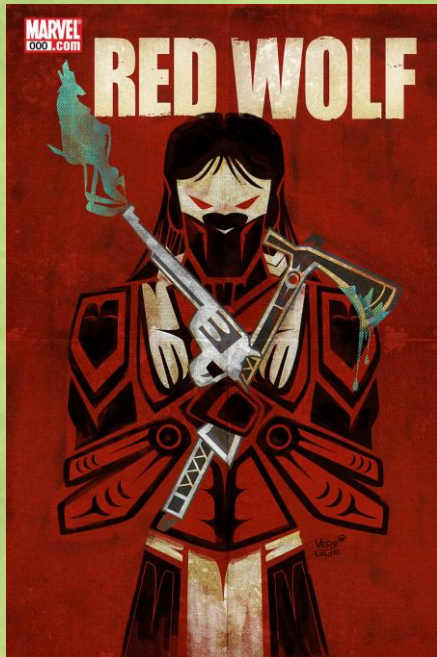
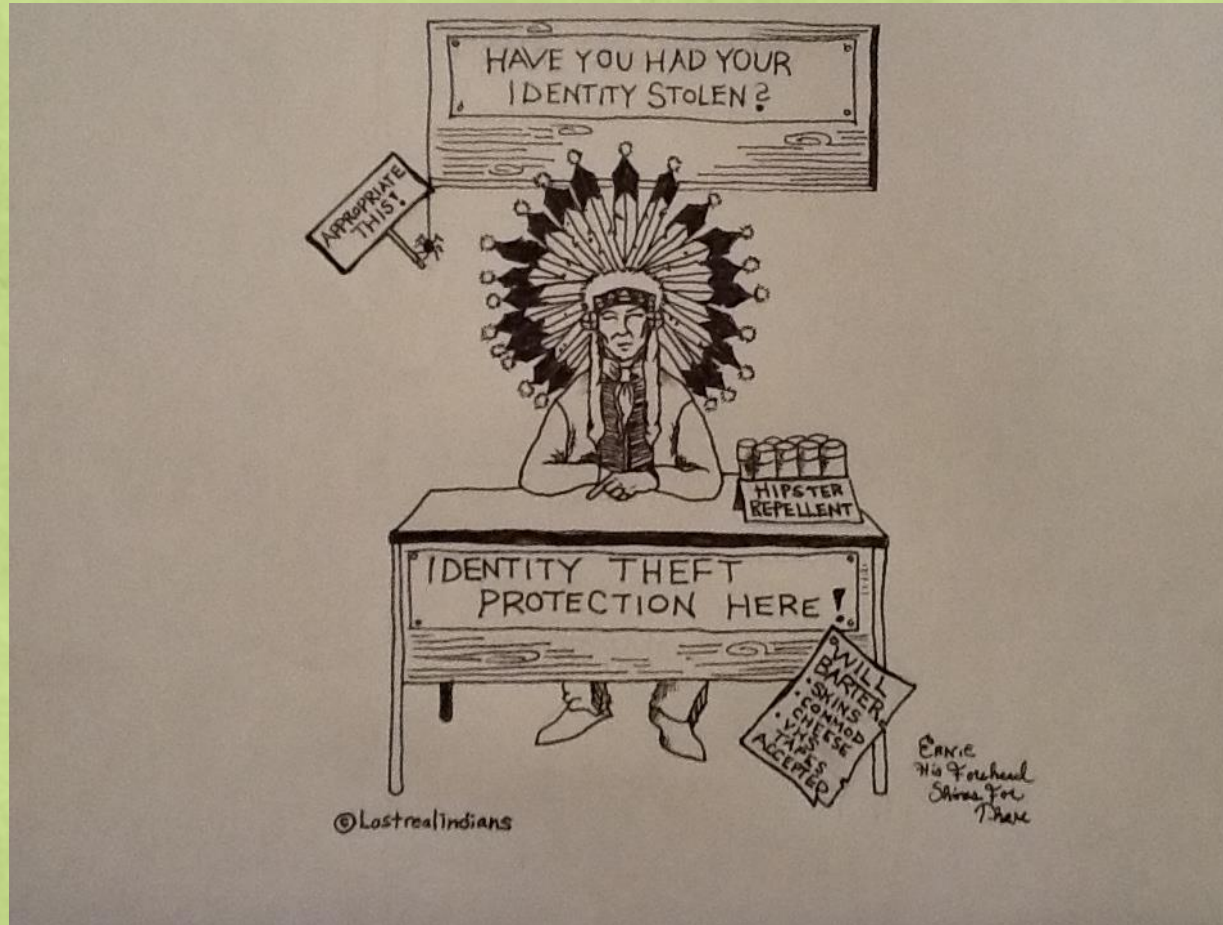
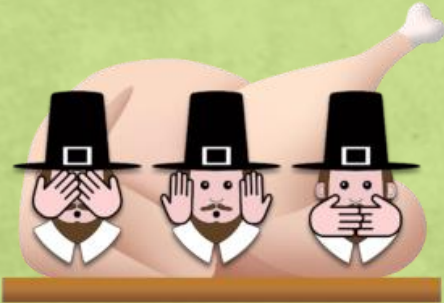


King County ↔ Indian Tribes Government to Government Relations

From: Joe Hovenkotter / King County Tribal Relations Liaison
To: Mountains to Sound Greenway Trust & AmeriCorps
Date: January 16, 2020



Cultural Context



Syllabus – “Working with Tribes”

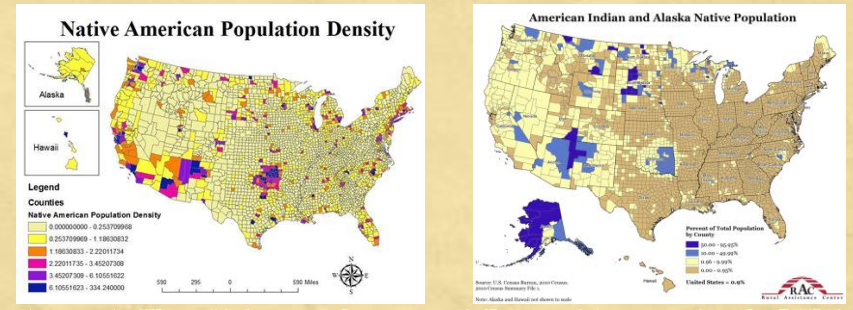
- 1. Indian Tribes / Fundamentals** *Who are they?*
- 2. Indian Tribes in King County** *How are tribes organized here?*
- 3. History / Stevens Treaties** *What are the ground rules?*
- 4. Ceded Territory / Reserved Territory** *What are the rules inside Indian reservations?*
- 5. Fishing Rights / Usual & Accustomed Places** *What are the rules outside of Indian reservations re: fishing?*
- 6. Hunting & Gathering Rights / Open & Unclaimed Lands** *What are the rules outside of Indian reservations re: hunting & gathering?*
- 7. Recent Litigation and Appeal** *What are the cutting edge relationship issues?*
- 8. International Recognition of Tribal Rights** *What's happening internationally?*
- 9. Tribal Support Organizations / Tribal News Sources** *What else do you want to learn on your own?*
- 10. Closing, Questions, Discussion** *What's on your mind?*

Part 1

Indian Tribes / Fundamentals

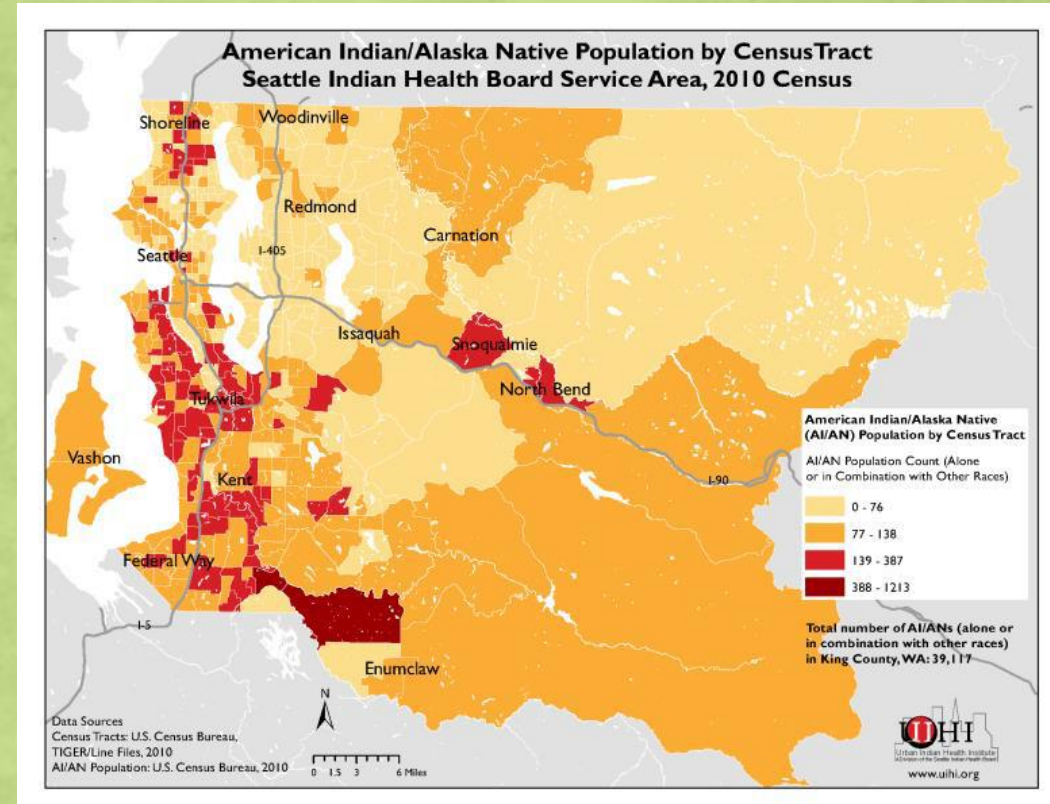
Indian Demographics – King County

(U.S. Census 2010; U.S. Census American Community Survey 2016)



	AI/AN*	General
Population	16,147	1,931,249
Percent of Total Population	0.8%	100.0%
Male : Female Ratio	48.5 : 51.5	49.8 : 50.2
Median Age	30.7	37.1
Number of Households	6,459	804,700
Average Household Size	2.5 persons	2.4 persons
% Living in Poverty	24.0%	10.2%
Avg. Per Capita Income (16+ yrs.)	\$33,132	\$43,629
% w/ High School Diploma	80.5%	93.6%
% w/ Bachelors Degree or higher	15.9%	54.3%
Labor Force Participation Rate	61.9%	69.5%

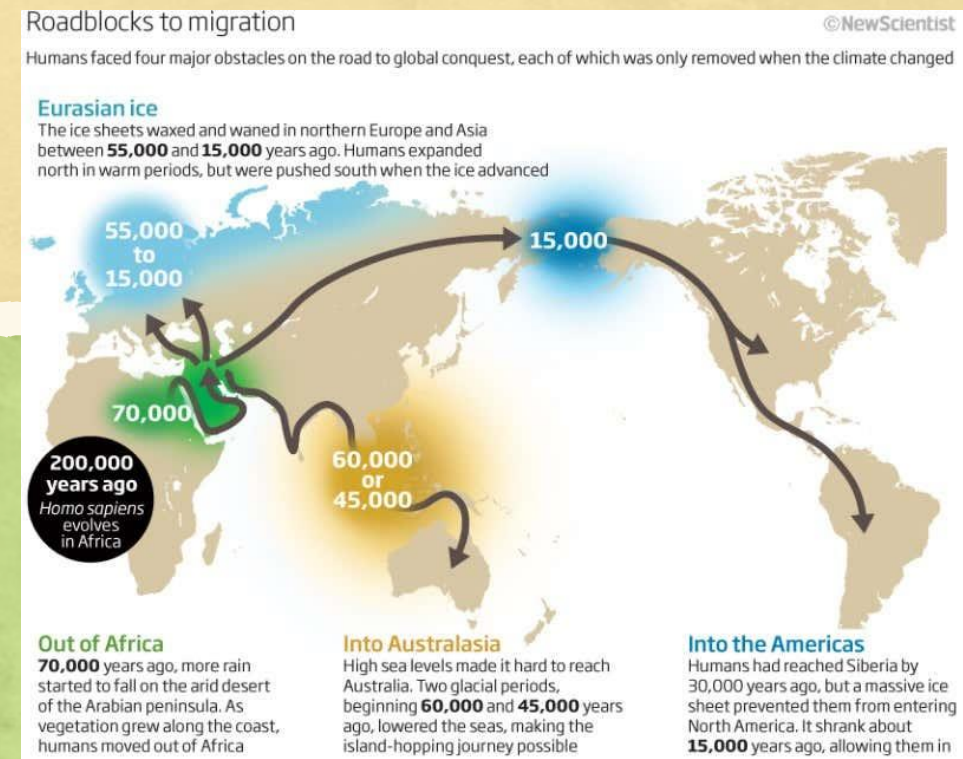
*AI/AN = American Indian / Alaska Native



NW Indian Tribes Prehistory / Time Immemorial



- Archeological Record + Carbon Dating + Genetic Testing
 - Life = 4.0 million years
 - Homo sapiens = 200,000-300,000 years
 - Clovis culture humans in PacNW = 16,000 years
- Language
 - Sophisticated lexicon / Salishan language / Lushootseed local dialect
 - Rudimentary common trading languages / Salish jargon
 - Oral tradition / glyphs & symbols, but no alphabet
- Mathematics / Measurement / Engineering / Natural History / Astronomy
 - Base 20 number system / no multiplication, division, algebra, or abstract geometry
 - Distance (paces, arm's length, finger width) / Weight ? / Volume ? / Temperature ?
 - Landform creation stories / Sky creation stories / Time (celestial/seasonal events)
- Technology
 - Hand tools / Rolling devices / Spindles / Spear points / Bow & Arrow / Fishing gear / Blades
 - Cedar watercraft / Cedar longhouses / Cedar containers
 - Plant part utensils (wood, braided leaves, fibrous ropes, etc.)



Indian Tribes – Historic Relationship with US



Coexistence

•1790 - 1828

Removal & Reservations

•1829 - 1886

Allotment & Assimilation

•1886 - 1932

Reorganization

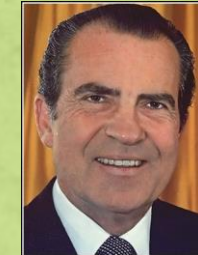
•1932 - 1945

Termination & Relocation

•1945 - 1960

Tribal Self-Determination

•1960 - 2019



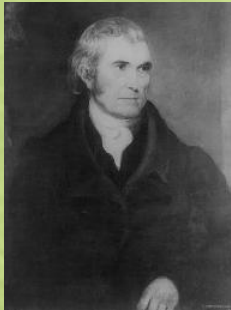
What we have done with the American Indian is its way as bad as what we imposed on the Negroes. We took a proud and independent race and virtually destroyed them. We have to find ways to bring them back into decent lives in this country.

— Richard M. Nixon —

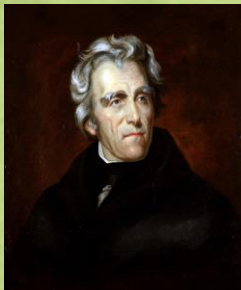
AZ QUOTES



Fundamentals re: Indian Tribal Governments



Chief Justice
John Marshall



President
Andrew Jackson

- Until 1871, the United States conducted its official relations with Indian tribes by treaty. The central policy was to attempt to separate Indians from non-Indians and to place interaction between the two groups subject to federal control. *American Indian Law*, 5th Ed. Canby, 2009; see also *U.S. Const. Art. I, Sec. 8. Cl. 3.*
- Rights of the conqueror/discoverer applied to United States' interaction with Indian tribes and therefore Indian tribes did not retain right to convey land (to anyone but U.S.) and did not retain power to make agreements with foreign sovereigns. *Johnson v. McIntosh*, 21 U.S. 543 (1823).
- Indian tribes are sovereigns, but not foreign, they are "domestic dependent nations." *Cherokee Nation v. Georgia* 30 U.S. 1, 17 (1831).
- Indian tribes are "distinct political communities, having territorial boundaries, within which their authority is exclusive." *Worcester v. Georgia*, 31 U.S. 515 (1832).
- Indian tribes are subject to plenary power of Congress. *U.S. v. Kagama*, 118 U.S. 375 (1886).



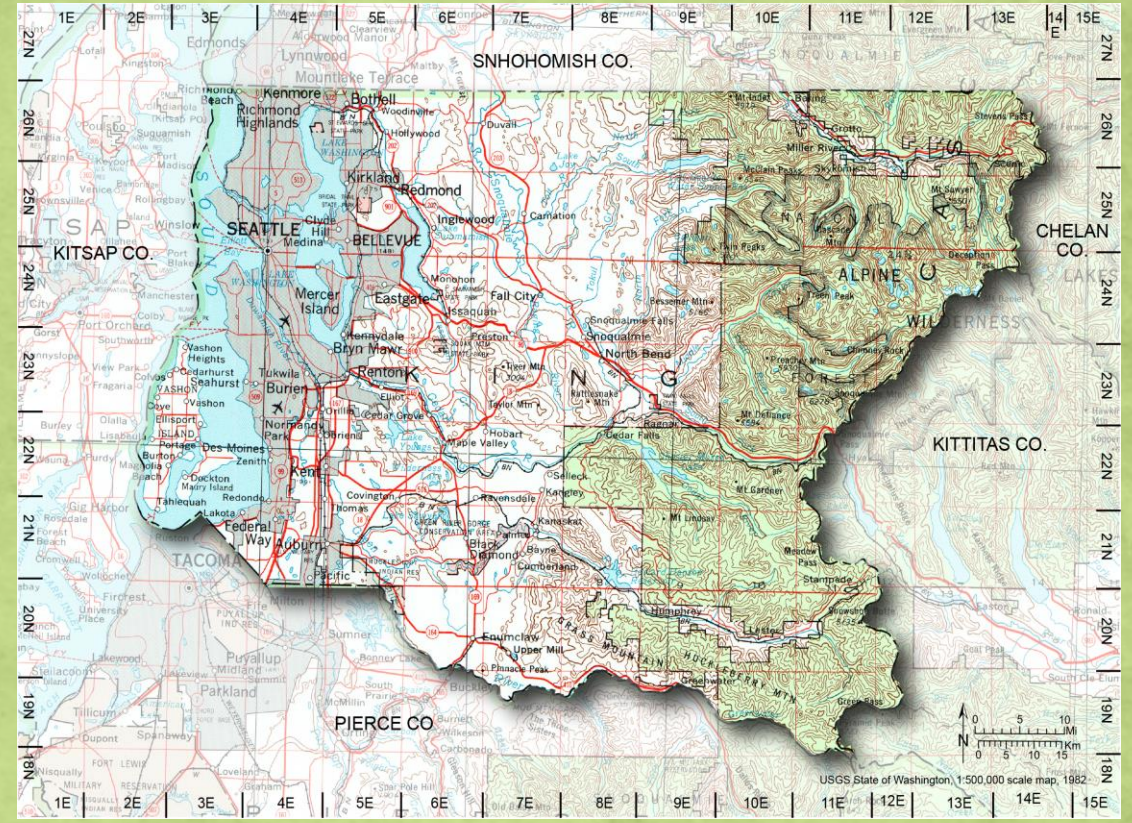
Leschi
Nisqually Tribe



Mary Louie
Snoqualmie Tribe



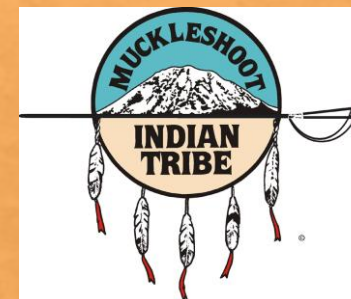
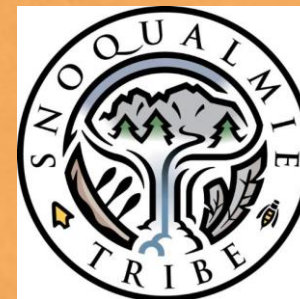
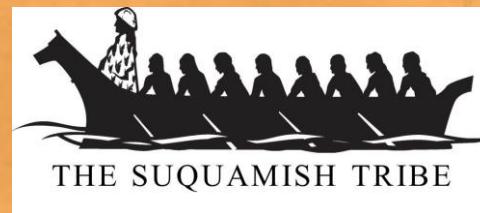
Drawing of Native encampment Puget Sound, William McMurtrie, 1850s



Map of King County

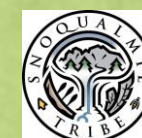
Part 2

Indian Tribes in King County



Indian Tribes - Tribal Governments

Tribe / Location	Organic Document	Ceded Territory	Reservation	Membership Population	Governing Body	Organic Document
Tulalip Tribes (Tulalip, WA)	Treaty of Point Elliott, 12 Stat. 927, January 22, 1855; Executive Order of December 23, 1873	E. Puget Sound Basin; 6.47M acres	Tulalip Indian Reservation; 22,567 acres	~4,600	Board of Directors x7; 3 yr. terms (March)	Ind. Reorg. Act § 16 Constitution; 01/24/1936
Suquamish Tribe (Suquamish, WA)	Treaty of Point Elliott, 12 Stat. 927, January 22, 1855; Executive Order of October 21, 1864	E. Puget Sound Basin; 6.47M acres	Port Madison Indian Reservation; 7,657 acres	~1,200	Tribal Council x7; 3 yr. terms (March)	Ind. Reorg. Act § 16 Constitution; 09/07/1939
Snoqualmie Tribe (Snoqualmie, WA)	Final Determination to Acknowledge, 62 FR 45864, August 29, 1997; DOI Solicitor's Letter of October 6, 1999 ² ; Indian Entities Recognized, 65 FR 13298, March 13, 2000; Reservation Proclamation, 71 FR 63,347, October 30, 2006	E. Puget Sound Basin; 6.47M acres	Snoqualmie Indian Reservation; 55.84 acres	~650	Tribal Council x9; Alternates x2; Elder x1; H'rdtry Chiefs x3; 4 yr. terms (May)	Constitution; 06/24/2006
Muckleshoot Tribe (Auburn, WA)	Treaty of Point Elliott, 12 Stat. 927, January 22, 1855; Executive Orders of January 20, 1857 and April 9, 1874	E. Puget Sound Basin; 6.47M acres	Muckleshoot Indian Reservation; 3,910 acres	~3,000	Tribal Council x9; 3 yr. terms (January)	Ind. Reorg. Act § 16 Constitution; 05/13/1936
Puyallup Tribe (Puyallup, WA)	Treaty of Medicine Creek, 10 Stat. 1132, December 26, 1854	SE Puget Sound Basin & Vashon I.; 2.24M acres	Puyallup Indian Reservation; 18,270 acres	~4,000	Tribal Council x7; 3 yr. terms (June)	Ind. Reorg. Act § 16 Constitution; 05/13/1936



Indian Tribes – Tribal Business Enterprises

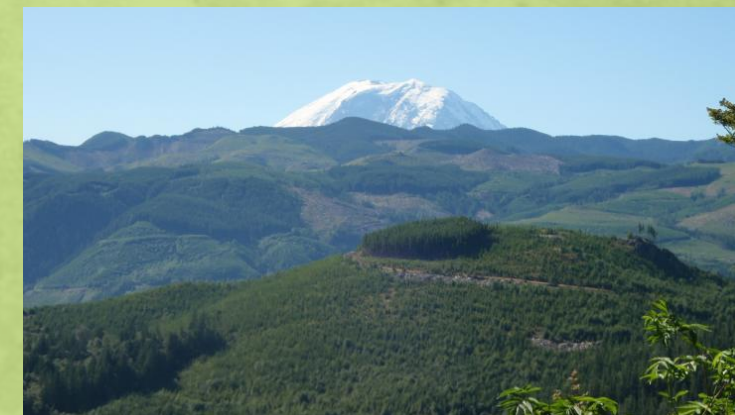
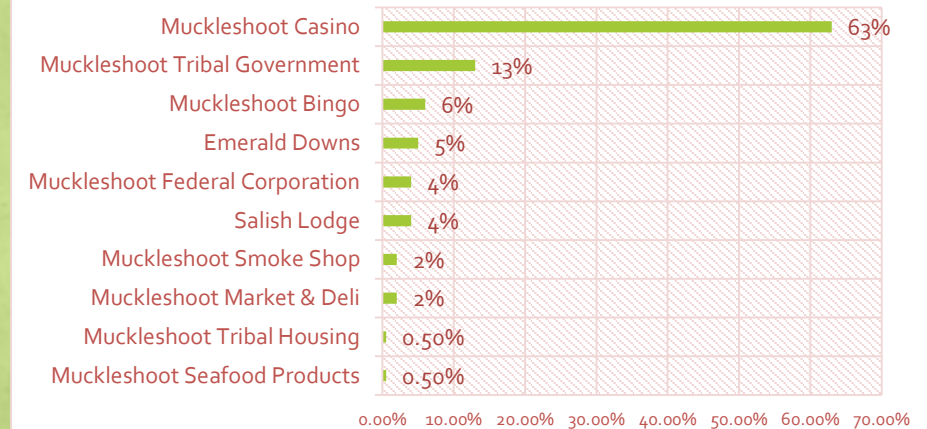
- Indian Reorganization Act – Section 17
 - Federally chartered corporations
 - Tribally owned & operated business enterprises

- Muckleshoot Tribally-owned businesses:
 - White River Amphitheater
 - Muckleshoot Casino & Hotel
 - Muckleshoot Bingo
 - Muckleshoot Market & Deli
 - Muckleshoot Smoke Shop
 - Joint Rivers Marijuana Dispensary
 - Emerald Downs
 - Muckleshoot Federal Corporation / Tomanamus Forest
 - Muckleshoot Seafood Products
 - Four Seasons Hotel & Private Residences (investor only)

- Snoqualmie Tribally-owned businesses:
 - Snoqualmie Casino
 - Salish Lodge & Spa
 - Snoqualmie Tobacco Company & Liquor Store
 - Crescent Market at Snoqualmie
 - Eighth Generation
 - Snoqualmie Fireworks Supply



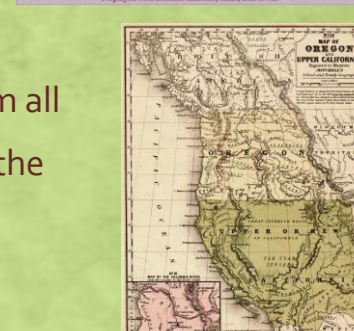
Revenue by MIT Business Organization (2017)



Sovereign History of King County



- | | | |
|---|---|---|
| <ul style="list-style-type: none"> ▪ Aboriginal Territory ▪ Provisional Gov't of Oregon | <p>Time Immemorial</p> <p>July 5, 1843</p> | <p>Rules of the Conqueror</p> <p>Organic Laws of Oregon</p> |
| <ul style="list-style-type: none"> ▪ Clark County (King County) | <p>August 20, 1845</p> | <p>Prov. Govt. of Oregon</p> |
| <ul style="list-style-type: none"> ▪ Lewis County (King County) | <p>December 19, 1845</p> | <p>Prov. Govt. of Oregon</p> |
| <ul style="list-style-type: none"> ▪ Oregon Treaty | <p>June 15, 1846</p> | <p>United States & United Kingdom</p> |
| <p>Established northern US Border at 54°40' west of Louisiana Purchase (i.e. Continental Divide)</p> | | |
| <ul style="list-style-type: none"> ▪ Territory of Oregon | <p>August 14, 1848</p> | <p>Stat. 30th Cong. 1st Sess. 923</p> |
| <ul style="list-style-type: none"> ▪ Thurston County (King County) | <p>January 12, 1852</p> | <p>Oregon Territorial Legislature</p> |
| <ul style="list-style-type: none"> ▪ King County | <p>December 22, 1852</p> | <p>Oregon Territorial Legislature</p> |
| <ul style="list-style-type: none"> ▪ Territory of Washington | <p>March 2, 1853</p> | <p>US Congress, <i>Journal of H.R.</i>, Vol. 48, p. 397</p> |
| <ul style="list-style-type: none"> ▪ State of Washington | <p>November 11, 1889</p> | <p>Presidential Proclamation, 26 Stat. 1552</p> |
| <ul style="list-style-type: none"> ▪ Enabling Act ▪ Washington Const. | <p>February 22, 1889</p> <p>October 1, 1889</p> | <p>U.S. Congress 25 Stat. 676</p> <p>Washington Constitutional Convention</p> |

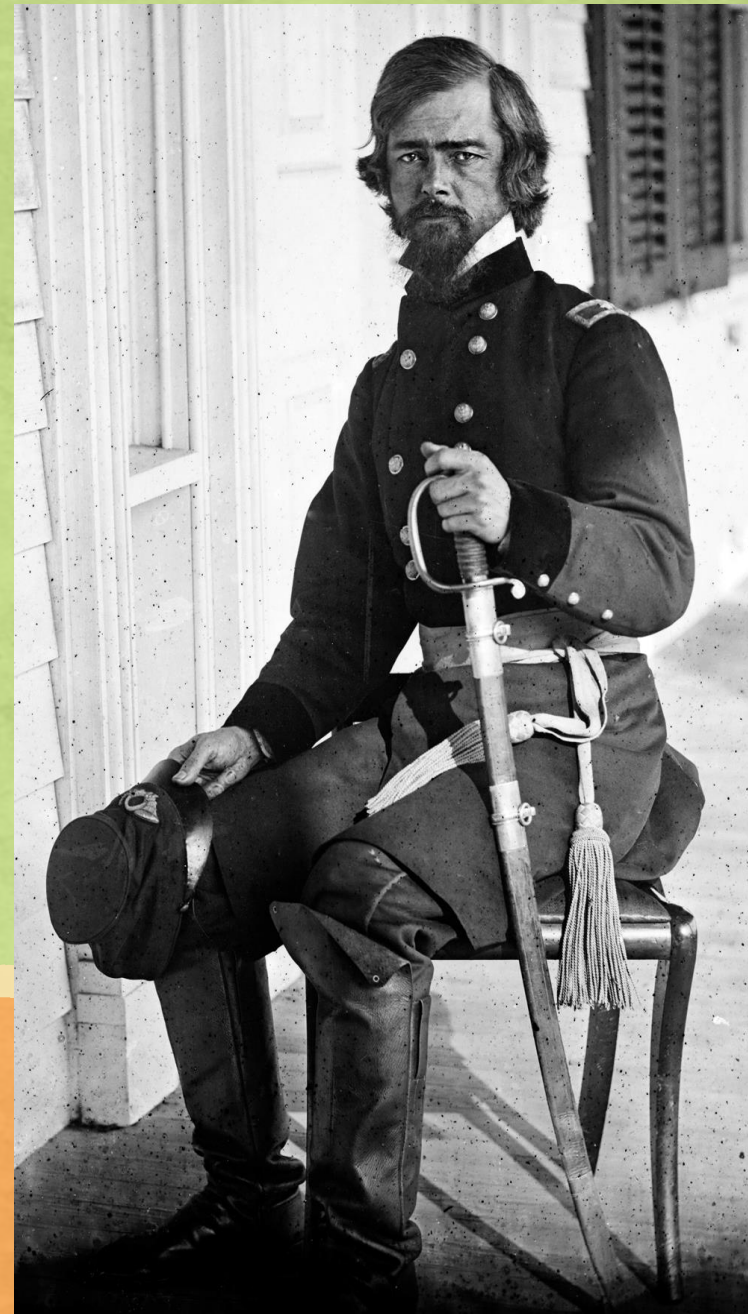


Art. XXVI, Compact with the United States. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying with the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States

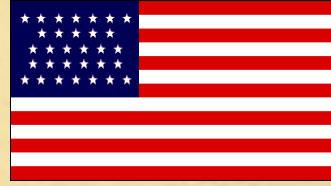


Part 3

History / Stevens Treaties

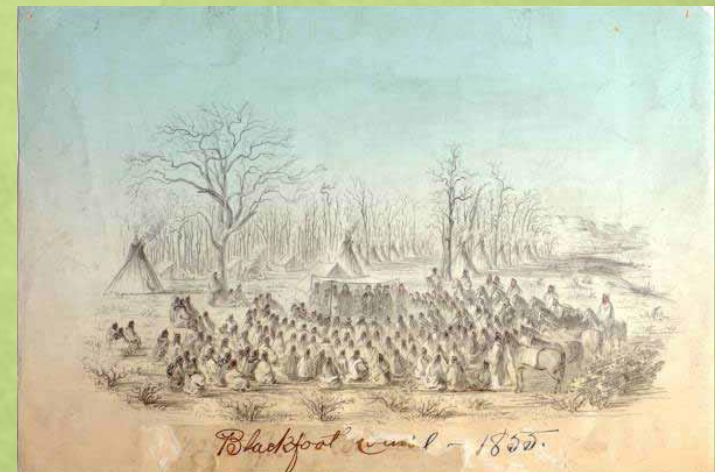
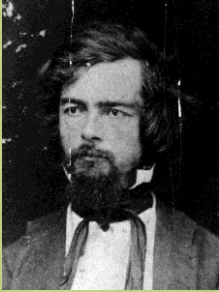


Governor Isaac Stevens



Stevens Treaties – Intent of the US

- Deescalate conflicts between settlers and Indians
- Limit British economic inroads
- Consolidate Indian social groups/bands into manageable tribal units
- Identify/recognize/empower leaders friendly to US goals
- Establish treaty commitments as soon as possible
- Establish as few reservations as possible
- Encourage/cajole/wait for Indians to assimilate
- Use force/violence/imprisonment when you have to



Stevens Treaties – Territory of Washington



- Treaty of Medicine Creek December 26, 1854
- Treaty of Point Elliott January 22, 1855
- Treaty of Point No Point January 26, 1855
- Treaty of Neah Bay January 31, 1855
- Treaty with the Yakama June 9, 1855
- Treaty with the Walla Wallas June 9, 1855
- Treaty with the Nez Perce June 11, 1855
- Treaty of Olympia July 1, 1855
- Treaty of Quinault River July 1, 1855
- Treaty of Hellgate July 16, 1855
- Treaty of the Upper Missouri October 17, 1855



Medicine Creek Council



Walla Walla Council

Steven's Notes re: Treaty of Point Elliott

"It is however proposed, if practicable to remove all the Indians
"on the East side of the Sound as far as the Snohomish; as also the
"S'Klallams to Hood's Canal, and generally to admit as few
"Reservations as possible, with a view of finally concentrating
"them in one."

"It is however proposed, if practicable to remove all the Indians on the East side of the Sound as far as the Snohomish; as also the S'Klallam to Hood's Canal, and generally to admit as few Reservations as possible, with a view of finally concentrating them in one."



Chief Pat-ka-nam

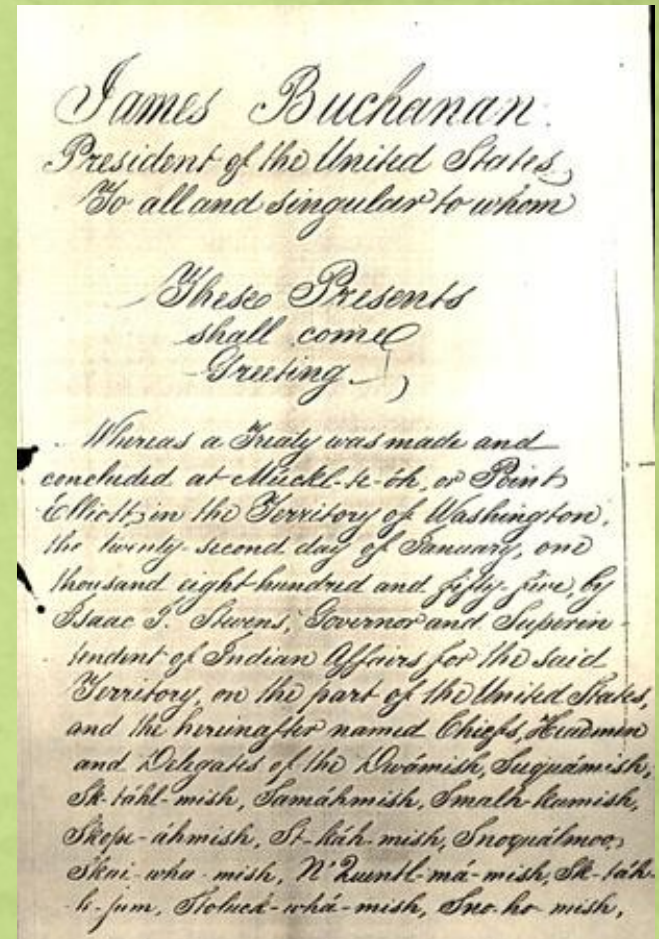


King County section of Map of Indian Nations and Tribes of the Territory of Washington commissioned by Isaac Stevens-1857

Name and date of treaties	Names of Tribes	Population	Reservations	Temp' Encampment
Treaty of Medicine Creek Dec 26, 1854	{ Quakan-amish Nisqually Puyallup }	1200	Klah-che-min Island Near mouth of Nisqually R. Mouth of Puyallup R.	Klache-min Island Fox Island
Treaty of Point Elliott Jan. 22 1855	{ Dwamish Suquamish and allied tribes }	942	Noo-soh-te-um near Port Madisen and at Muckleshoot	Dungines Point Fort Kit-sap
	{ Snoqualmoo Snohomish and allied tribes }	1700	Tewilt-seh-da north side of Snohomish R.	skayi Heua W. Isl.d
	{ Skagits and allied tribes }	1300	S.E. end of Perry's I.	
	{ Lummi Nooksahk Samish }	1050	Chah-choo-sen Island at the mouth of the Lummi River	Penn's Cove W. Isl.d
Treaty of Point no Point Jun. 25, 1855	Clallams Skokomish Chemakum	926 290 100 1316	Head of Hood's Canal	
Treaty of Neah Bay Jan 31 1855	Makahs	596 596	Cape Plattery	
Treaty of Olympia	Quinaiutl Kwillewute	493 493	Reservation to be selected by the President	
Tribes with whom treaties have not been made	Lower Chehalis Upper Chehalis Cowlitz & Tiatinapan Lower Chinooks Upper Chinooks	217 216 240 112 330 1115		S. S. Ford's on the Chehalis R. Near Cowlitz Landing Removed to White Salmon Vancouver and Cascades
Total number of Indians west of the Cascade Mountains Number with whom treaties have been made Number with whom treaties have yet to be made Largest number held on temporary reservations		9722 8597 1115 5686	All have been assisted during the war. The parties to the treaties of Neah Bay & Olympia the Lower Chehalis and Lower Chinooks have required but little assistance at the hands of the Department	

Indian Treaties: Legal Fundamentals

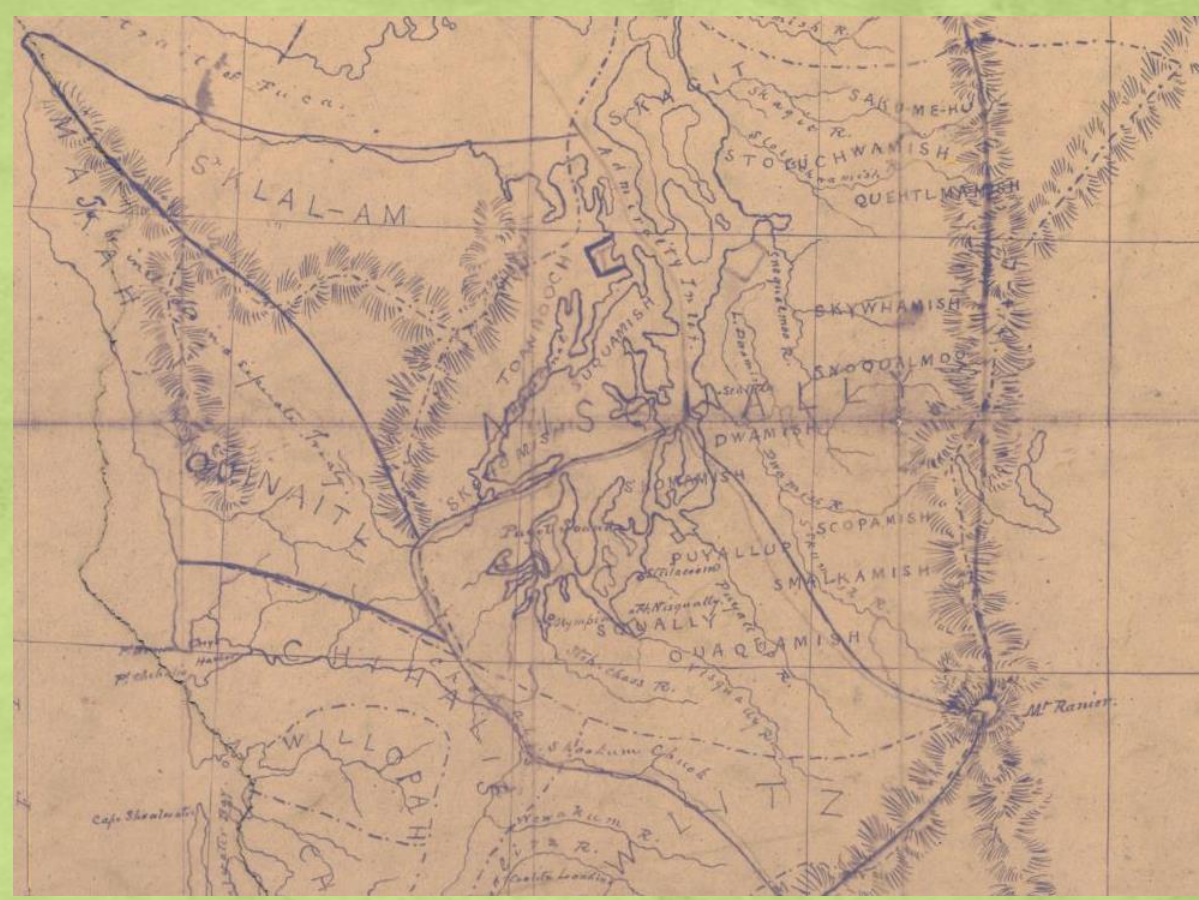
- A treaty made under the authority of the United States "shall be the supreme law of the land." *U.S. Constitution*, Article 6, Section 2.
- Treaties between the United States and Indian tribes are "not a grant of rights to the Indians, but a grant of rights from them -- a reservation of those not granted." *United States v. Winans*, 198 U.S. 371, 372 (1905).
- Tribal treaty rights are perpetual in duration (unless expressly limited otherwise). *Washington v. Washington State Commercial Fishing Vessel Association*, 443 U.S. 658, 667, n. 11 (1979)
- Legal rules regarding interpretation: 1) promote treaty's central purpose; 2) construe treaties as originally understood by tribal representatives; and 3) resolve ambiguities in favor of Indians. *United States v. Washington* 520 F.2d 658, 659-60 (1975).



James Buchanan,
President of the United States,
To all and singular to whom
These Presents
shall come
(Granting.)

Whereas a Treaty was made and
concluded at Ah-lah-ka-ah, or Point
Elliot, in the Territory of Washington,
the twenty-second day of January, one
thousand eight hundred and fifty-five, by
Isaac S. Stevens, Governor and Superin-
tendent of Indian Affairs for the said
Territory, on the part of the United States,
and the hereinafter named Chiefs, Headmen
and Delegates of the Nwá-mish, Suguá-mish,
Sk-táht-mish, Samá-hamish, Smáth-kamish,
Sképe-ah-mish, St-kúh-mish, Snoquá-moo,
Skni-whá-mish, N'kunh-má-mish, Sk-táht-
h-jum, Stóked-whá-mish, Súc-ho-mish,

Part 4



Gov. Isaac Stevens' Notes 12/30/1854

Ceded Territory / Reserved Territory

Indian Tribes – Reserved Territory



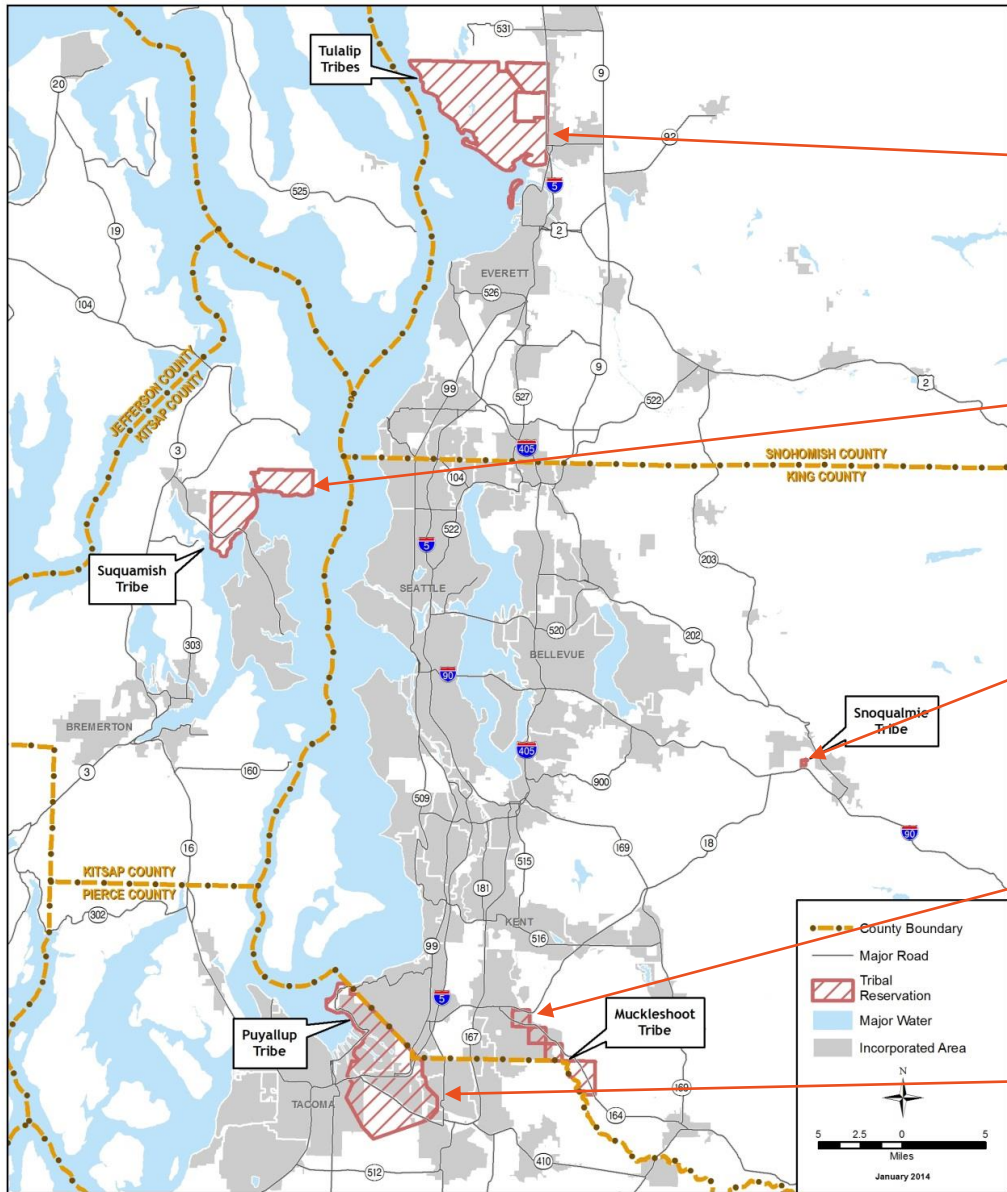
Treaty Indian Tribes in Western Washington

A topographic map of Western Washington showing the locations of Treaty Indian Tribes and their watersheds. Tribes marked include Makah, Quileute, Hoh, Quinalt, Lower Elwha Klamath, Skokomish, Squaxin Island, Nisqually, Puyallup, Muckleshoot, Tulalip, Stillaguamish, Upper Skagit, and Sauk-Sulatte. Major rivers shown include the Nooksack, Skagit, Stillaguamish, Snohomish, Skykomish, and Cowlitz. An inset map shows the location of Western Washington within the state of Washington.

On the cover: NOAA Fisheries research biologist Kinsey Frick and Lower Elwha Klamath Tribe project biologist Ray Moses release a chinook salmon into the upper Elwha River. Two fish-blocking dams have prevented salmon from migrating up the river for nearly a century. Dam removal efforts began September 2011 and are expected to continue through 2014. It is the largest dam removal project in the country. Photo: Debbie Preston. Map: Ron McFarlane.

Table of Contents

- 1 From the Chairman
- 2 Year in Review
- 4 Tribal Salmon Management
- 7 Regional Cooperative Management
- 10 Wildlife Management
- 11 Shellfish Management
- 12 NWIFC Activities



King County
 Department of
 Natural Resources and Parks
**Wastewater Treatment
 Division**

The information included on this map has been compiled from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.
 File Name: Q:\WTD\Projects\Tribal\Projects\tribal_b.mxd Sharl Cross

**King County &
 Nearby Reservations**

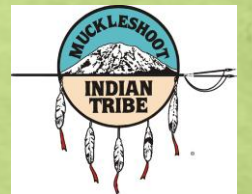
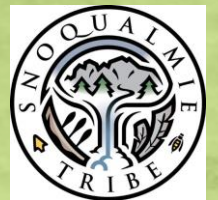
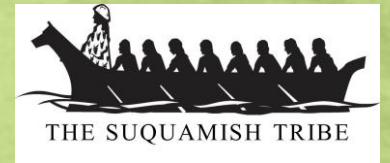
Tulalip Reservation / Tulalip Tribes

Port Madison Reservation / Suquamish Tribe

Snoqualmie Reservation / Snoqualmie Tribe

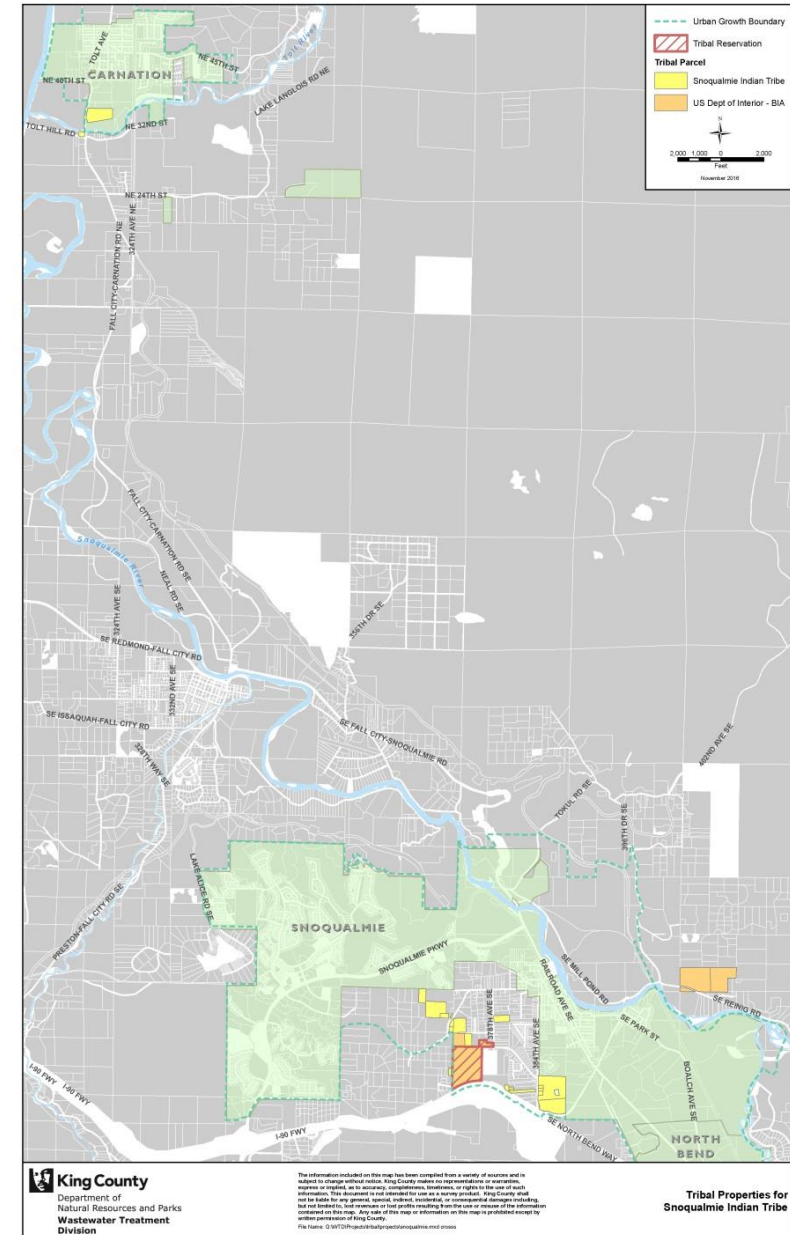
Muckleshoot Reservation / Muckleshoot Tribe

Puyallup Reservation / Puyallup Tribe



Indian Tribes Snoqualmie Reservation

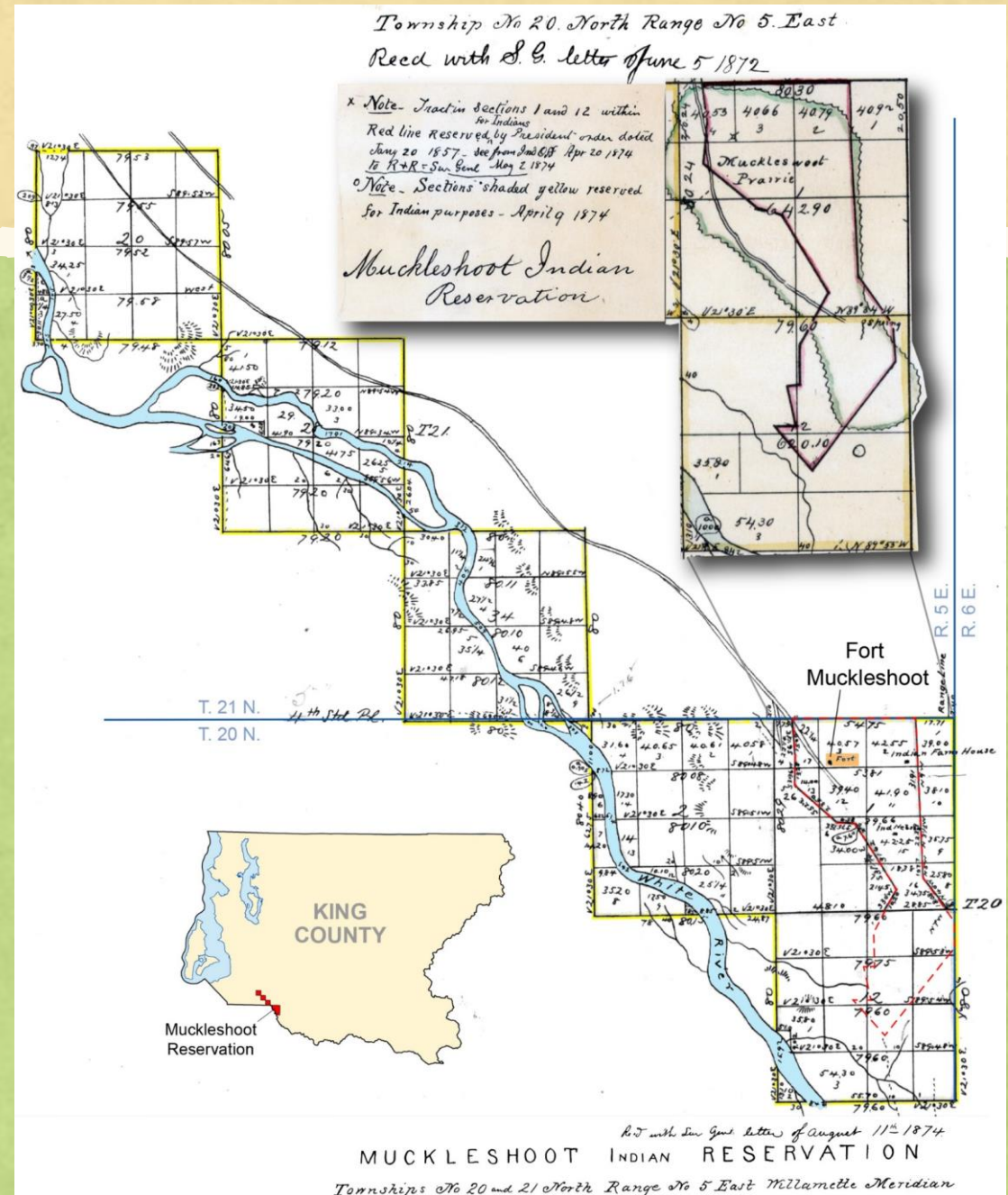
- Proclaimed by the Secretary of the Interior, October 20, 2006
- 55.840 acres of land
- “[F]or the exclusive use of Indians on that reservation who reside at the reservation by enrollment of tribal membership.” 71 Fed. Reg. 63347
- 24 total parcels of land owned by Snoqualmie Tribe (on & off reservation); 273.2 acres



Indian Tribes Muckleshoot Reservation

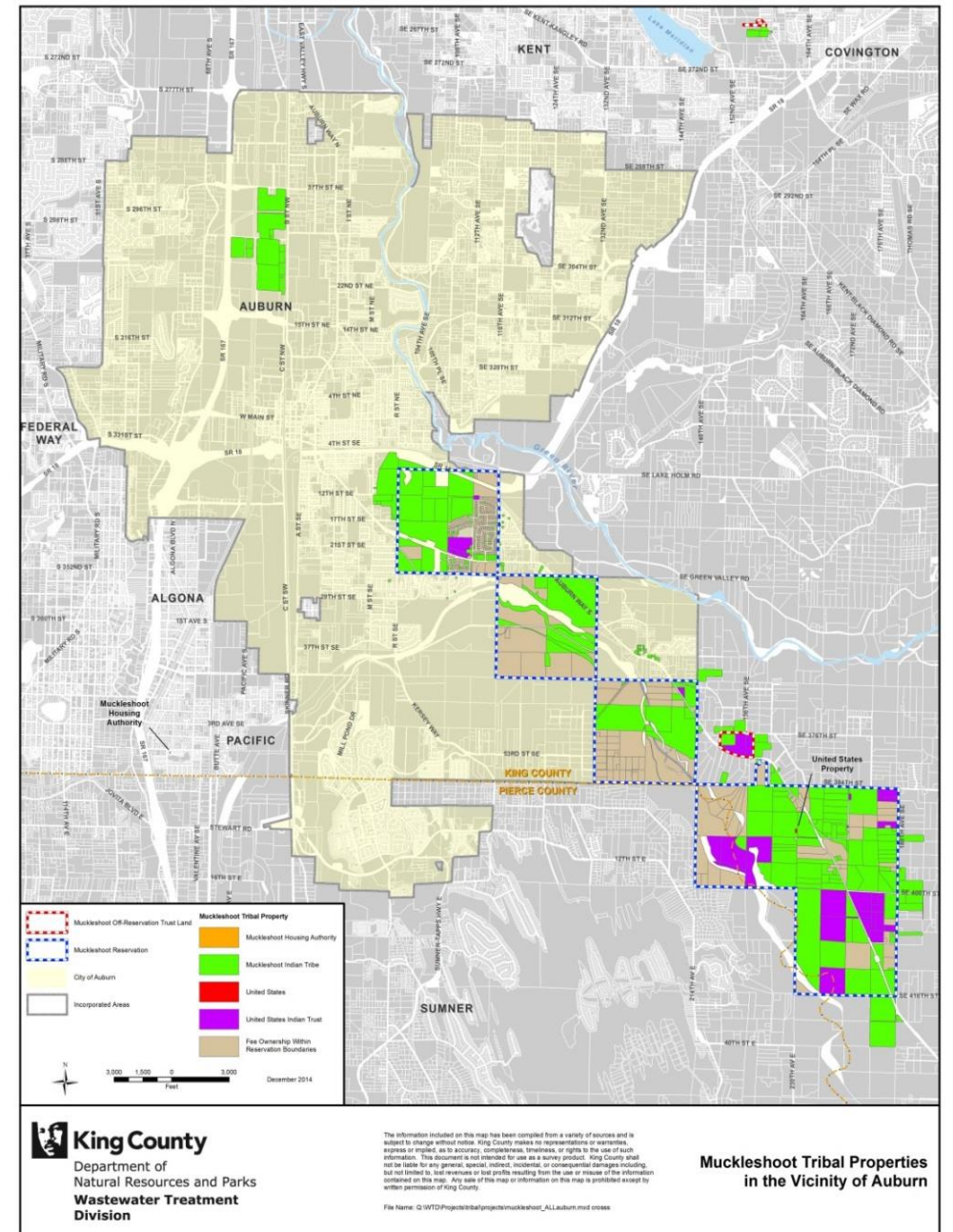
Complicated History of the Muckleshoot Reservation

- Originally Fort Muckleshoot - abandoned 1857
- Representatives of the White and Green River bands promised a reservation during Point Elliott Treaty negotiations in 1855
- White and Green River bands again promised a reservation at Fox Island Council in 1856
- Fort land became part of Reservation via ratification process for the Medicine Creek Treaty
- Boundary problems and order mislaid
- Borders settled by 1874 but internal land was lost to railroad grants
- Reservation with checkerboard ownership finally established by Executive Order in 1874



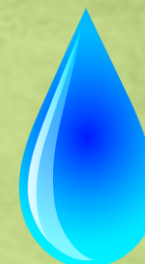
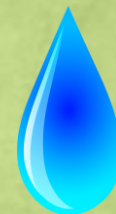
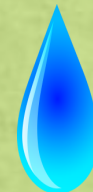
Indian Tribes Muckleshoot Reservation

- 3,910 acres
- “[R]eserved for the present use and occupation of the said tribes and bands the following tracts of land ... [a]ll which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use.” Treaty of Medicine Creek, Article II
- 492± total parcels of land owned by Muckleshoot Tribe and/or its members (on & off reservation); 6,400± total acres
- 730± parcels of forest land also owned by a Muckleshoot Tribal corporation; 43,000± acres



Indian Tribes – Water Rights

- There are three classes of Indian water rights.
 - Reserved water rights (federal) – when the US sets aside an Indian reservation, it either expressly or impliedly reserves sufficient water to satisfy the purposes of the reservation, with a priority date equal to the date of the reservation. *Winters v. U.S.*, 207 U.S. 564 (1908).
 - Aboriginal water rights (federal) - separate from and in addition to reserved rights; generally non-consumptive and recognized to protect pre-existing tribal uses such as hunting, fishing and trapping. *Winters* (n. 7) at 576.
 - Appropriative water rights (state) - obtained by tribes through State permit process.
- Tribal water rights may exist on and off of the reservation. *United States v. Adair*, 723 F.2d 1394, 1411 (9th Cir. 1983).
- The reserved rights doctrine protects against both injurious surface and groundwater diversions. *Cappaert v. United States*, 426 U.S. 128 (1976).
- Neither aboriginal nor reserved water rights can be lost through non-use; inchoate unquantified reserved Indian water rights generally pre-date existing state-based water rights. *Arizona v. California*, 373 U.S. 546, 599-601 (1963).
- Stevens Treaty Tribes hold off-reservation instream flow water rights for the “amount of water necessary to maintain anadromous fish life.” *State v. Acquavella*, Yakima County Superior Court No. 77-2-01484-5 (1990), *aff’d* 121 Wn.2d 257 (1993); *see also Kittitas Reclamation Dist. v. Sunnyside Valley Irrigation Dist.*, 626 F.2d 95 (9th Cir. 1980); *aff’d* 763 F.2d 1032, 1035 (9th Cir. 1985).



Duwamish Tribe

Other Local Indian People – Not Federally Recognized



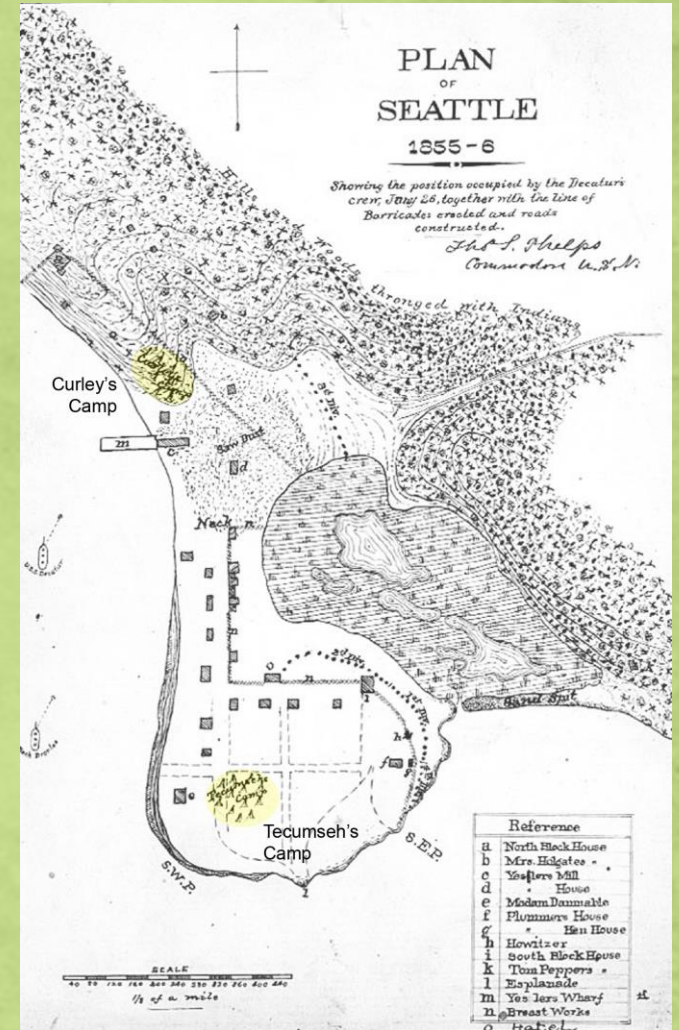
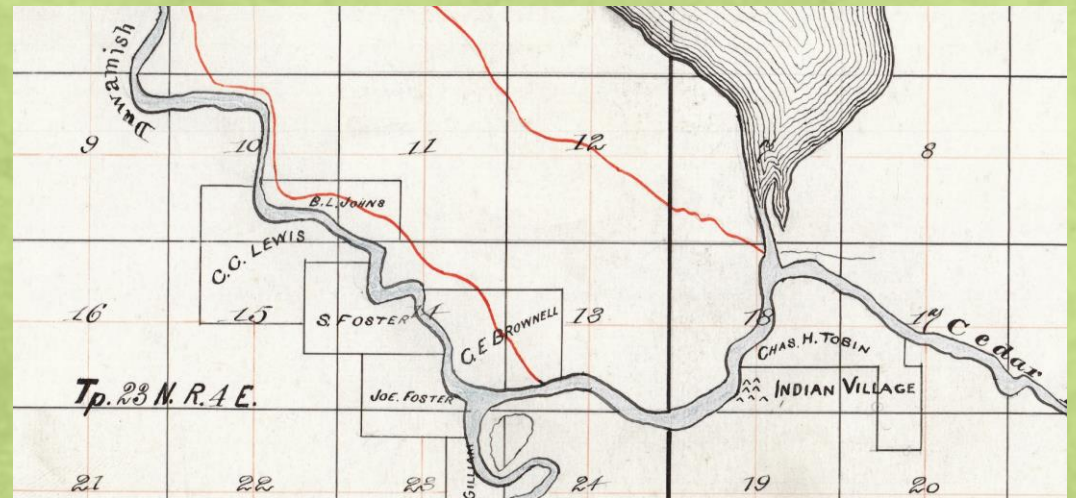
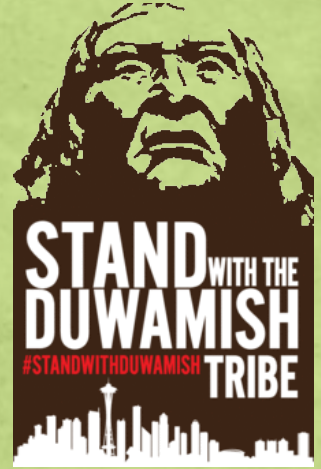
To the Honorable Arthur A. Denny, Delegate to Congress from Washington Territory:

The undersigned citizens of King County most respectfully suggest that we have heard with surprise and much dissatisfaction that some person has made a representation to Wm. H. WATERMAN Esq., Superintendent of Indian Affairs, which has caused him to ask of the Home Department that an Indian Reservation be established on Black River, in this county.

We know your familiarity with this section of country, and that you are aware that such a Reservation would do great injustice to this section of country, and is uncalled for, and of little value to the Indians: We, THEREFORE, have to request that you, at your earliest convenience, call the attention of the Home Department to the facts as you know them to exist, and hope that this will be sufficient to prevent this proposed unjust and unnecessary action of the Government in making a Reservation for the remnant of a band which numbers but sixteen families, and whose interests and wants have always been justly and kindly protected by the settlers of the Black River country; We therefore, most respectfully, but earnestly protest against the injury a Reservation of these Indians would be to the quiet and flourishing settlements upon the Black and Duwamish rivers,—as being unnecessary to the aborigines and injurious to your constituents of King County.

Most respectfully, your obedient servants,

NAMES.	NAMES.
Chas. C. Terry	William Brittain
A. H. Baxter	E. Welsh
Harry Smith	Z. M. Keller
Jeremiah Williams	E. C. Anderson
Richard Wallis	
John Welch	
William S. Johnson	
Joseph Dillon	
James Birch	
P. M. Green	
D. W. Cooklin	
J. M. Smith	
Daniel Alexander	
Andrew Beattie	
John One Crow	
Alexis Secor	



Denial of Duwamish Tribe's Petition for Federal Recognition

REASONING:

"D'Wamish and other allied tribes' ... moved to four reservations and the separate tribes and bands eventually consolidated as four reservation tribes that continue today as the Lummi Tribe of the Lummi Reservation, Suquamish Indian Tribe of the Port Madison Reservation, Swinomish Indian Tribal Community, and Tulalip Tribes of Washington. A few Duwamish tribal members moved to the Muckleshoot Reservation after its creation in 1857. The petitioner's ancestors, primarily Duwamish Indian women who married non-Indian settlers, did not go to the reservations with the treaty tribes. Rather, before and after the treaty, they left the tribes as individuals and families and, by the 1880s, lived dispersed throughout western Washington." Final Decision on Remand against Federal Acknowledgment of the Duwamish Tribal Organization, 80 Fed. Reg. 39142, July 8, 2015.

RULING:

Interior Board of Indian Appeals denied the Duwamish Tribe's Petition, finding that the Tribe did not meet the requisite elements for federal recognition as an Indian tribe. The petition is currently pending with the Secretary of the Interior. See Order Affirming Final Determination on Remand and Referring Issues to the Secretary, 66 IBIA 149, April 17, 2019.



Kikosoblu (a/k/a
Princess Angeline)



Part 5

Fishing Rights / Usual & Accustomed Places

Chinook



Chum



Coho



Sockeye



Pink



Kokanee



Cutthroat



Aboriginal Territory

- Tribes are sovereign nations that pre-existed the United States.
- By entering into treaties with the US, Tribes were not granted rights from the US, but instead reserved pre-existing rights to themselves.
- A Tribe's right to use land, water, and resources pursuant to a treaty with the US is often measured by the scope of the Tribe's aboriginal use (subject to reasonable time, place, and manner restrictions).
- A Tribe's right to use resources includes the right of reasonable access to travel to those resources.



Treaty of Point Elliott, Article V

Art. IV The right of taking fish at ~~the~~ usual & accustomed grounds & stations, ^{is further secured to said Indians} in common with all citizens of the territory & of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots & berries

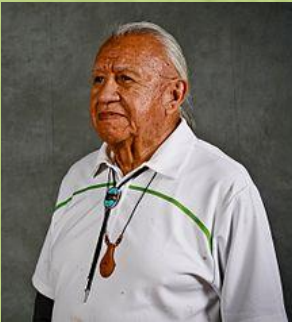
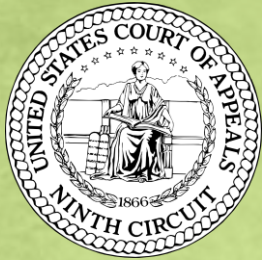
“The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with the citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries on open and unclaimed lands.” 12 Stat. 927, January 22, 1855



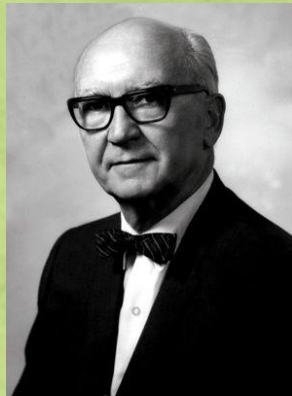
Chief Seattle

U.S. v. Washington / Phase I Fishing Rights

- Prior to ceding their territory to the U.S., Indian tribes had an exclusive and unlimited aboriginal right to occupy and use the bed and banks of rivers and to take fish therefrom. In treaty negotiations, Indian tribes retained the portion of this right necessary to continue their traditional fishing activities. *United States v. Washington*, 384 F.Supp. 312 (W.D. Wash. 1974), aff'd 520 F.2d 676 (9th Cir. 1975), cert denied, 423 U.S. 1086 (1976), substantially aff'd sub nom. *Washington v. Washington State Commercial Fishing Vessel Association*, 443 U.S. 658 (1979).
- Tribal treaty fishing rights include a “fair share” aspect and a “geographic” aspect.
- The “fair share” aspect arises from the “in common with” treaty clause. The court held that “the central principle here must be that Indian treaty rights to a natural resource that once was thoroughly and exclusively exploited by the Indians secures so much as, but not more than, is necessary to provide the Indians with a livelihood - - that is to say a moderate living.” *Fishing Vessel*, 443 U.S. at 686.
- The “geographic” aspect arises from the “usual and accustomed places” treaty clause. The court held that “every fishing location where members of the tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe ... is a **usual and accustomed [place]**.” *U.S. v. Washington*, 384 F.Supp. at 332.

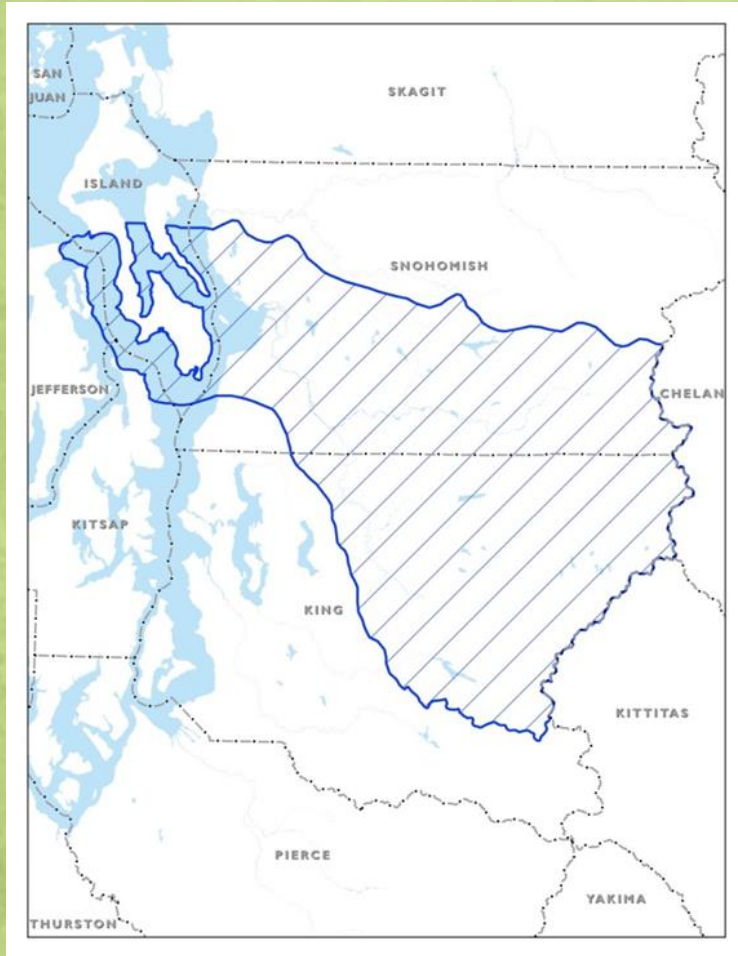


Billy Frank, Jr.



Judge George Boldt

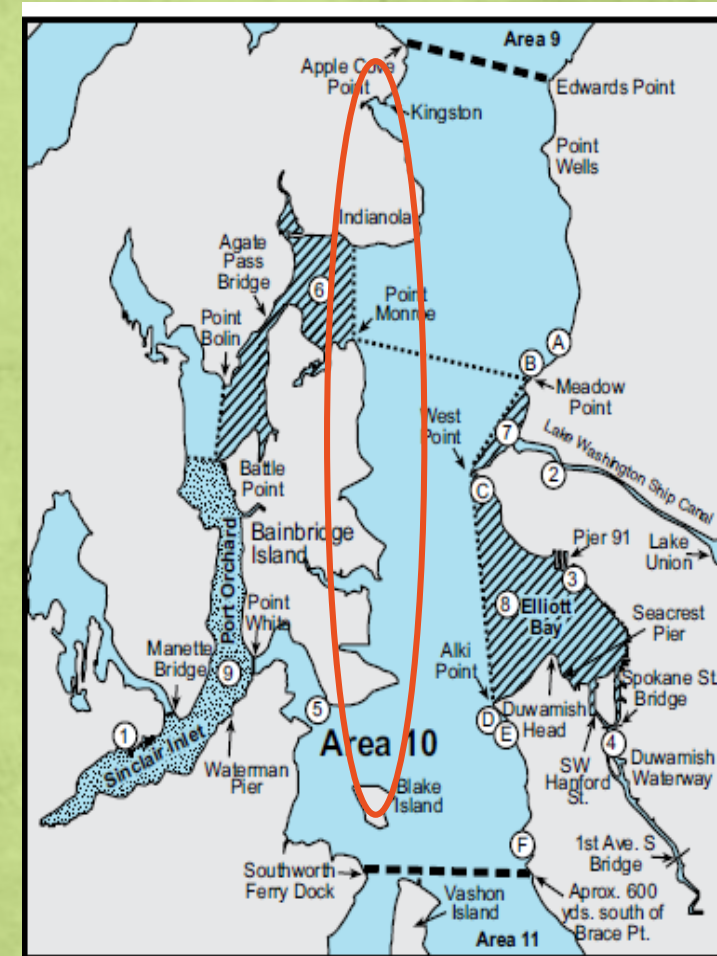
Tulalip Tribes Usual and Accustomed Places



Court Decreed U&A

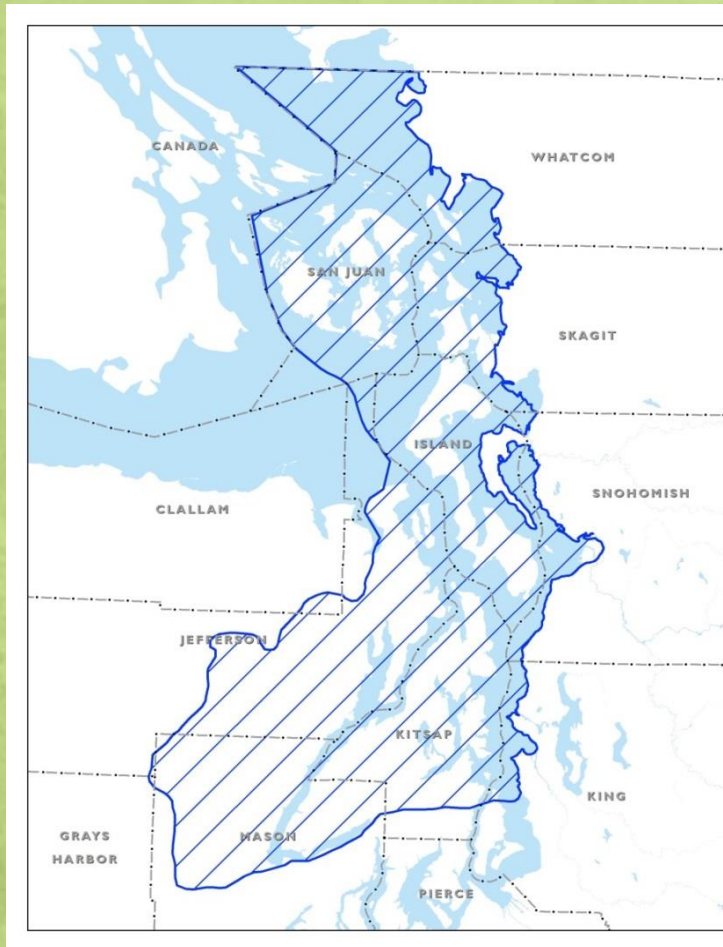


Tribally Identified Watershed of Interest



Catchment Area 10 – Excluding Elliott Bay

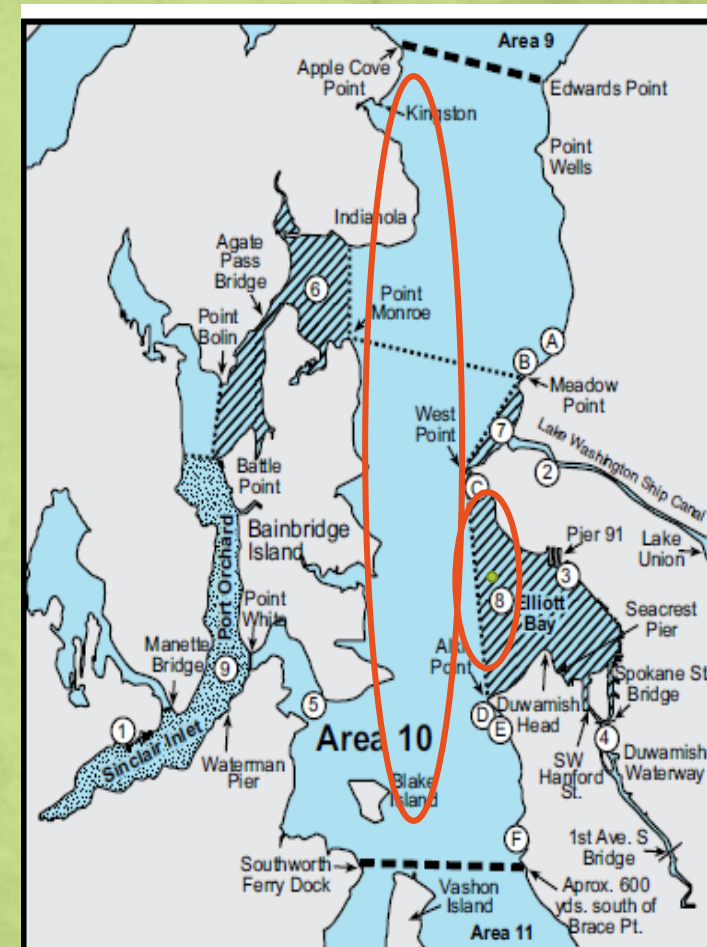
Suquamish Tribe Usual and Accustomed Places



Court Decreed U&A



Tribally Identified Watersheds of Interest



Catchment Area 10 including Outer Elliott Bay

Snoqualmie Tribe

Usual and Accustomed Places



- The US DoI Bureau of Indian Affairs disclaimed taking any action for or against finding that the Snoqualmie Tribe had off-reservation resource rights when it recognized the Snoqualmie Tribe, stating: "Conclusions concerning previous acknowledgment ... are solely for the purposes of a determination of 'tribal recognition' and are not intended to reflect conclusions concerning successorship in interest to a particular treaty or other rights." 62 Fed.Reg. 45864, August 29, 1997.



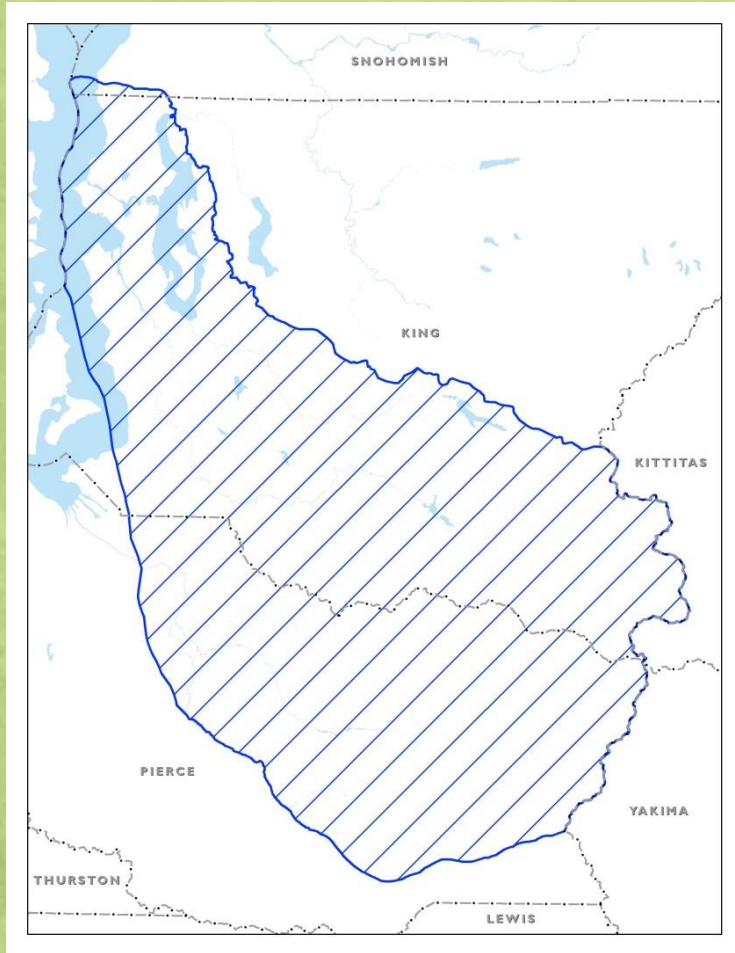
- Federal agencies recognize that ancestors of present-day Snoqualmie Tribal members signed the Treaty of Point Elliott, but have not issued any contemporary recognition of Snoqualmie Tribe off-reservation fishing, hunting, and/or gathering rights.



- Federal courts have not granted the Snoqualmie Tribe any federally adjudicated fishing rights pursuant to the *U.S. v. Washington* litigation. The court found that "[t]he usual and accustomed fresh water fishing places of the Snoqualmie, Snohomish, and Skykomish tribes are for present purposes the usual and accustomed fishing places of the Tulalip Tribes The Snohomish River system including tributaries and fresh water lakes and the Snoqualmie and Skykomish River systems." *Court Orders of July 16 and September 10, 1975*.



Muckleshoot Tribe Usual and Accustomed Places



Court Decreed U&A



Tribally Identified Watersheds of Interest



Catchment Area 10 – Inner Elliott Bay only

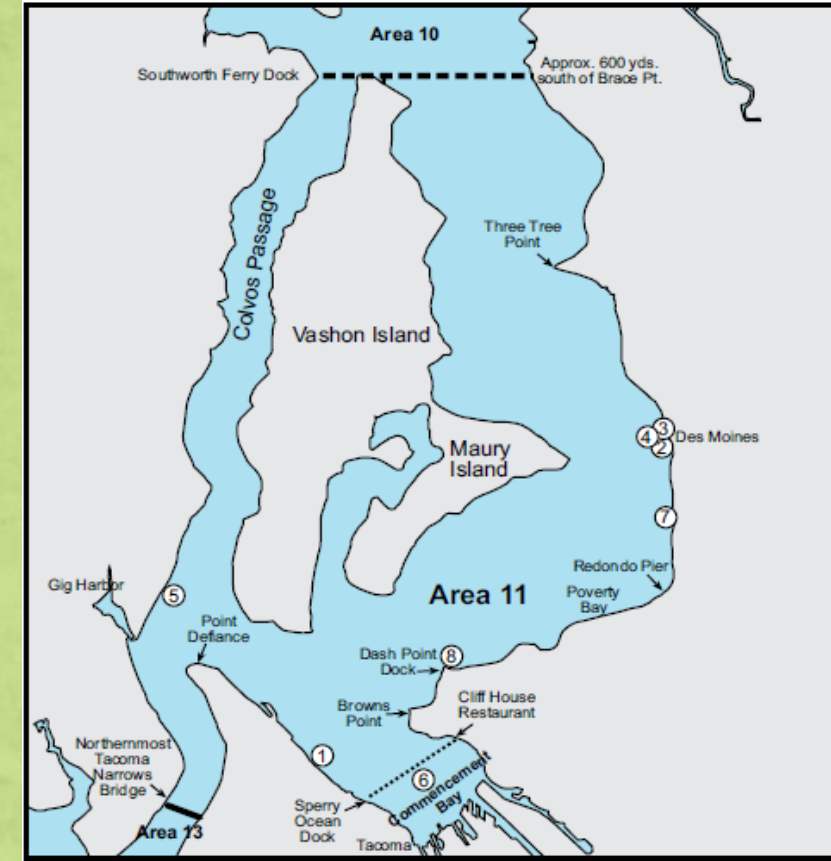
Puyallup Tribe Usual and Accustomed Places



Court Decreed U&A



Tribally Identified Watershed of Interest



Puget Sound Catchment Area 11

U.S. v. Washington / Phase II

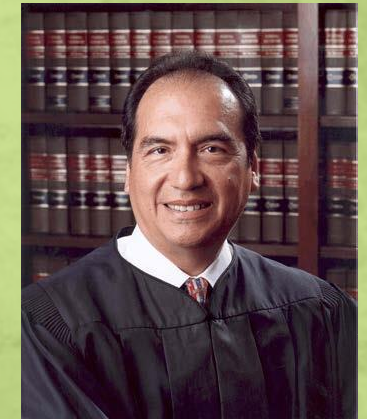
Hatcheries & Habitat Protection Rights

- Court interpreted the meaning of 1855 treaty language in the presence of modern technology and land use
- “[H]atchery fish are “fish” within the meaning of the treaty’s fishing clause.” U.S. v. Washington (Phase II), 506 F.Supp. 187, 202 (W.D. Wash. 1980)
- “[I]mplicitly incorporated in the treaties' fishing clause is the right to have the fishery habitat protected from man-made despoliation.” *Id.* at 203
 - 9th Circuit Court of Appeals initially affirms in 1983, then vacates ruling due to lack of “actual case or controversy” in 1986
 - Tribes accept vacated ruling, and stand down for 15 years
- Tribes assert claim for replacement of all fish blocking culverts owned by WashDoT in 2001; prevail in 2007; receive injunction against WashDot in 2013; US Supreme Court affirmed 9th Circuit in 2018



U.S. v. Washington / Phase II Culvert Case - Contemporary

- 2001 Culvert Case – Trial in federal District Court (Judge Martinez)
 - U.S. and 21 Indian tribes
 - State of Washington
- 2007 Martinez Ruling – WSDoT violating Indian tribal treaty rights (i.e. liability)
- 2013 Martinez Injunction – WSDoT must remedy environmental harm
 - 3,710 culverts; 1,977 of which block \geq 200 meters of migratory fish habitat
 - WSDOT must remedy: 1,283 high priority culverts within 17 years; and 694 low priority culverts at end of their useful life
 - Reaffirms that Tribes retain a right to protect off-reservation migratory fish habitat
- 2016 9th Circuit Appellate Panel Decision – affirms Martinez ruling & injunction
- 2016 WA Petition for Rehearing - Panel and *En Banc* rehearings requested by State
- 2017 WA Petition for Review by U.S. Supreme Court - granted
- 2018 Supreme Court issues per curiam opinion - affirms 9th Circuit opinion below
 - U.S and 23 Indian tribes + WA State state & local officials + law professors
 - Washington + 11 states + WA Assoc. of Counties + 6 NGOs



Judge Ricardo Martinez



Estimated Cost =
\$350M±/yr for 17 years

Amount Appropriated =
\$63M±/yr for 2019-2020

U.S. v. Washington – Phase II Habitat Protection - Related Cases

- *Kittitas Reclamation Dist. v. Sunnyside Valley Irrigation Dist.* 626 F.2d 95 (9th Cir. 1980) *aff'd* 763 F.2d 1032 (9th Cir. 1985)
 - The Yakama Tribe's treaty right includes a right to salmon-protective instream flows (Court cryptically noted that it was not addressing any treaty right to habitat protection).
- *Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504 (W.D. Wash. 1988)
 - 1983 Elliott Bay Marina (EBM) proposed & permit application submitted; to US Army Corps of Engineers (Corps); MIT & SIT filed suit over issuance of the Corps' permit; negotiations ensue; 1988 Corps reinstated permit with conditions; MIT and SIT amended suit and sought injunction prohibiting issuance of permit and subsequent construction of marina.
 - Construction would occupy the EBM site and affect the Tribes' usual and accustomed fishing areas in Elliott Bay and thus would interfere with their treaty right to fish
 - The Treaty fishing right is a property right which may not be taken without an Act of Congress, thus Corps must procure Tribal concurrence on permits implicating Treaty rights.
- *State v. Acquavella*, Yakima County Superior Court No. 77-2-01484-5 (1990), *aff'd* 121 Wn.2d 257 (1993)
 - Stevens Treaty Tribes hold off-reservation instream flow water rights for the "amount of water necessary to maintain anadromous fish life."
- *Northwest Sea Farms v. U.S. Army C of Engineers*, 931 F.Supp. 1515 (W.D. Wash. 1996)
 - Since mid-1980's, Northwest Sea Farms (NwSF) developing a fish farm for the production of net-pen salmon in the waters of Puget Sound (Rosario Strait) with anchorage footprint of 11.36 acres and surface footprint of 1.41 acres.
 - In 1992, Corps denied NwSF's application for a required permit under § 10 of the Rivers and Harbors Act, 33 U.S.C. § 403 (1986) based upon a finding that the project would be against the public interest because it would conflict with the Lummi Nation's fishing rights at one of Lummi's usual and accustomed fishing places under the Treaty of Point Elliott.
 - The Corps' conclusion was based upon two findings: (1) members of the Lummi fish the proposed site of the project on a "more than extraordinary basis"; and (2) the project would deny members of the Lummi access to the site. *Id.*
 - Accordingly, the Corps ruled that, under the relevant legal precedent, the permit should be denied as infringing upon the Lummi's treaty rights and the Federal District Court affirmed the Corps administrative ruling.



U.S. v. Washington - Shellfish

Geoduck

The geoduck clam is the largest burrowing clam found anywhere in the world. Geoduck clams live extremely long lives, on average about 146 years. In fact, this is one of the longest lifespans of any animal species in existence today! The geoduck siphon is covered with a tough skin ranging in color from light beige to brown. The flesh of a cleaned siphon is smooth and cream colored. The geoduck siphon meat has a sweet, fresh sea flavor and crunchy texture.



- Rafeedie Decision 1994, *United States v. Washington*, 873 F.Supp. 1422 (W.D.Wash.1994)
 - "Fish" means finfish and shellfish
 - Tribes' right of access subject to reasonable time, place, and manner restrictions
 - Tribes' right of harvest = up to half of shellfish except for those beds staked and cultivated by individuals
- Consent Decree 1994
 - Public health: Tribes participate in National Shellfish Sanitation Program and the Interstate Shellfish Sanitation Conference and abide by rules and regulations promulgated thereby
 - Sustainability: Tribal harvest can not exceed half of harvestable shellfish subject to court-ordered seasonal limits and in conjunction with State and Tribal regulations
- Commercial Harvest Settlement Agreement 1999:
 - The tribes will forgo their treaty right to harvest from commercial growers' beds.
 - Growers will provide, over 10 years, \$500,000 worth of shellfish enhancement on public tidelands of the state's choosing.
 - A \$33 million trust is established for the 17 treaty tribes to acquire and enhance other tidelands to which they will have exclusive access.



Part 6

Hunting & Gathering Rights / Open & Unclaimed Lands

Treaty of Point Elliott, Article V

Art. IV The right of taking fish at ~~the~~ usual & accustomed grounds & stations, ^{is further secured to said Indians} in common with all citizens of the territory & of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots & berries

“The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with the citizens of the Territory, and of erecting temporary houses for the purpose of curing, **together with the privilege of hunting, gathering roots and berries on open and unclaimed lands.**” 12 Stat. 927, January 22, 1855



Chief Seattle

Scope of Hunting & Gathering Right



- Legal
 - No legal distinction between a “right” and a “privilege” in this context
 - Admission of state on equal footing does not terminate tribal hunting rights; *Herrera v. Wyoming* (SCotUS 2019)
- Species
 - Any subject to general tribal and/or state hunting and gathering regulations
 - Any traditional first foods
- Harvest Numbers
 - Subject to regulations that are reasonable and necessary for conservation purposes
 - Tribal hunters harvest approximately 1.7 % of deer (495:29,154) and 5.0 % of elk (365:7,236) in Washington State (WDFW circa 2012)
- Locations
 - The scope of “open & unclaimed lands” is interpreted broadly and is not limited to ceded territory or “usual and accustomed places”; *State v. Buchanan* (Ct. App. WA 1997)
 - National Parks, although generally considered “open and unclaimed”, are not subject to treaty hunting privilege when conservation regulations prohibit hunting/gathering for purpose of preserving endangered species; *U.S. v. Hicks* (W. D. WA 1984)
 - Privately owned lands are not “open and unclaimed”; *State v. Chambers* (WA SCt)



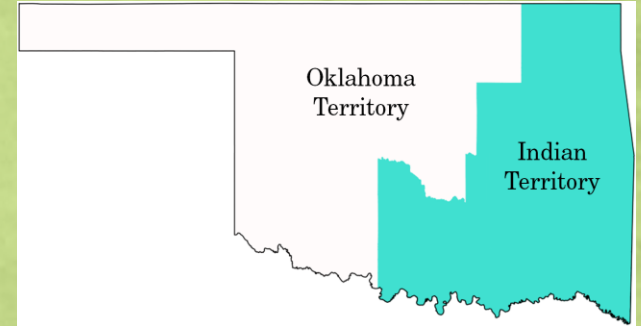
Part 7

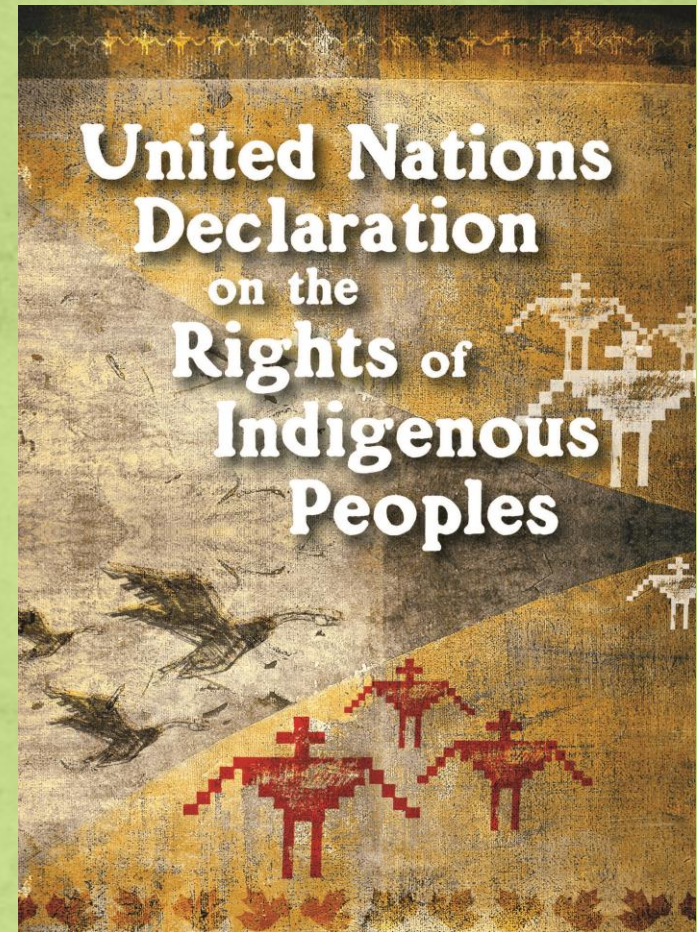


Recent Litigation & Appeal

Federal Courts

- *Sharp v. Murphy* (SCotUS): whether 1866 territorial boundaries of the Muscogee Reservation in Oklahoma still constitute an Indian reservation for purposes of criminal jurisdiction over an Indian who is a member of the Muscogee Nation. [see *The Atlantic*, November 20, 2018; *Who Owns Oklahoma?*]
- *McGirt v. Oklahoma* (SCotUS): whether 1866 territorial boundaries of the Muscogee Reservation in Oklahoma still constitute an Indian reservation for purposes of criminal jurisdiction over a Indian who is a member of the Seminole Nation. [see *The New York Times*, December 13, 2019; *Supreme Court to Rule on Whether Much of Oklahoma Is an Indian Reservation*]
- *Skokomish Indian Tribe v. Forsman* (9th Cir.): Skokomish Tribe failed to join indispensable tribes into its claim seeking to establish the boundary for Skokomish Tribe's "open and unclaimed" lands for treaty guaranteed hunting and gathering.
- *U.S. v. Washington: Subproceeding #670-9213* (9th Cir.), Muckleshoot Tribe asserts uncertainty re: location of U&A places for Tribe's marine fishing rights; *Subproceeding #C-709213RRSM* (W. Dist. WA), Stillaguamish Tribe seeks to establish marine U&U places; *Subproceeding #19-01RSM* (W. Dist. WA), Swinomish Tribe challenges Lummi Tribe's crab fishing activities E. of Whidbey Island.
- *Tulalip Tribes v. Washington* (9th Cir.): scope of state jurisdiction for retail sales taxes at Quil Ceda Village, a tribally owned shopping center including 150 non-Indian businesses located on 2,163 acres of reservation land (\$415M retail sales; \$38.8M total tax revenue; \$8.9M county tax revenue).
- *Brackeen v. Zinke* (5th Cir.): whether the Indian Child Welfare Act violates US Constitution's guarantees of equal protection in re: non-member Indian children and non-Indian adoptive parents. [see *New York Times*, June 5, 2019; *Who Can Adopt a Native American Child? A Texas Couple vs. 573 Tribes*]
- *Crow Tribe v. United States* (Dist. MT): petition against delisting of GYA grizzly bear from ESA based on (1) agency guidance re: best available science; (2) Administrative Procedures Act; (3) Religious Freedom Restoration Act; and (4) U.S. Const., 1st Amd.





Part 8

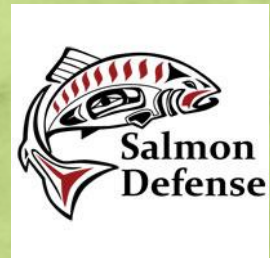
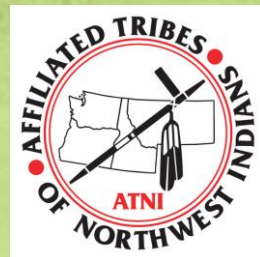
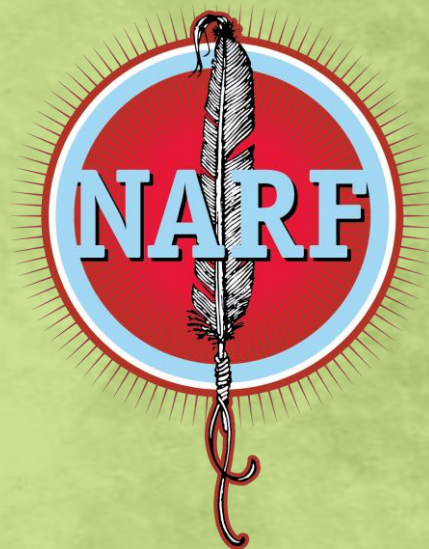


International Recognition of Tribal Rights

United Nations Declaration on the Rights of Indigenous Peoples



- States shall provide **effective mechanisms for prevention of, and redress** for: Any action which has the aim or effect of dispossessing them of their lands, territories or resources. Article 8, 2. (b)
- Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the **free, prior and informed consent** of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. Article 10
- Indigenous peoples have the **right to participate in decision-making in matters** which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. Article 18
- States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free, prior and informed consent** before adopting and implementing legislative or administrative measures that may affect them. Article 19
- Declarations are **not legally binding**. The US has signed but **not ratified** the declaration.



Part 9

Tribal Support Organizations & Tribal News Sources

Tribal Support Organizations

- National Congress of American Indian (NCAI)
 - <https://nwifc.org/>
- Affiliated Tribes of Northwest Indians (ATNI)
 - <https://www.atnitribes.org>
- Native American Rights Fund (NARF)
 - <https://www.narf.org/>
- Northwest Indian Fisheries Commission (NWIFC)
 - <https://nwifc.org/>
- Salmon Defense
 - <http://salmondefense.org/>
- United Indians of All Tribes Foundation
 - <http://www.unitedindians.org/>
- Seattle Indian Center
 - <http://seattleindian.org/>



Tribal News Sources

- Indian Country Today <https://indiancountrymedianetwork.com/today/>
- Native News Online <https://nativenewsonline.net/>
- Indian Country News <https://www.indiancountrynews.com/>
- Turtle Talk (Indian Country legal issues) <https://turtletalk.blog/>
- Native American Rights Fund Indian Law News <https://www.narf.org/nill/bulletins/>
- NW Treaty Tribes Website <https://nwtreatytribes.org/>
- Muckleshoot Messenger <http://www.muckleshoot.nsn.us/community/muckleshoot-messenger.aspx>
- Snoqualmie Tribe News <http://www.snoqualmietribe.us/news>
- Suquamish Tribe News <https://suquamish.nsn.us/home/government/newsletter/>
- Tulalip Tribe News <https://www.tulalipnews.com/wp/>
- Puyallup Tribe News <http://www.puyallup-tribe.com/>

Tribal Events Calendar 2020

Date	Day	Event	Sponsor	Site	Location
1/27-1/30	Mon-Thu	ATNI Winter Convention	Aff'd Tribes NW Indians	DoubleTree Hotel	Portland, OR
4/24-4/26	Fri-Sun	Suquamish Renewal Powwow	Suquamish Tribe	House of Awakened Culture	Suquamish, WA
TBD	TBD	UW Spring Powwow	First Nations at UW	TBD	Seattle, WA
5/25-5/28	Mon-Thu	ATNI Mid-Year Convention	Aff'd Tribes NW Indians	TBD	TBD
6/13	Sat	Festál Indigenous People	City of Seattle	Seattle Center	Seattle, WA
6/14	Sun	Indian Relay Races	Muckleshoot Tribe	Emerald Downs	Auburn, WA
TBD	TBD	Indian Law Seminar	WSBA Indian Law Section	WSBA Conf. Center	Seattle, WA
6/15-6/17	Mon-Wed	2020 Conference & Expo	NW Indian Gaming Association	TBD	TBD
6/19-6/21	Fri-Sun	Veteran's Powwow	Muckleshoot Tribe	Muckleshoot Powwow Grounds	Auburn, WA
6/19-6/21	Fri-Sun	Stommish Water Festival	Lummi Nation	Stommish Grounds	Bellingham, WA
TBD	TBD	Canoe Journey – Rest Stop	Muckleshoot Tribe	Alki Beach	Seattle, WA
7/17-7/19	Fri-Sun	Seafair Indian Days Powwow	Daybreak Star Center	Discovery Park	Seattle, WA
TBD	TBD	Canoe Journey – Rest Stop	Suquamish Tribe	House of Awakened Culture	Suquamish, WA
7/22-7/25	Wed-Sun	Paddle to Snuneymuxw	Snuneymuxw First Nation	Nanaimo River Reserve	Nanaimo, B.C.
8/21-8/23	Fri-Sun	Chief Seattle Days	Suquamish Tribe	House of Awakened Culture	Suquamish, WA
8/24-8/26	Fri-Sun	Skopabsh Powwow	Muckleshoot Tribe	Muckleshoot Powwow Grounds	Auburn, WA
9/4-9/6	Fri-Sun	Labor Day Powwow	Puyallup Tribe	Chief Leschi School	Puyallup, WA
TBD	TBD	Centennial Accord Meeting	Governor's Office of Indian Affairs	TBD	TBD
9/25-9/27	Fri-Sun	Tribal Wellness Powwow	Puyallup Tribe	Chief Leschi School	Puyallup, WA
10/3	Sat	SpiritWalk for Native Health	Seattle Indian Health Board	Discovery Park	Seattle, WA
10/5-10/8	Mon-Thu	ATNI Fall Convention	TBD	TBD	TBD
10/9	Fri	Kickoff - Indigenous Peoples' Day	Duwamish Tribe	Pier 57	Seattle, WA
10/12	Mon	Indigenous Peoples' Day	King County	TBD	Seattle, WA
11/8-11/13	Sun-Fri	Annual National Convention	Nat'l Cong. of American Indians	Oregon Convention Center	Portland, OR

Part 10

**Closing
Questions
Discussion
Thank You**

King County Dept. of Natural Resources and Parks
Joe Hovenkotter
Government Relations Officer / Tribal Relations Liaison
201 South Jackson Street, Suite 700
Seattle, WA 98104
206-477-4985
jhovenkotter@kingcounty.gov