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FILED

IN THE SAUK-SUIATTLE TRIBAL COURT

SAUK-SUIATTLE INDIAN TRIBE on its
own behalf and in its capacity as the
Sahkuméhu *ex rel* Tsuladx^w,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

Case No. SAU-CIV-01/22-001

**CIVIL COMPLAINT FOR
DECLARATORY JUDGMENT**

I. INTRODUCTION

This is an action for declaratory relief by which Plaintiffs¹ Sauk-Suiattle Indian Tribe, in its capacity as a tribal nation and as the Sahkuméhu for and on behalf of Tsuladx^w ə ti Stulək^w seeking declaratory relief to:

a. Declare Tsuladx^w within the territory of the Sauk-Suiattle Indian Tribe is protected and possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to

¹ *Sahkuméhu* denotes the Sauk-Suiattle Indian Tribe. *Tsuladx^w* means salmon in Lushootseed. *Stulək^w* means river. *Atcitalbix^w* means Native people. *Swatix^wtəd* means land. In tribal culture, names are hereditary property which can only be bestowed by those entitled to confer them. These are among the parties to this case. The names carry an obligation.

restoration, recovery, and preservation. These rights include, but are not limited to, the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human-caused global warming impacts and emissions and the right of access to their ancestral waters;

b. Declare that Plaintiff's tribal members possess a right and a public trust, or trust responsibility, to protect and save Tsuladx^w, and protect the waters that support Tsuladx^w within the 1855 ceded territory and beyond, free of obstructions which interfere with their right to exist.

c. Declare the Sahkuméhu have a legal duty to protect Tsuladx^w and to support healthy ecosystems from which to provide on-going food security to hunt, fish, trap and gather; which rights are protected by due process

d. Declare that Defendants individually and collectively knew or should have known that obstructions to Tsuladx^w's way of life was undertaken without the free, prior, informed consent of Tsuladx^w as sentient beings and without the free, prior, informed consent of or consultation with the Sahkuméhu or other tribes who owe a duty to Tsuladx^w.

e. Declare that Defendant are collectively and intentionally engaged in a pattern and practice of impermissibly infringing on and circumventing rights expressly protected under Law. See *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).²

f. Declare Defendant is willfully and intentionally engaged in civil rights deprivations against the Sahkuméhu, with regard to the free exercise and enjoyment of federally protected, treaty-recognized water property rights necessary to support the inherent and usufructuary property

² <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

rights to hunt, trap, fish under: the 1855 Treaty; the American Indian Religious Freedoms Act; the First Amendment; Fourth Amendment; Fifth Amendment; Due Process Clause; and, Equal Protection Clause of the Fourteenth Amendment.

g. Declare intentional interference by the City of Seattle with regard to the exercise of federally protected, treaty-recognized water property rights necessary to support the inherent and usufructuary property rights to hunt, fish and gather under the 1855 Treaty by unilaterally constructing dams without official notice to tribes, without Sahkuméhu consent in the treaty ceded territories.

II. BACKGROUND HISTORY

Tsuladx^w, our relatives under on water, are the most important cultural and sacred food of the Sahkuméhu and have been a part of our traditional stories, teachings, lifeways and spirituality since the earliest times to the present day. For the Sahkuméhu, Tsuladx^w is sentient like all living creatures and they are our relations. We Sahkuméhu have a sacred covenant with Tsuladx^w, the water and all living creatures, without which we cannot live.

For us Tsuladx^w is a gift from the Creator and because of this spiritual connection and relationship with them the Sahkuméhu expressly reserved the right maintain a relationship with them. They are central to our cultural identity, spiritual traditions, and physical wellbeing. It is an important species to the ecology and provides critical food and habitat to both endemic and migratory species.

Tsuladx^w depends on clean, abundant fresh flowing waters and the nutrients they carry and which important and essential natural ecosystem resources have been under constant threat from defendant's activities.

As the Minnesota District Court in United States v Brown, 777 F. 3d 1025 (2015) cited, "we trust the [government] to 'speak for the trees, for the trees have no tongues.'" See Sierra Club et al v U.S. Forest Service et al, (4th Cir. No. 18-1144) On Petition for Review of a Decision of the United States Forest Service order by the Honorable Circuit Judge Thacker: See USCA4 Appeal: 18-1144 Doc: 104 Filed: 12/13/2018 Pg: 60 of 60, Part IV, Petition for Review Granted, *Vacated and Remanded*.³

The Sauk-Suiattle Indian people have lived under the gaze of Whitehorse Mountain for many generations as Fishermen and Women, Gatherers and Hunters in the region of Sauk Prairie and near the present-day towns Darrington, Marblemount and Rockport, WA. In the early days, we were known as the Sah-ku-me-hu. We were canoe people, plying the swift waters of the Sauk, Suiattle, Stillaguamish, Cascade and Skagit Rivers in our river canoes. Though our homelands were in the mountains of the North Cascades, we often traveled downriver to Puget Sound. There we harvested saltwater fish, shellfish, and other foods not available in the mountains. We frequently voyaged in large seagoing canoes.

Sah-ku-méhu homelands were the entire drainage area of the Sauk, Suiattle and Cascade Rivers. We had an important village at Sauk Prairie, near the confluence of the Sauk and Suiattle

³ https://www.southernenvironment.org/uploads/words_docs/ACP_USFS_opinion.pdf (We trust the United States Forest Service to "speak for the trees, for the trees have no tongues." Dr. Seuss, *The Lorax* (1971).

Rivers. The village consisted of eight traditional cedar longhouses which were destroyed in 1880s by settlers who had laid claim to these lands. Our village was burned to the ground. Before the 1855 Treaty our Tribe was around 4,000 strong. By 1924 our numbers dwindled to 18. Residents in the Sauk-Suiattle Indian Reservation are the surviving descendants of the original peoples who lived in this special valley. Current membership is 314.

Tsuladx^w (Salmon), the acitalbix^w (tribal people) that lives in water, is the most important cultural and sacred food of the Sahkuméu. Tsuladx^w has been a part of our traditional stories, teachings, lifeways and spirituality since the earliest times to the present day. For the Sahkuméhu, Tsuladx^w is alive like all living creatures and they are our relations. Sahkuméhu have a sacred covenant with Tsuladx^w and the Stulək^w (river) and all living creatures, without which we cannot live.

For the Sahkuméhu, Tsuladx^w is a gift from the Creator and because of this spiritual connection and relationship with Tsuladx^w the Sahkuméhu expressly reserved the right to Tsuladx^w's existence. Tsuladx^w is our primary food. From time immemorial Tsuladx^w has been a vital factor to the sustenance and the continued existence of the Sahkuméhu. Tsuladx^w is central to Sahkuméhu cultural identity, spiritual traditions, and physical wellbeing. Tsuladx^w's children born in our homeland travel down the Skagit River as they grow on their journey to the saltwater. They depend on nutrient rich fresh waters in which to grow and in which important and essential natural ecosystem resources exist. Defendant's dams block many nutrients necessary to their growth.

Tsuladx^w possess inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation. These rights include, but are not limited

to, the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human caused global warming impacts and emissions. Tsuladx^w is a central element of the language, culture, heritage, migration stories and history of the Sakhuméhu people, and is an integral part of the wetland ecosystems and natural communities of the Sakhumehu.

The Sauk-Suiattle Tribal Council is the duly elected governing body of the Sauk-Suiattle Indian Tribe and of the Sauk-Suiattle Reservation pursuant to the constitution of the Sauk-Suiattle Indian Tribe as organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984),) and therefore has the responsibility and authority to provide for the safety, health and welfare of its tribal members on and off reservation. The tribal council shall have the power to act on all matters concerning the welfare of the tribe. The purpose of enacting the constitution, as stated in its preamble, was *inter alia* to preserve community resources and cultural identity for the welfare and benefit of the tribe.

Plaintiff's complaint is based upon the Natural Laws of the Lushootseed people. Native tribes are rich in unwritten traditional law and tribal Elders are cornerstones of traditional wealth. Unwritten law, sometimes called "natural law" or the "Creator's law," is found in values, beliefs, practices, customs, traditions, and in the ways problems are solved. It is passed on through language, stories, songs, dances, ceremonies, speech making, leadership, and decisions. It is shown through the behavior of those who carry on tribal traditions. It is taught by the guidance of tribal Elders, tribal leaders, and through the families. Traditional unwritten tribal law is centered upon relationships among families and persons within the tribe, relationships between tribes, problem solving, and on the interconnection of all creation and human relationships with nature. As set forth below, Plaintiff's conduct is contrary to the Natural Laws of the Sakhuméhu.

In English-based law systems, written law is the highest form of law, and once a law is written, it overrides unwritten law if they conflict. In other words, once a written law is adopted, it becomes the supreme law of the land. Tribal systems may or may not operate this way. For example, many tribes require that written tribal laws be interpreted so as not to conflict with tribal unwritten law. State and federal court judges may not understand this relationship between written and customary laws in tribal systems.

§ 1.040 of the Sahkumehu Law & Order Code provides that, in actions in its Tribal Court:

The provisions in this Code shall be liberally construed so as to give effect to its purpose of protecting the persons, property and resources of the Sauk-Suiattle Indian Tribe.

If, in the course of a proceeding, a procedure is not specified in the Code, the tribal court shall adopt any suitable process that appears in keeping with the spirit of Sauk-Suiattle tribal law. Id., § 2.010. The natural laws of the Creator are the highest laws applied by the Sahkuméhu. The claims of the plaintiffs in this case are based upon natural laws which obligate them and which are imposed by the Creator.

Natural law has also provided the basis for resolution of cases before the United States Supreme Court. As was enunciated by the Supreme Court in Johnson v. M'Intosh, 21 U.S. 543 (1823):

[I]t will be necessary in pursuing this inquiry to examine not singly those principles of abstract justice *which the Creator of all things has impressed on the mind of his creature man and which are admitted to regulate in a great degree the rights of civilized nations*, whose perfect independence is acknowledged, but those principles also which our own government has adopted in the particular case and given us as the rule for our decision.

(emphasis added). M'Intosh is not the only case in which Courts have invoked Natural Law in reaching decisions. State courts have recognized Natural Law as a basis for decisions. For example, the first woman in Wisconsin who thought she might have a right to practice law was told that she did not, in the following terms:

The *law of nature* destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world...[A]ll life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of the law, are *departures from the order of nature*[.]

In Re Goddell, 39 Wisc. 232, 235 (1875). Each time there is a movement to confer rights onto some new “entity”, the proposal is bound to sound odd or frightening or laughable. This is partly because until the rightless thing receives its rights, it cannot be seen as anything but a thing for the use of “us”—those who are holding property rights in them at the time...Such is the way the slaveholding South looked upon African Americans. C. Stone, *Should Trees have Standing?* (Revised 2010 edition), p. 3.

The Supreme Court in M'Intosh also plainly acknowledged that religious decrees of the *Pope* can be relied upon by a court to provide guidance in resolving cases before it (“Spain did not rest her title solely on the grant of the Pope”). On May 24, 2015 Pope Francis issued an enciclica, or papal bull, *Laudato Si*:⁴

[O]ur common home is like a sister with whom we share our life and a beautiful mother who opens her arms to embrace us... *to commit a crime against the natural world is a sin against ourselves and a sin against God*[.]

Id., p. 3, ¶ 8 (emphasis added). As to Saint Francis of Assisi, Pope Francis wrote:

⁴ file:///C:/Users/jfiander/Downloads/papa-francesco_20150524_enciclica-laudato-si.pdf

He communed with all creation, even preaching to the flowers, inviting them “to praise the Lord, just as if they were endowed with reason”.[19] His response to the world around him was so much more than intellectual appreciation or economic calculus, for to him each and every creature was a sister united to him by bonds of affection. That is why he felt called to care for all that exists. His disciple Saint Bonaventure tells us that, “from a reflection on the primary source of all things, filled with even more abundant piety, he would call creatures, no matter how small, by the name of ‘brother’ or ‘sister’”

Id., p. 4, ¶ 11. Pope Francis stated that his Encyclical Letter “is now added to the body of the Church’s social teaching.”

The Sakhumehu are people of the Lushootseed culture. The highest values of that culture are:

Respect (Hold Sacred) All of the Earth—

Respect (Hold Sacred) All of the Spirits—

Remember (Hold Sacred) The Creator—

V. Hilbert, Haboo; *Native American Stories from Puget Sound* (2020 Ed.), p. xiii. Among Lushootseed, humanoid, animal, and spirit forms “always had the same emotions and sensibilities as humans. Id., p. xxxii. These are natural laws of the Creator.

Defendant Seattle has itself expressly invoked laws based upon religion and the laws of Nature and is therefore estopped from denying the validity and applicability of same. As stated in the September 12, 2016 resolution of the Seattle City Council:⁵

WHEREAS, the American Indian Religious Freedom Act of 1978 affirms the need to “protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions,” particularly in American Indian sacred places; and

⁵ See also Seattle City Council Resolution No. 31740 (opposing action with negative impacts on cultural sites and the environment in portions of Indian Country) [Keystone XL Pipeline].

WHEREAS, Washington State recognizes that American Indian burial grounds and historic graves are “a finite, irreplaceable, and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Washington” (RCW 27.44.030);

WHEREAS, Articles, 11, 12, and 25 of the United Nations Declaration on the Rights of Indigenous People (UNDRIP), as endorsed by the United States in 2010, affirms that indigenous peoples...possess the right to maintain and protect their culture, religion, practices, and relationship with their “traditionally owned or otherwise occupied and used lands, territories [and] waters”; and

WHEREAS, the UNDRIP Article 32 further provides that governments shall consult with indigenous peoples “in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”[.]

And see, Seattle City Council Resolution 30230 (August 21, 2000), providing *inter alia* that “salmon are an important part of the spirit of the Northwest and preserving salmon will protect our cultural, environmental, and economic legacy for future generations” and that “the threat of extinction of Snake River salmon is still very real and imminent”.

III. JURISDICTION

3.A. Jurisdiction is invoked under the inherent tribal sovereignty of the Sauk-Suiattle Indian Tribe, the Constitution and Bylaws of the Sauk-Suiattle Indian Tribe, the Law and Order Code of the Sauk-Suiattle Indian Tribe, Montana v. United States, 450 U.S. 544 (1981), and the natural laws of the Sauk-Suiattle Indian Tribe in that defendant’s conduct threatens or imperils the health, welfare, safety and economic security of the Sauk-Tribal Indian Tribe and such impacts are felt by the Sauk-Suiattle Indian Tribe within the Sauk-Suiattle Reservation and lands and waters within the Ceded Territory of the Sauk-Suiattle Indian Tribe.

IV. VENUE

4.A. Venue is proper pursuant to the Sauk-Suiattle Indian Tribe Law and Order Code, Title II, Courts, section 2.020, which provides that the Court shall hear all actions arising under any code, resolution or ordinance enacted to protect, preserve, or regulate the rights reserved for Sahkuméhu regarding off-reservation resources. The Court shall also have jurisdiction to hear all actions arising under law or equity. Id.

V. PARTIES

5.A. The Sauk-Suiattle Indian Tribe is a tribal nation and the duly constituted government of the Sauk-Suiattle Reservation pursuant to the Constitution of the Sauk-Suiattle Indian Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984),) and therefore has the responsibility and authority to provide for the safety, health and welfare of its tribal members on and off reservation.

5.B. The City of Seattle is a municipal corporation which *inter alia* owns and operates hydroelectric dams within the aboriginal territory of the Sahkuméhu.

5.C. Seattle City Light is a business entity solely owned by the City of Seattle.

5.D. Tsuladx^w possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation. These rights include, but are not limited to, the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human caused global warming impacts and emissions. Tsuladx^w is considered by the Sahkuméhu people to be a gift from the Creator or Great Spirit and continues to be an important staple in the diets of native peoples for generations, is a central element of the language, culture, heritage, migration stories and history of the Sahkuméhu people, and is an

integral part of the wetland ecosystems and natural communities of the Sauk-Suiattle Indian Tribe of the Sauk-Suiattle Reservation.

VI. FACTUAL ALLEGATIONS

6.A. The Sahkuméhu's aboriginal territory is as follows:⁶

Beginning at the mouth of the Baker River near Concrete, Skagit County, Washington, thence N following the Baker River to Baker Lake; thence N from Baker Lake to the Canadian boundary line; thence E on said Canadian boundary line to the summit of the Cascade Range thence S along the summit of said Cascade Range to Indian Pass which is situated E of Monte Cristo in Snohomish County, Washington; thence W to the Sauk River and thence down the Skagit River to the mouth of the Baker River at Concrete, Washington.

6.B. During the period of 1917-1920, defendant's commenced and completed the first of their three hydroelectricity generating dams across the Skagit River.

6.C. The above described construction was undertaken without any consultation with the Sahkuméhu nor with any of the tribes which inhabited the drainage of the Skagit River basin.

6.D. Defendants' dams impede Tsuladx^w from advancing up the Skagit River beyond the first, or most downstream, dam of defendants.

6.E. The dams inundated sites of cultural significance to the Sahkuméhu as well as vegetative resources harvested by plaintiff.

6.F. On information and belief, defendants' dams and the resultant loss of spawning and rearing habitat contributed to the decline of population Tsuladx^w's people who were native to the *stulək ə ti Skagit*.

⁶ *Sauk-Suiattle Indian Tribe v. United States*, Court of Claims Docket No. 97, (Exhibit 20-6, Feb. 18, 1952).
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6.G. Defendants' have denied that their dams contributed to the decline of Tsuladx^w by falsely representing that Tsuladx^w, who are known for their jumping ability, could never have gotten past their dams due to natural barriers which impeded them from proceeding further upstream.

6.H. In the exercise of its sacred trust owed to Tsuladx^w, the Sahkuméhu refrained from fishing for Tsuladx^w within the Sahkumehu's customary fishing grounds in their distant upriver tributary rivers and streams of the Skagit from approximately 1970 to 2018. Sahkuméhu did so to preserve areas where Tsuladx^w laid their eggs to perpetuate their future generations.

6.I. As a direct and proximate result of defendant's denial of responsibility for the decline of Tsuladx^w, and as a result of defendants' shifting the blame to farmers and overharvesting by Sahkuméhu tribal fishermen and women, the Sahkuméhu have experienced harassment, intimidation and violence when engaging if harvesting Tsuladx^w even though Sahkuméhu limit their activities to approximately 6 people or less, regularly close their season early to insure adequate numbers of Tsuladx^w escape to their traditional spawning grounds, and exercise caution to avoid incidental capture of species of Tsuladx^w who have been deemed Threatened or Endangered Species.

6.J. Sahkuméhu have experienced fishing gear being stolen, nets being slashed, verbal harassment, and objects such as barrels being thrown in the rivers upstream from where they are to purposely entangle their nets and prevent them from capturing Tsuladx^w.

6.K. Notwithstanding that oral histories from the first people along the Skagit River clearly establish that Tsuladx^w traveled beyond defendants' dams, defendants have continued to deny the truth of these ancestral memories of Acitalbix^w of the Skagit basin, deeming the information to be

of less reliability than so-called written “science” documentation, constituting defamation of living and departed Sahkumehu and other Acitalbix^w.

6.L. The foregoing conduct by defendants has resulted the de-valuing of the Sahkuméhu and other Acitalbix^w.

VII. CLAIMS

Claim 1

7.1. Plaintiffs re-allege preceding paragraphs as if fully alleged again, here. The claims of Defendants to obstruct Tsuladx^w is in direct contravention to the usufructuary property interests of the Sahkuméhu vis-à-vis wild plants and animals and prevent the exercise of Plaintiffs various usufructuary rights in the 1855 Treaty of Point Elliott under color of law. These usufructuary rights had not been abrogated. Defendants’ activities constitute a taking of Plaintiff’s property without Due Process or just compensation, in violation of the Fourteenth Amendment of the Constitution of the United States and violated Plaintiffs' rights to equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, without rational basis and results in civil rights deprivations by Defendants.

Claim 2

7.2. Fourth Amendment and Due Process Violations. Plaintiffs re-allege preceding paragraphs as if fully alleged again, here. Plaintiffs blockage of water as its property has been seized without proper Notice and Opportunity to be heard damaging the plaintiffs which resulted in pecuniary loss, present and future damages for plaintiffs. In so doing, Defendants violated Plaintiffs Fourth Amendment rights to be free from arbitrary and capricious seizure of the

environment of Tsuladx^w and to be free from seizure of the tribal and personal water property rights.

Claim 3

First Amendment Religious and Cultural Practices

7.3. Plaintiffs re-allege preceding paragraphs as if fully alleged again, here. Plaintiffs religious and cultural practices in the 1855 Treaty Ceded Territory and beyond are subject to the American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996 and, as such, are protected by the First Amendment to the Constitution of the United States.

Claim 4

7.4. Plaintiff's statements disclaiming responsibility for the decline of Tsuladx^w has a direct and proximate result of citizens placing the blame for the decline of Tsuladx^w on Plaintiffs and other tribal fishermen and women, thereby constituting fraud and intentional or negligent infliction of emotional distress.

VIII. REMEDIES

Declaratory Relief

8.1. Declare that Tsuladx^w possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation. These rights include, but are not limited to, the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human caused global warming impacts and emissions and declare that defendant's conduct threatens and imperils plaintiffs' rights and significantly impacts their health, welfare, safety and economic security within their aboriginal territory and that such impact is felt on the Sauk-Suiattle Reservation.

8.2. Declare that the Sahkuméhu possess the Creator-given obligation and public trust duty to protect Tsuladx^w and protect and save its youth, including the right to protect access to the waters necessary for Tsuladx^w to flourish within the territory of the Sahkuméhu and beyond.

8.3. Enter such other and further relief as is just, equitable, necessary and appropriate to protect future generations of Tsuladx^w and Sahkuméhu.

DATED this 6th day of January, 2022.

Respectfully submitted,

SAUK-SUIATTLE INDIAN TRIBE
Sahkaméhu for and on behalf of Tsuladx^w
ə ti stulk^w



dx^w tuk^w k^wi atkin
Jack Fiander, General Counsel
Attorney for Plaintiffs