

IN THE UNITED STATES CLAIMS COURT

CHINOOK INDIAN TRIBE, COWLITZ)	
INDIAN TRIBE and WAHKEAKUM BAND)	
OF CHINOOK INDIANS,)	
)	Docket No.
Plaintiffs,)	
)	
v.)	
)	COMPLAINT
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

COME NOW the plaintiffs, CHINOOK INDIAN TRIBE, COWLITZ INDIAN TRIBE and WAHKEAKUM BAND OF CHINOOK INDIANS, through their undersigned attorney, and for their action against defendant, UNITED STATES OF AMERICA, set forth as follows:

JURISDICTION

1. This is an action for unliquidated damages in a case against the United States not sounding in tort. Specifically, plaintiffs seek money damages for the taking without compensation by defendants of their aboriginal rights to hunt and fish, in violation of the Fifth Amendment to the United States Constitution.

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1491.

PARTIES

3. Plaintiff CHINOOK INDIAN TRIBE is an American Indian tribe and its post office address is P. O. Box 76, Chinook, Washington 98614. The CHINOOK TRIBE is the political continuation of, and successor in interest to, the aboriginal tribe known as the Lower Band of Chinook Indians, which exclusively occupied and controlled lands on the north bank of the Columbia River in the vicinity of what today are Pacific and Wahkiakum Counties, Washington, near the town of Chinook, Washington, as well as the Columbia River and its tributaries adjacent to its aboriginal lands. The CHINOOK Tribe has continuously occupied its aboriginal territory from prior to 1851 through the present time.

4. Plaintiff COWLITZ INDIAN TRIBE is an American Indian tribe and its address is 2815 Dale Lane East, Tacoma, Washington 98424. The COWLITZ TRIBE is the political continuation of, and successor in interest to, the aboriginal Cowlitz Indian Tribe, which exclusively occupied and controlled lands on the north bank of the Columbia River and lands along both banks of the Cowlitz River in what today are Wahkiakum, Cowlitz and Lewis Counties, Washington, as well as the Columbia and Cowlitz Rivers and their tributaries adjacent to its aboriginal lands. The

COWLITZ Tribe has continuously occupied its aboriginal territory from prior to 1851 through the present time.

5. Plaintiff WAHKIAKUM BAND OF CHINOOK INDIANS is an American Indian tribe and its post office address is Route 4, Box 308, Astoria, Oregon 97103. The WAHKIAKUM BAND is the political continuation of, and successor in interest to, the aboriginal Wahkiakum Band of Chinook Indians, which exclusively occupied and controlled lands on the north bank of the Columbia River in what today is Wahkiakum County, Washington, as well as the Columbia River and its tributaries adjacent to its aboriginal lands. The WAHKIAKUM Band has continuously occupied its aboriginal territory from prior to 1851 through the present time.

6. The defendant is the UNITED STATES OF AMERICA.

ACTIONS OF OTHER TRIBUNAL

7. The United States Supreme Court has ruled that the CHINOOK TRIBE and the COWLITZ TRIBE were affiliated with the signatories of the Treaty of Olympia of July 1, 1855, and January 25, 1856, 12 Stat. 971, subsequent to that treaty's ratification and that they are entitled to enjoy the rights and privileges reserved or guaranteed by that treaty. See Halbert v. United States, 283 U.S. 753 (1931).

8. The United States Court of Appeals for the Ninth

Circuit has ruled that the fishing (and, inferentially, hunting) rights of plaintiff WAHKIAKUM BAND have never been extinguished in toto. See Wahkiakum Band of Chinook Indians v. Bateman, 655 F.2d 176 (9th Cir. 1981). Specifically, the Ninth Circuit ruled that the WAHKIAKUM BAND's aboriginal hunting and fishing rights are no longer exercisable within the Tribe's own aboriginal areas, but rather are exercisable within the hunting and fishing areas of the tribes which were signatory to the Treaty of Olympia since the WAHKIAKUM BAND was affiliated with the signatory tribes subsequent to the treaty's ratification.

9. The CHINOOK TRIBE and COWLITZ TRIBE filed suits in federal courts in Oregon and Washington which were identical to the WAHKIAKUM BAND's litigation referred to at paragraph 7. Those suits were dismissed without prejudice subsequent to the Ninth Circuit ruling in Wahkiakum Band v. Bateman.

10. This Court entered a judgment declaring that the lands of the aboriginal CHINOOK TRIBE had been taken, without compensation, by the UNITED STATES in the action of Lower Band of Chinook Indians of the State of Washington v. The United States, Congressional No. 10441 (Decided December 10, 1906). See Senate Document No. 188, 59th Cong., 2d Sess. Specifically, this Court found only that lands were taken, and there was no determination that hunting and

fishing rights had also been extinguished.

CAUSE OF ACTION

11. During their aboriginal existence, each of the plaintiff tribes owned and exercised rights to hunt and fish within their aboriginal areas.

12. Plaintiffs' rights to hunt and fish were valuable.

13. The defendant, by and through its agents and officials, has extinguished and taken, without compensation, the plaintiffs' rights to hunt and fish. These actions of extinguishment constitute a lack of good faith on the part of the defendant and were in violation of the Fifth Amendment to the United States Constitution.

14. The taking and extinguishment of plaintiffs' rights to hunt and fish was done without the consent of the plaintiffs, or any of them, which further constitutes a lack of good faith and was in violation of the Fifth Amendment.

15. The defendant has never compensated the plaintiffs for the taking of their hunting and fishing rights.

16. Plaintiffs' hunting and fishing rights which were taken by defendant had a value of \$30,000,000 at the date(s) of taking.

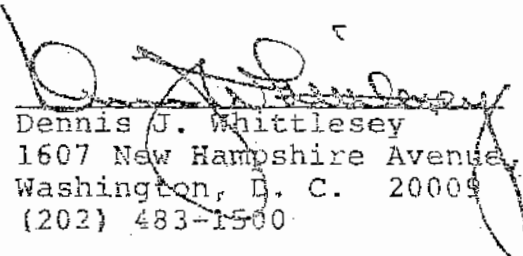
WHEREFORE, the CHINOOK INDIAN TRIBE, COWLITZ INDIAN TRIBE and WANKIAKUM BAND OF CHINOOK INDIANS pray this Court

to enter a money judgment in their favor as follows:

A. Money damages in the amount of \$30,000,000, as compensation for the taking of plaintiffs' hunting and fishing rights, plus interest from the date(s) of taking.

B. Such further relief as this Court deems proper.

DATED this 30th day of December, 1982.


Dennis J. Whittlesey
1607 New Hampshire Avenue, N. W.
Washington, D. C. 20009
(202) 483-1500

Attorney of Record for Plaintiffs

OF COUNSEL:

WHITTLESEY & O'BRIEN, P. C.
(Susan E. O'Keefe)
1607 New Hampshire Avenue, N. W.
Washington, D. C. 20009
(202) 483-1500