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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE CITY OF SEATTLE,

Plaintiff,

v.

SAUK-SUIATTLE TRIBAL COURT; JOSH WILLIAMS, in his official capacity as Sauk-Suiattle Tribal Court chief judge; JACKIE VARGAS, in her official capacity as Sauk-Suiattle Tribal Court clerk; and SAUK-SUIATTLE INDIAN TRIBE,

Defendants.

Case No.

PLAINTIFF THE CITY OF SEATTLE’S  
COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff The City of Seattle (the “City”), by and through its undersigned counsel, brings this action for declaratory and injunctive relief to prevent the unlawful exercise of jurisdiction over the City by Defendants Sauk-Suiattle Tribal Court (“Tribal Court”), Josh Williams in his official capacity as Sauk-Suiattle Tribal Court chief judge,<sup>1</sup> Jackie Vargas in her official capacity as Sauk-Suiattle Tribal Court clerk, and the Sauk-Suiattle Indian Tribe (“Sauk-Suiattle”) (collectively, “Tribal Defendants”).

<sup>1</sup> On January 26, 2022, the City received a notice of hearing from the Sauk-Suiattle Tribal Court clerk Jackie Vargas that lists Josh Williams as the Chief Judge of the Sauk-Suiattle Tribal Court. *See* Notice of Hearing, *Sauk-Suiattle Indian Tribe v. City of Seattle*, Case No. SAU-CIV-01/22-001 (Sauk-Suiattle Tribal Ct. Jan. 26, 2022) (attached hereto as Exhibit B).

**I. INTRODUCTION**

1  
2           1.       On January 6, 2022, Sauk-Suiattle filed a civil complaint for declaratory relief  
3 against the City in Tribal Court. *See* Amended Civil Complaint for Declaratory Judgment, *Sauk-*  
4 *Suiattle Indian Tribe v. City of Seattle*, Case No. SAU-CIV-01/22-001 (Sauk-Suiattle Tribal Ct.  
5 Jan. 18, 2022) (the “Tribal Court Complaint”) (attached hereto as Exhibit A).<sup>2</sup> Sauk-Suiattle filed  
6 its suit in its capacity as a tribal nation and as the Sakhuméhu for and on behalf of Tsuldax<sup>w</sup>  
7 (salmon).<sup>3</sup>

8           2.       The Tribal Court Complaint concerns the City’s operation of the Skagit River  
9 Hydroelectric Project, Federal Energy Regulatory Commission (“FERC”) Project No. 553 (the  
10 “Project”) and the alleged effects of the Project’s dams, reservoirs and generating facilities  
11 (collectively, the “Project Dams”) on, *inter alia*, Sauk-Suiattle’s usufructuary fishing rights.

12           3.       Tribal courts lack jurisdiction over nonmembers’ conduct that occurs off-  
13 reservation. *See Philip Morris USA, Inc. v. King Mountain Tobacco Co.*, 569 F.3d 932, 937–38  
14 (9th Cir. 2009). Even within the boundaries of a tribal reservation, the inherent authority of tribal  
15 courts does not extend to nonmembers unless one of the two narrow exceptions articulated by the  
16 U.S. Supreme Court in *Montana v. United States*, 450 U.S. 544, 565–66 (1981), apply. Here, the  
17 Tribal Court has no authority over the City and the Tribal Court Complaint because the City is not  
18 a member of the Sauk-Suiattle Tribe and all of the alleged conduct Sauk-Suiattle complains of  
19 occurs off-reservation. Moreover, even if Sauk-Suiattle were able to show that there was conduct  
20 that occurred on the Sauk-Suiattle Reservation or fee land within Sauk-Suiattle Reservation  
21 boundaries, neither of the *Montana* exceptions apply.

22           4.       This Complaint seeks a declaratory judgment, as well as injunctive and other relief,  
23 pursuant to 28 U.S.C. §§ 2201–2202 to prevent the Tribal Defendants’ unlawful exercise of  
24 jurisdiction over the City in connection with the Tribal Court Complaint.

25 <sup>2</sup> Sauk-Suiattle filed an amended complaint on January 18, 2022.

26 <sup>3</sup> According to the Tribal Court Complaint, Sakhuméhu denotes the Sauk-Suiattle and Tsuldax<sup>w</sup> means salmon in Lushootseed. Ex. A at A-1 n.2.



1 11. Jackie Vargas is the Sauk-Suiattle Tribal Court clerk.<sup>5</sup>

2 12. Sauk-Suiattle is a federally recognized Indian Tribe organized pursuant to the  
3 Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et seq.*, located in the State of Washington.  
4 Sauk-Suiattle’s Reservation is located within the District, and the Tribal Defendants’ principal  
5 place of business is 5318 Chief Brown Lane, Darrington, Washington 98241.

6 **IV. FACTUAL BACKGROUND**

7 **A. The Federal Power Act**

8 13. Under the Federal Power Act (“FPA”), FERC has broad, comprehensive authority  
9 to regulate the Project. *See* 16 U.S.C. § 791a *et seq.*; *California v. FERC*, 495 U.S. 490, 496, 110  
10 S. Ct. 2024 (1990) (holding that the FPA establishes a “broad federal role in the development and  
11 licensing of hydroelectric power”). Specifically, the FPA authorizes FERC “to issue licenses . . .  
12 for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power  
13 houses, transmission lines, or other project works necessary or convenient . . . for the development,  
14 transmission, and utilization of power across, along, from, or in any of the streams or other bodies  
15 of water over which Congress has jurisdiction.” 16 U.S.C. § 797(e).

16 14. A FERC license imposes conditions on the operator of a hydroelectric project to  
17 ensure “the adequate protection, mitigation, and enhancement of fish.” *See* 16 U.S.C. § 803(a)(1).  
18 Section 18 requires FERC to order a licensee to construct, maintain, and operate fishways if  
19 prescribed by either the federal Secretary of Commerce or the Interior. *See id.* § 811.

20 15. Section 313 of the FPA establishes the procedure a party must follow to seek  
21 redress when it is aggrieved by an order issued by FERC. *See* 16 U.S.C. § 825l. An aggrieved  
22 party has 30 days after FERC issues its order licensing a hydroelectric project to request rehearing.  
23 *See id.* § 825l(a). The aggrieved party then has 60 days to petition for review to “the United States  
24 court of appeals for any circuit wherein the licensee or public utility to which the order relates is  
25

26 <sup>5</sup> *Id.*

1 located or has its principal place of business . . . [or] the United States Court of Appeals for the  
 2 District of Columbia[.]” *See id.* § 8251(b). The United States Courts of Appeals accordingly have  
 3 “exclusive” jurisdiction “to affirm, modify, or set aside” FERC’s orders. *Id.*; *see City of Tacoma*  
 4 *v. Taxpayers of Tacoma*, 357 U.S. 320, 336 (1958) (“[A]ll objections to [a FERC] order, to the  
 5 license it directs to be issued, and to the legal competence of the licensee to execute its terms, must  
 6 be made in the Court of Appeals or not at all.”).

## 7 **B. The Project**

8 16. The City, through its City Light department, owns and operates the Project under a  
 9 license issued and administered by FERC under the FPA. The Project is located on the Skagit  
 10 River. *See Order Accepting Settlement Agreement, Issuing New License, and Terminating*  
 11 *Proceeding*, 71 FERC 61,159, 61,527 (May 16, 1995), 1995 WL 301337 (“1995 Relicensing  
 12 Order”) (attached hereto as Exhibit C). Sauk-Suiattle’s Reservation is located in Skagit and  
 13 Snohomish counties. *See U.S. Census Bureau, 2020 Census - Tribal Tract Map: Sauk-Suiattle*  
 14 *Reservation* (Jun. 14, 2021) (“2020 Census Map”).<sup>6</sup> The Project Dams are not located on Sauk-  
 15 Suiattle Reservation land or fee lands within the Sauk-Suiattle Reservation. The Project Dams are  
 16 not located on any of the water bodies where Sauk-Suiattle has adjudicated treaty fishing rights.  
 17 *See United States v. Washington*, 384 F. Supp. 312, 376 (W.D. Wash. 1974) (“*Boldt Decree*”)  
 18 (determining that Sauk-Suiattle’s usual and accustomed fishing places “included Sauk River,  
 19 Cascade River, Suiattle River and the following creeks which are tributary to the Suiattle River—  
 20 Big Creek, Tenas Creek, Buck Creek, Lime Creek, Sulphur Creek, Downey Creek, Straight Creek,  
 21 and Milk Creek,” as well as “Bedal Creek, tributary to the Sauk River”); *see also Order on Pending*  
 22 *Motions at 9–13, United States v. Washington*, No. C70-9213 RSM, ECF 47 (W.D. Wash. Oct.  
 23 26, 2021) (determining that the Skagit River was “unambiguously” and “intentionally” omitted  
 24  
 25

26 <sup>6</sup> *See* [https://www2.census.gov/geo/maps/DC2020/TribalTract/r3625\\_sauk-suiattle/DC20TT\\_FR3625.pdf](https://www2.census.gov/geo/maps/DC2020/TribalTract/r3625_sauk-suiattle/DC20TT_FR3625.pdf).

1 from the list of Sauk-Suiattle’s usual and accustomed fishing places) (“*Sauk-Suiattle Sub-*  
 2 *proceeding*”).

3 17. The Project has operated since the early 1920s. 1995 Relicensing Order at 61,554.<sup>7</sup>  
 4 In 1927, FERC’s predecessor agency, the Federal Power Commission (“FPC”), licensed the  
 5 Project for 50 years. *See* Federal Power Commission, License on Government Lands, Project No.  
 6 553, Washington, City of Seattle (Oct. 28, 1927) (“1927 License”) (attached hereto as Exhibit D)<sup>8</sup>;  
 7 *see also* 1995 Relicensing Order at 61,527.<sup>9</sup> Sauk-Suiattle has availed itself of FERC’s pervasive  
 8 jurisdiction over the Project since at least 1978, entering into a 1981 settlement agreement with  
 9 the City that established a flow regime and required flow-related fishery studies. Order  
 10 Conditionally Approving Interim Offer of Settlement, 15 FERC 61,144 at 61,329 (May 12, 1981),  
 11 1981 WL 35104 (attached hereto as Exhibit E)<sup>10</sup>; *see also* 1995 Relicensing Order at 61,527.<sup>11</sup>  
 12 Sauk-Suiattle expressly accepted the conditions that FERC imposed on its approval of the  
 13 settlement. Order Declaring Interim Settlement Effective and Partially Releasing a Condition, 16  
 14 FERC 61,044 at 61,078 (July 24, 1981), 1981 WL 33308 (attached hereto as Exhibit F).<sup>12</sup>

15 18. Approximately ten years later, in the proceeding on the City’s application for a new  
 16 license to replace the expired 1927 license, the City, Sauk-Suiattle, and others reached multiple  
 17 settlement agreements, resolving “all issues related to [P]roject operation[s], fisheries, wildlife,  
 18 recreation and aesthetics, erosion control, archaeological and historic resources, and traditional  
 19 cultural properties.” 1995 Relicensing Order at 61,527, 61,529.<sup>13</sup> Sauk-Suiattle signed onto the  
 20 over-arching Offer of Settlement and the Fisheries Settlement Agreement (the “Fisheries  
 21 Settlement Agreement”). *Id.* at 61,529<sup>14</sup>; *see also* Offer of Settlement at 1, Skagit River

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22 <sup>7</sup> Ex. C at C-54.

23 <sup>8</sup> Ex. D at D-6.

24 <sup>9</sup> Ex. C at C-2.

<sup>10</sup> Ex. E at E-2, E-3.

25 <sup>11</sup> Ex. C at C-3.

<sup>12</sup> Ex. F at F-1.

26 <sup>13</sup> Ex. C at C-3.

<sup>14</sup> Ex. C at C-3.

1 Hydroelectric Project No. 553, Dkt. No. EL 78-36 (FERC 1991) (attached hereto as Exhibit G).<sup>15</sup>  
 2 The Fisheries Settlement Agreement established the City’s “obligations relating to fishery  
 3 resources affected by the project, including numerous provisions to protect resident and migratory  
 4 fish species.” 1995 Relicensing Order at 61,530.<sup>16</sup> FERC adopted the Fisheries Settlement  
 5 Agreement through the 1995 Relicensing Order, which authorized maintenance and operation of  
 6 the Project for another 30 years. *See id.* at 61,532.<sup>17</sup> For the duration of the license, the Fisheries  
 7 Settlement Agreement “establishes [the City’s] obligations relating to fishery resources affected  
 8 by the [P]roject.” *Id.* at 61,530, 61,532.<sup>18</sup>

9 19. Although the Secretaries of Commerce and the Interior could have required that the  
 10 1995 license include construction, maintenance, and operation of fishways, those agencies chose  
 11 not to require fishways. Instead they, “along with” the other settling parties, including Sauk-  
 12 Suiattle, concurred “all issues concerning environmental impacts from relicensing of the Project,  
 13 as currently constructed, are satisfactorily resolved[.]” *Id.* at 61,535.<sup>19</sup> FERC, therefore, did not  
 14 require the City to construct and operate fishways at the Project, though FERC reserved its  
 15 “authority to require fish passage in the future, should circumstances warrant” and “after notice  
 16 and opportunity for hearing.” *Id.* at 61,535, n.28.<sup>20</sup>

17 20. The 1995 Relicensing Order provided a 30-year license that will expire in 2025.  
 18 Since early 2020, the City has been engaged in a multi-year FERC process to obtain a new license.  
 19 Numerous federal and state resource agencies, affected Tribes (including Sauk-Suiattle), and  
 20 interested parties are actively involved and again, fisheries issues are an important part of the

21 <sup>15</sup> Ex. G at G-319.

22 <sup>16</sup> Ex. C at C-8.

23 <sup>17</sup> Ex. C at C-26.

24 <sup>18</sup> Ex. C at C-8, C-14, C-15.

25 <sup>19</sup> Ex. C at C-18, C-19.

26 <sup>20</sup> Ex. C at C-19. In 2011, Sauk-Suiattle, City Light and other parties to the Fisheries Settlement Agreement revised it, but again did not require fishways. *See Revised Fisheries Settlement Agreement, Skagit River Hydroelectric Project, FERC No. 553, at 2 (Jan. 2011) (attached hereto as Exhibit H, at H-10).* FERC incorporated the Revised Fisheries Settlement Agreement into the Project’s License by *Order Amending License and Revising Annual Charges*, 144 FERC ¶ 62,044 (2013) at Ordering Paragraph (H) (revising Art. 404) (attached hereto as Exhibit I). *Id.* at para. 34.

1 process. *See* Study Plan Determination for the Skagit River Hydroelectric Project dated July 16,  
 2 2021 (“Study Plan Determination”) (attached hereto as Exhibit J). Sauk-Suiattle commented on  
 3 several aspects of the proposed study plan (*id.* at 1, 2, B-3, B-5, B-30),<sup>21</sup> and the plan includes a  
 4 study of the feasibility of fish passage at the Project. *Id.* at A-1–A-4.<sup>22</sup>

5 **C. The Tribal Court Complaint is Sauk-Suiattle’s Third Attempt in Seven**  
 6 **Months to Impermissibly, and Unsuccessfully, Litigate Fish Passage at the**  
 7 **Project**

8 21. The Tribal Court Complaint is Sauk-Suiattle’s third attempt since June 2021 to  
 9 collaterally attack the Project’s FERC license through an impermissible challenge to the City’s  
 10 operation and maintenance of the Project.

11 22. On or about June 30, 2021, Sauk-Suiattle filed its first lawsuit against the City in  
 12 the Skagit County Superior Court, which the City removed to the Western District of Washington  
 13 pursuant to 28 U.S.C. § 1441(a). *See* Notice of Removal to Federal Court, *Sauk-Suiattle Indian*  
 14 *Tribe v. City of Seattle*, Case No. 2:21-cv-1014, ECF 1 (W.D. Wash. July 29, 2021). Sauk-  
 15 Suiattle’s complaint sought declaratory relief that the presence and operation of the Gorge Dam  
 16 (one of the Project’s three dams) without fish passage violated the constitutions of Washington  
 17 and the United States, in addition to state and federal law. *Id.* at 2. On December 2, 2021, this  
 18 Court granted the City’s Motion to Dismiss. *See* Order Granting Motion to Dismiss at 2, *Sauk-*  
 19 *Suiattle Indian Tribe v. City of Seattle*, Case No. 2:21-cv-1014, ECF 21 (W.D. Wash. Dec. 2, 2021)  
 20 (attached hereto as Exhibit K). The Court agreed with the City that Sauk-Suiattle’s action was an  
 21 impermissible attack on the City’s FERC license in violation of Section 313 of the FPA, and  
 22 dismissed Sauk-Suiattle’s action because the Court lacked jurisdiction to hear any of Sauk-  
 23 Suiattle’s claims. *Id.* at 14. Sauk-Suiattle has appealed the Court’s dismissal to the Ninth Circuit.  
 24 *See* Notice of Appeal, *Sauk-Suiattle Indian Tribe v. City of Seattle*, Case No. 2:21-cv-1014, ECF  
 25 22 (W.D. Wash. Dec. 13, 2021).

26 <sup>21</sup> Ex. J at J-1, J-2, J-10, J-12, J-37.

<sup>22</sup> Ex. J at J-4– J-7.

1           23.     Sauk-Suiattle filed its second lawsuit against the City on September 17, 2021, and  
 2 subsequently filed an amended complaint on November 19, 2021, this time in King County  
 3 Superior Court. *See* Am. Compl. for Violations of Consumer Protection Act and for Certification  
 4 as a Class Action and for Declaratory and Injunctive Relief, *Sauk-Suiattle Indian Tribe v. City of*  
 5 *Seattle*, Case No. 21-2-12361-5 SEA, Dkt. 24 (King Cnty. Sup. Ct. Nov. 19, 2021). Sauk-Suiattle  
 6 claimed that the City’s statements regarding its operation of the Project without fish passage (1)  
 7 amount to “greenwashing” in alleged violation of Washington’s Consumer Protection Act, Chap.  
 8 19.86 RCW (the “CPA”), and (2) are a public and private nuisance in violation of state law. On  
 9 January 14, 2022, at the conclusion of oral argument on the City’s Motion to Dismiss, the court  
 10 ruled that Sauk-Suiattle’s claims lacked merit and granted the City’s Motion to Dismiss. *See id.*  
 11 Dkt. 37.<sup>23</sup> On January 20, 2022, Sauk-Suiattle filed a Notice of Appeal to the Washington Court  
 12 of Appeals, Division I. *See id.* Dkt. 38.

13           24.     On January 6, 2022, Sauk-Suiattle filed the Tribal Court Complaint in Tribal Court.  
 14 The Tribal Court Complaint contains four claims. Tribal Court Complaint at 14-15.<sup>24</sup> First, Sauk-  
 15 Suiattle claims that the Project Dams obstruct salmon in violation of the Treaty-based usufructuary  
 16 property interests of Sauk-Suiattle and its members in contravention of the 1855 Treaty of Point  
 17 Elliott (“1855 Treaty”). *Id.* at 14. Second, Sauk-Suiattle argues that the City’s “blockage of water”  
 18 constitutes an “arbitrary and capricious seizure” of salmon habitat and Sauk-Suiattle’s water  
 19 property rights in violation of the Fourth Amendment. *Id.* at 14-15. Third, Sauk-Suiattle argues  
 20 that the City’s operation of the Project has infringed upon its members’ “religious and cultural  
 21 practices” that are protected by the 1855 Treaty, the American Indian Religious Freedom Act, and  
 22 the First Amendment. *Id.* at 15. And fourth, Sauk-Suiattle argues that the City’s alleged  
 23 disclaiming of responsibility for salmon decline has a “direct and proximate result of citizens  
 24

25 <sup>23</sup> Judge McCoy ruled from the bench. As directed by the court, the parties are currently drafting a joint proposed  
 order dismissing the case.

26 <sup>24</sup> *See* Ex. A.

1 placing the blame” on Sauk-Suiattle, which constitutes fraud and intentional or negligent infliction  
2 of emotional distress. *Id.*

3 25. Sauk-Suiattle invoked the Tribal Court’s jurisdiction under “the inherent tribal  
4 sovereignty of the Sauk-Suiattle Indian Tribe, the Constitution and Bylaws of the Sauk-Suiattle  
5 Indian Tribe, the Law and Order Code of the Sauk-Suiattle Indian Tribe, *Montana v. United States*,  
6 450 U.S. 544 (1981), and the natural laws of the Sauk-Suiattle Indian Tribe.” *Id.* at 10.

## 7 V. CLAIMS FOR RELIEF

### 8 FIRST CLAIM FOR RELIEF

#### 9 Declaratory Judgment

10 26. Plaintiff re-alleges and incorporates by reference herein all allegations previously  
11 made in paragraphs 1 through 25 above.

12 27. An actual and justiciable controversy currently exists between the City and Sauk-  
13 Suiattle concerning the Tribal Court’s jurisdiction over the City and the Tribal Court Complaint.  
14 A declaration by this Court as to the Tribal Court Complaint would terminate the controversy  
15 giving rise to this cause of action.

16 28. Tribal courts lack jurisdiction over nonmembers’ conduct that occurs off-  
17 reservation. *See Philip Morris USA, Inc. v. King Mountain Tobacco Co.*, 569 F.3d 932, 938 (9th  
18 Cir. 2009). Even within the boundaries of a tribal reservation, the inherent authority of tribal courts  
19 does not extend to nonmembers unless one of the two narrow exceptions articulated by the U.S.  
20 Supreme Court in *Montana v. United States*, 450 U.S. 544, 565–66 (1981), apply. First, “the tribe  
21 may regulate . . . the activities of nonmembers who enter consensual relationships with the tribe  
22 or its members.” *Montana*, 450 U.S. at 565. Second, the U.S. Supreme Court stated that tribes  
23 may regulate “the conduct of non-Indians on fee lands within its reservation when that conduct  
24 threatens or has some **direct effect** on the political integrity, the economic security, or the health  
25 and welfare of the tribe.” *Id.* at 566 (emphasis added).





1 not have jurisdiction over the City in the action currently filed in Tribal Court or in any other  
2 Sauk-Suiattle administrative or judicial forum;

3 B. A preliminary injunction pursuant to Fed. R. Civ. P. 65 enjoining the Tribal  
4 Defendants from further proceeding against the City in Tribal Court;

5 C. A permanent injunction pursuant to Fed. R. Civ. P. 65 enjoining Tribal  
6 Defendants from further proceedings involving the City's operation of the Project in Tribal  
7 Court;

8 D. To the extent permitted by law, for an award of attorneys' fees and costs incurred;  
9 and

10 E. For such other relief as may be just and proper.

11  
12 DATED this 7th day of February, 2022.

13 K&L GATES LLP

14  
15 By: /s/ Kari L. Vander Stoep

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THE CITY OF SEATTLE