

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
PUGET SOUND POWER & LIGHT)
COMPANY, et al.)
)
(Skagit Nuclear Power Project,)
Units 1 and 2)

DOCKET NOS. 50-522
50-523

PETITIONER TRIBES' RESPONSE TO THE
BOARD'S REQUEST OF SEPTEMBER 26, 1978

This Board made three requests in the Chairman's September 26th letter: (1) Identify and quote applicable sections of treaties; (2) Designate witnesses and outline testimony; (3) Discuss representation on appeal and by SCANP.

1. Identify and Quote the Section or Sections of the Treaties Relied Upon to Support the Assertions That Their Interests are Specifically Provided For in Those Treaties.

The treaty in question is the "Treaty with the Dwamish, Suquamish, etc." commonly referred to as the Treaty of Point Elliott, 12 Stat. 927. The treaty was executed on January 22, 1855, ratified on March 8, 1859, and proclaimed on April 11, 1859. Because the entire treaty is necessary to understand the reservation of fishing rights, a copy is attached to this response.

The pertinent portion of the treaty is Article 5:

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...

The meaning of similar language in the treaty with the Yakimas was characterized by the United States Supreme Court as early as 1905, in United States v. Winans, 198 U.S. 371, 381-2 (1905).

The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. In other words, the treaty was not a grant of rights to the Indians, but a grant of right from them, -- a reservation of those not granted. And the form of the instrument and its language was adapted to that purpose. Reservations were not of particular parcels of land, and could not be expressed in deeds, as dealings between private individuals. The reservations were in large areas of territory, and the negotiations were with the tribe. They reserved rights, however, to every individual Indian, as though named therein. They imposed a servitude upon every piece of land as though described therein. There was an exclusive right of fishing reserved within certain boundaries. There was a right outside of those boundaries reserved "in common with citizens of the territory." As a mere right, it was not exclusive in the Indians. Citizens might share it, but the Indians were secured in its enjoyment by a special provision of means for its exercise. They were given "the right of taking fish at all usual and accustomed places," and the right "of erecting temporary buildings for curing them." The contingency of the future ownership of the lands, therefore, was foreseen and provided for; in other words, the Indians were given a right in the land, -- the right of crossing it to the river, -- the right to occupy it to the extent and for the purpose mentioned. No other conclusion would give effect to the treaty. And the right was intended to be continuing against the United States and its grantees as well as against the state and its grantees.

"In common with" clearly was never meant to place treaty tribes in the same status as private fishermen deriving whatever rights they have from Anglo-Saxon laws of capture.

The state argues that the term "in common with" was intended merely to insure that the treaty Indians would not be treated discriminatorily, that each Indian should have access to the traditional fishing grounds on the same footing with each white settler. The Supreme

Court long ago considered this construction, however, and rejected it. [Citing United States v. Winans]

United States v. Washington, 520 F.2d 676, 687 (9th Cir. 1975).

The Ninth Circuit had occasion to return to this question in 1978:

It is crucial to remember that these treaties did not grant the tribes anything; rather, the tribes granted the United States a vast expanse of land, reserving to themselves certain interests in it and in its profits a prendre.

Puget Sound Gillnetters Association v. United States District Court for the Western District of Washington, 573 F.2d 1123, 1126 (9th Cir. 1978). It should be noted that the United States Supreme Court has recently granted certiorari, based on a conflict between state and federal courts. State of Washington, et al. v. United States of America et al., Nos. 78-119 and 78-139, _____ U.S.L.W. _____ (October 16, 1978).

2. The Petitioners are Requested to Designate the Witnesses Who Would Present Data in Their Behalf if Intervention were to be Granted, as well as Outline the Content of the Evidence Each of the Designated Proposed Witnesses Would Submit if Permitted by Intervention.

The response to this request is contained in Petitioner Tribes' Preliminary Designation of Witnesses which is served and filed with this response.

3. Legal Analyses Concerning Preservation of Rights on Appeal and Relegation of Indian Rights to SCANP.

- a. Protection of rights on appeal

At issue is exactly how the Indian rights asserted here would be protected in the review process were SCANP not to appeal. To the extent that a SCANP appeal might arguably protect Petitioners - a matter which the tribes certainly do not concede - failure to prosecute such an appeal, or to provide

vigorous advocacy (for whatever reason) would leave Petitioners without an adequate legal remedy. The record would be silent as to Indian rights, and gravely deficient.

Assuming denial of intervention at Licensing Board, Appeals Board, and conceivably Commission levels, the procedural rules, §§ 2.714a and 2.762, would force Petitioners to sit by powerless and watch issues directly affecting their lives and livelihood being litigated and decided. The Indians, who have had the Anglo-Saxon system of advocacy forced upon them, would not be able to participate as adversaries, submit proposed findings and conclusions, take exceptions to the initial decision if necessary, or appeal that decision within this agency. They would thus be denied administrative appeals on extremely important questions.

Their only alternative would be to appeal the denial of intervention in the federal courts, and, if successful, move for reopening on their contentions. It is difficult to predict the workings of such a review process. See 42 U.S.C. §2139; 5 U.S.C. §704; Pepsico, Inc. v. Federal Trade Commission, 472 F.2d 179 (2d Cir. 1972); Thermal Ecology Must Be Preserved v. Atomic Energy Commission, 433 F.2d 524 (D.C. Cir. 1970); contra: Interstate Broadcasting Company v. United States, 286 F.2d 539 (D.C. Cir. 1960) and Public Service Commission of the State of New York v. Federal Power Commission, 284 F.2d 200 (D.C. Cir. 1960). Because of the magnitude of the treaty right, and the void which would exist on the record, it is a matter of argument when and to what extent appeals would be allowed.

But Petitioners would be forced to forego remedies in this agency. Attempts at exhaustion here would be futile. The delay of access to an appellate forum would, among other things, be costly for Petitioners, deprive them of access to agency expertise on technical questions, force them to seek reopening of the record with the additional burdens imposed when "extraordinary" remedies are involved, and interfere with

economic and social planning by the tribes and affected state and federal agencies in areas in which the Skagit nuclear project poses risks. Fisheries enhancement, harvest management and social programs would all be affected. As outsiders seeking to inform a federal court concerning deficiencies in these proceedings, Petitioners would be at a distinct disadvantage. That disadvantage could be compensated for, but only at considerable loss in time and expense.

Further, should intervention ultimately be ordered, and should Petitioners be successful in having the record reopened (see Thermal Ecology, supra.) Petitioners would be in the awkward position of arguing their interests for the first time in a proceeding which had already been completed once in their absence.

Finally, Petitioners' contentions involve mixed questions of law and fact. In order to grant intervention, a distinct likelihood, a federal court would have to recognize the existence of these questions. It would contribute to the speedy resolution of such a review, and ultimately to resolution of the whole matter, if those questions could be argued first at the agency level. The smooth flow of administrative proceedings will be frustrated, rather than expedited, by denial of intervention.

b. Representation by SCANP

Petitioners contend that it is not sufficient, nor consistent with due process, to proceed as if SCANP could provide representation of Indian rights. This becomes quite apparent upon review of the federal law dealing with Indian treaties and federal parties practice.

Petitioners occupy a very special status:

It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government. Indians today are American citizens.

They have the right to vote, to use state courts, and they receive some state services. But it is nevertheless still true, as it was in the last century, that "[t]he relation of the Indian tribes living within the borders of the United States ... [is] an anomalous one and of a complex character... They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided." United States v. Kagama, 118 U.S., at 381-382, 6 S.Ct., at 1112.

McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 173-4 (1973).

Indian tribes are "unique aggregations" having sovereignty over their members and over their territory. United States v. Mazurie, 419 U.S. 544 (1975). They still possess those attributes of sovereignty not taken from them by treaty or statute. United States v. Wheeler, U.S. , 98 S.Ct. 1079, 1089 (1978). They are analagous to separate nations. United States v. Devonian Gas and Oil Co., 424 F.2d 464 (2d Cir. 1970).

The rules applicable to treaties with foreign powers generally apply to Indian treaties. United States Solicitor For The Department Of The Interior, Federal Indian Law (1958). Treaties with tribes, like treaties with foreign powers, are the supreme law of the land. Worcester v. Georgia, 31 U.S. 515 (1832). There are, however, some special rules of treaty construction which should be remembered. Treaties must be construed as the Indians would have understood them and any doubtful expressions are to resolved in favor of the Indians. Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970). Congressional intention to modify or abrogate such treaties is not lightly imputed. Menominee Tribe of Indians v. United States, 391 U.S. 404 (1968).

Rights vested by treaty are protectable under the Fifth

Amendment. Tee-hit-ton Indians v. United States, 348 U.S. 272 (1955); Choate v. Trapp, 224 U.S. 665 (1912). The unique nature of the treaty fishing right has already been pointed out. United States v. Winans, *supra*; United States v. Washington, *supra*. A federal agency may not interfere with such treaty rights, by denying access or by destroying a fishery, without specific congressional authorization. Confederated Tribes of the Umatilla Indian Reservation v. Alexander, 440 F.Supp. 553 (D. Ore. 1977).

The United States, as trustee, is responsible for protecting treaty rights, making any necessary claims before the courts. Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976); *see also* the discussion of federal trust responsibility in Petitioners' Reply Brief. In fact, the United States has been held a necessary party in actions to protect Indian interests. Carlson v. Tulalip Tribes of Washington, 510 F.2d 1337 (9th Cir. 1975). But the United States' trust responsibility to protect Indian rights does not diminish the right of the tribes themselves to act on their own behalf and when there is a conflict between the United States and the tribes representation by the United States may be held to be inadequate under Rule 24(a) of the Federal Rules of Civil Procedure. Poafbitty v. Skelly Oil Company, 390 U.S. 365 (1968); State of New Mexico v. Aamodt, 537 F.2d 1102 (10th Cir. 1976); Skokomish Tribe v. France, 269 F.2d 555 (9th Cir. 1959).

The cases hold that although the United States would otherwise be an indispensable party, an Indian tribe is allowed to sue on its own behalf. In fact, the legislative history of 28 U.S.C. 1362 indicates that Congress specifically intended that Indian tribes could protect their interests when the United States, although a necessary party, did not choose to act. Salt River Pima-Maricopa Indian Community v. Arizona Sand and Rock Company, 353 F.Supp. 1098 (D. Ariz. 1972).

Under the circumstances of this case, the United States may well be a necessary party because of the involvement of treaty rights. To the extent that the United States has not chosen to

act, or has a conflict of interest, it is congressional purpose that Indians be allowed to act on their own behalf. Although the cases and statutes quoted relate to federal court proceedings, there is little distinction between forums when the rights are the same.

As to the question of adequacy of representation, a statement by the Supreme Court on standing provides a backdrop:

Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverse-ness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions?

Baker v. Carr, 369 U.S. 186 (1962).

Rule 24(a) deals with adequacy of representation:

The requirement of the Rule is satisfied if applicant shows representation of his interest "may be" inadequate: and the burden of making that showing should be treated as minimal.

Trbovich v. United Mine Workers of America, 404 U.S. 528, 538, n. 10 (1972). With regard to whether representation "may be inadequate" there is a slight presumption in favor of intervention. Holmes v. Government of the Virgin Islands, 61 F.R.D. 3 (D. Vi. 1973)

It would be unacceptable, a violation of federal law and congressional policy, to delegate protection of sovereign Indian tribes and their treaty-guaranteed rights to a private intervener. This is especially true when that intervener has not sought to assert those rights and when the agency making the delegation is an instrumentality of the federal trustee. And it is equally clear that if intervention is denied and if SCANP does not chose to pursue these Indian interests with vigorous advocacy these tribes and these rights will be severely harmed.

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Russell W. Busch Date
Evergreen Legal Services
Attorney for Upper Skagit Indian Tribe
and Sauk-Suiattle Indian Tribe

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PETITIONER TRIBES' PRELIMINARY
DESIGNATION OF WITNESSES

The following outline was prepared in response to the Chairman's request of September 26, 1978. While Petitioners anticipate calling the witnesses listed, the list is not intended to be inclusive and, should intervention be granted, it would at that time be appropriate to complete arrangements and prepare written testimony. During the interim field and literature research could result in changes to the list, depending on the nature of information gathered.

EVALUATION OF COSTS UNIQUE TO PETITIONER TRIBES
Dependence of Tribal Households on Fisheries Returning
to the Skagit System

Dr. Lynn Robbins, Anthropologist
Morris Dan, Swinomish
Dewey Mitchell, Swinomish
Laura Wilbur, Swinomish
Lawrence Boome, Upper Skagit
Larry Williams, Upper Skagit
Lawrence Joseph, Sauk

Andy Fernando, Skagit System Cooperative
Economic Condition of Tribal Households
Degree of Economic Reliance on Skagit Fisheries
Degree of Subsistence and Ceremonial Reliance
Cultural and Social Relationship to Fisheries

Importance of Skagit Fisheries to the Economic Base of the
Swinomish Indian Reservation

Terry Brenneman, Tribal Operations Manager
Fisheries and Reservation Tax Base
Tribal Harvest-to-Market Enterprise

Relationship of Indian Community to Skagit River Area

Dr. Barbara Lane, Anthropologist
Dr. Lynn Robbins
Laura Wilbur, Swinomish
Lawrence Boome, Upper Skagit
Lawrence Joseph, Sauk
Andy Fernando, Skagit System Cooperative
Historic Habitation and Use of Area
Current Habitation and Use
Social and Psychological Values

Socio-Economic Impacts of Construction and Industrialization

Dr. Lynn Robbins
Field Research, Upper Skagit Tribe
Economic and Social Patterns
Risks from "Boomtown" Effects
Tribal Labor Force
Social Mechanisms
Incidence of Alcoholism
Relations with non-Indian Community

Health Effects of Low-Level Ionizing Radiation on an Isolated
Indian Community

Dr. Lynn Robbins

Field Research Results

Habits of Upper Skagit Receptors

Marital Patterns

Incidence of Genetic Isolation

Dr. Rosalie Bertells, Biostatistician (tentative)

Mild Mutations in Closed Populations

Incidence of Birth Defects and Other Health Effects

Evaluation of Risk-Measurement Methods Here

Methods of Gathering and Evaluating Baseline Data

Child Health Monitoring During and After Operation

(Field Research is done by student teams and tribal employees after verification of methods with appropriate experts. For various reasons, all persons reviewing methods and data may not be available for testimony. When student research, including literature searches, is complete, additional expertise may be sought as needed.)

UNQUANTIFIED RISKS TO SKAGIT SYSTEM FISHERIES

Importance of Skagit System in Pacific Northwest Fisheries

Richard Granstrand, Biologist

Catch Statistics, All Species

Economic Valuations

Comparison to Total Puget Sound Harvest

Unique Value of Specific Wild Runs

Increasing Pressure on Fisheries

Management in United States v. Washington

Tribal Investment in Increased Fisheries

Presidential Task Force Proposal

Natural Enhancement Program

Stream Rehabilitation

Steven Fransen, Biologist

Current Lack of Skagit System Data Base

Data Collection by Skagit System Cooperative

Construction Impacts

Michael Watson, Consulting Engineer

Methods of Predicting Discharge at Site

Defining Watershed Boundaries

Computing Precipitation Retention

Hydrographs Correlating Storm to Discharge

Rating Silt and Flood-control Works

Richard Granstrand

Steven Fransen

Evaluation of Affected Feeder Streams

Wiseman Creek Coho Production

Other Runs

Risks Associated with Containment Vessel Transport

Interference with Indian Net Fishery

Risks Associated with Debris Removal

Risks Associated with Flow Modification

Risks Associated with Dredging

Cooling Water Intake System

Michael Watson and Michael Kaczmarek, Geohydrologist

Unacceptable Levels of Groundwater Intrusion

Evaluation of Existing Data

Methods to Determine Risk

Criteria for Hydrologic Mapping

Location of Test Wells

Pump-test Design

Computing Flow Characteristics

Dewatering Surface Streams by Infiltration

Evaluation of Existing Data

Methods of Determining Capture

Plotting Cones of Depression

Stream Measurement

Response Computation

Effects on Wetted Area

Richard Granstrand

Steven Fransen

Feeder Stream Evaluation

Production Now

Production Potential

Sediment Sampling

Spawning and Incubation Habitat

Rearing Habitat-Benthic Community

Spawning-to-Outmigration Cycles

Induction Effects on Burrowing Salmonids

Hot Water Diffuser

Steven Fransen

Richard Granstrand

Establishing Migration Patterns

Existing Data

Sampling Techniques for Diffuser Area

Determining Exposure

Size and Species

Swimming Speed

Attraction and Harboring

Lethal and Sub-lethal Effects

Michael Watson

Computing Stream Velocities at Diffuser Point

Computing Turbulence at Diffuser Point

Existing Sediments

Streambed Modification

Nozzle Turbulence

Comparison to Migrant Behavior

Swimming Speeds

Harboring in Turbulence

Thermal Attraction

Undesignated

Effluent Concentration in Benthic Community

Food Chains

Warm Water Hatchery

Steven Fransen

Richard Granstrand

Value of Natural Runs

Mixed-Stock Harvest Risks

Risks of Interspecific Interaction

Timing Problems Dependent on Warm Water Supply

Skagit River Enhancement Planning

Practical Observations

Design of Effective Monitoring System

Steven Fransen

Richard Granstrand

Biological Limits

Michael Watson

Discharge Measurement - Natural Flows

Temperature Measurement

Effluent Measurement

Executed in the presence of us—

Cris. Taylor, assistant secretary.
Andrew Smith.
John Flett, interpreter.

We, the chiefs and headmen of the Clow-we-wal-la, or Willamette Tum-water band of Indians, being assembled in council, give our assent unto, and agree to the provisions of the foregoing treaty.

In testimony whereof we have hereunto set our hands and seals, at Linn city, Oregon Territory, this nineteenth day of January, eighteen hundred and fifty-five.

Lal-bick, or John, his x mark. [L. S.]
Cuck-a-man-na, or David, his x mark. [L. S.]

Executed in the presence of us—

Cris. Taylor, assistant secretary.
John Flett, interpreter.

We, the chiefs and headmen of the Santam bands of Calapooia Indians, being duly authorized by our respective bands, give our assent unto, and agree to the provisions of the foregoing treaty.

In testimony whereof we have hereunto set our hands and seals, at Dayton, Oregon Territory, this twenty-second day of January, eighteen hundred and fifty-five.

Tow-ye-colla, or Louis, first chief, his x mark. [L. S.]
La-ham, or Tom, third chief, his x mark. [L. S.]
Senegertta, his x mark. [L. S.]
Pul-i-can, his x mark. [L. S.]
Te-na, or Kiles, his x mark. [L. S.]
Pul-kup-ti-ma, or John, his x mark. [L. S.]
Sal-laf, or Silas, his x mark. [L. S.]
Hoip-ke-nek, or Jack, his x mark. [L. S.]
Yep-tab, his x mark. [L. S.]
Satinvose, or James, his x mark. [L. S.]

Executed in the presence of us—

Edward R. Geary, secretary.
Cris. Taylor.
Andrew Smith.
John Flett, interpreter.

TREATY WITH THE DWAMISH, SUQUAMISH, ETC., 1855.

Articles of agreement and convention made and concluded at Muckl-te-oh, 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, head-men and delegates of the Dwamish, Suquamish, Sk-tahl-mish, Sam-ahmish, Smalh-kamish, Skope-ahmish, St-kah-mish, Snoqualmoo, Skai-wha-mish, N' Quentl-ma-mish, Sk-tah-le-jum, Stoluck-wha-mish, Sno-ho-mish, Skagit, Kik-i-ah-lus, Swin-a-mish, Squin-ah-mish, Sah-ku-mehu, Noo-wha-ha, Nook-wa-chah-mish, Mee-sée-gua-guilch, Cho-bah-ah-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.

ARTICLE 1. 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



Jan. 22, 1855.

12 Stat. 927.
Ratified Mar. 8, 1859.
Proclaimed Apr. 11, 1859.

Cession of lands to the United States.

Boundaries.

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 around 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.

Reservation.

ARTICLE 2. 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 Hwhomish 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, etc.

Further reservation for schools.

ARTICLE 3. There is also reserved from out the lands hereby ceded the amount of thirty-six sections, or one township of land, on the northeastern 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 4. 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 secured to Indians.

ARTICLE 5. 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.

ARTICLE 6. 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 year, 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, 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.

Payment by the United States.

How to be applied.

ARTICLE 7. 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 hereinbefore 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 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 accordingly therefor.

Indians may be removed to reservation, etc.

Lots may be assigned to individuals.

Ante, p. 612.

ARTICLE 8. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

ARTICLE 9. 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, of 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, etc.

To surrender offenders.

ARTICLE 10. 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.

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

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

United States to establish school and provide instructors, furnish mechanics, shops, physicians, etc.

Treaty, when to take effect.

ARTICLE 11. The said tribes and bands agree to free all slaves now held by them and not to purchase or acquire others hereafter.

ARTICLE 12. 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 13. 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.

ARTICLE 14. 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 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.

ARTICLE 15. 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 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.]	Wats-ka-iah-tchie, or John Hobtst-boot, Sub-chief of Snohomish, his x mark. [L. s.]
Pat-ka-nam, Ch'ia of the Snoqualmoo, Snohomish and other tribes, his x mark. [L. s.]	Smeh-mai-hu, Sub-chief of Skai-wha-mish, his x mark. [L. s.]
Chow-its-hoot, Chief of the Lummi and other tribes, his x mark. [L. s.]	Slat-eah-ka-nam, Sub-chief of Snoqualmoo, his x mark. [L. s.]
Goliah, Chief of the Skagits and other allied tribes, his x mark. [L. s.]	St'hau-ai, Sub-chief of Snoqualmoo, his x mark. [L. s.]
Kwallattam, or General Pierce, Sub-chief of the Skagit tribe, his x mark. [L. s.]	Luga-ken, Sub-chief of Skai-wha-mish, his x mark. [L. s.]
S'hootst-hoot, Sub-chief of Snohomish, his x mark. [L. s.]	S'heht-soolt, or Peter, Sub-chief of Snohomish, his x mark. [L. s.]
Snah-talc, or Bonaparte, Sub-chief of Snohomish, his x mark. [L. s.]	Do-queh-oo-satl, Snoqualmoo tribe, his x mark. [L. s.]
Squash-um, or The Smoke, Sub-chief of the Snoqualmoo, his x mark. [L. s.]	John Kanam, Snoqualmoo sub-chief, his x mark. [L. s.]
See-alla-pa-han, or The Priest, Sub-chief of Sk-tah-le-jum, his x mark. [L. s.]	Klemsh-ka-nam, Snoqualmoo, his x mark. [L. s.]
He-uch-ka-nam, or George Bonaparte, Sub-chief of Snohomish, his x mark. [L. s.]	Ts'huahntli, Dwa-mish sub-chief, his x mark. [L. s.]
Tee-nah-talc, or Joseph Bonaparte, Sub-chief of Snohomish, his x mark. [L. s.]	Kwuss-ka-nam, or George Snatelum, Sen., Skagit tribe, his x mark. [L. s.]
Ns'ski-oos, or Jackson, Sub-chief of Snohomish, his x mark. [L. s.]	Hel-mits, or George Snatelum, Skagit sub-chief, his x mark. [L. s.]
	S'kwai-kwi, Skagit tribe, sub-chief, his x mark. [L. s.]
	Seh-lek-qu, Sub-chief Lummi tribe, his x mark. [L. s.]

S'h'-cheh-oo, or General Washington, Sub-chief of Lummi tribe, his x mark. [L. s.]	Tse-sum-ten, Lummi tribe, his x mark. [L. s.]
Whai-lan-hu, or Davy Crockett, Sub-chief of Lummi tribe, his x mark. [L. s.]	K'it-hahl-ten, Lummi tribe, his x mark. [L. s.]
She-ah-delt-hu, Sub-chief of Lummi tribe, his x mark. [L. s.]	W'it-ta-kanam, or John, Lummi tribe, his x mark. [L. s.]
Kwult-seh, Sub-chief of Lummi tribe, his x mark. [L. s.]	Ch-lah-ben, Noo-qua-cha-mish band, his x mark. [L. s.]
Kwull-et-hu, Lummi tribe, his x mark. [L. s.]	Noo-heh-oo, Snoqualmoo tribe, his x mark. [L. s.]
Kleh-kent-soot, Skagit tribe, his x mark. [L. s.]	Hweh-uk, Snoqualmoo tribe, his x mark. [L. s.]
Sohn-heh-ovs, Skagit tribe, his x mark. [L. s.]	Peh-nus, Skai-whamish tribe, his x mark. [L. s.]
S'deh-ap-kan, or General Warren, Skagit tribe, his x mark. [L. s.]	Yim-ka-dam, Snoqualmoo tribe, his x mark. [L. s.]
Chul-whil-tan, Sub-chief of Suquamish tribe, his x mark. [L. s.]	Twooi-as-kut, Skaiwhamish tribe, his x mark. [L. s.]
Ske-eh-tum, Skagit tribe, his x mark. [L. s.]	Luch-al-kanam, Snoqualmoo tribe, his x mark. [L. s.]
Patchkanam, or Dome, Skagit tribe, his x mark. [L. s.]	S'hoot-kanam, Snoqualmoo tribe, his x mark. [L. s.]
Sata-Kanam, Squin-ah-nush tribe, his x mark. [L. s.]	Sme-a-kanam, Snoqualmoo tribe, his x mark. [L. s.]
Sd-zo-mahl, Kik-ial-lus band, his x mark. [L. s.]	Sad-zis-keh, Snoqualmoo, his x mark. [L. s.]
Dahtl-de-min, Sub-chief of Sah-kumeh-hu, his x mark. [L. s.]	Heh-mahl, Skaiwhamish band, his x mark. [L. s.]
Sd'zek-du-num, Me-sek-wi-guilse sub-chief, his x mark. [L. s.]	Charley, Skagit tribe, his x mark. [L. s.]
Now-a-chais, Sub-chief of Dwamish, his x mark. [L. s.]	Sampson, Skagit tribe, his x mark. [L. s.]
Mis-lo-tche, or Wah-hehl-tchoo, Sub-chief of Suquamish, his x mark. [L. s.]	John Taylor, Snohomish tribe, his x mark. [L. s.]
Sloo-noksh-tan, or Jim, Suquamish tribe, his x mark. [L. s.]	Hatch-kwentum, Skagit tribe, his x mark. [L. s.]
Moo-whah-lad-hu, or Jack, Suquamish tribe, his x mark. [L. s.]	Yo-i-kum, Skagit tribe, his x mark. [L. s.]
Too-leh-plan, Suquamish tribe, his x mark. [L. s.]	T'kwa-ma-han, Skagit tribe, his x mark. [L. s.]
Ha-seh-doo-an, or Keo-kuck, Dwamish tribe, his x mark. [L. s.]	Sto-dum-kan, Swinamish band, his x mark. [L. s.]
Hoo-vilt-meh-tum, Sub-chief of Suquamish, his x mark. [L. s.]	Be-lole, Swinamish band, his x mark. [L. s.]
We-al-pah, Skaiwhamish tribe, his x mark. [L. s.]	D'zo-lole-gwam-hu, Skagit tribe, his x mark. [L. s.]
S'ah-an-hu, or Hallam, Snohomish tribe, his x mark. [L. s.]	Steh-shail, William, Skaiwhamish band, his x mark. [L. s.]
She-hope, or General Pierce, Skagit tribe, his x mark. [L. s.]	Kel-kahl-tsoot, Swinamish tribe, his x mark. [L. s.]
Hwn-lah-lakq, or Thomas Jefferson, Lummi tribe, his x mark. [L. s.]	Pat-sen, Skagit tribe, his x mark. [L. s.]
Ch-tsimpt, Lummi tribe, his x mark. [L. s.]	Pat-teh-us, Noo-wha-ah sub-chief, his x mark. [L. s.]
	S'hoolk-ka-nam, Lummi sub-chief, his x mark. [L. s.]
	Ch-lok-suts, Lummi sub-chief, his x mark. [L. s.]

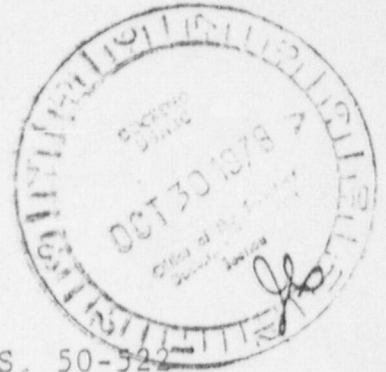
Executed in the presence of us—

M. T. Simmons, Indian agent.
C. H. Mason, Secretary of
Washington Territory.
Benj. F. Shaw, Interpreter.
Chas. M. Hitchcock.
H. A. Goldsborough.
George Gibbs.
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Henry D. Cock.

S. S. Ford, jr.
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Ellis Barnes.
R. S. Bailey.
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J. H. Hall.
Rob't Davis.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)

PUGET SOUND POWER & LIGHT COMPANY,)
et al.)

(Skagit Nuclear Power Project,)
Units 1 and 2))

DOCKET NOS. 50-522
50-523

CERTIFICATE OF SERVICE

I hereby certify that copies of:

PETITIONER TRIBES' PRELIMINARY DESIGNATION OF WITNESSES

and

PETITIONER TRIBES' RESPONSE TO THE BOARD'S REQUEST OF
SEPTEMBER 26, 1978

have been served on the following by depositing the same in the
United States mail, postage prepaid, by transmitting through
a guaranteed-delivery freight forwarder, or by legal messenger, on
this 27 day of October, 1978.

by

A handwritten signature in cursive script, appearing to read "Russell W. Busch".

Russell W. Busch
Attorney for the Upper Skagit Tribe
and Sauk-Suiattle Tribe

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