathering activities.

United States v. Washington, 764 F.2d at 674.

ii. Primary Right of Regulation and Exclusion reserved under the Treaty of Point No Point

As part of the reserved rights under Article IV of the Treaty of Point No Point, the signatories also reserved the right to exclude other Indians from their individual territories. The Court “infer[red] that the tribes reasonably understood themselves to be retaining no more and no less of a right vis-à-vis one another than they possessed prior to the treaty.” *United States v. Lower Elwha Tribe*, 642 F.2d 1141, 1144 (9th Cir. 1981). The Lower Elwha Tribe was the first of the Point No Point Treaty successors to judicially confirm their reservation of right to exclude other Indians from their territory (i.e. primary right). This Court opined:

The finding that the Lower Elwha Tribe controlled fishing east of the Hoko River rests primarily on the testimony of Dr. Barbara Lane, an anthropologist. She testified that the treaty-time Elwha occupied the area east of the Hoko and considered it their territory.

She stated that the prevailing conception of tribal territory among Northwest Indians comprised the right to exclude members of other tribes.¹

United States v. Lower Elwha Tribe, 642 F.2d at 1142-1143. This is in part consistent with district court determination that:

The Twana and their neighbors, like other treaty-time Indians in the case area, recognized a hierarchy of primary and secondary or permissive use rights, including fishing rights. (Tr. of Hearing, pp. 14-18; finding 12 herein.) The people occupying² a territory held the primary right to fish in the territory.

United States v. Washington, 626 F. Supp. at 1490 at Finding No. 356), *aff'd*, 764 F.2d 670. Furthermore, “the treaty-time Twana’s control of their territory inhered primarily in the network of shared customary understandings concerning territory.” *Id.* at 1491 at Finding No. 357, *aff'd*, 764 F.2d 670. This Court in its opinion affirming the lower court’s findings and determination, particularly noted that:

The customary behavior of treaty-time Indians generally reflected these common understandings through restraint from intrusion on or unauthorized use of others’ territories. The court found, however, that the Twana had readily available means of deterring unauthorized use of their territory, such as social disapproval, magical retaliation, and possibly physical force.

¹ “Dr. Lane amplified this principle by identifying four specific factors to be considered in determining whether a tribe legitimately controlled an area: (1) proximity of the area to tribal population centers, (2) frequency of use and relative importance to the tribe, (3) contemporary conceptions of control or territory, and (4) evidence of behavior consistent with control.” *United States v. Lower Elwha Tribe*, 642 F.2d at 1143 at fn. 4.

² Judge Craig’s reliance on occupancy of a territory to establish a primary right, marks a departure from Dr. Barbara Lane’s four-part inquiry. This Court considered this and determined that, “[t]he court in *Lower Elwha*, however, did not state that these considerations were a rigid formula or test, but rather, indicated they were useful as an analytical tool.” *United States v. Washington*, 764 F.2d at 673.

United States v. Washington, 764 F.2d at 674.

2. Treaty of Point Elliott and Other Stevens Treaties

Other Stevens Treaties included the: Treaty of Medicine Creek³ (10 Stat. 1132); Treaty of Point Elliott⁴ (12 Stat. 927); Treaty of Neah Bay⁵ (12 Stat. 939); Treaty with the Walla Wallas⁶ (12 Stat. 945); Treaty with the Yakamas⁷ (12 Stat. 951); Treaty with the Nez Percé⁸ (12 Stat. 957); and Treaty of Olympia⁹ (12 Stat. 971). In Article I of each of these Stevens Treaties, the Indians ceded vast tracts of land to the United States. In particular, the Suquamish Indian Tribe ceded Suquamish Territory, as described by Dr. Barbara Lane:¹⁰

In 1855 the Suquamish held the west side of Puget Sound from near the mouth of Hood Canal south to Vashon island. Their territory included the land

³ Addendum 14 (includes the Nisqually Indian Tribe, Puyallup Tribe, Squaxin Island Tribe and Muckleshoot Indian Tribe).

⁴ Addendum 7 (currently includes the Lummi Tribe, Nooksack Indian Tribe, Stillaguamish Tribe, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, Suquamish, Sauk-Suiattle Indian Tribe, Tulalip Tribes and Muckleshoot Indian Tribe).

⁵ Addendum 21 (includes Makah Indian Tribe).

⁶ Addendum 27 (includes the Confederated Tribes of the Umatilla Indian Reservation).

⁷ Addendum 34 (includes the Yakama Nation).

⁸ Addendum 41 (includes the Nez Perce).

⁹ Addendum 48 (includes Quinault, Hoh and Quileute).

¹⁰ Dr. Barbara Lane, “Identity, Treaty Status and fisheries of the Suquamish Tribe of the Port Madison Indian Reservation,” Exhibit USA-73, pp. 1-2, 4-5, 11-16 (emphasis added). These passages from Dr. Lane’s report demonstrate that there was competent and reliable evidence before Judge Boldt in 1975” *United States v. Washington*, 20 F. Supp. 3d at 1052.

around Port Madison, Liberty Bay, Port Orchard, Dye's Inlet, Sinclair Inlet and south to Olalla. It also included Bainbridge Island, Blake island, and possibly also the west side of Whidbey Island.

United States v. Washington, 20 F. Supp. 3d 986, 1050 (W.D. Wash. 2013); *see also* *United States v. Washington*, 794 F.3d 1129 (9th Cir. 2015). The Treaty of Point Elliott Ceded Area, encompassing Suquamish Territory, was described as:

. . . the lands and country occupied by them, bounded and described as follows: Commencing at a point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence eastwardly, running along the north line of lands heretofore ceded to the United States by the Nisqually, Puyallup, and other Indians, to the summit of the Cascade range of mountains; thence northwardly, following the summit of said range to the 49th parallel of north latitude; thence west, along said parallel to the middle of the Gulf of Georgia; thence through the middle of said gulf and the main channel through the Canal de Arro to the Straits of Fuca, and crossing the same through the middle of Admiralty Inlet to Suquamish Head; thence southwesterly, through the peninsula, and following the divide between Hood's Canal and Admiralty Inlet to the portage known as Wilkes' Portage; thence northeastwardly, and following the line of lands heretofore ceded as aforesaid to Point Southworth, on the western side of Admiralty Inlet, and thence round the foot of Vashon's Island eastwardly and southeastwardly to the place of beginning, including all the islands comprised within said boundaries, and all the right, title, and interest of the said tribes and bands to any lands within the territory of the United States.

ER 8; 12 Stat. 927 art. I.

V. SUMMARY OF THE ARGUMENT

The Skokomish Indian Tribe reserved "the privilege of hunting and gathering roots and berries on open and unclaimed lands." Addendum 3; 12 Stat. 933 art. IV

(Treaty of Point No Point). Some of those “lands” are embraced and encompassed within Skokomish (or Twana) Territory,¹¹ which extends:

from Wilkes’ Portage northwest across to the arm of Hood Canal up to the old limits of the Tchimakum, thence westerly to the summit of the Coast Range, thence southerly to the head of the west branch of the Satsop, down that branch to the main fork, thence east to the summit of the Black Hills, thence north and east to the place of beginning.

United States v. Washington, 626 F. Supp. at 1489 at Finding No. 353, *aff’d*, 764 F.2d 670. The Skokomish Indian Tribe also retains a primary right over Treaty resources located in its territory. As Dr. Barbara Lane stated, the “prevailing conception of tribal territory among Northwest Indians comprised the right to exclude members of other tribes.” *United States v. Lower Elwha Tribe*, 642 F.2d at 1142-1143.

The Suquamish Officers in their executive capacities unlawfully “opened” Game Management Units which include lands from the Olympics to the “west shore of Hood Canal,” located within Skokomish’s territory. These lands are far removed from Suquamish’s Territory and the Treaty of Point Elliott Ceded Area. Since this unlawful conduct was committed in their executive capacities, the Suquamish Officers are not protected by sovereign immunity or legislative immunity.

¹¹ The Skokomish Indian Tribe is not suggesting that a member of a Treaty tribe cannot hunt outside their Ceded Area or territory. When that member enters another Treaty tribe’s territory that member is simply subject to regulation or exclusion by the local Treaty tribe.

As this is also a matter of enforcement of settled law¹² (i.e., injunctive relief against only the Suquamish Officers), no other person need be joined pursuant to Rule 19. Fed. R. Civ. P. 19. Lastly, a dismissal and the denial of leave to amend was wholly unwarranted. The Skokomish Indian Tribe, if necessary, could have amended its Complaint to satisfy the district court's concerns.

VI. ARGUMENT

A. Standard of Review

“Questions of law are reviewed *de novo* and questions of fact for clear error.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011).

This Court “review[s] the district court’s interpretation of treaties, statutes, and executive orders *de novo*.” *United States v. Confederated Tribes of the Colville Indian Reservation*, 606 F.3d 698, 708 (9th Cir. 2010).

This Court reviews “*de novo* a district court’s decision to grant or deny legislative immunity.” *Kaahumanu v. County of Maui*, 315 F.3d 1215, 1219 (9th Cir. 2003); ER 23-24.

“Issues of tribal sovereign immunity are reviewed *de novo*.” *Pistor v. Garcia*, 791 F.3d 1104, 1110 (9th Cir. 2015); ER 20-23.

¹² See Statement of Related Cases.

This Court reviews a district court's granting of a Rule 19 dismissal motion for abuse of discretion, but reviews the legal conclusions underlying that determination *de novo*. *Alto v. Black*, 738 F.3d 1111, 1125 (9th Cir. 2013); ER 24-28.

B. The district court erred by determining that the Suquamish Tribal Council Members “are entitled to legislative immunity”

The Suquamish Tribal Council Members possess both legislative and executive authority. The district court erred by failing to properly characterize the unlawful conduct committed by the Suquamish Tribal Council Members as executive in nature. To reach this conclusion, it is helpful to draw a comparison between the Constitution of the United States and that of the Suquamish Indian Tribe.

“The [United States] Constitution sought to divide the delegated powers of the new federal government into three defined categories, legislative, executive and judicial, to assure, as nearly as possible, that each Branch of government would confine itself to its assigned responsibility.” *I.N.S. v. Chadha*, 462 U.S. 919, 951 (1983). In this federal system, “[w]hen the Executive acts, it presumptively acts in an executive or administrative capacity as defined in Art. II. And when . . . one House of Congress purports to act, it is presumptively acting within its assigned sphere.” *Id.* at 951-52; U.S. Const. art. I, § 1 (“All legislative Powers herein granted

shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”); *Bowsher v. Synar*, 478 U.S. 714, 726 (1986) (“The structure of the Constitution does not permit Congress to execute the laws.”); U.S. Const. art. II, § 1, cl. 1 (“The executive Power shall be vested in a President of the United States of America.”); U.S. Const. art. II, § 3 (The President “shall take Care that the Laws be faithfully executed.”); *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 501 (2010) (“A key ‘constitutional means’ vested in the President—perhaps *the* key means—was ‘the power of appointing, overseeing, and controlling those who execute the laws.’”).

The Suquamish Indian Tribe is organized in a manner distinct from the federal government, in that it operates under a tribal system, which fuses both the legislative and executive branches into one body. Addendum 55-56, 58-60; Suquamish Const. art. III (“[t]he governing body of the Suquamish Indian Tribe shall be known as the Suquamish Tribal Council.”; Powers of the Governing Body); Suquamish Const. art. V (Elections); Suquamish Const. art. VI (Duties of Officers); 25 U.S.C. § 5123 (Indian Reorganization Act, Organization of Indian tribes). Though fused, the actions taken by the Suquamish Tribal Council Members can be soundly characterized as falling within either the legislative sphere or executive sphere.

When acting as a legislative branch of the Suquamish Indian Tribe, the Suquamish Tribal Council Members draw from specific powers enumerated in

Article III of the Suquamish Constitution that fall within the legislative sphere, for example:

The Council shall have the following powers . . .

- (h) To promulgate . . . ordinances which shall be subject to approval by the Secretary of the Interior governing the conduct of members of the Suquamish Indian Tribe regarding hunting, fishing, and shell fishing.
- (i) To pass ordinances that govern the conduct of all persons and regulate all property within the Tribe's jurisdiction to the fullest extent allowed under applicable Federal law, that provide for the maintenance of law and order and the administration of justice, and that promote the social and economic welfare of the Suquamish people.

Addendum 56; Suquamish Const. art. III (h)-(i); *see also* U.S. Const. art. I, § 1 (legislative authority). This would include the enactment by resolution of the Suquamish Tribal Code Title 14 covering Fishing and Hunting, for which the Suquamish Tribal Council Members would possess legislative immunity. Addendum 63; *Bechard v. Rappold*, 287 F.3d 827, 829 (9th Cir. 2002) (Legislators have immunity when they act “in their legislative capacities, not in their administrative or executive capacities.”); *Community House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 960 (9th Cir. 2010).

Now, when acting as an executive branch, the Suquamish Tribal Council Members draw from other powers enumerated in Article III of the Suquamish Constitution that are definitively within the executive sphere, for example:

The Council shall have the following powers . . .

- (a) To negotiate with Federal, State, and local governments and others on behalf of the Tribe . . .
- (h) To . . . enforce ordinances which shall be subject to approval by the Secretary of the Interior governing the conduct of members of the Suquamish Indian Tribe regarding hunting, fishing, and shell fishing.
...
- (j) To take such actions as are necessary to carry into effect any of the foregoing powers and duties.

Addendum 55-56; Suquamish Const. Art. III (a), (h), (j); *see also* U.S. Const. art. II, § 1, cl. 1 (executive authority); U.S. Const. art. II, § 2, cl. 2 (executive “[p]ower. . . to make Treaties.”); U.S. Const. art. II, § 3 (executive power to “take Care that the Laws be faithfully executed.”); *Free Enterprise Fund*, 561 U.S. at 501 (executive branch’s “power of appointing, overseeing, and controlling those who execute the laws.”). Also, the Suquamish Tribal Council Members that are officers, have additional executive authority derived from Article VI of the Suquamish Constitution. As one example, “[t]he Chairman of the Tribal Council . . . shall . . . exercise any authority specifically delegated to him by the Tribal Council.” Addendum 58; Suquamish Const. art. VI, § 1 (Duties of Officers). When exercising these executive powers, the Suquamish Tribal Council Members cannot legitimately assert legislative immunity. *Bechard v. Rappold*, 287 F.3d at 829; *Community House, Inc. v. City of Boise, Idaho*, 623 F.3d at 960; *Bowsher v. Synar*, 478 U.S. at

726 (“The structure of the Constitution does not permit” the Legislative branch “to execute the laws.”).

Turning to the Complaint, it is expressly alleged that “[t]he authority, including executive and legislative, possessed by” the Suquamish Tribal Council Members “is derived in part from the Constitution and Bylaws of the Suquamish Tribe, Port Madison Reservation, Washington, as Amended.” ER 154 at ¶ 18. The Skokomish also alleged and claimed that the:

Defendants have and continue to engage in unlawful conduct by opening hunting within Skokomish (or Twana) Territory, in violation of Plaintiff, Skokomish Indian Tribe’s primary right to regulate and prohibit treaty hunting and gathering, which is a legally protected interest.

ER 166 at ¶ 50. This “opening” is an act which is taken by the Suquamish Tribal Council Members in their capacity as the executive branch of the Suquamish Indian Tribe, not as the legislative branch. Throughout the years, the sitting members of the Suquamish Tribal Council adopted a course of conduct evidencing a continuity of purpose, the unlawful “opening” of hunting within portions of Skokomish’s territory in the Olympics and Hood Canal. Fed. R. Civ. P. 25(d); ER 148-149.

In review, the evidence establishes that expressly or implicitly the Chairman (Leonard Forsman) was delegated executive authority by the Suquamish Tribal Council to unlawfully advance its hunting claim within Skokomish (or Twana) Territory. ER 122-149; Addendum 58; Suquamish Const. art. VI, § 1. In exercising

this delegated executive authority, the Chairman (Leonard Forsman) co-authored an anthropological report entitled, “Suquamish Hunting in the Olympic Mountains and Hood Canal by Leonard Forsman, M.A. and Dennis Lewarch, M.A.” dated June 17, 2008. ER 122-130. This report was issued by the “Suquamish Tribe” and provided to the Washington State Department of Fish and Wildlife. *Id.* The Chairman (Leonard Forsman) later co-authored a second report generated this time by the Archaeology and Historic Preservation Program Suquamish Tribe entitled, “Suquamish Hunting in the Olympic Mountains and Hood Canal,” dated August 19, 2009 and also submitted to the Washington State Department of Fish and Wildlife. ER 131-147. Both of these reports are fatally flawed, directly conflicting with earlier court determinations.¹³

On September 5, 2014, the Chairman (Leonard Forsman) sent a letter to Michele K. Culver of the Washington Department of Fish and Wildlife, referencing the information provided in 2009 and pressing for the opening of portions of the Olympics and Hood Canal. ER 148-149. This correspondence was sent on the official letterhead of the Suquamish Tribe, Office of Tribal Council. *Id.*

¹³ “At and before treaty times, the Twana Indians occupied nine winter villages situated in the Hood Canal drainage basin. . . No other aboriginal Indian group occupied a village located within the Hood Canal drainage south of the Port Gamble area.” *United States v. Washington*, 626 F. Supp. at 1488 at Finding No. 350, *aff’d*, 764 F.2d at 673-74. “The Twana name for Hood Canal itself was the ‘Twana’s saltwater.’” *Id.* at 1489 at Finding No. 351, *aff’d*, 764 F.2d at 674.

The letter provides in relevant part:

I am in receipt of your August 8, 2014 letter stating that the Washington State Department of Fish and Wildlife (WDFW) is requesting the Suquamish Tribe to provide additional information regarding its treaty hunting in that portion of its traditional hunting area now identified by WDFW as game management units 621 and 624. You propose a meeting . . . I will direct appropriate Suquamish Tribe staff and legal counsel to contact you to discuss the timing, format and agenda for this meeting. . . The Suquamish Tribe will engage WDFW in a dialogue on this matter only because it appears that until a federal court confirms the full breadth of the Suquamish Tribe's hunting rights, duly authorized tribal member hunters are at a risk of interference and criminal prosecution by agents of the state. Our discussions will *not* be about proving our treaty hunting rights. Rather, they will be to demonstrate that we have pre-existing rights, and if the state cannot fully respect our sovereignty until a federal court demands it, the state must at the least exercise its enforcement and prosecutorial discretion in the interim. . . Please contact, Mr. Rob Purser, Director of Fisheries . . . to assist in organizing our meeting, and to confirm that WDFW will permit this discussion to take place without the continued threat of state enforcement interference

ER 148-149. It is important to note that this executive branch meeting request followed the adoption of the 2013 Suquamish Hunting Regulation Addendum for Game Management Units (GMU) 624 and 621, the same Game Management Units that continue to be disputed, which extend to the “west shore of Hood Canal.” ER 170.

Also, it is legally and factually significant that the members of the Suquamish Tribal Council, through Leonard Forsman, Chairman, and while acting as an executive branch, directed “appropriate Suquamish Tribe staff and legal counsel to contact [WDFW] to discuss the timing, format and agenda for this meeting.” ER

148; *Free Enterprise Fund*, 561 U.S. at 501 (“A key ‘constitutional means’ vested in the President—perhaps *the* key means—was ‘the power of appointing, overseeing, and controlling those who execute the laws.’”); Addendum 67 (Suquamish Code § 14.3.11(d), “The tribal fisheries director shall be responsible for . . . [c]arrying out other duties related to hunting as delegated by tribal council.”). In that correspondence, furthermore, the Washington Department of Fish and Wildlife was directed to specifically “contact, Mr. Rob Purser, Director of Fisheries¹⁴ . . . to assist in organizing our meeting, and to confirm that WDFW will permit this discussion to take place without the continued threat of state enforcement interference” ER 149.

Considering the foregoing evidence and law, the district court clearly erred when it determined that, “. . . Suquamish Councilmembers are entitled to legislative immunity because they acted legislatively in promulgating and enforcing the challenged ordinance, and there is no evidence that they engaged in non-legislative functions.” ER 24 at ll. 11-13. The Suquamish Tribal Council Members, as the

¹⁴ “Mr. Rob Purser, Director of Fisheries” is also a named appellee and, with respect to him, the district court correctly denied the motion to dismiss on legislative immunity grounds. ER 24 at ll. 8-11. The district court ruled that “[i]t is also true that the Suquamish Fisheries Director is not entitled to legislative immunity because his authority to issue hunting licenses involves ad hoc decision making, applied to individuals, that is non-legislative in character and does not bear the hallmarks of traditional legislative.” *Id.* In sum, “the Suquamish Fisheries Director exercised executive authority in issuing hunting licenses. . . .” ER 24 at ll. 15-17.

executive branch, acted in their executive capacities and the described acts are neither “formally legislative in character” nor do they bear “all the hallmarks of traditional legislation.” *Community House, Inc.*, 623 F.3d at 960. The Suquamish Tribal Council Members clearly sought to execute the laws, i.e., the Suquamish Constitution, Ordinances, Regulations and other laws, directly and through staff of the executive branch which includes Robert Purser, Jr., the Fisheries Director. ER 122-149; Addendum 55-56; Suquamish Const. art. III (h) (“enforce ordinances”) and (j) (“To take such actions as are necessary to carry into effect any of the . . . duties.”); *Free Enterprise Fund*, 561 U.S. at 501 (Executive power to oversee and control those who execute the laws). The execution of the law can never be a legislative function. *Bowsher v. Synar*, 478 U.S. at 726.

Beyond the execution of the law, members of the Suquamish Tribal Council sought to “negotiate” an agreement with the State, a separate sovereign, to allow the unlawful opening of hunting in portions of the Olympics and Hood Canal, which is an executive act entirely distinct from the enforcement of the Ordinance or Regulation. Suquamish Const. art. III (a) (“The Council shall have the following powers . . . To negotiate with . . . State . . . governments and others on behalf of the Tribe”); *see also* U.S. Const. art. II, § 2, cl. 2 (executive “[p]ower. . . to make Treaties.”). These members specifically sought to compel “the state” to “at least exercise its enforcement and prosecutorial discretion . . . to protect [Suquamish]

hunters only.” ER 148. This negotiation is definitive evidence of the exercise of non-legislative functions.

C. The district court erred by dismissing the Suquamish Tribal Council Members from the action on sovereign immunity grounds

The district court failed to consider the evidence clearly demonstrating that the Suquamish Tribal Council Members directly exercised their executive authority to advance their management objectives (i.e., the “opening”). *See* discussion *supra* Section VI.B; ER 122-149. The requested relief does not operate against the sovereign, is prospective and injunctive in nature (i.e., merely seeking the cessation of acts) and does not involve the disposition of unquestionably sovereign property. As such, these “tribal officers” are not shielded by sovereign immunity.

“In the context of a Rule 12(b)(1) motion to dismiss on the basis of tribal sovereign immunity, ‘the party asserting subject matter jurisdiction has the burden of proving its existence,’ i.e., that immunity does not bar the suit.” *Pistor v. Garcia*, 791 F.3d at 1111. “In resolving such a motion, ‘[a] district court may “hear evidence regarding jurisdiction” and “resolv[e] factual disputes where necessary.”’” *Id.*

As for sovereign immunity, the United States Supreme Court has consistently held that, “[t]he state cannot . . . impart to the official immunity from responsibility to the supreme authority of the United States.” *Ex parte Young*, 209 U.S. 123, 167 (1908). “*Ex parte Young* gives life to the Supremacy Clause. Remedies designed to

end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law.” *Green v. Mansour*, 474 U.S. 64, 68 (1985); U.S. Const. art. VI, cl. 2. This Court in 2012 ruled that, “the *Ex parte Young* doctrine . . . permits actions for prospective non-monetary relief against state or tribal officials in their official capacity to enjoin them from violating federal law, without the presence of the immune State or tribe.” *Salt River Project Agr. Imp. and Power Dist. v. Lee*, 672 F.3d 1176, 1181 (9th Cir. 2012). More recently, it was held by the United States Supreme Court that “[a]s this Court has stated before, analogizing to *Ex parte Young*, [citation omitted], tribal immunity does not bar such a suit for injunctive relief against *individuals*, including tribal officers, responsible for unlawful conduct.” *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024, 2035 (2014). In determining whether the *Ex parte Young* exception applies, “a court need only conduct a ‘straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.’” *Verizon Maryland, Inc. v. Public Service Comm’n of Maryland*, 535 U.S. 635, 645 (2002).

1. This action does not operate against the sovereign, nor does it require affirmative actions by the sovereign

The district court cites to the decision of this Court in *Dawavendewa*, which provides:

if the relief sought will operate against the sovereign, the suit is barred . . . a suit may be barred . . . when the requested relief will require affirmative actions by the sovereign

ER 21 ll. 21-23; *Dawavendewa v. Salt River Project Agr. Imp. and Power Dist.*, 276 F.3d 1150, 1160 (9th Cir. 2002).

In Skokomish’s Complaint, unlike in *Dawavendewa*, the Suquamish Tribal Council Members and the Fisheries Director were actually named in the Complaint, as the responsible “tribal officers.” ER 153-155 at ¶¶ 11-17, 19; *Dawavendewa v. Salt River Project Agr. Imp. and Power Dist.*, 276 F.3d at 1160 (“*Dawavendewa*’s complaint never mentions tribal officials. Neither does it allege that tribal officials acted in contravention of constitutional or federal statutory law, nor has it named any tribal officials as parties to this litigation.”). The Skokomish specifically alleged and claimed that the:

Defendants have and continue to engage in unlawful conduct by opening hunting within Skokomish (or Twana) Territory, in violation of Plaintiff, Skokomish Indian Tribe’s primary right to regulate and prohibit treaty hunting and gathering, which is a legally protected interest.

ER 166 at ¶ 50. The Skokomish Indian Tribe also requested:

An injunction, pursuant to 28 U.S.C. § 2202, prohibiting Defendants, and their successors and assigns, directly or indirectly, from engaging in unlawful conduct by opening hunting or gathering within Skokomish (or Twana) Territory, in violation of Plaintiff, Skokomish Indian Tribe’s primary right to regulate and prohibit treaty hunting and gathering, which is a legally protected interest guaranteed by Article IV of the Treaty of Point No Point of January 26, 1855 (12 Stat. 933) and as declared by the Court. . . .

ER 167 at ¶ 52(3). This relief sought by Skokomish does not “operate against the sovereign.” The relief enjoins the Suquamish Officers, for example, from directly and indirectly executing the laws and negotiating with the State to unlawfully open hunting within Skokomish (or Twana) Territory.¹⁵ This type of relief does not require any “affirmative actions by the sovereign,” but merely the “cessation of the conduct.” A court could, however, also “direct affirmative action where the officer having some duty to perform not involving discretion, but merely ministerial in its nature, refuses or neglects to take such action.” *Ex parte Young*, 209 U.S. at 158; *Vann v. Kempthorne*, 534 F.3d 741, 752 (D.C. Cir. 2008). In sum, the Skokomish Indian Tribe’s action should not be barred on these grounds.

2. The Suquamish Tribal Council Members engaged in unlawful conduct through actual enforcement and negotiations; this is not merely a “generalized duty”

The district court correctly determined that the Suquamish Fisheries Director “has the ‘requisite enforcement connection’ to the allegedly unlawful hunting ordinance,” as he “oversees hunting enforcement and allocated both short term and annual hunting permits to Suquamish Tribal members.” ER 22 at ll. 6-9; Addendum 67 (Suquamish Code § 14.3.11, “Responsibilities of Fisheries Director”);

¹⁵ With respect to the Suquamish Fisheries Director, the district court correctly concluded that the “requested injunction will not operate against the Suquamish Tribe because it will merely prevent the Fisheries Director from issuing unlawful hunting licenses.” ER 22 at ll. 19-21.

Addendum 68 (Suquamish Code § 14.3.15, “Hunting for Ceremonial Purposes”); Addendum 66 (Suquamish Code § 14.3.6(b), “Designated Hunters” and Suquamish Code § 14.3.8, “Annual Permit”). The district court, however, erred by dismissing the Suquamish Tribal Council Members from the action because “the Councilmembers’ generalized duty to enforce ordinances is insufficient to subject them to suit under *Ex Parte Young*” and “they lack the requisite enforcement connection to the challenged regulation.” ER 22 at ll. 12-13; ER 23 at ll. 4-5. In the Order Granting Defendants’ Motion to Dismiss, the district court cited to specific caselaw in support of its dismissal on sovereign immunity grounds, specifically:

. . . the plaintiff must allege that the named defendants have a “requisite enforcement connection” to the challenged law. *Burlington Northern & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1092–93 (9th Cir. 2007) (holding the *Ex Parte Young* exception did not apply to tribal chairmen responsible only for adopting, not enforcing, a challenged tax). The enforcement connection must be “fairly direct.” *L.A. Cnty. Bar Ass’n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992). A generalized duty to enforce the law is insufficient to subject an official to suit under *Ex Parte Young*. *Id.*

ER 21 at ll. 8-14. The district court then proceeded to consider the record, finding and/or concluding that the “Suquamish Tribal Councilmembers have only the authority to promulgate and generally manage hunting ordinances.” ER 22 at ll. 10-11. This decision is simply wrong, and does not fully take into consideration the breadth of executive powers granted under the Suquamish Constitution. As previously noted, the Suquamish Tribal Council has the following executive powers:

- (a) To negotiate with Federal, State, and local governments and others on behalf of the Tribe . . .
- (h) To . . . enforce ordinances . . . governing the conduct of members of the Suquamish Indian Tribe regarding hunting, fishing, and shell fishing.
...
- (j) To take such actions as are necessary to carry into effect any of the foregoing powers and duties.

Addendum 55-56; Suquamish Const. art. III (a), (h), (j). The district court focused on the Suquamish Tribal Council's "generalized duties," yet overlooked their actual unlawful conduct, taken in their executive capacities. Of significance, is how the governing body, independently, chooses to and exercises its executive powers to achieve its management objectives. As earlier discussed, the record clearly establishes that the Suquamish Tribal Council Members exercised their executive powers to negotiate, "enforce" and carry into effect its intended purpose of unlawfully "opening" hunting within portions of Skokomish's territory. *See* discussion *supra* Section VI.B; Addendum 55-56; Suquamish Const. Art. III (a), (h), (j); Suquamish Const. art. VI, § 1 (delegation of authority to Chairman); Addendum 68 (Suquamish Code § 14.3.11(d), "The tribal fisheries director shall be responsible for . . . [c]arrying out other duties related to hunting as delegated by tribal council.").

The record also clearly establishes the requisite enforcement connection to the challenged regulation. ER 122-149. In particular, the Suquamish Tribal Council in

its letter advocates for the unlawful “opening” of hunting in the Olympics and Hood Canal, and speaks directly to the “duly authorized tribal regulations.” ER 131, 149. The letter signed by Leonard Forsman, Chairman of the Suquamish Tribal Council, expressly provides that:

I will direct appropriate Suquamish Tribe staff and legal counsel to contact you to discuss the timing, format and agenda for this meeting. . .

The Suquamish Tribe will engage WDFW in a dialogue on this matter . . .

In closing, I urge WDFW not to use an enforcement action as a de facto and premature means of declaring that GMU 621 or 624 is outside of Suquamish Treaty hunting area. Such an interference with Suquamish members hunting under *duly authorized tribal regulations* would jeopardize, perhaps even make impossible, the dialogue that we each have now committed to.

ER 149 (emphasis added). What is also of import is that the district court even contradicted itself by determining that, “. . . Suquamish Councilmembers . . . acted legislatively in . . . *enforcing* the challenged ordinance. . . .” ER 24 at ll. 12-13 (emphasis added).

In sum, it is contrary to the *Ex parte Young* doctrine, which “gives life to the Supremacy Clause,” to shield the Suquamish Tribal Council Members under sovereign immunity, when these unlawful acts are directly taken by the governing body, in their official capacity as the executive branch. Addendum 55; Suquamish Const. art. III (“[t]he governing body of the Suquamish Indian Tribe shall be known as the Suquamish Tribal Council.”); *Green v. Mansour*, 474 U.S. at 68; *Ex parte*

Young, 209 U.S. at 167. It, furthermore, runs afoul of the *Bay Mills* doctrine, which allows “relief against *individuals* . . . responsible for unlawful conduct.” *Bay Mills Indian Community*, 134 S.Ct. at 2035 (Emphasis Added).

3. This action is not about the disposition of unquestionably sovereign property

The relief requested does not involve the “disposition of unquestionably sovereign property.” *Dawavendewa v. Salt River Project Agr. Imp. and Power Dist.*, 276 F.3d at 1160. Skokomish’s primary right over Skokomish (or Twana) Territory, a reserved right, is fully preserved by the Treaty of Point No Point and encompasses (embraces) the impacted areas. *See* discussion *infra* Section VI.D; Addendum 2; 12 Stat. 933; *United States v. Winans*, 198 U.S. at 381; *United States v. Adair*, 723 F.2d at 1413; *United States v. Lower Elwha Tribe*, 642 F.2d at 1144; *United States v. Washington*, 626 F. Supp. at 1486-1491; *United States v. Washington*, 764 F.2d at 674. The impacted areas even include lands up “to the west shore of Hood Canal.” ER 170-171.

The Suquamish Indian Tribe, in stark contrast, is a successor in interest to signatories to the Treaty of Point Elliott of January 22, 1855. Addendum 8; 12 Stat. 927; *United States v. Washington*, 459 F. Supp. at 1040 at Finding No. 260. The impacted areas opened by the Suquamish Officers lie outside of the Treaty of Point Elliott Ceded Area. Addendum 8-9; 12 Stat. 927 art. I; ER 170-171. The impacted

areas are also far removed from Suquamish Territory, which was described as follows:

In 1855 the Suquamish held the west side of Puget Sound from near the mouth of Hood Canal south to Vashon island. Their territory included the land around Port Madison, Liberty Bay, Port Orchard, Dye's Inlet, Sinclair Inlet and south to Olalla. It also included Bainbridge Island, Blake island, and possibly also the west side of Whidbey Island.

United States v. Washington, 20 F. Supp. 3d at 1050; *see also United States v. Washington*, 794 F.3d 1129 (9th Cir. 2015). Nothing in the record even hints at the Suquamish Indian Tribe possessing a legitimate aboriginal claim to title over the impacted areas. To the contrary the record clearly shows that, “[a]t and before treaty times, the Twana Indians occupied nine winter villages situated in the Hood Canal drainage basin. . . No other aboriginal Indian group occupied a village located within the Hood Canal drainage south of the Port Gamble area.” *United States v. Washington*, 626 F. Supp. at 1488 at Finding No. 350, *aff'd*, 764 F.2d at 673-74.

The Suquamish Officers also failed to produce any evidence to support the proposition that the Treaty of Point Elliott “granted” hunting and gathering rights within Skokomish (or Twana) Territory equal to or greater than that reserved by the Skokomish Indian Tribe under the Treaty of Point No Point. *United States v. Winans*, 198 U.S. at 381 (“[T]he treaty was not a grant of rights to the Indians, but a grant of right from them, —a reservation of those not granted.”); *United States v. Adair*, 723 F.2d at 1413 (“ . . . the tribe retains all rights not expressly ceded to the

Government in the treaty so long as the rights retained are consistent with the tribe's sovereign dependent status."); *United States v. Lower Elwha Tribe*, 642 F.2d at 1144 ("the tribes reasonably understood themselves to be retaining no more and no less of a right vis-à-vis one another than they possessed prior to the treaty.").

The correspondence sent on the official letterhead of the Suquamish Indian Tribe, Office of Tribal Council even evidences the questionable nature of the Suquamish's claim to equal rights within those portions of the Olympics and Hood Canal located within Skokomish's territory, specifically:

. . . The Suquamish Tribe's hunting rights, including their geographic scope, should be as our treaty-signing ancestors knew and understood them. However, the State Court has attempted to restrict these rights to the Treaty of Point Elliott ceded area and other areas where the Suquamish Tribe can show historic hunting activity.

ER 148. This Court may also recall that Dr. Barbara Lane testified, it was that the "prevailing conception of tribal territory among Northwest Indians comprised the right to exclude members of other tribes." *United States v. Lower Elwha Tribe*, 642 F.2d at 1142-1143. Under this concept, the Suquamish Indian Tribe even claimed a primary right over the Tulalip Tribe "in that part of area 9 south of a line drawn from Foulweather Bluff west to Tala Point," near the mouth of Hood Canal. *United States v. Washington*, 626 F. Supp. at 1478. As such, the Suquamish Indian Tribe's "treaty-signing ancestors" must have known about and understood this exclusionary

concept, and these modern-day Suquamish Officers are simply now choosing to reimagine the meaning solely for their members' benefit.

D. The district court erred by granting a dismissal under Rule 19

The district court wrote that the Appellees “assert the Suquamish Tribe—not just its officers—and other Stevens Treaty Tribes are indispensable parties” and after having applied a Rule 19 analysis, ultimately dismissed the action. ER 25 at ll. 4-5; Fed. R. Civ. P. 19; *Alto v. Black*, 738 F.3d at 1125 (Joinder is not itself jurisdictional.). The district court’s analysis of the facts and caselaw, however, was flawed. Since the law is settled,¹⁶ Rule 19 is not implicated and the joinder of additional persons is not required.

¹⁶ In *Skokomish v. Squaxin et al.* (D.C. No. 2:17-sp-01-RSM), under the umbrella of *United States v. Washington* (C70-9213), the Skokomish Indian Tribe filed a Request for Determination seeking in part to confirm its right to exercise Skokomish’s primary right over fishing in portions of Skokomish (or Twana) Territory lying outside of the Hood Canal Drainage Basin. This claim relied on the findings, conclusions, decisions, and opinion from *United States v. Washington*, 626 F. Supp. 1405, *aff’d*, 764 F.2d 670. The district court dismissed the request with prejudice and the matter was appealed to this Court (Cir. Case No. 17-35760). It is important to note that, the unlawful conduct in *Skokomish v. Forsman et al.*, however, occurred within the Hood Canal Drainage Basin, an area not contested. There is also a dispute over the significance of Judge Martinez’s dismissal of *Skokomish v. Squaxin et al.*, as reflected in the supplemental authority letters filed in appeals of *Makah v. Quileute and Quinault* (Cir. Case Nos. 15-35824 and 15-35827). Dkt. Nos. 86-87.

1. Skokomish's rights and privileges under the Treaty of Point No Point are fully preserved

The district court incorrectly determined that “[t]he court in *U.S. v. Washington* did not clearly establish Skokomish’s primary hunting right because the case principally (if not exclusively) concerned fishing rights.” ER 26 at ll. 5-7. The “case” concerns the meaning of the Stevens Treaties and the reservation of rights and privileges under them.

As the Stevens Treaties are interpreted by the courts, that resulting caselaw or precedent is, and has always been, portable from one case to another (i.e., *stare decisis*). And a simple fishing case can result in establishment of foundational doctrines that have wide application. For example, *Winans* concerned the obstruction of fishing access on the Columbia River, but it also served a broader function by establishing the Reserved Rights Doctrine¹⁷ as applied generally to Indian treaties, not just the Treaty with the Yakamas. *United States v. Winans*, 198 U.S. at 381; Addendum 34; 12 Stat. 951. As such, it would be just as inaccurate to call *Winans* simply a “case principally (if not exclusively) concerned [about] fishing rights.”

¹⁷ This doctrine was also expressly adopted by Judge Boldt in his 1974 landmark decision on Treaty rights. *United States v. Washington*, 384 F. Supp. at 407.

Now, the parties to *United States v. Washington*, including neighboring Stevens Treaty tribes, the State of Washington and the United States are bound by the decisions and appeals from that case. *Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001) (“If a court must decide an issue governed by a prior opinion that constitutes binding authority, the later court is bound to reach the same result, even if it considers the rule unwise or incorrect. Binding authority must be followed unless and until overruled by a body competent to do so.”). Through more than four decades of intense litigation at the district court and appellate levels, the courts have specifically determined: (a) treaty status and successorship; (b) territorial boundaries; (c) occupancy and use of the aboriginal territories; and (d) the nature of the reserved right to control an Indian tribe’s treaty harvests within another’s territory. All of these being critical and necessary components of the litigation in *United States v. Washington*.

Since the Suquamish Indian Tribe is one of the Stevens Treaty tribes that chose to become a party to *United States v. Washington*, it and its officers are also bound. The doctrine of *res judicata* (claim preclusion)¹⁸ and the doctrine collateral

¹⁸ *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (“Res judicata” is “also known as claim preclusion.”); *Ruiz v. Snohomish County Public Utility District No. 1*, 824 F.3d 1161, 1164 (9th Cir. 2016) (“Res judicata applies when there is: (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between parties.”); see also *Whole Woman’s Health v. Hellerstedt*, 136 S.Ct. 2292, 2305 (2016) (“The doctrine of claim preclusion (the

estoppel (issue preclusion)¹⁹ specifically preclude the Suquamish Officers from relitigating the courts' earlier decisions.

The district court should not be permitted to also ignore these findings, conclusions, decisions, and opinions.²⁰ Fed. R. Civ. P. 60; *Hart v. Massanari*, 266 F.3d at 1170 (“A district judge may not respectfully (or disrespectfully) disagree with his learned colleagues on his own court of appeals who have ruled on a controlling legal issue, or with Supreme Court Justices writing for a majority of the Court.”).

a. The Skokomish Indian Tribe reserved rights and privileges under the Treaty of Point No Point

The Skokomish Indian Tribe, as a successor to the Skokomish and Twana, reserved “the privilege of hunting and gathering roots and berries on open and

here-relevant aspect of res judicata) prohibits ‘successive litigation of the very same claim’ by the same parties.”).

¹⁹ *Beauchamp v. Anaheim Union High School Dist.*, 816 F.3d 1216, 1225 (9th Cir. 2016) (“For the doctrine to apply: (1) the issue must be identical to one alleged in prior litigation; (2) the issue must have been ‘actually litigated’ in the prior litigation; and (3) the determination of the issue in the prior litigation must have been ‘critical and necessary’ to the judgment.”).

²⁰ “The Suquamish Tribe [sought] an order vacating this Court’s Order Adopting the Special Master’s Report and Recommendation Re: Skokomish Indian Tribe’s Request for Determination of Primary Right in Hood Canal Fishery, dated March 24, 1984.” *United States v. Washington*, 626 F. Supp. at 1491-1492, *aff’d*, 764 F.2d 670. The court treated “the Suquamish Tribe’s Motion to Vacate Order as a motion to alter or amend a judgment pursuant to Federal Rules of Civil Procedure, Rule 59.” *Id.* at 1492. The court ultimately denied the motion, after the court applied a *de novo* review of the Special Master’s findings. *Id.*

unclaimed lands” and a primary right over its territory, as part of the Treaty of Point No Point. Addendum 3; 12 Stat. 933 art. IV; *United States v. Washington*, 384 F. Supp. at 376-377 at Finding Nos. 133-134; *United States v. Winans*, 198 U.S. at 381 (Reservation of Rights Doctrine); *United States v. Adair*, 723 F.2d at 1413 (“the tribe retains all rights not expressly ceded to the Government in the treaty. . . .”); *United States v. Lower Elwha Tribe*, 642 F.2d at 1144 (“the tribes reasonably understood themselves to be retaining no more and no less of a right vis-à-vis one another than they possessed prior to the treaty.”). See discussion *infra* Section VI.D.1.b-c. The Treaty of Point No Point is self-executing, immediately enforceable and the Supreme Law of the Land.²¹ Addendum 4; 12 Stat. 933 art. XIV; U.S. Const. art. VI, cl. 2.

b. The boundaries of Skokomish (or Twana) Territory are determined

Skokomish (or Twana Territory) is separate and distinct from all other Indian tribes’ territories. See discussion *supra* Section IV.B.1. The Skokomish Indian Tribe’s primary right area includes Skokomish (or Twana) Territory which extends:

from Wilkes’ Portage northwest across to the arm of Hood Canal up to the old limits of the Tchimakum, thence westerly to the summit of the Coast Range, thence southerly to the head of the west branch of the Satsop, down that

²¹ A self-executing treaty is a treaty that becomes judicially enforceable upon ratification, as compared to a non-self-executing treaty which requires additional legislation by Congress in order to be implemented. *Medellin v. Texas*, 552 U.S. 491, 525-526 (2008). The Treaty of Point No Point of January 26, 1855 is self-executing as it became “obligatory,” upon its ratification on March 8, 1859. 12 Stat. 933 art. XIV (Proclaimed on April 29, 1859).

branch to the main fork, thence east to the summit of the Black Hills, thence north and east to the place of beginning.

United States v. Washington, 626 F. Supp. at 1489 at Finding No. 353, *aff'd*, 764 F.2d 670 (Extracted from the 1854–55 journal of George Gibbs, a lawyer, ethnographer and secretary to the 1855 Treaty Commission). George Gibbs’ description of Skokomish (or Twana) Territory embraces and encompasses portions of the Hood Canal drainage basin, in which the Suquamish Officers seek to open hunting. ER 170-171. More particularly, the courts have expressly and unambiguously determined that:

Gibbs’ description of Twana territory embraces²² Hood Canal and its drainage basin northward along the canal to the point on the west shore now known as Termination Point, which was the southern limit of the Tchimakum shown on a map prepared by Gibbs in 1856.

United States v. Washington, 626 F. Supp. at 1489 at Finding No. 353, *aff'd*, 764 F.2d 670. And, that:

. . . the treaty-time territory of the Twana Indians encompassed²³ all of the waters of Hood Canal, the rivers and streams draining into it, and the Hood Canal drainage basin south of a line extending from Termination Point on the west shore of Hood Canal directly to the east shore. . . .

²² To embrace something means, “to encircle; surround; enclose.” *Webster’s New Universal Unabridged Dictionary* 592 (2nd ed. 1983). This dictionary was selected as it was published contemporaneously with Special Master Cooper’s Report and Judge Craig’s determination. *See also Muckleshoot v. Lummi*, 234 F.3d 1099, 1100-1101 (9th Cir. 2000) (The use of “the common dictionary meaning. . .”).

²³ Encompassed means “to encircle; to surround.” *Webster’s New Universal Unabridged Dictionary* 598 (2nd ed. 1983).

United States v. Washington, 626 F. Supp. at 1489-90 at Finding No. 354, *aff'd*, 764 F.2d 670. George Gibbs' description of Skokomish (or Twana) Territory also includes other areas outside of the Hood Canal drainage basin, such as, portions of the Satsop watershed.²⁴ Additionally, of particular importance is that the issuing court, when considering "Gibbs' description of Twana territory" found "it to be the best available evidence," rather than any specific map. *United States v. Washington*, 626 F. Supp. at 1489 at Finding No. 353, *aff'd*, 764 F.2d 670.

George Gibbs' description of Skokomish (or Twana) Territory is not ambiguous and nothing indicates that the issuing court intended something other than the text's apparent meaning. *Tulalip v. Suquamish Indian Tribe*, 794 F.3d 1129, 1133 (9th Cir. 2015). The geographic boundaries of George Gibbs' description of Skokomish (or Twana) Territory are fixed, definite and supported by the record considered by the issuing court. *Muckleshoot Tribe v. Lummi Indian Tribe*, 141 F.3d 1355, 1359-1360 (9th Cir. 1998) (*Muckleshoot I*) ("what [the issuing court] meant in precise geographic terms" and "the only relevant evidence is that which was considered by [the judge] when he made his finding."); *Muckleshoot Indian Tribe v. Lummi Indian Nation*, 234 F.3d 1099, 1100 (9th Cir. 2000) (*Muckleshoot II*); *United*

²⁴ See legal boundary description, ". . . southerly to the head of the west branch of the Satsop, down that branch to the main fork, thence east to the summit of the Black Hills, thence north and east to the place of beginning." *United States v. Washington*, 626 F. Supp. at 1489 at Finding No. 353, *aff'd*, 764 F.2d 670.

States v. Muckleshoot Indian Tribe, 235 F.3d 429, 433 (9th Cir. 2000) (*Muckleshoot*

III). With respect to the considered evidence:

- Gibbs' description of Twana territory was based on information gathered from Indians at and before the treaty councils and at contemporaneous meetings.²⁵
- Gibbs' description of Twana territory is also corroborated by other evidence in this proceeding, including the work of Dr. T.T. Waterman and Dr. Elmendorf. Waterman, an anthropologist working with Indian informants around 1920, compiled an extensive list and map of sites used by Indians in the western Washington area, including the Suquamish, Klallam and Twana Indians. . . . The accuracy of Dr. Elmendorf's list of Twana sites . . . is also corroborated by Waterman's earlier list. Dr. Lane found that the cross-checking made possible by these independent sources of data presented a particularly reliable basis for determining the location of treaty-time Twana territory.²⁶
- The court finds that the foregoing description of Twana territory is also consistent with the customary Indian understanding of territory at treaty times.²⁷

Lastly, the court may not "alter, amend, or enlarge" the issuing court's findings.

Muckleshoot I, 141 F.3d at 1360.²⁸

²⁵ *United States v. Washington*, 626 F. Supp. at 1489 at Finding No. 353, *aff'd*, 764 F.2d 670 (George Gibbs' 1854-55 Journal).

²⁶ *United States v. Washington*, 626 F. Supp. at 1489 at Finding No. 354, *aff'd*, 764 F.2d 670.

²⁷ *United States v. Washington*, 626 F. Supp. at 1490 at Finding No. 355, *aff'd*, 764 F.2d 670.

²⁸ "The Suquamish Tribe [sought] an order vacating this Court's Order Adopting the Special Master's Report and Recommendation Re: Skokomish Indian Tribe's Request for Determination of Primary Right in Hood Canal Fishery, dated March 24, 1984." *United States v. Washington*, 626 F. Supp. at 1491-1492, *aff'd*, 764 F.2d 670. The court treated "the Suquamish Tribe's Motion to Vacate Order as a motion

c. Skokomish (or Twana) Territory was long used and occupied by the Skokomish and Twana people

The earlier courts' findings with respect to the use and occupancy of Skokomish (or Twana) Territory are not ambiguous and nothing indicates that the court intended something other than the text's apparent meaning. *Tulalip v. Suquamish Indian Tribe*, 794 F.3d at 1133. These findings are likewise supported by the record. *Muckleshoot I*, 141 F.3d at 1359-1360; *Muckleshoot II*, 234 F.3d at 1100; *Muckleshoot III*, 235 F.3d at 433. Specifically:

- At and before treaty times, the Twana engaged in a variety of fishing and hunting activities in and around Hood Canal and the streams flowing into it.²⁹
- The district court found that all areas of the Hood Canal, and the rivers and streams draining into it were easily accessible by canoe to the Twana and were intensively used by and of great importance to them for food-gathering activities.³⁰
- [Dr. T.T. Waterman's] data confirm that the areas within the Skokomish (or Twana) territory described by Gibbs were long used and occupied by the aboriginal Twana people.³¹
- Dr. Elmendorf, who testified by deposition, is the acknowledged authority on the Twana Indians. (Tr. of Hearing, pp. 54-55, 98.) His monograph, *The*

to alter or amend a judgment pursuant to Federal Rules of Civil Procedure, Rule 59.” *Id.* at 1492. The court ultimately denied the motion, after the court applied a *de novo* review of the Special Master's findings. *Id.*

²⁹ *United States v. Washington*, 626 F. Supp. at 1489 at Finding No. 352, *aff'd*, 764 F.2d 670.

³⁰ *United States v. Washington*, 764 F.2d at 674.

³¹ *United States v. Washington*, 626 F. Supp. at 1489 at Finding No. 354, *aff'd*, 764 F.2d 670.

Structure of Twana Culture (1960) (Ex. 2 to Ex. SK-SM-1), is based on data collected between 1935 and 1955 from knowledgeable Indian informants born shortly after negotiation of the treaties and is widely regarded to be the best ethnography of a case-area tribe. The court finds that Dr. Elemendorf's testimony and his scholarly monograph are highly reliable.³²

- At and before treaty times, the Twana Indians occupied nine winter villages situated in the Hood Canal drainage basin. . . . No other aboriginal Indian group occupied a village located within the Hood Canal drainage south of the Port Gamble area.³³

Additionally, Article I of the Treaty of Point No Point addressed occupancy, with the signatories ceding to the United States “the lands and country occupied by them.”³⁴ This determination is final and not readily subject to judicial revision by the district court. *Muckleshoot I*, 141 F.3d at 1360.

d. Skokomish's control extends to all of Skokomish (or Twana) Territory

The district court rejected the existing precedent and Skokomish's defenses, and ruled that:

. . . Skokomish's right is far from clearly established. Article IV of the Point No Point Treaty reserved to all four signatory tribes “the privilege of hunting and gathering roots and berries on open and unclaimed lands,” without reference to a primary right.

³² *United States v. Washington*, 626 F. Supp. at 1487 at Finding No. 348, *aff'd*, 764 F.2d 670.

³³ *United States v. Washington*, 626 F. Supp. at 1488 at Finding No. 350, *aff'd*, 764 F.2d at 673-74.

³⁴ Addendum 2; 12 Stat. 933 art. I; *see discussion supra* Section IV.B.1, describing the geographic and political division of the Treaty of Point No Point Ceded Area between the S'Klallam (or Clallam), the Skokomish (or Twana) and the Chimakum (or Tchimakum).

ER 26 at ll. 2-5. The district court in rendering its decision, however, failed to correctly apply the Reservation of Rights Doctrine and failed to construe the language of Article IV, “in the sense in which they would naturally be understood by the Indians,” that signed the Treaty of Point No Point. *Washington v. Washington State Commercial Fishing Vessel Ass’n*, 443 U.S. 658, 676 (1979), quoting, *Jones v. Meehan*, 175 U.S. 1, 11 (1899); see also *United States v. Winans*, 198 U.S. at 381 (Reservation of Rights Doctrine); *United States v. Adair*, 723 F.2d at 1413 (“the tribe retains all rights not expressly ceded to the Government in the treaty. . . .”). The signatory Indian tribes “reasonably understood themselves to be retaining no more and no less of a right vis-à-vis one another than they possessed prior to the treaty.” *United States v. Lower Elwha Tribe*, 642 F.2d at 1144. And, it was the Lower Elwha Klallam Tribe, one of the Treaty of Point No Point successor tribes, which confirmed “that the prevailing conception of tribal territory among Northwest Indians comprised the right to exclude members of other tribes.” *United States v. Lower Elwha Tribe*, 642 F.2d at 1142-1143.

This conception of Skokomish’s territorial control was reinforced by later litigation. *United States v. Washington*, 764 F.2d at 674 (“common understandings through restraint from intrusion on or unauthorized use of others’ territories”); *United States v. Washington*, 626 F. Supp. at 1491 at Finding No. 357 (“the treaty-

time Twana's control of their territory inhered primarily in the network of shared customary understandings concerning territory. However, the court also finds that Twana had readily available means to deter unauthorized use of their territory and fishing areas within it."). Additionally, "[t]he court found . . . that the Twana had readily available means of deterring unauthorized use of their territory, such as social disapproval, magical retaliation, and possibly physical force." *United States v. Washington*, 764 F.2d at 674.

And, instances of members of other Indian tribes engaging in the harvesting of Treaty resources, "by permission, through intermarriage, or on illicit incursions" did "not destroy" a primary right. *United States v. Lower Elwha Tribe*, 642 F.2d at 1144. For example, in the Hood Canal Agreement, the signatories agreed that the "primary right of the Skokomish Tribe is an aboriginal right of that tribe confirmed and preserved by the Treaty of Point-No-Point (12 Stat. 933)," even though,

[e]ach year significant numbers of Clallam Indians would travel from their villages to sites on the Hood Canal to fish with the Twana. Most, if not all, of these Clallam visitors were marriage relatives of Twana Indians. The Clallam who fished on Hood Canal did so with the understanding that the Hood Canal fishery was Twana territory."

United States v. Washington, 626 F. Supp. at 1469; ER 113 at ll. 3-8. The Hood Canal Agreement also does not limit, in any way, a signatory from exercising its primary right over hunting and/or gathering activities. *Id.*; ER 109-120. The agreement purports to only partially limit the ability of the Skokomish Indian Tribe

from exercising its primary right over “fishing” in the Hood Canal fishery north of Ayock Point vis-à-vis the signatories to the Treaty of Point No Point. *Id.*

In sum, this is a matter of fact and law that is well established and should not be so easily discarded. *Hart v. Massanari*, 266 F.3d at 1170 (“A district judge may not respectfully (or disrespectfully) disagree with his learned colleagues on his own court of appeals who have ruled on a controlling legal issue, or with Supreme Court Justices writing for a majority of the Court.”).

e. Skokomish’s Primary Right is fully preserved

Applying both Dr. Barbara Lane’s analytical tool³⁵ from the *Lower Elwha* case and Judge Craig’s occupancy rule,³⁶ to the record confirms that Skokomish’s primary right over its territory is fully preserved.

2. The district court erred in its application of Rule 19(a)

The district court misapplied Rule 19(a) of the Federal Rules of Civil Procedure, resulting in a dismissal without prejudice. Addendum 75-76.

a. The district court can accord complete relief among existing parties

Rule 19 requires joinder if, in a Treaty tribe’s absence, “the court cannot accord complete relief among existing parties.” Fed. R. Civ. P. 19(a)(1)(A). Since

³⁵ *United States v. Lower Elwha Tribe*, 642 F.2d at 1143 at fn. 4.

³⁶ *United States v. Washington*, 626 F. Supp. at 1490 at Finding No. 356, *aff’d*, 764 F.2d 670.

the law is settled and all of the neighboring Stevens Treaty Tribes, State of Washington and United States of America are bound, the district court can “accord complete relief.” Nothing prohibits the Skokomish Indian Tribe from bringing a separate enforcement action against the specific “tribal officers” responsible for unlawful conduct (i.e., the “opening”). ER 166 at ¶ 50; *see example Hoh Indian Tribe et al. v. Baldrige*, 2:81-cv-00742 (W.D. Wash. 1981) (legal action brought without joinder of all of the Stevens Treaty Tribes that included a request for an injunction prohibiting the Secretary from opening the ocean fishery); ER 80-99; *Michigan v. Bay Mills Indian Community*, 134 S.Ct at 2035 (Absent federal authority, the opening of a casino would constitute unlawful conduct by a tribal officer.).

b. No other Indian tribe may legitimately claim an interest in Skokomish (or Twana) Territory

Rule 19 also requires joinder when a:

. . . person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:

- (i) as a practical matter impair or impede the person’s ability to protect the interest; or
- (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1)(B). This rule is likewise inapplicable, as the law is settled.

In conducting its analysis, the district court failed to address under what federal authority, the Suquamish Officers or any Indian tribe other than the Skokomish Indian Tribe could lawfully open hunting or gathering within those portions of Skokomish's territory that include the Olympics and Hood Canal. The district court simply assumed that "[t]he Suquamish and other Stevens Treaty Tribes" had "hunting and gathering rights in the subject area." ER 26 at ll. 7-8. The district court, presumably based on this assumption, concluded that these "persons" then "have a 'claimed legal interest' to Twana Territory hunting rights." *Id.* To reach such a conclusion, the district court apparently chose to impermissibly depart from the Reservation of Rights Doctrine. *Hart v. Massanari*, 266 F.3d at 1170.

As discussed, Stevens Treaty Tribes "reserved" a primary right within their Treaty-time territory, as every Indian tribe had an interest in "detering unauthorized use of their territory." *United States v. Washington*, 764 F.2d 674; *United States v. Winans*, 198 U.S. at 381 ([T]he treaty was not a grant of rights to the Indians, but a grant of right from them,—a reservation of those not granted.); *United States v. Lower Elwha Tribe*, 642 F.2d at 1144 (Indian tribes "reasonably understood themselves to be retaining no more and no less of a right vis-à-vis one another than they possessed prior to the treaty."). Nothing in the record or decision supports the abandonment of this Reservation of Rights Doctrine, in favor of a "grant of rights doctrine."

3. The district court erred in its application of Rule 19(b)

When joinder is not feasible, Rule 19(b) set outs four factors that a court must consider when determining “whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.” Fed. R. Civ. P. 19(b). Addendum 75-76. In applying these factors, the district court should have permitted the action to proceed.

a. There is no prejudice

The first factor to consider is, “the extent to which a judgment rendered in the person’s absence might prejudice that person or the existing parties.” Fed. R. Civ. P. 19(b)(1). Since this is a matter of settled law, derived from the Reservation of Rights Doctrine, there is simply no prejudice. As discussed, each Indian tribe under their applicable Stevens Treaty reserved a primary right within their Treaty-time territory. They simply did not reserve a primary right in someone else’s territory.

b. The relief is sufficiently narrowly tailored

The second factor to consider is, “the extent to which any prejudice could be lessened or avoided.” Fed. R. Civ. P. 19(b)(2). As this action is brought solely to enjoin the unlawful conduct of Suquamish Officers, the relief requested is narrowly tailored and there is not prejudice to lessen or avoid. ER 167.

c. A judgment would be adequate

The third factor to consider is, “whether a judgment rendered in the person’s absence would be adequate.” Fed. R. Civ. P. 19(b)(3). If the unlawful conduct was enjoined, the imminent and ongoing threat of theft of the Skokomish Indian Tribe’s Treaty resources by members of the Suquamish Indian Tribe would be eliminated, and the remedy, therefore adequate. ER 167.

d. No other adequate remedy appears available

The fourth factor to consider is, “whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.” Fed. R. Civ. P. 19(b)(4). If this Court determines that this enforcement action could be brought under the umbrella of *United States v. Washington* (C70-9213), the Skokomish Indian Tribe would consider bringing such an action. Absent such a determination, there would be no remedy available.

E. The district court erred by denying the Skokomish Indian Tribe leave to amend its Complaint

The district court ruled that “amendment of the claims asserted would not and could not remedy the fact that it cannot adjudicate its right absent the other interested tribes, and it cannot join those tribes. Filing an amended complaint would be futile.” ER 28 at l. 22; ER 29 at ll. 1-2. This is inaccurate. Fed. R. Civ. P. 15(a)(2); *Cook et al. v. Northern California Collection Service Inc.*, 911 F.2d 242, 247 (9th Cir.

1990) (“ . . . a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.”); Fed. R. Civ. P. 19(b)(2).

The Skokomish Indian Tribe could revoke the invitation of the other Stevens Treaty Tribes, that have a claimed legal interest to Twana Territory hunting rights. In doing so, the Skokomish Indian Tribe would create an Article III, Case or Controversy, and then could utilize the *Bay Mills* decision to enjoin their respective “tribal officers.” *Michigan v. Bay Mills Indian Community*, 134 S.Ct. at 2035. This approach, however, is not favored as it would disrupt longstanding relationships and current management arrangements.

In the alternative, the Skokomish Indian Tribe could have even further narrowed the relief requested and constructed a limiting order as to application to other neighboring Stevens Treaty Tribes.

VII. CONCLUSION

This Court should reverse and remand for further proceedings consistent with the following holdings: (1) the Skokomish Indian Tribe retains its primary right over Skokomish (or Twana) Territory as described by George Gibbs in his 1854-55 Journal; (2) the Suquamish Officers are not protected by sovereign or legislative immunity; (3) no other persons need be joined; and (4) the Skokomish Indian Tribe should be granted leave to amend its Complaint, if it becomes later necessary.

Respectfully submitted this 15th day of October, 2017.

s/EARLE DAVID LEES, III, WSBA No. 30017

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Attorney for the Skokomish Indian Tribe

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Appellant Skokomish Indian Tribe, to the best of its belief and knowledge, states that the following are deemed related:

Skokomish v. Squaxin et al., Ninth Circuit Court of Appeals Case No. 17-35760 (D.C. No. 2:17-sp-01-RSM). This matter involves the interpretation and enforceability of the findings, conclusions, decisions, and opinions in: *United States v. Washington*, 626 F. Supp. 1405 (W.D. Wash. 1985); *United States v. Washington*, 764 F.2d 670 (9th Cir. 1985); and generally *United States v. Washington*, C70-9213 and any appeal therefrom. This is an appeal from a dismissal with prejudice.

Respectfully submitted this 15th day of October, 2017.

s/EARLE DAVID LEES, III, WSBA No. 30017
Attorney for the Skokomish Indian Tribe

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 17-35336

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

- ☐ This brief complies with the length limits permitted by Ninth Circuit Rule 28.1-1.
The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☒ This brief complies with the length limits permitted by Ninth Circuit Rule 32-1.
The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b).
The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1) ☐ separately represented parties; (2) ☐ a party or parties filing a single brief in response to multiple briefs; or (3) ☐ a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief complies with the longer length limit authorized by court order dated
The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.
- ☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is words or pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4.
The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or
Unrepresented Litigant

/Earle David Lees, Skokomish's Attorney

Date

("s/" plus typed name is acceptable for electronically-filed documents)

ADDENDUM

TABLE OF CONTENTS

Treaties with Indian Tribes

Treaty of Point No Point (12 Stat. 933).....	1
Treaty of Point Elliott (12 Stat. 927)	7
Treaty of Medicine Creek (10 Stat. 1132).....	14
Treaty of Neah Bay (12 Stat. 939).....	21
Treaty with the Walla Wallas (12 Stat. 945)	27
Treaty with the Yakamas (12 Stat. 951)	34
Treaty with the Nez Percé (12 Stat. 957).....	41
Treaty of Olympia (12 Stat. 971).....	48

Constitutional Provisions

U.S. Const. art. I, § 1 (Powers of Congress).....	53
U.S. Const. art. II, § 2, cl. 2 (President’s Treaty Making Power and Appointing Power)	53
U.S. Const. art. II, § 3 (Powers of the President).....	53
U.S. Const. art. VI, cl. 2 (Supreme Law of the Land)	53
Suquamish Const.....	54

Suquamish Tribal Code

Title 14, Chapter 14.3 (Hunting).....	63
---------------------------------------	----

Rule

Fed. R. Civ. P. 19	75
--------------------------	----

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large, Treaties,
AND
PROCLAMATIONS,
OF THE
UNITED STATES OF AMERICA.

FROM

DECEMBER 5, 1859, TO MARCH 3, 1863.

Arranged in Chronological Order and carefully collated with the
Originals at Washington.

WITH

REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY

GEORGE P. SANGER,

COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed, are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 8, 1846.

VOL. XII.

BOSTON:
LITTLE, BROWN AND COMPANY.

1863.

TREATY WITH THE S'KLALLAMS. JANUARY 26, 1855.

933

*Treaty between the United States of America and the S'Klallams Indians.
Concluded at Point no Point, Washington Territory, January 26, 1855;
Ratified by the Senate, March 8, 1859; Proclaimed by the President of
the United States, April 29, 1859.*

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA:

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: January 26, 1855.

WHEREAS a Treaty was made and concluded at Hahd Skus, or Point no Point, in Washington Territory, on the twenty-sixth day of January, eighteen hundred and fifty-five, between Isaac I. Stevens, Governor and Superintendent of Indian Affairs for the said Territory, on the part of the United States, and the hereinafter named Chiefs, Headmen, and Delegates of the different villages of the S'Klallams Indians, viz.: the Kah-tai, Squah-quaihtl, Tch-queen, Ste-tehtlum, Tsohkw, Yennis, El-hwa, Pishstst, Hunnint, Klat-la-wash, and Oke-no, and also of the Sko-ko-mish, Too-an-hooch, and Chem-a-kum tribes occupying certain lands on the straits of Fuca and Hood's Canal, in the Territory of Washington, on behalf of said tribes, and duly authorized by them; which treaty is in the words and figures following, to wit:

Preamble.

Articles of agreement and convention, made and concluded at Hahd-skus, or Point no Point, Suquamish Head, in the Territory of Washington, this twenty-sixth day of January, eighteen hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the different villages of the S'Klallams, viz.: Kah-tai, Squah-quaihtl, Tch-queen, Ste-tehtlum, Tsohkw, Yennis, El-hwa, Pishstst, Hun-nint, Klat-la-wash, and Oke-ho, and also of the Sko-ko-mish, To-an-hooch and Chem-a-kum tribes, occupying certain lands on the straits of Fuca and Hood's Canal in the Territory of Washington, on behalf of said tribes, and duly authorized by them.

Contracting parties.

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, viz.: commencing at the mouth of the Okebo 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 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.

Cession of lands to the United States.

Boundaries.

Vol. x. p. 1182.

ante Treaties, p. 1.

ARTICLE II. There is, however, reserved for the present use and occupation of the said tribes and bands the following tract of land, viz.: the

Reservation.

Whites not to reside thereon.	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.
Tribes to settle on reservation.	ARTICLE III. The said tribes and bands agree to remove to and settle upon the said reservation 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 lands not in the actual claim or occupation of citizens of the United States, and upon any land claimed or occupied, if with the permission of the owner.
Privileges to the Indians.	ARTICLE IV. The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States; and of erecting temporary houses for the purpose of curing; together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. <i>Provided, however,</i> That they shall not take shell-fish from any beds staked or cultivated by citizens.
Payments by the United States.	ARTICLE V. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of sixty thousand dollars, in the following manner, that is to say: during the first year after the ratification hereof, six thousand dollars; for the next two years, five thousand dollars each year; for the next three years, four thousand dollars each year; for the next four years, three thousand dollars each year; for the next five years, two thousand four hundred dollars each year; and for the next five years, one thousand six hundred dollars each year.
How to be applied.	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.
Appropriation for removal, &c.	ARTICLE VI. 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 six thousand dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve.
Indians may be removed to other reservation.	ARTICLE VII. The President may hereafter, when in his opinion the interests of the Territory shall require, and the welfare of said Indians be promoted, remove them from said reservation 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 thereon 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 made therefor accordingly.
Lands may be surveyed and assigned, &c.	ARTICLE VIII. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.
Vol. x. p. 1044.	
Annuities not to be taken for debts of individuals.	

TREATY WITH THE S'KLALLAMS. JANUARY 26, 1855.

935

ARTICLE IX. The said tribes and bands acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof; and they 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 proven 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 United States, but to deliver them up for trial by the authorities.

Tribes to preserve friendly relations,

to pay for depredations.

not to make war but in self defence.

To surrender offenders.

ARTICLE X. The above tribes and bands are desirous to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Indian belonging thereto who shall be guilty of bringing liquor into said reservation, 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.

Annuities may be withheld from those drinking ardent spirits.

ARTICLE XI. 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 the 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 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 central agency, who shall furnish medicine and advice to the sick, and shall vaccinate them; the expenses of the said school, shops, persons employed, and medical attendance to be defrayed by the United States, and not deducted from the annuities.

United States to establish school.

Mechanics' shop.

To employ a physician.

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

Tribes to free slaves and not to acquire others.

ARTICLE XIII. 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.

Not to trade out of the United States.

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

When treaty 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 of Indians have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

Signatures, January 26, 1855.

ISAAC I. STEVENS, Governor and Superintendent. [L. s.]

CHITS-A-MAH-HAN, the Duke of York, his x mark. [L. s.]

Chief of the S'klallams.

DAH-WHIL-LUK, *Chief of the Sko-ko-mush.* his x mark. [L. s.]

KUL-KAH-HAN, or General Pierce, his x mark. [L. s.]

Chief of the Chem-a-kum.

HOOL-HOLE-TAN, or Jim, *Sko-ko-mish sub-chief.* his x mark. [L. s.]

SAI-A-KADE, or Frank, *Sko-ko-mish sub-chief.* his x mark. [L. s.]

LOO-GWEH-OOS, or George, his x mark. [L. s.]

Sko-ko-mish sub-chief.

TREATY WITH THE S'KLALLAMS. JANUARY 26, 1855.

E-DAGH-TAN, or Tom, <i>Sko-ko-mish sub-chief.</i>	his x mark.	[L. S.]
KAIA-HAN, or Daniel Webster, <i>Chem-a-kum sub-chief.</i>	his x mark.	[L. S.]
ETS-SAH-QUAT, <i>Chem-a-kum sub-chief.</i>	his x mark.	[L. S.]
KLEH-A-KUNST, <i>Chem-a-kum sub-chief.</i>	his x mark.	[L. S.]
HE-ATL, Duke of Clarence, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
LACH-KA-NAM, or Lord Nelson, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
TCHOTEST, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
HOOT-OTE ST, or General Lane, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
TO-TOTESH, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
HAH-KWIA-MIHL, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
SKAI-SE-EE, or Mr. Newman, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
KAHS-SAHS-A-MATL, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
S'HOTE-CH-STAN, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
LAH-ST, or Tom, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
TULS-MET-TUM, Lord Jim, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
YAHT-LE-MIN, or General Taylor, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
KLA-KOISHT, or Captain, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
SNA-TALC, or General Scott, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
TSEH-A-TAKE, or Tom Benton, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
YAH-KWI-E-NOOK, or General Gaines, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
KAIA-AT-LAH, or General Lane, Jr., <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
CAPTAIN JACK, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
HE-ACH-KATE, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
TSOH-AS-HAU, or General Harrison, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
KWAH-NALT-SOTE, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
S'HOKE-TAN, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
PAITL, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
WEN-A-HAP, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
KLEW-SUM-AH, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
SE-ATT-HOME-TAU, <i>S'klallam sub-chief.</i>	his x mark.	[L. S.]
TSAT-SAT-HOOT, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
PE-AN-HO, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
YI-AH-HUM, or John Adams, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
TI-ITCH-STAN, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
SOO-YAHNTCH, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
TTSEH-A-TAKE, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
HE-ATS-AT-SOOT, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
TOW-OOTS-HOOT, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
TSHEH-HAM, or General Pierce, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
KWIN-NAS-SUM, or George, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
HAI-AHTS, John, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
HAI-OTEST, John, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
SEH-WIN-NUM, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
YAI-TST, or George, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
HE-PAIT, or John, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
SLIMM, or John, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
T'KLALT-SOOT, or Jack, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
S'TAI-TAN, or Sam, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
HUT-TETS-OOT, <i>S'klallam tribe.</i>	his x mark.	[L. S.]
HOW-A-OWL, <i>S'klallam tribe.</i>	his x mark.	[L. S.]

TREATY WITH THE S'KLALLAMS. JANUARY 26, 1855.

937

Executed in the presence of us—

M. T. SIMMONS,
 C. H. MASON, *Secretary Washington Territory*,
 BENJ. F. SHAW, *Interpreter*,
 JOHN H. SCRANTON,
 JOSIAH P. KELLER,
 C. M. HITCHCOCK, M. D.,
 A. B. GOVE,
 H. A. GOLDSBOROUGH,
 B. J. MADISON,
 F. A. ROWE,
 JAS. M. HUNT,
 GEORGE GIBBS, *Secretary*,
 JOHN J. REILLY,
 ROBT. DAVIS,
 S. S. FORD, Jr.,
 H. D. COCK,
 ORRINGTON CUSHMAN,
 J. CONKLIN.

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 eighth day of March, one thousand eight hundred and fifty-nine, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

Ratification,
 March 8, 1859.

"IN EXECUTIVE SESSION,

"SENATE OF THE UNITED STATES, March 8, 1859.

"*Resolved*, (two thirds of the senators present concurring.) That the Senate advise and consent to the ratification of treaty between the United States and the S'Klallams Indians occupying lands in the Straits of Fuca and Hood's Island, in Washington Territory, signed 26th January, 1855.

"Attest: "ASBURY DICKINS, *Secretary*."

Now, therefore, be it known that I, JAMES BUCHANAN, 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 eighth of March, eighteen hundred and fifty-nine, accept, ratify, and confirm the said treaty.

Proclamation
 April 29, 1859.

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

Done at the city of Washington, this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

JAMES BUCHANAN.

By the President:
 LEWIS CASS, *Secretary of State*.

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large, Treaties,
AND
PROCLAMATIONS,
OF THE
UNITED STATES OF AMERICA.

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WITH

REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY

GEORGE P. SANGER,

COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed, are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1846.

VOL. XII.

BOSTON:
LITTLE, BROWN AND COMPANY.

1863.

TREATY WITH THE DWÁMISH &C. INDIANS. JAN. 22, 1855.

927

TREATIES.

Treaty between the United States and the Dwámish, Suquámish, and other allied and subordinate Tribes of Indians in Washington Territory. Concluded at Point Elliott, Washington Territory, January 22, 1855. Ratified by the Senate, March 8, 1859. Proclaimed by the President of the United States, April 11, 1859.

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: Jan. 22, 1855.

WHEREAS a treaty was made and concluded at Múckl-te-óh, or Point Elliott, in the Territory of Washington, the twenty-second day of January, one thousand eight hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the hereinafter-named chiefs, headmen, and delegates of the Dwámish, Suquámish, Sk-táhl-mish, Sam-áhmish, Smalh-kahmish, Skope-áhmish, St-káh-mish, Snoquálmoo, Skai-wha-mish, N'Quentl-má-mish, Sk-táh-le-jum, Stoluck-whá-mish, Sno-ho-mish, Skágit, Kik-i-állus, Swin-á-mish, Squin-áh-mish, Sah-ku-méhu, Noo-whá-bá, Nook-wa-cháh-mi-h, Mee-see-qua-guilch, Cho-bah-áh-bish, and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes and duly authorized by them; which treaty is in the words and figures following to wit:

Preamble.

Articles of agreement and convention made and concluded at Múckl-te-óh, or Point Elliott, in the Territory of Washington, this twenty-second day of January, eighteen hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the undersigned chiefs, headmen and delegates of the Dwámish, Suquámish, Sk-táhl-mish, Sam-áhmish, Smalh-kahmish, Skope-áhmish, St-káh-mish, Snoquálmoo, Skai-wha-mish, N'Quentl-má-mish, Sk-táh-le-jum, Stoluck-whá-mish, Sno-ho-mish, Skágit, Kik-i-állus, Swin-á-mish, Squin-áh-mish, Sah-ku-méhu, Noo-whá-ba, Nook-wa-cháh-mish, Me-sée-qua-guilch, Cho-bah-áh-bish, and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes, and duly authorized by them.

Contracting parties.

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: Commencing at a point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence eastwardly, running along the north line of lands heretofore ceded to the United States by the Nisqually, Puyallup, and other Indians, to the summit of the Cascade range of mountains; thence northwardly, following the summit of said range to the 49th parallel of north latitude; thence west, along said parallel to the middle of the Gulf of Georgia; thence through the middle of said gulf and the main channel through the Canal de Arro to the Straits of Fuca, and crossing the

Cession of lands to the United States.

Boundaries.

Vol. x. p. 1132.

same through the middle of Admiralty Inlet to Suquamish Head; thence southwesterly, through the peninsula, and following the divide between Hood's Canal and Admiralty Inlet to the portage known as Wilkes' Portage; thence northeastwardly, and following the line of lands heretofore ceded as aforesaid to Point Southworth, on the western side of Admiralty Inlet, and thence round the foot of Vashon's Island eastwardly and south-eastwardly to the place of beginning, including all the islands comprised within said boundaries, and all the right, title, and interest of the said tribes and bands to any lands within the territory of the United States.

Reservation.

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 amount of two sections, or twelve hundred and eighty acres, surrounding the small bight at the head of Port Madison, called by the Indians Noo-sohk-um; the amount of two sections, or twelve hundred and eighty acres, on the north side Hwomish Bay and the creek emptying into the same called Kwilt-seh-da, the peninsula at the southeastern end of Perry's Island called Sháis-quihl, and the island called Chah-choo-sen, situated in the Lummi River at the point of separation of the mouths emptying respectively into Bellingham Bay and the Gulf of Georgia. All which tracts shall be 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 or bands, and of the superintendent or agent, but, if necessary for the public convenience, roads may be run through the said reserves, the Indians being compensated for any damage thereby done them.

Whites not to
reside thereon
unless, &c.

Further res-
ervation for
school.

ARTICLE III. There is also reserved from out the lands hereby ceded the amount of thirty-six sections, or one township of land, on the north-eastern shore of Port Gardner, and north of the mouth of Snohomish River, including Tulalip Bay and the before-mentioned Kwilt-seh-da Creek, for the purpose of establishing thereon an agricultural and industrial school, as hereinafter mentioned and agreed, and with a view of ultimately drawing thereto and settling thereon all the Indians living west of the Cascade Mountains in said Territory. Provided, however, that the President may establish the central agency and general reservation at such other point as he may deem for the benefit of the Indians.

Tribes to settle
on reservation
within one year.

ARTICLE IV. The said tribes and bands agree to remove to and settle upon the said first above mentioned reservations 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 land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied, if with the permission of the owner.

Rights and
privileges se-
cured to Indians.

ARTICLE V. The right of taking fish at 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 and gathering roots and berries on open and unclaimed lands. Provided, however, that they shall not take shell-fish from any beds staked or cultivated by citizens.

Payment by the
United States.

ARTICLE VI. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of one hundred and fifty thousand dollars, in the following manner—that is to say: For the first year after the ratification hereof, fifteen thousand dollars; for the next two years, twelve thousand dollars each year; for the next three years, ten thousand dollars each year; for the next four years, seven thousand five hundred dollars each year; for the next five years, six thousand dollars each year; and for the last five years, four thousand two hundred and fifty 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

How to be
applied.

TREATY WITH THE DWAMISH &c. INDIANS. JAN. 22, 1855.

929

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.

ARTICLE VII. The President may hereafter, when in his opinion the interests of the Territory shall require and the welfare of the said Indians be promoted, remove them from either or all of the special reservations heretofore made to the said general reservation, or such other suitable place within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of such 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 Ojibwas, 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 made accordingly therefor.

Indians may be removed to reservation, etc.

Lots may be assigned to individuals.

Vol. x. p. 1844.

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

ARTICLE IX. The said tribes and bands acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof, and they pledge themselves to commit no depredations on the property of such citizens. Should any one or more of them violate this pledge, and the fact be satisfactorily proven 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 the 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 depredations on 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.

Tribes to preserve friendly relations.

to pay for depredations. not to make war except, &c.

to surrender offenders.

ARTICLE X. 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 tribe 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.

Annuities to be withheld from those who drink etc., ardent spirits.

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

Tribes to free all slaves and not to acquire others. not to trade out of the United States.

ARTICLE XII. The said tribes and bands further 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.

ARTICLE XIII. 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 fifteen thousand dollars to be laid out and expended under the direction of the President and in such manner as he shall approve.

\$15,000 appropriated for expenses of removal and settlement.

ARTICLE XIV. 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

United States to establish school and provide instructors,

furnish mechanical 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 like term of twenty years to instruct the Indians in their respective occupations. And the United States finally agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of said school, shops, persons employed, and medical attendance to be defrayed by the United States, and not deducted from the annuities.

Treaty when to take effect.

ARTICLE XV. 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.

Signatures, Jan. 22, 1855.

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 of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS, *Governor and Superintendent*, [L. s.]

SEATTLE, *Chief of the Dwamish and Suquamish tribes.*

his x mark. [L. s.]

PAT-KA-NAM, *Chief of the Snoqualmoo, Snohomish and other tribes.*

his x mark. [L. s.]

CHOW-ITS-HOOT, *Chief of the Lummi and other tribes.*

his x mark. [L. s.]

GOLIAH, *Chief of the Skagits and other allied tribes.*

his x mark. [L. s.]

KWALLATTUM, or General Pierce, *Sub-chief of the Skagit tribe.*

his x mark. [L. s.]

S'HOOTST-HOOT, *Sub-chief of Snohomish.*

his x mark. [L. s.]

SNAH-TALC, or Bonaparte, *Sub-chief of Snohomish.*

his x mark. [L. s.]

SQUUSH-UM, or The Smoke, *Sub-chief of the Snoqualmoo.*

his x mark. [L. s.]

SEE-ALLA-PA-HAN, or The Priest, *Sub-chief of Sk-tah-le-jum.*

his x mark. [L. s.]

HE-UCH-KA-NAM, or George Bonaparte, *Sub-chief of Snohomish.*

his x mark. [L. s.]

TSE-NAH-TALC, or Joseph Bonaparte, *Sub-chief of Snohomish.*

his x mark. [L. s.]

NS'SKI-OOS, or Jackson, *Sub-chief of Snohomish.*

his x mark. [L. s.]

WATS-KA-LAH-TCHIE, or John Hobtst-hoot, *Sub-chief of Snohomish.*

his x mark. [L. s.]

SMEH-MAI-HU, *Sub-chief of Skai-woha-mish.*

his x mark. [L. s.]

SLAT-EAH-KA-NAM, *Sub-chief of Snoqualmoo.*

his x mark. [L. s.]

ST'HAU-AI, *Sub-chief of Snoqualmoo.*

his x mark. [L. s.]

LUGS-KEN, *Sub-chief of Skai-woha-mish.*

his x mark. [L. s.]

S'HEHT-SOOLT, or Peter, *Sub-chief of Snohomish.*

his x mark. [L. s.]

DO-QUEH-OO-SATL, *Snoqualmoo tribe.*

his x mark. [L. s.]

JOHN KANAM, *Snoqualmoo sub-chief.*

his x mark. [L. s.]

KLEMSH-KA-NAM, *Snoqualmoo.*

his x mark. [L. s.]

TS'HUAHNTL, *Dwa-mish sub-chief.*

his x mark. [L. s.]

KWUSS-KA-NAM, or George Snatelum, Sen., *Skagit tribe.*

his x mark. [L. s.]

HEL-MITS, or George Snatelum, *Skagit sub-chief.*

his x mark. [L. s.]

TREATY WITH THE DWAMISH & C. INDIANS. JAN. 22, 1855.

931

S'KWAI-KWI, <i>Skagit tribe, sub-chief.</i>	his x mark.	[L. S.]
SEH-LEK-QU, <i>Sub-chief Lummi tribe.</i>	his x mark.	[L. S.]
S'HP-CHEH-OOS, or General Washington, <i>Sub-chief of Lummi tribe.</i>	his x mark.	[L. S.]
WIIAI-LAN-HU, or Davy Crockett, <i>Sub-chief of Lummi tribe.</i>	his x mark.	[L. S.]
SHE-AH-DELT-HU, <i>Sub-chief of Lummi tribe.</i>	his x mark.	[L. S.]
KWULT-SEH, <i>Sub-chief of Lummi tribe.</i>	his x mark.	[L. S.]
KWULL-ET-HU, <i>Lummi tribe.</i>	his x mark.	[L. S.]
KLEH-KENT-SOOT, <i>Skagit tribe.</i>	his x mark.	[L. S.]
SOHN-HEH-OVS, <i>Skagit tribe.</i>	his x mark.	[L. S.]
S'DEH-AP-KAN, or General Warren, <i>Skagit tribe.</i>	his x mark.	[L. S.]
CHUL-WHIL-TAN, <i>Sub-chief of Suquamish tribe.</i>	his x mark.	[L. S.]
SKE-EH-TUM, <i>Skagit tribe.</i>	his x mark.	[L. S.]
PATCHKANAM, or Dome, <i>Skagit tribe.</i>	his x mark.	[L. S.]
SATS-KANAM, <i>Squin-ah-nush tribe.</i>	his x mark.	[L. S.]
SD-ZO-MAHTL, <i>Kik-ial-lus band.</i>	his x mark.	[L. S.]
DAHTL-DE-MIN, <i>Sub-chief of Sah-ku-meh-hu.</i>	his x mark.	[L. S.]
SD'ZEK-DU-NUM, <i>Me-sek-wi-guilse sub-chief.</i>	his x mark.	[L. S.]
NOW-A-CHAI, <i>Sub-chief of Dwamish.</i>	his x mark.	[L. S.]
MIS-LO-TCHE, or Wah-hehl-tchoo, <i>Sub-chief of Suquamish.</i>	his x mark.	[L. S.]
SLOO-NOKSH-TAN, or Jim, <i>Suquamish tribe.</i>	his x mark.	[L. S.]
MOO-WHAH-LAD-HU, or Jack, <i>Suquamish tribe.</i>	his x mark.	[L. S.]
TOO-LEH-PLAN, <i>Suquamish tribe.</i>	his x mark.	[L. S.]
HIA-SEH-DOO-AN, or Keo-kuck, <i>Dwamish tribe.</i>	his x mark.	[L. S.]
HOOVILT-MEH-TUM, <i>Sub-chief of Suquamish.</i>	his x mark.	[L. S.]
WE-AI-PAH, <i>Skaiwhamish tribe.</i>	his x mark.	[L. S.]
S'AH-AN-HU, or Hallam, <i>Snohomish tribe.</i>	his x mark.	[L. S.]
SHE-HOPE, or General Pierce, <i>Skagit tribe.</i>	his x mark.	[L. S.]
HWN-LAH-LAKQ, or Thomas Jefferson, <i>Lummi tribe.</i>	his x mark.	[L. S.]
CHT-SIMPT, <i>Lummi tribe.</i>	his x mark.	[L. S.]
TSE-SUM-TEN, <i>Lummi tribe.</i>	his x mark.	[L. S.]
KLT-HAHL-TEN, <i>Lummi tribe.</i>	his x mark.	[L. S.]
KUT-TA-KANAM, or John, <i>Lummi tribe.</i>	his x mark.	[L. S.]
CH-LAH-BEN, <i>Noo-gua-cha-mish band.</i>	his x mark.	[L. S.]
NOO-HEH-OOS, <i>Snoqualmoo tribe.</i>	his x mark.	[L. S.]
HWHEH-UK, <i>Snoqualmoo tribe.</i>	his x mark.	[L. S.]
PEH-NUS, <i>Skaiwhamish tribe.</i>	his x mark.	[L. S.]
YIM-KA-NAM, <i>Snoqualmoo tribe.</i>	his x mark.	[L. S.]
TWOOI-AS-KUT, <i>Skaiwhamish tribe.</i>	his x mark.	[L. S.]
LUCH-AL-KANAM, <i>Snoqualmoo tribe.</i>	his x mark.	[L. S.]
S'HOOT-KANAM, <i>Snoqualmoo tribe.</i>	his x mark.	[L. S.]
SME-A-KANAM, <i>Snoqualmoo tribe.</i>	his x mark.	[L. S.]
SAD-ZIS-KEH, <i>Snoqualmoo.</i>	his x mark.	[L. S.]
HEH-MAHL, <i>Skaiwhamish band.</i>	his x mark.	[L. S.]
CHARLEY, <i>Skagit tribe.</i>	his x mark.	[L. S.]
SAMPSON, <i>Skagit tribe.</i>	his x mark.	[L. S.]
JOHN TAYLOR, <i>Snohomish tribe.</i>	his x mark.	[L. S.]
HATCH-KWENTUM, <i>Skagit tribe.</i>	his x mark.	[L. S.]
YO-I-KUM, <i>Skagit tribe.</i>	his x mark.	[L. S.]
T'KWA-MA-HAN, <i>Skagit tribe.</i>	his x mark.	[L. S.]
STO-DUM-KAN, <i>Swinamish band.</i>	his x mark.	[L. S.]

VOL. XII. TREAT.—120

BE-LOLE, <i>Swinamish band.</i>	his x mark.	[L. S.]
D'ZO-LOLE-GWAM-HU, <i>Skagit tribe.</i>	his x mark.	[L. S.]
STEH-SHAIL, William, <i>Skaiwamish band.</i>	his x mark.	[L. S.]
KEL-KAHL-TSOOT, <i>Swinamish tribe.</i>	his x mark.	[L. S.]
PAT-SEN, <i>Skagit tribe.</i>	his x mark.	[L. S.]
PAT-TEH-US, <i>Noo-wha-ah sub-chief.</i>	his x mark.	[L. S.]
S'HOOLK-KA-NAM, <i>Lummi sub-chief.</i>	his x mark.	[L. S.]
CH-LOK-SUTS, <i>Lummi sub-chief.</i>	his x mark.	[L. S.]

Executed in the presence of us—

M. T. SIMMONS, *Indian Agent.*
 C. H. MASON, *Secretary of Washington Territory.*
 BENJ. F. SHAW, *Interpreter.*
 CHAS. M. HITCHCOCK.
 H. A. GOLDSBOROUGH.
 GEORGE GIBBS.
 JOHN H. SCRANTON.
 HENRY D. COCK.
 S. S. FORD, Jr.
 ORRINGTON CUSHMAN.
 ELLIS BARNES.
 R. S. BAILEY.
 S. M. COLLINS.
 LAFAYETTE BALCH.
 E. S. FOWLER.
 J. H. HALL.
 ROB'T DAVIS.

Consent of
Senate,
March 8, 1859.

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 eighth day of March, one thousand eight hundred and fifty-nine, 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 8, 1859.

"*Resolved*, (two-thirds of the senators present concurring.) That the Senate advise and consent to the ratification of treaty between the United States and the chiefs, headmen and delegates of the Dwámi-sh, Suquámish and other allied and subordinate tribes of Indians occupying certain lands situated in Washington Territory, signed the 22d day of January, 1855.

"Attest:

"ASBURY DICKINS, *Secretary.*"

Proclamation,
April 11, 1859.

Now, therefore, be it known that I, JAMES BUCHANAN, 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 eighth of March, one thousand eight hundred and fifty-nine, accept, ratify, and confirm the said treaty.

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

[SEAL.] Done at the city of Washington, this eleventh day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

JAMES BUCHANAN.

By the President:

LEWIS CASS, *Secretary of State.*

BY AUTHORITY OF CONGRESS.

THE

Statutes at Large and Treaties

OF THE

UNITED STATES OF AMERICA.

FROM

DECEMBER 1, 1851, TO MARCH 3, 1855,

Arranged in Chronological Order;

WITH

REFERENCES TO THE MATTER OF EACH ACT AND TO THE
SUBSEQUENT ACTS ON THE SAME SUBJECT.

EDITED BY

GEORGE MINOT, ESQ.,

COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed are hereby recognised, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1845.

VOL. X.

BOSTON:

LITTLE, BROWN AND COMPANY.

1855.

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 Vashon's 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

TREATY WITH NISQUALLY, &C. DEC. 26, 1854.

1133

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, if 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.

Ante, 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 re-
specting 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 central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of the said school, shops, employées, 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.

Treaty, when
to take effect.

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.

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.]

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

1135

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.]
SONAN-O-YUTL,	his x mark.	[L. S.]
KL-TEHP,	his x mark.	[L. S.]
SAHL-KO-MIN,	his x mark.	[L. S.]
T'BET-STE-HEH-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-YAH-TUM,	his x mark.	[L. S.]
CHAH-ACHSH,	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,
WILLIAM,

his x mark. [L. S.]
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. TYERALL,
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, Steilacoom, Squawksin, S'Hom-amish, Steth-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.

1137

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. MARCY, *Secretary of State*.

VOL. X. TREAT.—143

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large, Treaties,
AND
PROCLAMATIONS,
OF THE
UNITED STATES OF AMERICA.

FROM

DECEMBER 5, 1859, TO MARCH 3, 1863.

Arranged in Chronological Order and carefully collated with the
Originals at Washington.

WITH

REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY

GEORGE P. SANGER,

COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed, are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1846.

VOL. XII.

BOSTON:
LITTLE, BROWN AND COMPANY.

1863.

TREATY WITH THE MAKAH TRIBE. JAN. 31, 1855.

939

Treaty between the United States of America and the Makah Tribe of Indians. Concluded at Neah Bay, Washington Territory, January 31, 1855. Ratified by the Senate, March 8, 1859. Proclaimed by the President of the United States, April 18, 1859.

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: January 31, 1855

WHEREAS a treaty was made and concluded at Neah Bay, in the Territory of Washington, on the thirty-first day of January, eighteen hundred and fifty-five, between Isaac I. Stevens, governor and superintendent of Indian affairs for said Territory, on the part of the United States, and the hereinafter-named chiefs, headmen, and delegates of the several villages of the Makah tribe of Indians, viz.: Neah Waatch, Tsoo-Yess, and Osett, occupying the country around Cape Classett or Flattery, on behalf of the said tribe and duly authorized by the same; which treaty is in the words and figures following, to wit:

Articles of agreement and convention, made and concluded at Neah Bay, in the Territory of Washington, this thirty-first day of January, in the year eighteen hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the several villages of the Makah tribe of Indians, viz.: Neah Waatch, Tsoo-Yess, and Osett, occupying the country around Cape Classett or Flattery, on behalf of the said tribe and duly authorized by the same.

Contracting
Parties.

ARTICLE I. The said tribe hereby cedes, relinquishes, and conveys to the United States all their right, title, and interest in and to the lands and country occupied by it, bounded and described as follows, viz: Commencing at the mouth of the Oke-ho River, on the Straits of Fuca; thence running westwardly with said straits to Cape Classett or Flattery; thence southwardly along the coast to Osett, or the lower Cape Flattery; thence eastwardly along the line of lands occupied by the Kwe-déh-tut or Kwill-eh-yute tribe of Indians, to the summit of the coast range of mountains, and thence northwardly along the line of lands lately ceded to the United States by the S'Klallam tribe to the place of beginning, including all the islands lying off the same on the straits and coast.

Surrender of
lands to the
United States.
Boundaries.Treaties, ante,
P. 7.

ARTICLE II. There is, however, reserved for the present use and occupation of the said tribe the following tract of land, viz.: Commencing on the beach at the mouth of a small brook running into Neah Bay next to the site of the old Spanish fort; thence along the shore round Cape Classett or Flattery, to the mouth of another small stream running into the bay on the south side of said cape, a little above the Waatch village; thence following said brook to its source; thence in a straight line to the source of the first-mentioned brook, and thence following the same down to the place of beginning; which said tract shall be 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 tribe 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 here-

Reservation.
Boundaries.Whites not to
reside thereon,
unless, &c.
Roads may be
made.

Other friendly bands may be placed thereon. after 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.

Indians to settle on reservation within a year. ARTICLE III. The said tribe agrees to remove to and settle upon the said reservation, if required so to do, 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 land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied, if with the permission of the owner.

Rights and privileges secured to Indians. ARTICLE IV. The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands: *Provided, however,* That they shall not take shell-fish from any beds staked or cultivated by citizens.

Payments by the United States. ARTICLE V. In consideration of the above cession the United States agree to pay to the said tribe the sum of thirty thousand dollars, in the following manner, that is to say: During the first year after the ratification hereof, three thousand dollars; for the next two years, twenty-five hundred dollars each year; for the next three years, two thousand dollars each year; for the next four years, one thousand five hundred dollars each year; and for the next ten 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.

Appropriation for removal and for clearing and fencing land, &c. ARTICLE VI. To enable the said Indians to remove to and settle upon their aforesaid reservation, 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 dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve. And any substantial improvements heretofore made by any individual Indian, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President and payment made therefor accordingly.

Indians may be removed from the reservation. ARTICLE VII. The President may hereafter, when in his opinion the interests of the Territory shall require, and the welfare of said Indians be promoted thereby, remove them from said reservation to such 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 thereon 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 practicable.

Vol. x. p. 1044. Annuities of tribes not to pay debts of individuals. ARTICLE VIII. The annuities of the aforesaid tribe shall not be taken to pay the debts of individuals.

The Indians to preserve friendly relations, &c. ARTICLE IX. The said Indians acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof, and they 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 proven before the agent, the property taken shall be returned, or in default thereof, or if injured or

TREATY WITH THE MAKAH TRIBE. JAN. 31, 1855.

941.

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 case of depredations against citizens. And the said tribe agrees not to shelter or conceal offenders against the United States, but to deliver up the same for trial by the authorities.

Not to make war except, &c.

To surrender offenders.

ARTICLE X. The above tribe is desirous to exclude from its reservation the use of ardent spirits, and to prevent its people from drinking the same, and therefore it is provided that any Indian belonging thereto who shall be guilty of bringing liquor into said reservation, 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.

Annuities to be withheld from those drinking ardent spirits.

ARTICLE XI. 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 the period of twenty years, an agricultural and industrial school, to be free to children of the said tribe in common with those of the other tribes of said district and to provide a smithy and carpenter's shop, and furnish them with the necessary tools and employ a blacksmith, carpenter and farmer for the like term to instruct the Indians in their respective occupations. *Provided however,* That should it be deemed expedient a separate school may be established for the benefit of said tribe and such others as may be associated with it, and the like persons employed for the same purposes at some other suitable place. And the United States further agree to employ a physician to reside at the said central agency, or at such other school should one be established, who shall furnish medicine and advice to the sick, and shall vaccinate them; the expenses of the said school, shops, persons employed and medical attendance to be defrayed by the United States and not deducted from the annuities.

The United States to establish an agricultural &c. school for the Indians.

to provide tools and employ mechanics, &c.

a physician, &c.

ARTICLE XII. The said tribe agrees to free all slaves now held by its people and not to purchase or acquire others hereafter.

The tribe is to free all slaves and not to acquire others.

ARTICLE XIII. The said tribe finally agrees 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 its reservation without consent of the superintendent or agent.

not to trade out of the United States.

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

Foreign Indians not to reside on reservations. When treaty 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 tribe aforesaid have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

Signatures, January 31, 1855.

ISAAC I. STEVENS, Governor and Superintendent. [L. s.]

TSE-KAUWTL, Head Chief of the Makah Tribe.	his x mark.	[L. s.]
KAL-CHOTE, Sub-chief of the Makahs.	his x mark.	[L. s.]
TAH-A-HOWTL, Sub-chief of the Makahs.	his x mark.	[L. s.]
KAH-BACH-SAT, Sub-chief of the Makahs.	his x mark.	[L. s.]
KETS-KUS-SUM, Sub-chief of the Makahs.	his x mark.	[L. s.]
HAATSE, Sub-chief of the Makahs.	his x mark.	[L. s.]
KEH-CHOOK, Sub-chief of the Makahs.	his x mark.	[L. s.]
IT-AN-DA-HA, Sub-chief of the Makahs.	his x mark.	[L. s.]
KLAH-PE-AN-HIE, or Andrew Jackson, Sub-chief of the Makahs.	his x mark.	[L. s.]
TSAL-AB-OOS, or Peter, Neah Village.	his x mark.	[L. s.]

TREATY WITH THE MAKAH TRIBE. JAN. 31, 1855.

TAHOLA, <i>Neah Village.</i>	his x mark.	[L. S.]
KLEHT-LI-QUAT-STL, <i>Waatch Village.</i>	his x mark.	[L. S.]
TOO-WHAH-TAN, <i>Waatch Village.</i>	his x mark.	[L. S.]
TAHTS-KIN, <i>Neah Village.</i>	his x mark.	[L. S.]
NENCHOOP, <i>Neah Village.</i>	his x mark.	[L. S.]
AH-DE-AK-TOO-AH, <i>Osett Village.</i>	his x mark.	[L. S.]
WILLIAM, <i>Neah Village.</i>	his x mark.	[L. S.]
WAK-KEP-TUP, <i>Waatch Village.</i>	his x mark.	[L. S.]
KLAHT-TE-DI-YUKE, <i>Waatch Village.</i>	his x mark.	[L. S.]
OOBICK, <i>Waatch Village.</i>	his x mark.	[L. S.]
BICH-TOOK, <i>Waatch Village.</i>	his x mark.	[L. S.]
BAHT-SE-DITL, <i>Neah Village.</i>	his x mark.	[L. S.]
WACK-SHIE, <i>Neah Village.</i>	his x mark.	[L. S.]
HAH-YO-HWA, <i>Waatch Village.</i>	his x mark.	[L. S.]
DAHT-LEEK, or Mines, <i>Osett Village.</i>	his x mark.	[L. S.]
PAH-HAT, <i>Neah Village.</i>	his x mark.	[L. S.]
PAI-YEH, <i>Osett Village.</i>	his x mark.	[L. S.]
TSAH-WEH-SUP, <i>Neah Village.</i>	his x mark.	[L. S.]
AL-IS-KAH, <i>Osett Village.</i>	his x mark.	[L. S.]
KWE-TOWTL, <i>Neah Village.</i>	his x mark.	[L. S.]
KAHT-SAHT-WHA, <i>Neah Village.</i>	his x mark.	[L. S.]
TCHOO-QUUT-LAH, or Yes Sir, <i>Neah Village.</i>	his x mark.	[L. S.]
KLATTS-OW-SEHP, <i>Neah Village.</i>	his x mark.	[L. S.]
KAI-KL-CHIS-SUM, <i>Neah Village.</i>	his x mark.	[L. S.]
KAH-KWT-LIT-HA, <i>Waatch Village.</i>	his x mark.	[L. S.]
HE-DAH-TITL, <i>Neah Village.</i>	his x mark.	[L. S.]
SAH-DIT-LE-UAD, <i>Waatch Village.</i>	his x mark.	[L. S.]
KLAH-KU-PIHL, <i>Tsoo-yess Village.</i>	his x mark.	[L. S.]
BILLUK-WHTL, <i>Tsoo-yess Village.</i>	his x mark.	[L. S.]
KWAH-TOO-QUALH, <i>Tsoo-yess Village.</i>	his x mark.	[L. S.]
YOOCH-BOOTT, <i>Tsoo-yess Village.</i>	his x mark.	[L. S.]
SWELL, or Jeff. Davis, <i>Neah Village.</i>	his x mark.	[L. S.]

Executed in the presence of us. The words "five hundred" being first interlined in the 5th article, and erasures made in the 8th and 9th articles.

M. T. SIMMONS, *Indian Agent.*

GEORGE GIBBS, *Secretary.*

B. F. SHAW, *Interpreter.*

C. M. HITCHCOCK, M. D.

E. S. FOWLER.

ORRINGTON CUSHMAN.

ROBT. DAVIS.

Consent of
Senate, March 8,
1859.

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 eighth day of March, one thousand eight hundred and fifty-nine, advise and consent to the ratification of the same by a resolution in the words and figures following, to wit:—

"IN EXECUTIVE SESSION,

"SENATE OF THE UNITED STATES, March 8, 1859.

"Resolved, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of treaty between the United States and the chiefs, headmen, and delegates of the Makah tribes of Indians occupying the country around Cape Classet or Flatlattery, in Washington Territory, signed 31st January, 1855.

"Attest:

"ASBURY DICKINS, *Secretary.*"

TREATY WITH THE MAKAH TRIBE. JAN. 31, 1855.

943

Now, therefore, be it known that I, JAMES BUCHANAN, President of the United States of America, do, in pursuance of the advice and consent of the Senate as expressed in their resolution of March eighth, eighteen hundred and fifty-nine, hereby accept, ratify, and confirm the said treaty. Proclamation,
April 18, 1869.

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

Done at the city of Washington, this eighteenth day of April,
in the year of our Lord one thousand eight hundred and fifty-
[SEAL.] nine, and of the independence of the United States the
eighty-third.

JAMES BUCHANAN.

By the President:

LEWIS CASS, *Secretary of State.*

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large, Treaties,
AND
PROCLAMATIONS,
OF THE
UNITED STATES OF AMERICA.

FROM

DECEMBER 5, 1859, TO MARCH 3, 1863.

Arranged in Chronological Order and carefully collated with the
Originals at Washington.

WITH

REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY

GEORGE P. SANGER,

COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed, are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1846.

VOL. XII.

BOSTON:
LITTLE, BROWN AND COMPANY.

1863.

TREATY WITH THE WALLA-WALLAS, &c. JUNE 9, 1855.

945

Treaty between the United States and the Walla-Walla, Cayuses, and Umatilla Tribes and Bands of Indians in Washington and Oregon Territories. Concluded at Camp Stevens, in the Walla-Walla Valley, Washington Territory, June 9, 1855. Ratified by the Senate, March 8, 1859. Proclaimed by the President of the United States, April 11, 1859.

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: June 9, 1855.

WHEREAS a treaty was made and concluded at the treaty ground, Camp Stevens, in the Walla-Walla Valley on the ninth day of June, one thousand eight hundred and fifty-five, between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and Joel Palmer, superintendent of Indian affairs for Oregon Territory, on the part of the United States, and the hereinafter named chiefs, headmen and delegates of the Walla-Walla, Cayuses and Umatilla tribes and bands of Indians, occupying lands partly in Washington and partly in Oregon Territory, they being duly authorized thereto by said tribes and bands; which treaty is in the following words and figures, to wit:

Preamble.

Articles of agreement and convention made and concluded at the treaty ground, Camp Stevens, in the Walla-Walla Valley, this ninth day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and Joel Palmer, superintendent of Indian affairs for Oregon Territory, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the Walla-Wallas, Cayuses, and Umatilla tribes, and bands of Indians, occupying lands partly in Washington and partly in Oregon Territories, and who, for the purposes of this treaty, are to be regarded as one nation acting for and in behalf of their respective bands and tribes, they being duly authorized thereto; it being understood that Superintendent I. I. Stevens assumes to treat with that portion of the above named bands and tribes residing within the Territory of Washington, and Superintendent Palmer with those residing within Oregon.

Contracting parties.

ARTICLE I. The above named confederated bands of Indians cede to the United States all their right, title, and claim to all and every part of the country claimed by them, included in the following boundaries, to wit: Commencing at the mouth of the Tocannon River, in Washington Territory, running thence up said river to its source; thence easterly along the summit of the Blue Mountains, and on the southern boundaries of the purchase made of the Nez Percés Indians, and easterly along that boundary to the western limits of the country claimed by the Shoshonees or Snake Indians; thence southerly along that boundary (being the waters of Powder River) to the source of Powder River, thence to the head waters of Willow Creek, thence down Willow Creek to the Columbia River, thence up the channel of the Columbia River to the lower end of a large island below the mouth of Umatilla River, thence northerly to a point on the Yakama River, called Tohmah-luke, thence to Le Lac, thence to the White banks on the Columbia below Priest's Rapids, thence down the Columbia River to the junction of the Columbia and Snake Rivers, thence up the Snake River to the place of beginning: *Provided, however,* That so much

Cession of lands to the United States. Boundaries.

Boundaries.

of the country described above as is contained in the following boundaries shall be set apart as a residence for said Indians, which tract for the purposes contemplated shall be held and regarded as an Indian reservation; to wit: Commencing in the middle of the channel of Umatilla River opposite the mouth of Wild Horse Creek, thence up the middle of the channel of said creek to its source, thence southerly to a point in the Blue Mountains, known as Lee's Encampment, thence in a line to the headwaters of Howtome Creek, thence west to the divide between Howtome and Birch Creeks, thence northerly along said divide to a point due west of the southwest corner of William C. McKay's land claim, thence east along his line to his southeast corner, thence in a line to the place of beginning; all of which tract shall be set apart and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white person be permitted to reside upon the same without permission of the agent and superintendent. The said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, without any additional expense to the government other than is provided by this treaty, and until the expiration of the time specified, the said bands shall be permitted to occupy and reside upon the tracts now possessed by them, guaranteeing to all citizen[s] of the United States, the right to enter upon and occupy as settlers any lands not actually enclosed by said Indians: *Provided, also*, That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them. *And provided, also*, That if any band or bands of Indians, residing in and claiming any portion or portions of the country described in this article, shall not accede to the terms of this treaty, then the bands becoming parties hereunto agree to reserve such part of the several and other payments herein named, as a consideration for the entire country described as aforesaid, as shall be in the proportion that their aggregate number may have to the whole number of Indians residing in and claiming the entire country aforesaid, as consideration and payment in full for the tracts in said country claimed by them. *And provided, also*, That when substantial improvements have been made by any member of the bands being parties to this treaty, who are compelled to abandon them in consequence of said treaty, [they] shall be valued under the direction of the President of the United States, and payment made therefor.

ARTICLE II. In consideration of and payment for the country hereby ceded, the United States agree to pay the bands and tribes of Indians claiming territory and residing in said country, and who remove to and reside upon said reservation, the several sums of money following, to wit: eight thousand dollars per annum for the term of five years, commencing on the first day of September, 1856; six thousand dollars per annum for the term of five years next succeeding the first five; four thousand dollars per annum for the term of five years next succeeding the second five, and two thousand dollars per annum for the term of five years next succeeding the third five; all of which several sums of money shall be expended for the use and benefit of the confederated bands herein named, under the direction of the President of the United States, who may from time to time at his discretion determine what proportion thereof shall be expended for such objects as in his judgment will promote their well-being, and advance them in civilization, for their moral improvement and education, for buildings, opening and fencing farms, breaking land, purchasing teams, wagons, agricultural implements and seeds, for clothing, provision and tools, for medical purposes, providing mechanics and farmers, and for arms and ammunition.

Reservation.

Whites not to
reside thereon,
unless, &c.
Tribes to settle
thereon in a
year.

Rights and
privileges se-
cured to the In-
dians.

Proviso in case
any tribe does
not accede to this
treaty.

Allowance for
improvements, if,
&c.

Payments by
the United
States.

How to be ex-
pended.

TREATY WITH THE WALLA-WALLAS, &c. JUNE 9, 1855.

947

ARTICLE III. In addition to the articles advanced the Indians at the time of signing this treaty, the United States agree to expend the sum of fifty thousand dollars during the first and second years after its ratification, for the erection of buildings on the reservation, fencing and opening farms, for the purchase of teams, farming implements, clothing, and provisions, for medicines and tools, for the payment of employes, and for subsisting the Indians the first year after their removal.

United States
to expend
\$50,000 for
buildings, &c.

ARTICLE IV. In addition to the consideration above specified, the United States agree to erect at suitable points on the reservation, one saw-mill, and one flouring-mill, a building suitable for a hospital, two school-houses, one blacksmith shop, one building for wagon and ploughmaker and one carpenter and joiner shop, one dwelling for each, two millers, one farmer, one superintendent of farming operations, two school teachers, one blacksmith, one wagon and ploughmaker, one carpenter and joiner, to each of which the necessary out buildings. To purchase and keep in repair for the term of twenty years all necessary mill fixtures and mechanical tools, medicines and hospital stores, books and stationery for schools, and furniture for employes.

to erect saw-
mills, schools,
mechanics'
shops, &c.

The United States further engage to secure and pay for the services and subsistence, for the term of twenty years, [of] one superintendent of farming operations, one farmer, one blacksmith, one wagon and ploughmaker, one carpenter and joiner, one physician, and two school teachers.

to employ me-
chanics, teach-
ers, &c.

ARTICLE V. The United States further engage to build for the head chiefs of the Walla-Walla, Cayuse, and Umatilla bands each one dwelling-house, and to plough and fence ten acres of land for each, and to pay to each five hundred dollars per annum in cash for the term of twenty years. The first payment to the Walla-Walla chief to commence upon the signing of this treaty. To give to the Walla-Walla chief three yoke of oxen, three yokes and four chains, one wagon, two ploughs, twelve hoes, twelve axes, two shovels, and one saddle and bridle, one set of wagon harness, and one set of plough harness, within three months after the signing of this treaty.

to build dwell-
ing-houses, &c.
for head chiefs.

To build for the son of Pio-pio-mox-mox one dwelling-house, and plough and fence five acres of land, and to give him a salary for twenty years, one hundred dollars in cash per annum, commencing September first, eighteen hundred and fifty-six.

Pio-pio-mox-
mox.

The improvement named in this section to be completed as soon after the ratification of this treaty as possible.

It is further stipulated that Pio-pio-mox-mox is secured for the term of five years, the right to build and occupy a house at or near the mouth of Yakama River, to be used as a trading post in the sale of his bands of wild cattle ranging in that district. *And provided, also,* That in consequence of the immigrant wagon road from Grand Round to Umatilla, passing through the reservation herein specified, thus leading to turmoils and disputes between Indians and immigrants, and as it is known that a more desirable and practicable route may be had to the south of the present road, that a sum not exceeding ten thousand dollars shall be expended in locating and opening a wagon road from Powder River or Grand Round, so as to reach the plain at the western base of the Blue Mountains, south of the southern limits of said reservation.

\$10,000 to be
expended for
opening wagon
road from Pow-
der River.

ARTICLE VI. The President may, from time to time at his discretion cause the whole or such portion as he may think proper, of the tract that may now or hereafter be set apart as a permanent home for those Indians, to be surveyed into lots and assigned to such Indians of the confederated bands as may wish to enjoy the privilege, and locate thereon permanently, to a single person over twenty-one years of age, forty acres, to a family of two persons, sixty acres, to a family of three and not exceeding five, eighty acres; to a family of six persons and not exceeding ten, one hundred and twenty acres; and to each family over ten in number, twenty

Allotments of
land may be
made to individ-
ual Indians.

acres to each additional three members; and the President may provide for such rules and regulations as will secure to the family in case of the death of the head thereof, the possession and enjoyment of such permanent home and improvement thereon; and he may at any time, at his discretion, after such person or family has made location on the land assigned as a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale, or forfeiture, which condition shall continue in force until a State constitution, embracing such land within its limits, shall have been formed and the legislature of the State shall remove the restriction: *Provided, however,* That no State legislature shall remove the restriction herein provided for without the consent of Congress: *And provided, also,* That if any person or family, shall at any time, neglect or refuse to occupy or till a portion of the land assigned and on which they have located, or shall roam from place to place, indicating a desire to abandon his home, the President may if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family their portion of the annuities or other money due them, until they shall have returned to such permanent home, and resumed the pursuits of industry, and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of Indians residing on said reservation: *And provided, also,* That the head chiefs of the three principal bands, to wit, Pio-pio-mox-mox, Weyatenatamany, and Wenap-shoot, shall be secured in a tract of at least one hundred and sixty acres of land.

Patents may issue therefor. Conditions.

Restriction not to be removed, unless, &c.

Assignment of patent may be cancelled, &c.

Certain head chiefs to have 160 acres.

Annuities of Indians not to pay debts of individuals.

Bands to preserve friendly relations, &c.

to pay &c. for depredations.

not to make war, except, &c.

to submit to regulations.

Annuities withheld from those drinking liquor.

Right of way reserved for roads through reservation.

When treaty to take effect.

Signatures, June 9, 1855.

ARTICLE VII. The annuities of the Indians shall not be taken to pay the debts of individuals.

ARTICLE VIII. The confederated bands acknowledge their dependence on the government of the United States and promise to be friendly with all the citizens thereof, and pledge themselves to commit no depredation on the property of such citizens, and should any one or more of the Indians violate this pledge, and the fact be satisfactorily proven 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 of Indians except in self-defence, but submit all matter of difference between them and other Indians, to the government of the United States or its agents for decision, and abide thereby; and if any of the said Indians commit any depredations on other Indians, the same rule shall prevail as that prescribed in the article in case of depredations against citizens. Said Indians further engage to submit to and observe all laws, rules, and regulations which may be prescribed by the United States for the government of said Indians.

ARTICLE IX. In order to prevent the evils of intemperance among said Indians, it is hereby provided that if any one of them shall drink liquor, or procure it for others to drink, [such one] may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

ARTICLE X. The said confederated bands agree that, whenever in the opinion of the President of the United States the public interest may require it, that all roads highways and railroads shall have the right of way through the reservation herein designated or which may at any time hereafter be set apart as a reservation for said Indians.

ARTICLE XI. 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.

In testimony whereof, the said I. I. Stevens and Joel Palmer, on the part of the United States, and the undersigned chiefs, headmen, and dele-

TREATY WITH THE WALLA-WALLAS, &c. JUNE 9, 1855.

949

gates of the said confederated bands, have hereunto set their hands and seals, this ninth day of June, eighteen hundred and fifty-five.

ISAAC I. STEVENS, [L. s.]
Governor and Superintendent Washington Territory.
JOEL PALMER, [L. s.]
Superintendent Indian Affairs, O. T.

PIO-PIO-MOX-MOX,	his x mark.	[L. s.]
Head Chief of Walla-Wallas.		
MEANI-TEAT or Pierre,	his x mark.	[L. s.]
WEYATENATEMANY,	his x mark.	[L. s.]
Head Chief of Cayuses.		
WENAP-SNOOT,	his x mark.	[L. s.]
Head Chief of Umatilla.		
KAMASPELLO,	his x mark.	[L. s.]
STEACHUS,	his x mark.	[L. s.]
HOWLISH-WAMPO,	his x mark.	[L. s.]
FIVE CROWS,	his x mark.	[L. s.]
STOCHEANIA,	his x mark.	[L. s.]
MU-HOWLISH,	his x mark.	[L. s.]
LIN-TIN-MET-CHEANIA,	his x mark.	[L. s.]
PETAMYO-MOX-MOX,	his x mark.	[L. s.]
WATASH-TE-WATY,	his x mark.	[L. s.]
SHE-YAM-NA-KON,	his x mark.	[L. s.]
QUA-CHIM,	his x mark.	[L. s.]
TE-WALCA-TEMANY,	his x mark.	[L. s.]
KEANTOAN,	his x mark.	[L. s.]
U-WAIT-QUAICK,	his x mark.	[L. s.]
TILCH-A-WAIX,	his x mark.	[L. s.]
LA-TA-CHIN,	his x mark.	[L. s.]
KACHO-ROLICH,	his x mark.	[L. s.]
KANOCEY,	his x mark.	[L. s.]
SOM-NA-HOWLISH,	his x mark.	[L. s.]
TA-WE-WAY,	his x mark.	[L. s.]
HA-HATS-ME-CHEAT-PUS,	his x mark.	[L. s.]
PE-NA-CHEANIT,	his x mark.	[L. s.]
HA-YO-MA-KIN,	his x mark.	[L. s.]
YA-CA-LOX,	his x mark.	[L. s.]
NA-KAS,	his x mark.	[L. s.]
STOP-CHA-YEOU,	his x mark.	[L. s.]
HE-YEAU-SHE-KEAUT,	his x mark.	[L. s.]
SHA-WA-WAY,	his x mark.	[L. s.]
TAM-CHA-KEY,	his x mark.	[L. s.]
TE-NA-WE-NA-CHA,	his x mark.	[L. s.]
JOHNSON,	his x mark.	[L. s.]
WHE-LA-CHEY,	his x mark.	[L. s.]

Signed in the presence of—

JAMES DOTY, *Secretary Treaties.*
WM. C. MCKAY, *Secretary Treaties.*
C. CHIROUSE, *O. M. I.*
A. D. PAMBURN, *Interpreter.*
JOHN WHITFORD, his x mark, *Interpreter.*
MATHEW DOFA, his x mark, *Interpreter.*
WILLIAM CRAIG, *Interpreter.*
JAMES COXEY, his x mark, *Interpreter.*
PATRICK MCKENZIE, *Interpreter.*
ARCH. GRACIE, JR., *Brevet Second Lieutenant 4th Infantry.*
R. R. THOMPSON, *Indian Agent.*
R. B. METCALFE, *Indian Sub-Agent.*

950

TREATY WITH THE WALLA-WALLAS, &C. JUNE 9, 1855.

Consent of Sen-
ate, March 8,
1859.

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

"IN EXECUTIVE SESSION,

"SENATE OF THE UNITED STATES, March 8, 1859.

"*Resolved*, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of [the] treaty between the United States and the chiefs, headmen and delegates of the Walla-Wallas, Cayuses and Umatilla tribes of Indians occupying lands partly in Washington and partly in Oregon Territories, and signed the 9th day of June, 1855.

"Attest :

"ASBURY DICKINS, *Secretary*."

Proclamation,
April 11, 1859.

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

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

Done at the City of Washington, this eleventh day of April,
in the year of our Lord one thousand eight hundred and fifty-
[SEAL.] nine, and of the independence of the United States the
eighty-third.

JAMES BUCHANAN.

By the President:

LEWIS CASS, *Secretary of State*.

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large, Treaties,
AND
PROCLAMATIONS,
OF THE
UNITED STATES OF AMERICA.

FROM

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REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
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EDITED BY

GEORGE P. SANGER,

COUNSELLOR AT LAW.

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VOL. XII.

BOSTON:
LITTLE, BROWN AND COMPANY.

1863.

TREATY WITH THE YAKAMAS. JUNE 9, 1855.

951

Treaty between the United States and the Yakama Nation of Indians. Concluded at Camp Stevens, Walla-Walla Valley, June 9, 1855. Ratified by the Senate, March 8, 1859. Proclaimed by the President of the United States, April 18, 1859.

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: June 9, 1855.

WHEREAS a treaty was made and concluded at the Treaty Ground, Camp Stevens, Walla-Walla Valley, on the ninth day of June, in the year one thousand eight hundred and fifty-five, between Isaac I. Stevens, governor, and superintendent of Indian affairs, for the Territory of Washington, on the part of the United States, and the hereinafter named head chief, chiefs, headmen and delegates of the Yakama, Palouse, Piquouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat, confederate tribes and bands of Indians, occupying lands lying in Washington Territory, who, for the purposes of this treaty, are to be considered as one nation, under the name of "Yakama," with Kamaiakun as its Head Chief, on behalf of and acting for said bands and tribes, and duly authorized thereto by them; which treaty is in the words and figures following, to wit:

Preamble.

Articles of agreement and convention made and concluded at the treaty ground, Camp Stevens, Walla-Walla Valley, this ninth day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the undersigned head chief, chiefs, headmen and delegates of the Yakama, Palouse, Piquouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat, confederated tribes and bands of Indians, occupying lands hereinafter bounded and described and lying in Washington Territory, who for the purposes of this treaty are to be considered as one nation, under the name of "Yakama," with Kamaiakun as its head chief, on behalf of and acting for said tribes and bands, and being duly authorized thereto by them.

Contracting parties.

ARTICLE I. The aforesaid confederated 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 and claimed by them, and bounded and described as follows, to wit:

Cession of lands to the United States.

Commencing at Mount Ranier, thence northerly along the main ridge of the Cascade Mountains to the point where the northern tributaries of Lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes (119° 10'), which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians; thence in a true south course to the

Boundaries.

TREATY WITH THE YAKAMAS. JUNE 9, 1855.

forty-seventh (47°) parallel of latitude; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes; thence down the Palouse River to its junction with the Moh-hah-ne-she, or southern tributary of the same; thence, in a southeasterly direction, to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Percé tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White banks," below the Priest's rapids; thence westerly to a lake called "La Lac;" thence southerly to a point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the western extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning.

Reservation. ARTICLE II. There is, however, reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries, to wit:

Boundaries. Commencing on the Yakama River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning.

Reservation to be set apart, &c. and Indians to settle thereon; whites not to reside thereon. All which tract shall be set apart, and, so far as necessary, surveyed and marked out, for the exclusive use and benefit of said confederated tribes and bands of Indians, as an Indian reservation; nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent. And the said confederated tribes and bands agree to remove to, and settle upon, the same, within one year after the ratification of this treaty. 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, if with the permission of the owner or claimant.

Guaranteeing, however, the right to all citizens of the United States, to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named.

Improvements to be paid for by the United States. And provided, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated, and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued, under the direction of the President of the United States, and payment made therefor in money; or improvements of an equal value made for said Indian upon the reservation. And no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money, or improvements of an equal value shall be furnished him as aforesaid.

ARTICLE III. And provided, That, if necessary for the public con-

TREATY WITH THE YAKAMAS. JUNE 9, 1855.

953

venience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways. Roads may be made.

The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land. Privileges secured to Indians.

ARTICLE IV. In consideration of the above cession, the United States agree to pay to the said confederated tribes and bands of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty, the sum of two hundred thousand dollars, in the following manner, that is to say: sixty thousand dollars, to be expended under the direction of the President of the United States, the first year after the ratification of this treaty, in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, supplying them with provisions and a suitable outfit, and for such other objects as he may deem necessary, and the remainder in annuities, as follows: for the first five years after the ratification of the treaty, ten thousand dollars each year, commencing September first, 1856; for the next five years, eight thousand dollars each year; for the next five years, six thousand dollars per year; and for the next five years, four thousand per year. Payments by the United States;

All which sums of money shall be applied to the use and benefit of 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 for them. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto. how to be applied.

ARTICLE V. The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, two schools, erecting the necessary buildings, keeping them in repair, and providing them with furniture, books, and stationery, one of which shall be an agricultural and industrial school, to be located at the agency, and to be free to the children of the said confederated tribes and bands of Indians, and to employ one superintendent of teaching and two teachers; to build two blacksmiths' shops, to one of which shall be attached a tin shop, and to the other a gunsmith's shop; one carpenter's shop, one wagon and ploughmaker's shop, and to keep the same in repair and furnished with the necessary tools; to employ one superintendent of farming and two farmers, two blacksmiths, one tinner, one gunsmith, one carpenter, one wagon and ploughmaker, for the instruction of the Indians in trades and to assist them in the same; to erect one saw-mill and one flouring-mill, keeping the same in repair and furnished with the necessary tools and fixtures; to erect a hospital, keeping the same in repair and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provided with the necessary furniture, the buildings required for the accommodation of the said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years. United States to establish schools,
mechanics' shops,
saw-mill and flouring-mill,
hospital.

And in view of the fact that the head chief of the said confederated tribes and bands of Indians is expected, and will be called upon, to perform many services of a public character, occupying much of his time, the United States further agree to pay to the said confederated tribes and bands of Indians five hundred dollars per year, for the term of twenty years after the ratification hereof, as a salary for such person as the said Salary to head chief; house, &c

TREATY WITH THE YAKAMAS. JUNE 9, 1855.

confederated tribes and bands of Indians may select to be their head chief; to build for him at a suitable point on the reservation a comfortable house and properly furnish the same, and to plough and fence ten acres of land. The said salary to be paid to, and the said house to be occupied by, such head chief so long as he may continue to hold that office.

Kamaiakun is
the head chief.

And it is distinctly understood and agreed that at the time of the conclusion of this treaty Kamaiakun is the duly elected and authorized head chief of the confederated tribes and bands aforesaid, styled the Yakama nation, and is recognized as such by them and by the commissioners on the part of the United States holding this treaty; and all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said confederated tribes and bands of Indians. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

Reservation
may be surveyed
into lots, and as-
signed to individ-
uals or families.

ARTICLE VI. The President may, from time to time, at his discretion, cause the whole or such portions of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes and bands of Indians 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.

Vol. x. p. 1044.

Annuities not
to pay debts of
individuals.

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

Tribes to pre-
serve friendly re-
lations;

ARTICLE VIII. The aforesaid confederated tribes and bands of Indians acknowledge their dependence upon the government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens.

to pay for
depredations;

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 the annuities.

not to make
war but in self-
defence;

Nor will they make war upon 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 depredations on any other Indians within the Territory of Washington or Oregon, the same rule shall prevail as that provided in this article in case of depredations against citizens. And the said confederated tribes and bands of Indians agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

to surrender
offenders.

Annuities may
be withheld from
those who drink
ardent spirits.

ARTICLE IX. The said confederated tribes and bands of Indians desire to exclude from their reservation 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 confederated tribes and bands of Indians, who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her annuities withheld from him or her for such time as the President may determine.

Wenatshapam
fishery reserved.

ARTICLE X. *And provided,* That there is also reserved and set apart from the lands ceded by this treaty, for the use and benefit of the aforesaid confederated tribes and bands, a tract of land not exceeding in quantity one township of six miles square, situated at the forks of the Pisuouse or Wenatshapam River, and known as the "Wenatshapam fishery," which said reservation shall be surveyed and marked out whenever the President may direct, and be subject to the same provisions and restrictions as other Indian reservations.

When treaty
to take effect.

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

TREATY WITH THE YAKAMAS. JUNE 9, 1855.

955

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the undersigned head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS,
Governor and Superintendent. [L. S.]

KAMAIKUN,	his x mark.	[L. S.]
SKLOOM,	his x mark.	[L. S.]
OWHI,	his x mark.	[L. S.]
TE-COLE-KUN,	his x mark.	[L. S.]
LA-HOOM,	his x mark.	[L. S.]
ME-NI-NOCK,	his x mark.	[L. S.]
ELIT PALMER,	his x mark.	[L. S.]
WISH-OCH-KMPITS,	his x mark.	[L. S.]
KOO-LAT-TOOSE,	his x mark.	[L. S.]
SHEE-AH-COTTE,	his x mark.	[L. S.]
TUCK-QUILLE,	his x mark.	[L. S.]
KA-LOO-AS,	his x mark.	[L. S.]
SCHA-NOO-A,	his x mark.	[L. S.]
SLA-KISH,	his x mark.	[L. S.]

Signed and scaled in presence of—

JAMES DOTY, *Secretary of Treaties*,
MIE. CLES. PANDOST, *O. M. T.*,
WM. C. MCKAY,
W. H. TAPPAN, *Sub Indian Agent, W. T.*,
C. CHIROUSE, *O. M. T.*,
PATRICK MCKENZIE, *Interpreter*,
A. D. PAMBURN, *Interpreter*,
JOEL PALMER, *Superintendent Indian Affairs, O. T.*,
W. D. BIGLOW,
A. D. PAMBURN, *Interpreter*.

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

Ratification,
March 8, 1859.

"IN EXECUTIVE SESSION,
"SENATE OF THE UNITED STATES, March 8, 1859.

"*Resolved*, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of treaty between the United States and the head chief, chiefs, headmen, and delegates of the Yakama, Palouse, and other confederated tribes and bands of Indians, occupying lands lying in Washington Territory, who, for the purposes of this treaty, are to be considered as one nation, under the name of "Yakama," with Kamaiakun as its head chief, signed 9th June, 1855.

"Attest: "ASBURY DICKINS, *Secretary*."

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

Proclamation,
April 18, 1859.

VOL. XII. TREAT.—123

956

TREATY WITH THE YAKAMAS. JUNE 9, 1855.

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

Done at the city of Washington, this eighteenth day of April, in the year of our Lord one thousand eight hundred and fifty-
[SEAL.] nine, and of the independence of the United States the eighty-third.

JAMES BUCHANAN.

By the President:

LEWIS CASS, *Secretary of State*.

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large, Treaties,
AND
PROCLAMATIONS,
OF THE
UNITED STATES OF AMERICA.

FROM

DECEMBER 5, 1859, TO MARCH 3, 1863.

Arranged in Chronological Order and carefully collated with the
Originals at Washington.

WITH

REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY

GEORGE P. SANGER,

COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed, are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1846.

VOL. XII.

BOSTON:
LITTLE, BROWN AND COMPANY.

1863.

TREATY WITH THE NEZ PERCÉS. JUNE 11, 1855.

957

*Treaty between the United States of America and the Nez Percé Indians.
Concluded at Camp Stevens, in the Walla-Walla Valley, June 11, 1855.
Ratified by the Senate, March 8, 1859. Proclaimed by the President
of the United States, April 29, 1859.*

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: June 11, 1855.

WHEREAS a treaty was made and concluded at the treaty ground, Camp Stevens, in the Walla-Walla Valley, on the eleventh day of June, one thousand eight hundred and fifty-five, between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and Joel Palmer, superintendent of Indian affairs for Oregon Territory, on the part of the United States, and the hereinafter-named Chiefs, Headmen, and Delegates of the Nez Percé tribe of Indians occupying lands lying partly in Oregon and partly in Washington Territory, between the Cascade and the Bitter Root Mountains, on behalf of and duly authorized by said tribe, which said treaty is in the words and figures following, to wit:

Preamble.

Articles of agreement and convention made and concluded at the treaty ground, Camp Stevens, in the Walla-Walla Valley, this eleventh day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and Joel Palmer, superintendent of Indian affairs for Oregon Territory, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the Nez Percé tribe of Indians occupying lands lying partly in Oregon and partly in Washington Territories, between the Cascade and Bitter Root Mountains, on behalf of, and acting for said tribe, and being duly authorized thereto by them, it being understood that Superintendent Isaac I. Stevens assumes to treat only with those of the above-named tribe of Indians residing within the Territory of Washington, and Superintendent Palmer with those residing exclusively in Oregon Territory.

Contracting parties.

ARTICLE I. The said Nez Percé tribe of Indians hereby cede, relinquish and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them, bounded and described as follows, to wit: Commencing at the source of the Wo-na-ne-she or southern tributary of the Palouse River; thence down that river to the main Palouse; thence in a southerly direction to the Snake River, at the mouth of the Tucanon River; thence up the Tucanon to its source in the Blue Mountains; thence southerly along the ridge of the Blue Mountains; thence to a point on Grand Ronde River, midway between Grand Ronde and the mouth of the Woll-low-how River; thence along the divide between the waters of the Woll-low-how and Powder River; thence to the crossing of Snake River, at the mouth of Powder River; thence to the Salmon River, fifty miles above the place known [as] the "crossing of the Salmon River;" thence due north to the summit of the Bitter Root Mountains; thence along the crest of the Bitter Root Mountains to the place of beginning.

Cession of lands to the United States.

Boundaries.

ARTICLE II. There is, however, reserved from the lands above ceded for the use and occupation of the said tribe, and as a general reservation

Reservation.

TREATY WITH THE NEZ PERCÉS. JUNE 11, 1855.

Boundaries. for other friendly tribes and bands of Indians in Washington Territory, not to exceed the present numbers of the Spokane, Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians, the tract of land included within the following boundaries, to wit: commencing where the Moh-ha-nashe or southern tributary of the Palouse River flows from the spurs of the Bitter Root Mountains; thence down said tributary to the mouth of the Ti-nat-pan-up Creek, thence southerly to the crossing of the Snake River ten miles below the mouth of the Al-po-wa-wi River; thence to the source of the Al-po-wa-wi River in the Blue Mountains; thence along the crest of the Blue Mountains; thence to the crossing of the Grand Ronde River, midway between the Grand Ronde and the mouth of the Woll-low-how River; thence along the divide between the waters of the Woll-low-how and Powder Rivers; thence to the crossing of the Snake River fifteen miles below the mouth of the Powder River; thence to the Salmon River above the crossing; thence by the spurs of the Bitter Root Mountains to the place of beginning.

Reservation to be set apart, &c., and Indians to settle thereon.

Whites not to reside thereon without, &c.

Improvements to be paid for by the United States.

Roads may be made.

Privileges secured to Indians.

Payments by the United States.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said tribe as an Indian reservation; nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent; and the said tribe agrees to remove to and settle upon the same within one year after the ratification of this treaty. 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, if with the permission of the owner or claimant, guarantying, however, the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named. And provided that any substantial improvement heretofore made by any Indian, such as fields enclosed and cultivated, and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President of the United States, and payment made therefor in money, or improvements of an equal value be made for said Indian upon the reservation, and no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money or improvements of equal value shall be furnished him as aforesaid.

ARTICLE III. And provided that, if necessary for the public convenience, roads may be run through the said reservation, and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them, as also the right, in common with citizens of the United States, to travel upon all public highways. The use of the Clear Water and other streams flowing through the reservation is also secured to citizens of the United States for rafting purposes, and as public highways.

The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

ARTICLE IV. In consideration of the above cession, the United States agree to pay to the said tribe in addition to the goods and provisions distributed to them at the time of signing this treaty, the sum of two hundred thousand dollars, in the following manner, that is to say, sixty thousand dollars, to be expended under the direction of the President of the United States, the first year after the ratification of this

TREATY WITH THE NEZ PERCÉS. JUNE 11, 1855.

959

treaty, in providing for their removal to the reserve, breaking up and fencing farms, building houses, supplying them with provisions and a suitable outfit, and for such other objects as he may deem necessary, and the remainder in annuities, as follows: for the first five years after the ratification of this treaty, ten thousand dollars each year, commencing September 1, 1856; for the next five years, eight thousand dollars each year; for the next five years, six thousand each year, and for the next five years, four 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 for them. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.

ARTICLE V. The United States further agree to establish, at suitable points within said reservation, within one year after the ratification hereof, two schools, erecting the necessary buildings, keeping the same in repair, and providing them with furniture, books, and stationery, one of which shall be an agricultural and industrial school, to be located at the agency, and to be free to the children of said tribe, and to employ one superintendent of teaching and two teachers; to build two blacksmith's shops, to one of which shall be attached a tin shop and to the other a gunsmith's shop; one carpenter's shop, one wagon and ploughmaker's shop, and to keep the same in repair, and furnished with the necessary tools; to employ one superintendent of farming and two farmers, two blacksmiths, one tinner, one gunsmith, one carpenter, one wagon and ploughmaker, for the instruction of the Indians in trades, and to assist them in the same; to erect one saw-mill and one flouring-mill, keeping the same in repair, and furnished with the necessary tools and fixtures, and to employ two millers; to erect a hospital, keeping the same in repair, and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provide with the necessary furniture the buildings required for the accommodation of the said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.

And in view of the fact that the head chief of the tribe is expected, and will be called upon, to perform many services of a public character, occupying much of his time, the United States further agrees to pay to the Nez Percé tribe five hundred dollars per year for the term of twenty years, after the ratification hereof, as a salary for such person as the tribe may select to be its head chief. To build for him, at a suitable point on the reservation, a comfortable house, and properly furnish the same, and to plough and fence for his use ten acres of land. The said salary to be paid to, and the said house to be occupied by, such head chief so long as he may be elected to that position by his tribe, and no longer.

And all the expenditures and expenses contemplated in this fifth article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said tribe, nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

ARTICLE VI. The President may from time to time, at his discretion, cause the whole, or such portions of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said tribe 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 in the year 1854, so far as the same may be applicable.

Payments how
to be applied

United States
to establish
schools, &c.

to build me-
chanics' shops,
&c.

saw-mill.

hospital.

Salary to head-
chief, house, &c.

Reservation
may be surveyed
into lots and as-
signed to individ-
uals or families.

Vol. x. p. 1044.

TREATY WITH THE NEZ PERCÉS. JUNE 11, 1855.

Annuities not
to pay debts of
individuals.

Tribe to pre-
serve friendly
relations.

to pay for
depredations.

not to make
war except in
self-defence.

to surrender
offenders.

Annuities may
be withheld from
those who drink
ardent spirits.

Land of Wil-
liam Craig.

When treaty to
take effect.

Signatures,
June 11, 1855.

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

ARTICLE VIII. The aforesaid tribe acknowledge their dependence upon 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 the annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and the 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 of Washington, the same rule shall prevail as that prescribed in this article in cases of depredations against citizens. And the said tribe agrees not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE IX. The Nez Percés desire to exclude from their reservation 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 tribe who is guilty of bringing liquor into said reservation, 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.

ARTICLE X. The Nez Percé Indians having expressed in council a desire that William Craig should continue to live with them, he having uniformly shown himself their friend, it is further agreed that the tract of land now occupied by him, and described in his notice to the register and receiver of the land office of the Territory of Washington, on the fourth day of June last, shall not be considered a part of the reservation provided for in this treaty, except that it shall be subject in common with the lands of the reservation to the operations of the intercourse act.

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

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and Joel Palmer, superintendent of Indian affairs for Oregon Territory, and the chiefs, headmen, and delegates of the aforesaid Nez Percé tribe of Indians, 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 Sup't Washington Territory.

JOEL PALMER, [L. S.]
Superintendent Indian Affairs.

ALEIYA, or Lawyer, Head-chief of the Nez Percés,	[L. S.]
APPUSHWA-HITE, or Looking-glass, his x mark.	[L. S.]
JOSEPH,	his x mark. [L. S.]
JAMES,	his x mark. [L. S.]
RED WOLF,	his x mark. [L. S.]
TIMOTHY,	his x mark. [L. S.]
U-UTE-SIN-MALE-CUN,	his x mark. [L. S.]
SPOTTED EAGE,	his x mark. [L. S.]
STOOP-TOOP-NIN, or Cut-Hair,	his x mark. [L. S.]
TAH-MOH-MOH-KIN,	his x mark. [L. S.]
TIPPELANECBUPOOH,	his x mark. [L. S.]
HAH-HAH-STILPILP,	his x mark. [L. S.]
COOL-COOL-SHUA-NIN,	his x mark. [L. S.]

TREATY WITH THE NEZ PERCÉS. JUNE 11, 1855.

961

SILISH,	his x mark.	[L. S.]
TOH-TOH-MOLEWIT,	his x mark.	[L. S.]
TUKY-IN-LIK-IT,	his x mark.	[L. S.]
TE-HOLE-HOLE-SOOT,	his x mark.	[L. S.]
ISH-COH-TIM,	his x mark.	[L. S.]
WEE-AS-CUS,	his x mark.	[L. S.]
HAH-HAH-STOORE-TEE,	his x mark.	[L. S.]
EEE-MAHT-SIN-POOH,	his x mark.	[L. S.]
TOW-WISH-AU-IL-PILP,	his x mark.	[L. S.]
KAY-KAY-MASS,	his x mark.	[L. S.]
SPEAKING EAGLE,	his x mark.	[L. S.]
WAT-TI-WAT-TI-WAH-HI,	his x mark.	[L. S.]
HOWH-NO-TAH-KUN,	his x mark.	[L. S.]
TOW-WISH-WANE,	his x mark.	[L. S.]
WAHPT-TAH-SHOOSHE,	his x mark.	[L. S.]
BEAD NECKLACE,	his x mark.	[L. S.]
KOOS-KOOS-TAS-KUT,	his x mark.	[L. S.]
LEVI,	his x mark.	[L. S.]
PEE-OO-PE-WHI-HI,	his x mark.	[L. S.]
PEE-OO-PEE-IECTEIM,	his x mark.	[L. S.]
PEE-POOME-KAH,	his x mark.	[L. S.]
HAH-HAH-STLIL-AT-ME,	his x mark.	[L. S.]
WEE-YOKE-SIN-ATE,	his x mark.	[L. S.]
WEE-AH-KI,	his x mark.	[L. S.]
NECALAHTSIN,	his x mark.	[L. S.]
SUCK-ON-TIE,	his x mark.	[L. S.]
IP-NAT-TAM-MOOSE,	his x mark.	[L. S.]
JASON,	his x mark.	[L. S.]
KOLE-KOLE-TIL-KY,	his x mark.	[L. S.]
IN-MAT-TUTE-KAH-KY,	his x mark.	[L. S.]
MOH-SEE-CHEE,	his x mark.	[L. S.]
GEORGE,	his x mark.	[L. S.]
NICKE-EL-IT-MAY-HO,	his x mark.	[L. S.]
SAY-I-EE-OUSE,	his x mark.	[L. S.]
WIS-TASSE-CUT,	his x mark.	[L. S.]
KY-KY-SOO-TE-LUM,	his x mark.	[L. S.]
KO-KO-WHAY-NEE,	his x mark.	[L. S.]
KWIN-TO-KOW,	his x mark.	[L. S.]
PEE-WEE-AU-AP-TAH,	his x mark.	[L. S.]
WEE-AT-TENAT-IL-PILP,	his x mark.	[L. S.]
PEE-OO-PEE-U-IL-PILP,	his x mark.	[L. S.]
WAH-TASS-TUM-MANNEE,	his x mark.	[L. S.]
TU-WEE-SI-CE,	his x mark.	[L. S.]
LU-EE-SIN-KAH-KOOSE-SIN,	his x mark.	[L. S.]
HAH-TAL-EE-KIN,	his x mark.	[L. S.]

Signed and sealed in presence of us—

JAMES DOTY, *Secretary of Treaties, W. T.*
 WM. C. MCKAY, *Secretary of Treaties, O. T.*
 W. H. TAPPAN, *Sub-Indian Agent,*
 WILLIAM CRAIG, *Interpreter,*
 A. D. PAMBURN, *Interpreter,*
 WM. McBEAN,
 GEO. C. BOMFORD,
 C. CHIROUSE, *O. M. T.*
 MIE. CLES. PANDOSTY,
 LAWRENCE KIP,
 W. H. PEARSON.

962

TREATY WITH THE NEZ PERCÉS. JUNE 11, 1855.

Ratification,
March 8, 1859.

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 eighth day of March, eighteen hundred and fifty-nine, advise and consent to the ratification of the same, by a resolution, in the words and figures following, to wit :

“IN EXECUTIVE SESSION,

“SENATE OF THE UNITED STATES, March 8, 1859.

“*Resolved*, (two thirds of the senators present concurring.) That the Senate advise and consent to the ratification of treaty between the United States and the chiefs, headmen and delegates of the Nez Percé tribe of Indians, occupying lands lying partly in Washington and partly in Oregon Territories, between the Cascade and Bitter Root Mountains, signed 11th day June, 1855.

“Attest :

“ASBURY DICKINS, *Secretary*.”Proclamation,
April 29, 1859.

Now, therefore, be it known that I, JAMES BUCHANAN, 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 eighth of March, eighteen hundred and fifty-nine, accept, ratify, and confirm the said treaty.

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

Done at the city of Washington, this twenty-ninth day of April,
in the year of our Lord one thousand eight hundred and fifty-
[SEAL.] nine, and of the independence of the United States the
eighty-third.

JAMES BUCHANAN.

By the President :

LEWIS CASS, *Secretary of State*.

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large, Treaties,
AND
PROCLAMATIONS,
OF THE
UNITED STATES OF AMERICA.

FROM

DECEMBER 5, 1859, TO MARCH 3, 1863.

Arranged in Chronological Order and carefully collated with the
Originals at Washington.

WITH

REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY

GEORGE P. SANGER,

COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed, are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1846.

VOL. XII.

BOSTON:
LITTLE, BROWN AND COMPANY.

1863.

TREATY WITH THE QUI-NAI-ELTS, &C. JULY 1, 1855. JAN. 25, 1856. 971

Treaty between the United States and the Qui-nai-elt and Quil-leh-ute Indians. Concluded on the Qui-nai-elt River, in the Territory of Washington, July 1, 1855, and at the city of Olympia, January 25, 1856. Ratified by the Senate, March 8, 1859. Proclaimed by the President of the United States, April 11, 1859.

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: July 1, 1855.
January 25, 1856.
Preamble.

WHEREAS a treaty was made and concluded on the Qui-nai-elt River, in the Territory of Washington, on the first day of July, one thousand eight hundred and fifty-five, and at the city of Olympia also in said Territory, on the twenty-fifth day of January, one thousand eight hundred and fifty-six, between Isaac I. Stevens, governor and superintendent of Indian affairs in the Territory aforesaid, on the part of the United States, and the hereinafter-named chiefs, headmen, and delegates of the different tribes and bands of the Qui-nai-elt and Quil-leh-ute Indians, on the part of said tribes and bands, and duly authorized thereto by them; which treaty is in the words and figures following, to wit:—

Articles of agreement and convention made and concluded by and between Isaac I. Stevens, governor and superintendent of Indian affairs, of the Territory of Washington, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the different tribes and bands of the Qui-nai-elt and Quil-leh-ute Indians, on the part of said tribes and bands, and duly authorized thereto by them. Contracting parties.

ARTICLE I. The said tribes and bands 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: Commencing at a point on the Pacific coast, which is the southwest corner of the lands lately ceded by the Makah tribe of Indians to the United States, and running easterly with and along the southern boundary of the said Makah tribe to the middle of the coast range of mountains; thence southerly with said range of mountains to their intersection with the dividing ridge between the Chehalis and Quinialt Rivers; thence westerly with said ridge to the Pacific coast; thence northerly along said coast to the place of beginning. Surrender of lands to the United States.
Boundaries.

ARTICLE II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of land sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian affairs or Indian 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 lands not in the actual claim and occupation of citizens of the United States, and upon any lands claimed or occupied, if with the permission of the owner or claimant. If necessary for the public convenience, roads may be run through said reservation, on compensation being made for any damage sustained thereby. Reservation within the Territory of Washington.
Whites not to reside thereon, unless, &c.
Indians to remove and settle there.
Roads may be made.

VOL. XII. TREAT.—125

972 TREATY WITH THE QUI-NAI-ELTS, &c. JULY 1, 1855. JAN. 25, 1856.

Rights and
privileges se-
cured to the
Indians.

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

Payments by
the United
States.

ARTICLE IV. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of twenty-five thousand dollars, in the following manner, that is to say: For the first year after the ratification hereof, two thousand five hundred dollars; for the next two years, two thousand dollars each year; for the next three years, one thousand six hundred dollars each year; for the next four years, one thousand three hundred dollars each year; for the next five years, one thousand dollars each year; and for the next five years, seven hundred dollars each year. All of which sums of money shall be applied to the use and benefit of the said Indians under the directions 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.

How to be
applied.

Appropriation
for removal, for
clearing and
fencing land, &c.

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

Indians may
be removed from
the reservation,
&c.

ARTICLE VI. The President may hereafter, when in his opinion the interests of the Territory shall require, and the welfare of the said Indians be promoted by it, remove them from said reservation or 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, in which latter case the annuities, payable to the consolidated tribes respectively, shall also be consolidated; and he may further, at his discretion, cause the whole or any portion of the lands to be 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 Indians, and which they shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President, and payment made accordingly therefor.

Tribes and an-
nuities may be
consolidated.

Vol. x. p. 1044.

Annuities of
tribes not to pay
debts of individ-
uals.

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

The tribes to
preserve friendly
relations, &c.

ARTICLE VIII. The said 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 proven 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,

to pay for
depredations.

not to make
war, except, &c.

TREATY WITH THE QUI-NAI-ELTS, &c. JULY 1, 1855. JAN. 25, 1856. 973

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 is prescribed in this article in cases of depredations against citizens. And the said tribes and bands agree not to shelter or conceal offenders against the laws of the United States, but to deliver them to the authorities for trial.

To surrender
offenders.

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.

Annuities to be
withheld from
those drinking
&c. ardent
spirits.

ARTICLE X. The United States further agree to establish at the general agency for the district of Puget 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 the 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 to 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 central 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 their annuities.

The United
States to estab-
lish an agricul-
tural &c. school
for the Indians.

to employ
mechanics, &c.
a physician,
&c.

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

The tribes are
to free all slaves
and not acquire
others.

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 on their reservations without consent of the superintendent or agent.

not to trade
out of the United
States.

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.

Foreign Indians
not to reside on
reservations.
When treaty 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 of Indians, have hereunto set their hands and seals, at Olympia, January 25, 1856, and on the Qui-nai-elt River, July 1, 1855.

Signatures.
July 1, 1855.
January 25, 1856.

ISAAC I. STEVENS, Governor and Sup't of Indian Affairs.

TAH-HO-LAH, Head Chief Qui-nite'l tribe,	his x mark.	[L. S.]
HOW-YAT'L, Head Chief Quil-ley-yute tribe,	his x mark.	[L. S.]
KAL-LAPE, Sub-chief Quil-ley-hutes,	his x mark.	[L. S.]
TAH-AH-HA-WHT'L, Sub-chief Quil-ley-hutes,	his x mark.	[L. S.]
LAY-LE-WHASH-ER,	his x mark.	[L. S.]
E-MAH-LAH-CUP,	his x mark.	[L. S.]
ASH-CHAK-A-WICK,	his x mark.	[L. S.]
AY-A-QUAN,	his x mark.	[L. S.]
YATS-SEE-O-KOP,	his x mark.	[L. S.]
KARTS-SO-PE-AH,	his x mark.	[L. S.]
QUAT-A-DE-TOT'L,	his x mark.	[L. S.]
NOW-AH-ISM,	his x mark.	[L. S.]
CLA-KISH-KA,	his x mark.	[L. S.]
KLER-WAY-SR-HUN,	his x mark.	[L. S.]
QUAR-TER-HEIT'L,	his x mark.	[L. S.]
HAY-NEE-SIOOS,	his x mark.	[L. S.]

974 TREATY WITH THE QUI-NAI-ELTS, &c. JULY 1, 1855. JAN. 25, 1856.

HOO-E-YAS'LSEE,	his x mark.	[L. s.]
QUILT-LE-SE-MAH,	his x mark.	[L. s.]
QUA-LATS-KAIM,	his x mark.	[L. s.]
YAH-LE-HUM,	his x mark.	[L. s.]
JE-TAH-LET-SHIN,	his x mark.	[L. s.]
MA-TA-A-HA,	his x mark.	[L. s.]
WAH-KEE-NAH, <i>Sub-chief Qui-nite'l tribe,</i>	his x mark.	[L. s.]
YER-AY-LET'L, <i>Sub-chief,</i>	his x mark.	[L. s.]
SILLEY-MARK'L,	his x mark.	[L. s.]
CHER-LARK-TIN,	his x mark.	[L. s.]
HOW-YAT'L,	his x mark.	[L. s.]
KNE-SHE-GUARTSH, <i>Sub-chief,</i>	his x mark.	[L. s.]
KLAY-SUMETZ,	his x mark.	[L. s.]
KAPE,	his x mark.	[L. s.]
HAY-ET-LITE'L, or John,	his x mark.	[L. s.]

Executed in the presence of us; the words "or tracts," in the II. article, and "next," in the IV. article, being interlined prior to execution.

M. T. SIMMONS, *Special Indian Agent.*

H. A. GOLDSBOROUGH, *Commissary, &c.*

B. F. SHAW, *Interpreter.*

JAMES TILTON, *Surveyor-General Washington Territory.*

F. KENNEDY.

J. Y. MILLER.

H. D. COCK.

Consent of
Senate, March 8,
1859.

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 eighth day of March, one thousand eight hundred and fifty-nine, advise and consent to the ratification of the same by a resolution in the words and figures following, to wit:—

"IN EXECUTIVE SESSION,

"SENATE OF THE UNITED STATES, March 8, 1859.

"*Resolved,* (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of treaty between the United States and the chiefs, headmen, and delegates of the different tribes and bands of the Qui-nai-elt and Quil-leh-ute Indians in Washington Territory, signed 1st day of July, 1855, and 25th day of January, 1856.

"Attest:

"ASBURY DICKINS, *Secretary.*"

Proclamation,
April 11, 1859.

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

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

Done at the city of Washington, this eleventh day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-third.

JAMES BUCHANAN.

By the President:

LEWIS CLASS, *Secretary of State.*

Constitution of the United States of America

U.S. Const. art. I, § 1 (Powers of Congress)

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Const. art. II, § 2, cl. 2 (President's Treaty Making Power and Appointing Power)

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 3 (Powers of the President)

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

U.S. Const. art. VI, cl. 2 (Supreme Law of the Land)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and 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.

CONSTITUTION AND BYLAWS
OF THE
SUQUAMISH TRIBE
PORT MADISON RESERVATION, WASHINGTON
AS AMENDED

PREAMBLE

We, the people of the Suquamish Indian Tribe of the Port Madison Reservation in the State of Washington, in order to establish our Tribal organization, to develop our community resources, to administer justice and to promote the economic and social welfare of ourselves and our descendants, do hereby establish this Constitution and Bylaws.

ARTICLE I — TERRITORY

The Territory in which the Suquamish Tribe has a beneficial ownership interest includes that portion of the Port Madison Reservation remaining in an unallotted status at the time of approval of this Constitution and Bylaws, and any other lands which may be acquired for or by, and held in the name of, the Suquamish Tribe. The jurisdiction of the tribe over such lands, and over the allotted lands within the original boundaries of the Port Madison Reservation, shall not be inconsistent with applicable Federal and State laws. However, nothing in this Article shall be construed as restricting the treaty hunting and fishing rights of members, including the right to fish in usual and accustomed places.

ARTICLE II — MEMBERSHIP

SECTION 1:

The membership of the Suquamish Indian Tribe shall consist of the following:

- (a) All persons of Suquamish Indian blood whose names appear on the official census roll of the Tribe as of January 1, 1942; PROVIDED, that such persons have not relinquished membership in the Suquamish Tribe or have not become enrolled as members of any other tribe, band or Indian Community; and PROVIDED, further that such roll may be corrected subject to the approval of the Secretary of the Interior.

- (b) All children born between January 1, 1942 and the date of approval of this Constitution and Bylaws, to persons who are members; PROVIDED, that those children who have been enrolled as members of other tribes shall be eligible if within one (1) year from the date of approval of this Constitution, they or their parents action in their behalf, apply for membership in the Suquamish Tribe and they relinquish membership in the other tribe.
- (c) All persons of one-eighth or more Indian blood born to any member of the Suquamish Tribe, after the date of approval of this Constitution and Bylaws.

SECTION 2:

An application for membership by adoption, after approval of this section of the Constitution, from any person of one-fourth degree or more Indian blood may be approved by a majority of Tribal members present at a regular or special General Council meeting. For the purpose of exercising Suquamish Indian Treaty Fishing Rights, all persons adopted pursuant to this section shall be one-eighth or more Suquamish.

(Art. II §2 amended by Res. 83-045 (part), passed May 9, 1983; approved by Area Director Sept. 29, 1983)

ARTICLE III — POWERS OF THE GOVERNING BODY

The governing body of the Suquamish Indian Tribe shall be known as the Suquamish Tribal Council. The Council shall have the following powers and duties subject to any limitations by applicable State laws or statutes of the United States and the regulations of the Secretary of the Interior:

- (a) To negotiate with Federal, State, and local governments and others on behalf of the Tribe and to advise and consult with representatives of the United States government on all activities which may affect the Tribe.
- (b) To acquire, manage, lease, use, and contract with all Tribal real property and other Tribal assets, together with all improvements which may be acquired by the Tribe from the United States government or elsewhere, with the approval of the Secretary of the Interior whenever required by Federal law.
- (c) To prevent the sale, disposition, lease or encumbrance of Tribal lands, interest in lands, or other Tribal assets, without the consent of the Tribe.
- (d) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, so long as such approval is required by Federal law.

- (e) To advise the Secretary of the Interior with regard to all appropriation estimates of Federal projects for the benefit of the Tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.
- (f) To administer any funds within the control of the Tribe and to make expenditures of available funds for Tribal purposes in accordance with a budget approved by Tribal Council. All expenditures of the Tribal funds under control of the Tribal Council shall be made only by resolution duly approved by the Tribal Council in Regular or Special meetings, and the amount so expended shall be a matter of record available to all Tribal members and the Bureau of Indian Affairs at all reasonable times.
- (g) To determine its own rules of procedure.
- (h) To promulgate and enforce ordinances which shall be subject to approval by the Secretary of the Interior governing the conduct of members of the Suquamish Indian Tribe regarding hunting, fishing, and shell fishing.
- (i) To pass ordinances that govern the conduct of all persons and regulate all property within the Tribe's jurisdiction to the fullest extent allowed under applicable Federal law, that provide for the maintenance of law and order and the administration of justice, and that promote the social and economic welfare of the Suquamish people.
- (j) To take such actions as are necessary to carry into effect any of the foregoing powers and duties.

(Art. III(i) and (j) amended by Res. 80-111 (part), passed Oct. 14, 1980; approved by Area Director Jan. 15, 1981)

ARTICLE IV — MANNER OF REVIEW

SECTION 1:

Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior, shall within ten (10) days of its enactment be presented to the Superintendent or Officer in Charge of the agency exercising jurisdiction, who shall within ten (10) days after its receipt, approve or disapprove it.

SECTION 2:

If the Superintendent or Officer in Charge approves any resolution or ordinance which is subject to review, it shall thereupon become effective, but he shall transmit the enactment bearing his endorsement to the Secretary of the Interior, who may, within ninety (90) days of the date of its receipt rescind the resolution or ordinance for any cause by notifying the Suquamish Tribe of his veto.

SECTION 3:

If the Superintendent or Officer in Charge disapproves any resolution or ordinance which is subject to review, he shall within ten (10) days after its receipt, advise the Suquamish Tribal Council of his reasons therefore, and if these reasons appear to the Council insufficient, it may, by vote of the majority of all members, refer the resolution or ordinance to the Secretary of the Interior, and if approved by him in writing it shall become effective.

ARTICLE V — ELECTIONS

SECTION 1:

The Suquamish Tribal Council shall consist of a Chairperson, Vice-Chairperson, Secretary, Treasurer and three (3) Council Members. All shall serve for a three (3) year term. The terms of office for all Tribal Council members shall be staggered.

At the first regularly scheduled General Council meeting following the adoption of this section, all Tribal Council members shall stand for election.

The Tribal Chairperson and Secretary shall be elected for full three (3) year terms. The Tribal Treasurer and Vice-Chairperson shall be elected for two (2) year terms.

The three (3) Council Members shall be elected for one (1) year terms.

At the expiration of the initial term of office specified for each Council Member in this section, or until certification of his or her successor's election and thereafter, each Tribal Council Member shall be elected to a full three (3) year term.

SECTION 2:

Nominations for Council positions shall be made from the floor and votes are to be cast for their election by secret ballot at the annual General Council meeting in MARCH.

Procedures to be followed at this election will be in accordance with an electoral code adopted by the General Council.

There must be at least two (2) candidates for each position and the candidates receiving the highest number of votes shall be elected.

SECTION 3:

The election will take place after all annual reports and old business have been presented.

Newly elected officers will assume their duties immediately and serve until their successors have been duly elected.

SECTION 4:

Any enrolled member of the Tribe eighteen (18) years of age or older shall have the right to vote except in those elections called by the Secretary of the Interior, in which case he shall be at least twenty-one (21) years of age.

Any enrolled member twenty-one (21) years of age or older shall be eligible to serve on the Tribal Council.

SECTION 5:

All election disputes, including the determination of the qualifications of any voter, if questioned, will be resolved by the General Council.

(Art. V §1 amended by Res. 78-033 (part), passed Mar. 21, 1978; approved by Area Director Nov. 27, 1978; by Res. 83-045 (part), passed May 9, 1983, and by Res. 83-066, passed July 6, 1983; approved by Area Director Sept. 29, 1983. Art. V §2 amended by Res. 83-045 (part), passed May 9, 1983; approved by Area Director Sept. 29, 1983.)

ARTICLE VI — DUTIES OF OFFICERS

SECTION 1:

The Chairman of the Tribal Council shall preside over all Tribal and General Council meetings of the Tribe. He shall be allowed to vote ONLY in case of a tie.

He shall countersign all checks involving the expenditures of Tribal funds and exercise any authority specifically delegated to him by the Tribal Council. He shall sign all correspondence.

SECTION 2:

The Vice-Chairman of the Tribal Council shall assist the Chairman when called upon to do so, and in the absence of the Chairman, he shall preside. When so presiding, he shall have all the rights, privileges, and duties as well as the responsibilities of the Chairman.

SECTION 3:

The Secretary shall prepare all Tribal correspondence and shall not sign notices or documents unless authorized by the Tribal Council.

It shall be the duty of the Secretary to keep a complete and accurate record of all matters transacted at Council meetings and to submit copies of minutes of all meetings of the Tribal Council and General Council to the Western Washington Agency.

He shall mail notices of special meetings to all qualified voters at least ten (10) days prior to such meetings.

SECTION 4:

The Treasurer shall have custody of and be responsible for all funds in the custody of the Tribal Council.

The Treasurer shall deposit all such funds in such federally insured banks or elsewhere as directed by the Tribal Council and shall keep proper records of such funds.

The Treasurer shall report on all receipts and expenditures and the amount and nature of all funds on hand at the annual General Council meeting and upon request of the Tribal Council.

The Treasurer shall not pay out any funds except when authorized to do so by a resolution of the Tribal Council and all checks must be signed by the Treasurer and countersigned by the Chairman.

The Tribal Council shall decide when the amount of funds being handled by the Treasurer has become large enough to justify the need for an annual audit. It shall then require that the books and records of the Treasurer shall be audited by either a competent auditor or by a Federal employee appointed by the Secretary of the Interior or his authorized representative.

The Treasurer shall be required to have a surety bond satisfactory to the Tribal Council and the Superintendent of the Agency. The surety bond will be obtained at the expense of the Suquamish Tribe.

SECTION 5:

The Tribal Council shall appoint such committees and other personnel as required and shall outline their duties and responsibilities by proper resolution.

ARTICLE VII — VACANCIES AND REMOVAL

SECTION 1:

If any member of the Council shall die, resign or shall be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State, or Federal Court, a vacancy in his office shall automatically be created, and at its next regular or special meeting, the Tribal Council shall appoint someone to fill the office until the annual General Council meeting at which time a successor shall be elected pursuant to Article V to fill the office for the balance of the unexpired term.

SECTION 2:

The members of the Tribe shall have the power to remove any member of the Tribal Council by filing a petition with the Secretary of the Tribal Council, signed by at least twenty-five percent (25%) of the eligible voters, asking for the removal of said member of the Tribal Council; PROVIDED, that no such person may be removed except at a Special General Council meeting at which he shall have an opportunity for a hearing.

The vote of the qualified voters at such meeting will decide whether such person is to be removed; PROVIDED, that twenty-five percent (25%) or more of the eligible voters shall vote in such meeting, which shall be held within thirty (30) days after the filing of the petition.

ARTICLE VIII — MEETINGS

SECTION 1:

The Tribal Council shall hold meetings as called either in writing or verbally by the Chairman or three (3) members of the Council at any time when Tribal business is to be transacted.

No business shall be transacted unless a quorum of four (4) voting members is present.

SECTION 2:

There shall be an annual meeting of the General Council on the THIRD SUNDAY OF MARCH each year.

Special meetings of the General Council may be called at the discretion of the Chairman and shall be called by him/her at the request in writing of a majority of the Tribal Council, or by a written request of twenty-five percent (25%) of the members of the General Council.

A quorum shall consist of fifty (50) eligible voting members at either the annual meeting or at special meetings.

SECTION 3:

The General Council shall be composed of all Tribal members who are at least eighteen (18) years of age.

(Art. VIII §§1 and 2 amended by Res. 78-033 (part), passed Mar. 21, 1978; approved by Area Director Nov. 27, 1978; §2 amended by Res. 78-033 (part), passed Mar. 21, 1978; approved by Area Director Nov. 27, 1978; and by Res. 83-045 (part), passed May 9, 1983, approved by Area Director Sept. 29, 1983.)

ARTICLE IX — REFERENDUM

SECTION 1:

Upon receipt of a petition of at least twenty-five percent (25%) of the eligible voters of the Tribe, or upon the request of the majority of the members of the Tribal Council, the Chairman shall call a General Council meeting to be held within thirty (30) days of receipt of such petition or request, to consider any enacted or proposed ordinance or resolution, and the vote of the majority of the qualified voters in such referendum will decide whether the enacted or proposed ordinance or resolution shall thereafter be in effect; PROVIDED, that twenty-five percent (25%) or more of the eligible voters shall vote in such referendum.

ARTICLE X — AMENDMENTS

SECTION 1:

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior; PROVIDED, that at least thirty percent (30%) of those entitled to vote shall vote in such an election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior.

SECTION 2:

It shall be the duty of the Secretary of the Interior to call such election on any proposed amendment upon receipt of a petition signed by thirty percent (30%) of the qualified voters of the Tribe, or by a majority of the Tribal Council.

ARTICLE XI — BILL OF RIGHTS

All members of the Suquamish Indian Tribe shall be accorded equal rights pursuant to Tribal Law.

No member shall be denied any of the rights or guarantees enjoyed by non-Indian citizens under the Constitution of the United States, including, but not limited to, freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress or grievances, and due process of law.

ARTICLE XII — ADOPTION

This Constitution and Bylaws when adopted by a majority vote of the qualified voters of the Suquamish Tribe of Indians of Washington voting at an election called for that purpose by the Secretary of the Interior; PROVIDED, that at least thirty percent (30%) of those entitled to vote, shall vote in such an election, shall be submitted to the Secretary of the Interior, and if approved, shall be effective from the date of such approval.

APPROVAL

I, John A. Carver, Jr., Under-Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Statute 984), as amended, do hereby approve the attached Constitution and Bylaws of the Suquamish Tribe, Port Madison Reservation, Washington.

Approval Recommended
James E. Officer - June 16, 1965
Associate Commissioner

James A. Carver, Jr.
Under-Secretary of the Interior
(SEAL)

Washington, D.C.
Date: July 2, 1965

TITLE 14. FISHING

Chapter 14.3

HUNTING

Sections:

- 14.3.1 Jurisdiction.
- 14.3.2 Policies and Purpose.
- 14.3.3 Scope.
- 14.3.4 Definitions.
- 14.3.5 Eligible Hunters.
- 14.3.6 Designated Hunters.
- 14.3.7 Identification Card.
- 14.3.8 Annual Permit.
- 14.3.9 Tags and Reporting.
- 14.3.10 Hunting Committee.
- 14.3.11 Responsibilities of Fisheries Director.
- 14.3.12 General Closure.
- 14.3.13 Application of USC 1165.
- 14.3.14 Posted Areas.
- 14.3.15 Hunting for Ceremonial Purposes.
- 14.3.16 Annual Regulations.
- 14.3.17 In-season Regulations.
- 14.3.18 Intergovernmental Agreements.
- 14.3.19 Manner of Hunting.
- 14.3.20 Prohibited Acts.
- 14.3.21 Elk Season Restrictions.
- 14.3.22 Muzzle-loading Rifles.
- 14.3.23 Cooperation with Federal and State Agencies.
- 14.3.24 Producing Identification.
- 14.3.25 Game Officers.
- 14.3.26 Enforcement Procedures.
- 14.3.27 Marine Mammals.

14.3.1. Jurisdiction. The Suquamish Tribal Court shall have jurisdiction, pursuant to Suquamish Tribal Code Chapter 3.2, over all actions arising under this chapter. (Res. 88-007 (part), passed Jan. 28, 1988; amended by Res. 94-156 (part), passed Nov. 21, 1994)

14.3.2. Policies and Purpose. (a) It is the policy of the Suquamish Tribe and the purpose of this chapter to protect, enhance, and conserve game resources used by members of the tribe. Hunting by members of the tribe should be primarily for the purpose of providing food for Suquamish Indian families and preserving the Suquamish culture. It should be only secondarily sport and recreation.

(b) This chapter is intended to promote and protect the exercise of the tribe's rights under the Treaty of Point Elliott; and nothing in it shall be construed as a relinquishment or limitation of any such rights. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.3. Scope. This chapter shall apply to all persons within the boundaries of the Port Madison Indian Reservation and on all other lands owned by or held in trust for the Suquamish Tribe. It shall further apply to all persons purporting to exercise the right to hunt off reservation which is secured to the Suquamish Tribe by the Treaty of Point Elliott. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.4. Definitions. When used in this chapter, the following terms have the following meanings:

(a) "Adult" means any person who is eighteen years old or older.

(b) "Bag limit" means the maximum number of animals which may lawfully be taken, caught, killed, or possessed by one person during a particular period of time. The limit may include limits on size and sex as well as species.

(c) "Big game" means elk, deer, mountain goat, mountain sheep, cougar or mountain lion, and bear.

(d) "Closed area" means any place where this chapter and regulations issued pursuant to this chapter make it unlawful to hunt.

(e) "Closed season" means all times during the year except those times designated by regulation as open for hunting.

(f) "Game" means all animals defined as "big game" or "marine mammals" and all waterfowl.

(g) "Game officer" or "game agent" means any person authorized by the Suquamish Indian Tribe to enforce this chapter and regulations issued pursuant to this chapter.

(h) "Hunt" and its derivatives, "hunting," "hunted," etc. and "trap" and its derivatives mean any effort to kill, injure, capture, or disturb a wild animal or wild bird. "Hunting" refers also to and includes "trapping."

(i) "Marine mammals" means all those species of marine mammals which are resident or migratory through the tribe's treaty-reserved fishing and hunting area.

(j) "Non-member" means any person who is not enrolled in the Suquamish Tribe.

(k) "Open season" means those times established by regulation for lawful hunting and trapping. "Open season" includes the first and last days of the established time, unless otherwise specified in the regulation.

(l) "Public roads" means those roads maintained by the State of Washington or any of its subdivisions.

(m) "Regulation" means any rule governing hunting or trapping which is issued pursuant to and as provided in this chapter.

(n) "Suquamish tribal member" means a person enrolled in the Suquamish Indian Tribe.

(o) "Tag" means a card, label, or other identification device to be attached to the carcass of any game animal.

(p) "Tribal council" means the governing council of the Suquamish Indian Tribe.

(q) "Tribe" means the Suquamish Indian Tribe.

(r) "Wildlife" means all species of animals, including birds, which exist within the areas covered by this chapter except fish and domesticated animals. (Res. 88-007 (part), passed Jan. 28, 1988; amended by 95-048, passed July 24, 1995; renumbered for consistency Jun. 27, 2007)

14.3.5. Eligible Hunters. The following persons shall be eligible to exercise hunting and trapping rights under the authority of this chapter:

(a) Enrolled members of the Suquamish Tribe who are eighteen years old or older;

(b) Enrolled members of the Suquamish Tribe under the age of eighteen years who have been awarded a certificate of satisfactory completion of a firearms safety course approved by the tribe or by any other Indian tribe or state; provided that a minor under the age of fourteen years shall hunt or trap only when accompanied by his or her parent or guardian or by an adult approved by his or her parent or guardian; and

(c) Persons not members of the tribe who are legally married to Suquamish tribal members; provided that such non-members shall hunt or trap only when accompanied by their spouses or by their adult children who are Suquamish tribal members; and provided further that the non-member spouses shall not exercise hunting rights under the authority of any other Indian treaty tribe. (Res. 88-007 (part), passed Jan. 28, 1988; amended by Tribal Council Sept. 27, 1993; renumbered for consistency Jun. 27, 2007)

14.3.6. Designated Hunters. (a) Upon finding that a member of the Suquamish Tribe is unable to hunt for himself or herself, the fisheries director may issue a permit which allows a designated hunter to hunt for the disabled person.

(b) Any adult member of the tribe possessing a valid Suquamish hunting permit may request that the fisheries director place his or her name on a list of designated hunters. The fisheries director shall list as designated hunters those persons who have demonstrated hunting ability, have not been convicted of a tribal hunting offense for the two previous years, and have not been prohibited by federal, tribal, or state law from carrying a firearm. Each year, as part of the annual regulations established pursuant to §14.3.5, the tribal council shall establish the number of designated hunter permits to be issued. That number of designated hunters shall be selected by lot from the total number of hunters whose names have been placed on the list provided for in this section. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.7. Identification Card. Before hunting or trapping under authority of this chapter, every person shall obtain a tribal treaty fishing and hunting identification card or spouse identification card as provided in Chapter 14.1. A hunter or trapper must have this identification card in his or her possession while hunting, while traveling to or from hunting, and while transporting or dressing game. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.8. Annual Permit. No person shall hunt or trap pursuant to this chapter without first obtaining from the tribal fisheries director an annual hunting permit. The tribal council may establish a license fee for each category of permit. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.9. Tags and Reporting. (a) A person desiring to hunt or trap a big game animal shall first obtain a game tag from the tribal fisheries department. The tag shall be attached to the carcass of each animal immediately after the animal is killed. Every tag issued by the fisheries department, whether the hunter bagged an animal or not, shall be returned to the fisheries department no later than three days after the hunting season for that species closes.

(b) Every person who bags a game animal under authority of this chapter shall report the number and species of the animals bagged and the location of the taking to the tribal fisheries department no later than thirty days after the hunting season for that species closes. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.10. Hunting Committee. (a) The Suquamish Tribal Council shall appoint a hunting committee to advise the council and the fisheries director. The committee's responsibilities shall include:

- (1) Representing the views of the hunters;

(2) Attending meetings which involve the development of game conservation and enhancement strategies, of annual hunting regulations, and of the hunting ordinance; and

(3) Communicating to tribal hunters the hunting policies and rules of the tribe.

(b) Any member of the Suquamish Tribe eligible to vote in tribal elections is eligible for appointment to the hunting committee; provided that no person may serve simultaneously on the hunting committee and the fish committee established in STC Chapter 14.1; and provided further that no more than one person in an immediate family may serve on the committee at a time. An immediate family consists of parents and guardians, spouses, and children, including adult children.

(c) The hunting committee shall be composed of five persons appointed for three-year terms. The tribal council shall try to appoint to the hunting committee persons who are familiar with hunting techniques and with the game resources within the tribe's jurisdiction. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.11. Responsibilities of Fisheries Director. The tribal fisheries director shall be responsible for the implementation of this chapter, including:

(a) Jointly with the hunting committee, recommending annual regulations;

(b) Adopting in-season regulations, as provided in §14.3.16 of this chapter;

(c) Overseeing the enforcement of this chapter and regulations issued pursuant to this chapter; and

(d) Carrying out other duties related to hunting as delegated by the tribal council. (Res. 88-007 (part), passed Jan. 28, 1988; renumbered for consistency Jun. 27, 2007)

14.3.12. General Closure. (a) The Port Madison Indian Reservation and all off-reservation areas within the scope of this chapter are closed to hunting and trapping by persons eligible to hunt or trap pursuant to this chapter unless those areas have been specifically opened to hunting by regulations adopted as provided in this chapter.

(b) All areas of the Port Madison Indian Reservation are closed to hunting and trapping by persons who are not members of the Suquamish Tribe except spouses eligible to hunt pursuant to §14.3.5. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.13. Application of 18 USC 1165. Any person who hunts or traps on the Port Madison Indian Reservation in violation of the provisions of this chapter or regulations adopted pursuant to this chapter shall be deemed to be hunting on the reservation without lawful authority or permission, as those terms are used in 18 USC 1165. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.14. Posted Areas. No person subject to the Suquamish Tribe's jurisdiction shall enter with the intent of hunting or trapping an area whose limits are posted with signs indicating that the owner of the land has prohibited hunting there. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.15. Hunting for Ceremonial Purposes. The fisheries director may issue short-term permits for the hunting of animals needed for funerals, religious ceremonies, and tribal community ceremonies. Such a permit shall specify the species, sex, and number of animals to be taken; the name of the hunter; and the dates during which the permit is valid. Permits may be issued under this section for hunting during a closed season. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.16. Annual Regulations. No later than one month before each hunting season, the fisheries director and hunting committee shall recommend to the tribal council annual regulations necessary to carry out the purposes of this chapter. The regulations may establish open areas, open seasons, bag limits, limitations on methods of taking game, and other measures to ensure the wise use and conservation of game resources. Before proposing annual regulations, the fisheries director shall obtain available information on the abundance and territories of various wildlife species within the areas covered by this chapter, shall consult with the Washington State Department of Wildlife on game conservation needs in those areas, and shall obtain the recommendations of the hunting committee regarding the proposed regulations. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.17. In-season Regulations. (a) The fisheries director, after consulting with as many members of the hunting committee as is practicable, may adopt emergency in-season regulations governing hunting when he or she receives information that changes in the annual regulations are necessary for the conservation of game resources.

(b) Emergency in-season regulations shall take effect at the time specified in the regulations and shall remain in effect until they lapse by their own terms or until the tribal council withdraws them; provided that the fisheries director shall promptly notify the tribal council of the regulations' adoption.

(c) An in-season regulation adopted pursuant to this section shall not be enforced against a hunter unless it has been personally served on the hunter before the alleged violation or unless it has been posted at several public locations for at least twenty-four hours. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.18. Intergovernmental Agreements. The fisheries director is authorized to negotiate agreements relating to the management and protection of game with the government of any other treaty tribe, the State of Washington, or the United States Government. No such agreement shall be binding unless approved by the Suquamish Tribal Council. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.19. Manner of Hunting. All hunting and trapping pursuant to this chapter shall be done in a safe and respectful manner. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.20. Prohibited Acts. Each of the following acts shall be an offense punishable as indicated here.

(a) Failure to obtain and possess an annual hunting and trapping permit:
\$750.00/120 days;

(b) Hunting during a closed season: \$750.00/120 days;

(c) Taking an animal in any manner or by any means contrary to this chapter or regulations: \$300.00/90 days;

(d) Hunting within the boundaries of a closed area: \$750.00/120 days;

(e) Exceeding the bag limit set by annual regulations issued under this chapter:
\$750.00/120 days;

(f) Failure to report the number, species, sex, and location of all game killed:
\$100.00/30 days;

(g) Causing or permitting game killed or trapped to go to waste: \$300.00/90 days;

(h) Taking wildlife from another person's trap without permission or damaging, removing, or possessing another person's trap without permission: \$500.00/90 days;

(i) Selling killed or trapped animals or their meat: \$750.00/120 days;

(j) Transporting big game without a tag: \$250.00/60 days;

(k) Transporting a loaded firearm in or on a motor vehicle: \$500.00/90 days;

(l) Discharging a firearm or an arrow from, across, or within twenty feet of a public road: \$250.00/60 days;

(m) Hunting from within or on a motor vehicle or pursuing game with a motor vehicle: \$500.00/90 days;

(n) Hunting with an artificial light: \$500.00/90 days;

(o) Hunting deer or elk while accompanied by a dog: \$250.00/60 days;

(p) Hunting while under the influence of alcohol or illegal drugs: \$300.00/90 days;

(q) Permitting or failing to prohibit hunting by a child under the age of fourteen for whom the adult has legal guardianship responsibility: \$250.00/60 days;

(r) Killing, catching, confining, or injuring any eagle, eagle's nest, or eagle egg: \$1,000.00/1 yr. jail (365 days);

(s) Laying or setting out any bait to lure wildlife for hunting: \$500.00/90 days;

(t) Laying or setting out any drug, explosive, or poison that may endanger, injure, or kill wildlife: \$500.00/90 days;

(u) Mutilating wildlife so that the species or sex cannot be determined visually: \$300.00/90 days;

(v) Shooting at any person or domestic animal while hunting: \$1,000.00/180 days;

(w) Destroying, defacing, tearing down, or concealing any signs or other printed matter placed and posted under authority of this chapter to assist the enforcement of hunting regulations: \$300.00/90 days;

(x) Discarding any object, debris, or waste on any public or private property, except in designated trash receptacles, while engaged in or on the way to or from hunting: \$100.00/30 days;

(y) Resisting or obstructing any game agent in the discharge of his duties under this chapter: \$500.00/60 days;

(z) Permitting, aiding, and abetting another person to engage in conduct which is unlawful under this chapter or a regulation issued pursuant to this chapter: \$250.00/60 days;

(aa) Violating any provision of this chapter or any regulation adopted pursuant to this chapter not specifically referenced elsewhere: \$300.00/90 days;

(bb) Hunting big game with any of the following:

(1) A fully automatic firearm: \$300.00/90 days;

(2) A rifle with a bore diameter less than .240 of an inch (6 mm) or a barrel length less than 16 inches: \$300.00/90 days;

(3) A rifle cartridge with a bullet weighing less than 85 grains or that develops less than 900 foot pounds of energy at 100 yards: \$300.00/90 days;

(4) A rifle cartridge containing a bullet other than mushrooming or expanding type designed for big game hunting: \$250.00/60 days;

(5) A shotgun, except that a shotgun which is 20 gauge or larger and uses shells loaded with slugs or buckshot size #1 or larger may be used to hunt deer and bear: \$300.00/90 days;

(6) A hand gun, except that deer, bear, or cougar may be hunted with a .30-.30 rifle/pistol, a .44 magnum, or a .45 Winchester magnum, with a minimum barrel length of 6 inches and which develops a minimum of 1,000 ft. lbs. of energy at the muzzle: \$300.00/90 days;

(7) A bow that possesses less than 40 pounds of pull, measured at 28 inches of draw in length: \$300.00/90 days;

(8) Any arrows except those having sharp broadhead blade or blades at least 5/8 inches wide: \$300.00/90 days;

(cc) Hunting with a crossbow: \$500.00/120 days;

(dd) Hunting small game animals with a shotgun larger than a 10 gauge: \$300.00/90 days;

(ee) Hunting game birds with lead shot, with a shotgun larger than 10 gauge, or with a rifle or pistol, except that blue grouse, spruce grouse, and ruffed grouse may be hunted with a rifle or pistol: \$300.00/90 days; or

(ff) Entering for the purpose of hunting or trapping an area posted with signs prohibiting hunting: (Res. 88-007 (part), passed Jan. 28, 1988; amended by Res. 95-048, passed July 24, 1995; renumbered for consistency Jun. 27, 2007)

14.3.21. Elk Season Restrictions. During open season for elk, no person shall hunt in areas where elk may reasonably be expected unless one of the following conditions is met:

(a) He has in his possession the proper permits, tags, and firearms for hunting elk;

(b) The deer and elk seasons are open at the same time, and he has proper permits, tags, and firearms for hunting deer; or

(c) He is hunting game birds with a shotgun containing size 4 or smaller shot.

Violation of this section is an offense punishable by a fine not to exceed \$300.00 or imprisonment for a period not to exceed ninety days or both. (Res. 88-007 (part), passed Jan. 28, 1988; renumbered for consistency Jun. 27, 2007)

14.3.22. Muzzle-loading Rifles. A muzzle-loading rifle means a single or double barrel wheel lock, matchlock, flintlock, or percussion rifle with exposed ignition in which the black powder and ball or bullet must be loaded from the muzzle. No person shall carry or possess a muzzle-loading rifle which does not meet the following requirements: If the rifle has a removable breech plug, such removal must require the use of tools. Minimum barrel length is 20 inches and minimum caliber is 40, such measurement to be taken from land to land in a barrel. Ignition shall be wheel lock, matchlock, flintlock, or percussion using original style percussion caps that fit on the nipple and are exposed to the elements. Sights must be metal. Telescopic sights or sights containing glass are prohibited. This section shall not apply to carrying a muzzle-loading pistol. Violation of this section is an offense punishable by a fine not to exceed \$300.00 or imprisonment for a period not to exceed ninety days or both. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.23. Cooperation with Federal and State Agencies. Authorized federal and state game conservation officials may monitor tribal hunting activities outside the Port Madison Reservation but only to the extent that the monitoring is reasonable and necessary for game conservation purposes. Persons hunting under authority of this chapter shall not interfere with the monitoring activities of such officials. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.24. Producing Identification. Any person hunting or purporting to hunt under authority of the Suquamish Tribe shall produce for examination the identification card and permits required by this chapter upon demand of a tribal game agent, tribal police officer, or state or federal official. Failure to produce the required identification and/or permits shall be probable cause to believe that the person has no right to exercise tribal hunting rights. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.25. Game Officers. (a) The Suquamish Tribal Council shall appoint one or more persons to serve as tribal game officers. The tribal law enforcement officers and fisheries patrol officers shall also have the authority to enforce the provisions of this chapter and all regulations adopted pursuant to the chapter. In addition, the council may appoint or deputize persons to assist the game officers in the performance of their duties on a temporary basis.

(b) The tribal game officers shall regularly patrol the Port Madison Reservation and off-reservation areas where tribal hunters are engaged in hunting. They shall have authority to enforce the provisions of this chapter and all annual and emergency regulations adopted pursuant to this chapter. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.26. Enforcement Procedures. The procedures for enforcing this chapter and all regulations adopted pursuant to this chapter shall be the same as those provided in the Suquamish Fishing Ordinance, STC §14.1.37 through STC §14.1.48. (Res. 88-007 (part), passed Jan. 28, 1988)

14.3.27 Marine Mammals. (a) It is prohibited to harass, kill, harvest, or take any marine mammal except as otherwise provided by this chapter, Suquamish tribal regulation promulgated under the authority of this chapter, or federal law.

(b) **Deterring Harm – Lethal Acts.** Nothing herein shall prohibit a licensed tribal owner/operator of fishing gear or catch, or an employee or agent of such owner/operator, or tribal fisheries enforcement officer from:

(1) Deterring a marine mammal from damaging such gear or catch;

(2) Deterring a marine mammal from damaging private or tribal property;

or

(3) Deterring a marine mammal from endangering personal safety

by any lethal means; provided, however, that all reasonable steps to deter such marine mammal which do not result in death or serious injury to the mammal have been taken and, provided further, that all such lethal takings are reported to the tribal fisheries office or fisheries enforcement officer as provided herein.

(c) **Self-defense.** Nothing herein shall prohibit the taking, killing, or injury of a marine mammal if such taking, killing, or injury is imminently necessary in self-defense or to save the life of a person in immediate danger.

(d) **Commercial Harvest.** Except as permitted by this chapter or annual regulations or by federal law, the intentional taking of any marine mammal for commercial purposes is prohibited. Any permitted commercial harvest of marine mammals shall include a plan for monitoring and reporting of the tribal harvest and shall be consistent with §14.3.2 (conservation needs of the resource). Tribal harvesters shall be required to comply with harvest reporting requirements contained in this chapter or annual regulations.

(e) **Ceremonial and Subsistence Harvest.** Marine mammals may be harvested for ceremonial and subsistence purposes as provided for in annual or in-season emergency regulations. However, no marine mammal shall be harvested except by a permit duly issued by the Suquamish Fisheries Department. Such permit shall authorize the taking of the specific species listed and shall be deemed revoked automatically when the total number of animals harvested has met the number designated by permit or the total season limit as determined in annual or emergency regulations, whichever is reached first.

(f) **Incidental Injury or Death of Marine Mammals.** Nothing herein shall prohibit the incidental injury or death of a marine mammal due to entanglement within fishing gear operated in accordance with the provisions of Chapter 14.1.

(g) Reporting Incidents and Delivery of Marine Mammals. Any member or owner/operator of a Suquamish tribal fishing vessel, where applicable, shall report all incidents which occur under any provisions of this chapter which result in incidental mortality or serious injury to marine mammals to the Suquamish Fisheries Department or a Suquamish fisheries enforcement officer within forty-eight hours of the incident.

(h) Delivery of Carcass. The carcass of any marine mammal killed pursuant to subsections (c) and (f) of this section shall be detained if reasonably possible and given over to the Suquamish Fisheries Department or a Suquamish fisheries enforcement officer as soon as possible. (Res. 95-048 (part), passed July 24, 1995)

Federal Rules of Civil Procedure – Rule 19

(a) Persons Required to Be Joined if Feasible.

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) Venue. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is subject to Rule 23.

9th Circuit Case Number(s) 17-35336

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)