

The Honorable Ricardo S. Martinez

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

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

STATE OF WASHINGTON

Defendants.

Case No. C70-9213

Subproceeding: 24-sp-01 RSM

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

**I. NATURE OF THE ACTION**

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

REQUEST FOR DETERMINATION FOR USUAL AND ACCUSTOMED  
FISHING GROUNDS NOT SPECIFICALLY DETERMINED BY FINAL  
DECISION #1  
(CASE NO. 70-9213) PAGE 1

mctlaw

1325 4<sup>TH</sup> AVENUE, SUITE 1730

SEATTLE, WA 98101

888-952-5242

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

3 2. Some of the Usual and Accustomed fishing grounds and stations ("U&A") of the Sauk-  
 4 Suiattle Indian Tribe ("Sauk-Suiattle" or "Tribe") were described in Final Decision #1 at  
 5 Finding of Facts 129–132. *United States v. Washington*, 384 F. Supp. 312, 375–76 (W.D. Wash.  
 6 1974) ("Final Decision #1). Regarding the Tribe's freshwater U&A, Finding of Fact 131 noted  
 7 that the non-exhaustive list of the Tribe's U&A "included Sauk River, Cascade River, Suiattle  
 8 River and the following creeks which are tributary to the Suiattle River— Big Creek, Tenas  
 9 Creek, Buck Creek, Lime Creek, Sulphur Creek, Downey Creek, Straight Creek, and Mill  
 10 Creek. Bedal Creek, tributary to the Sauk River, was also a Sauk fishing ground." *Id.* Whether  
 11 Sauk-Suiattle U&A also included the Skagit River and Baker River was not specifically  
 12 determined in Final Decision #1. Regarding U&A in the Puget Sound, Finding of Fact 132  
 13 stated that the Tribe "traveled to the saltwater to procure marine life unavailable in their own  
 14 territory." *Id.* at 376. However, the exact locations of the Tribe's saltwater (also referred to as  
 15 "marine water") U&A were not specifically determined in Final Decision #1.

16 3. The Tribe respectfully requests that the Court exercise its authority under the continuing  
 17 jurisdiction of this case to determine that the Usual and Accustomed fishing grounds and  
 18 stations of the Sauk-Suiattle Indian Tribe include the Skagit River, the Baker River, and  
 19 saltwater areas including from Warm Beach to the mouth of the Stillaguamish River, the South  
 20 Fork of the Skagit Delta and Skagit Bay, the west and north sides of Hat Island, both sides of  
 21 Camano Island (including Saratoga Passage and Port Susan), Samish Bay, Chuckanut Bay,  
 22 Padilla Bay, Fidalgo Bay, the east side of Whidbey Island (including Penn Cove, Oak Harbor,  
 23 Crescent Harbor, and Holmes Harbor), Snee-oosh Beach, Similk Bay, Turner Bay, and from

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

## 3 II. PARTIES

4 4. Petitioner is the Sauk-Suiattle Indian Tribe, a federally recognized Indian tribe with a  
 5 governing body recognized by the United States Federal Government. *See* Indian Entities  
 6 Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,  
 7 89 Fed. Reg. 944, 946 (Jan. 8, 2024). The Tribe is the successor-in-interest to the Sah-Ku-Mehu  
 8 Tribe, signatory to the Treaty of Point Elliott of January 22, 1855, ratified March 8, 1859, and  
 9 proclaimed April 11, 1859. 12 Stat. 927.  
 10

11 5. Respondent is the State of Washington.

12 6. There are several other parties included in this long-running case. The Tulalip Tribes,  
 13 Suquamish Tribe, Swinomish Indian Community, and the Upper Skagit Indian Tribe have  
 14 previously identified themselves as parties that may be directly affected by this Request and that  
 15 intend to appear as Respondents in this case. Several other Tribes with adjudicated or disputed  
 16 U&A in or near the requested area attended the meet-and-confer process in this matter, but it is  
 17 not known whether any of those parties will appear in this subproceeding, nor what position  
 18 they may take.  
 19  
 20

## 21 III. CONTINUING JURISDICTION

22 7. In Final Decision #1, Judge Boldt found that “[t]his Court should retain continuing  
 23 jurisdiction of this case to grant such further relief as may be found by the court to be  
 24 appropriate.” *United States v. Washington*, 384 F. Supp. 312 at 405. To that end, it was held  
 25 that “the court does hereby reserve continuing jurisdiction of this case without limitation at this  
 26 time.” *Id.* at 347.  
 27

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

#### IV. STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

## V. PRAYER FOR RELIEF

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

REQUEST FOR DETERMINATION FOR USUAL AND ACCUSTOMED  
FISHING GROUNDS NOT SPECIFICALLY DETERMINED BY FINAL  
DECISION #1  
(CASE NO. 70-9213) PAGE 6

mctlaw

1325 4<sup>TH</sup> AVENUE, SUITE 1730

SEATTLE, WA 98101

888-952-5242

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

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

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

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of September, 2024

/s/ Kehl Van Winkle

Kehl A. Van Winkle, WSBA # 53762

**mctlaw**

1325 4<sup>th</sup> Ave, Suite 1730

Seattle, WA 98101

Email: kvanwinkle@mctlaw.com

Email: omcginn@mctlaw.com

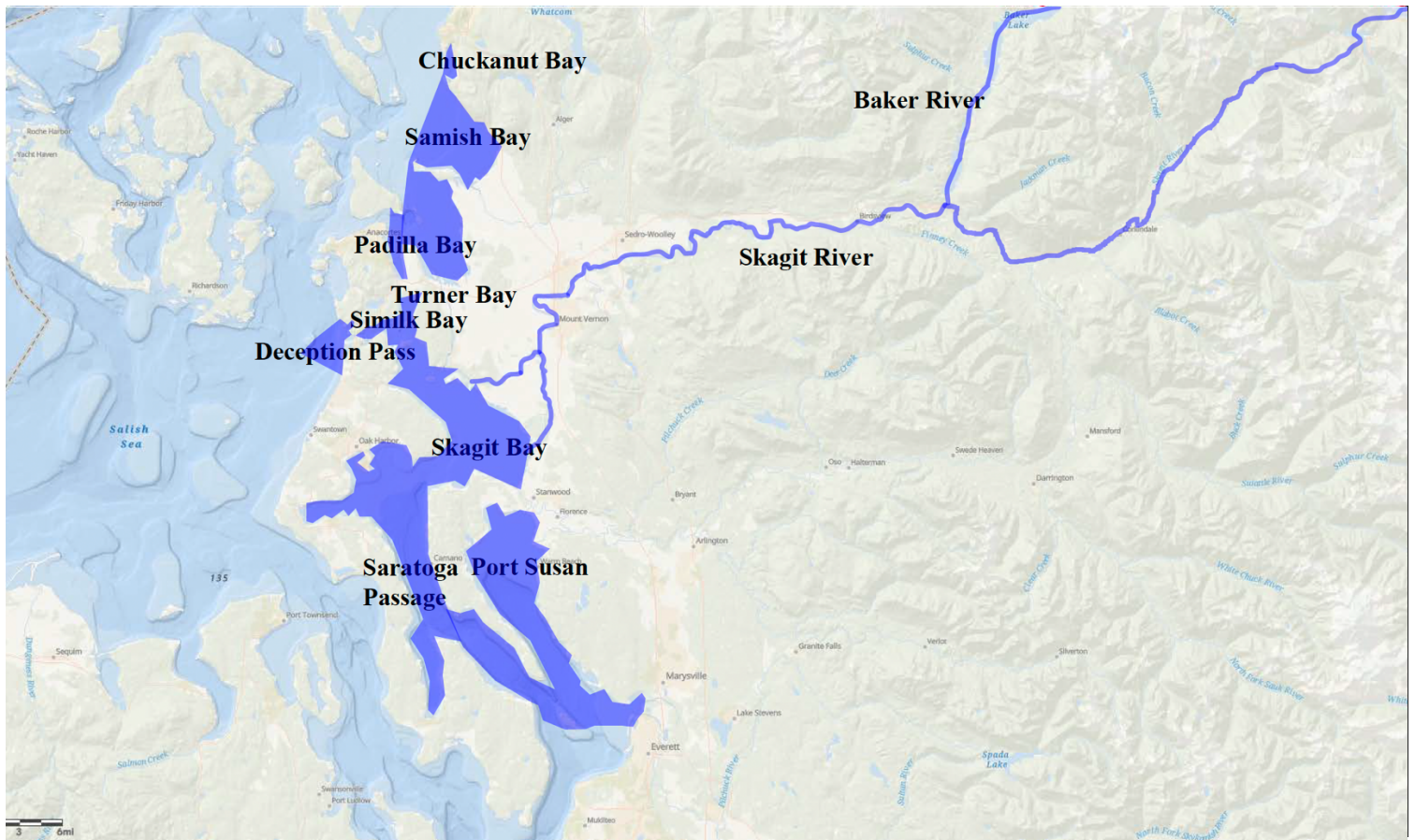
Tel: 888.952.5242

Fax: 877.952.5042

# **EXHIBIT 1**

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





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