



University of Idaho

College of Law

US V. OREGON

11.19.2019 PRESENTATION

BY: JONATHAN LITSTER

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DISCLAIMER 1

This presentation contains no policy recommendations of any kind.

This is only a brief overview of the legal history that led up to *United States v. Oregon*, including the case itself, and some points after the case.

The duty to create, propose, and present policy recommendations rests with the Workgroup itself.



DISCLAIMER 2

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A BACKGROUND FOR FUTURE HARVEST DISCUSSION

This presentation should serve as a background for members of the Governor's Salmon Workgroup to understand the history of *United States v. Oregon* to facilitate a better future discussion of harvest.

I Main Takeaways:

- Canons of Treaty Construction
- US v. Oregon's Three Limitations on Regulations

OVERVIEW

-  Time Immemorial
-  Stevens Treaties and Other Treaties
-  Case Law before United States v. Oregon
-  United States v. Oregon
-  Case Law after United States v. Oregon

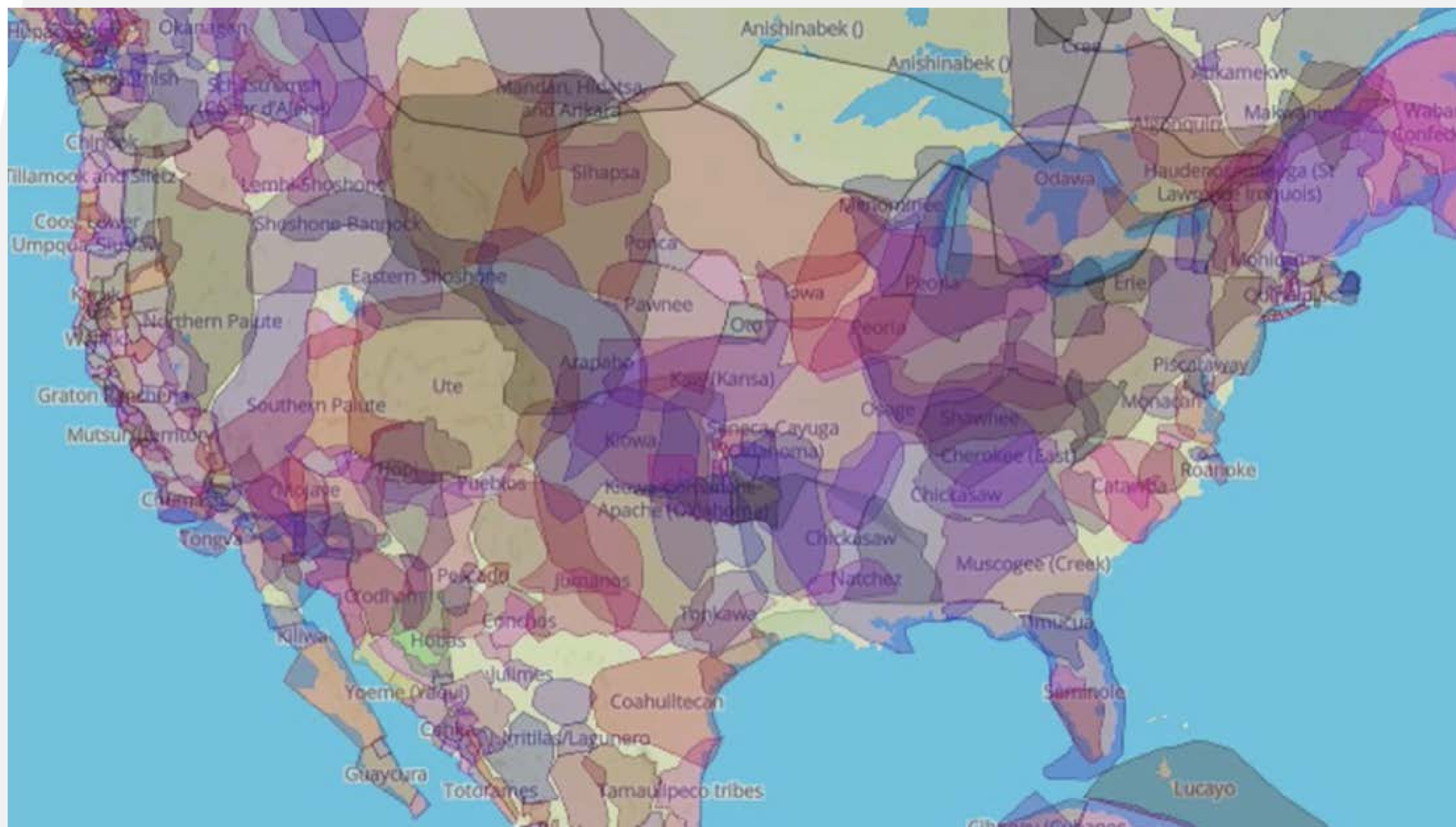


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TIME IMMEMORIAL

TIME IMMEMORIAL





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STEVENS TREATIES

- AND OTHER TREATIES

UNITED STATES CONSTITUTION

ARTICLE VI, CLAUSE 2

I “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; **and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;** and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” [USCS Const. Art. VI, Cl 2](#)

STEVENS TREATIES

1850'S ERA

- I Treaty of Hellgate (1855)
- I Treaty of Medicine Creek (1854)
- I Treaty of Neah Bay signed with the Makah (1855)
- I Treaty of Point Elliott (1855)
- I Point No Point Treaty (1855)
- I Quinault Treaty (1855 and 1856)
- I Treaty of Walla Walla (1855)

ISAAC STEVENS

MARCH 25, 1818 – SEPTEMBER 1, 1862



Controversial Governor of the Territory of Washington from 1853 to 1857. Brokered the treaties with the tribes on behalf of the United States.

STEVENS TREATIES

- I Cleared title to 64 million acres of land
- I Facilitated peaceful settlement of the Northwest
- I Similar language of “The right of taking fish, at all **usual and accustomed grounds** and stations, is further secured to said Indians in common with all citizens of the Territory...together with the privilege of hunting....” 10 Stat. 1132 (1854 Treaty of Medicine Creek).

OTHER TREATIES

FORT BRIDGER TREATY OF 1868

- I Made at Fort Bridger, Utah Territory on July 3, 1868 brokered by Nathaniel G. Taylor, Commissioner of Indian Affairs.
- I Native Americans “shall have the right to hunt on the **unoccupied lands** of the United States **so long as game may be found thereon**, and so long as peace subsists among the whites and Indians on the borders of the hunting districts.” Treaty with the Eastern Shoshoni and Bannock, 1868, 15 Stat. 673.
- I Interpreted in *State v. Tinno*, 94 Idaho 759 (1972).

STEVENS TREATIES CONTINUED

- I Original idea being Native fishing would supply food for the Settlers, but decades later Settlers were competing with Native harvests.
- I Innovations such as fish wheels and barbed wire fences enabled Settlers to exclude Native harvesters.
- I Fences brought about the first major appellate decision interpreting the Stevens Treaties.



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CASE LAW BEFORE UNITED STATES V. OREGON

OVERVIEW

CASE LAW BEFORE UNITED STATES V. OREGON

- I *United States v. Taylor* (1887 – Territory of Washington Supreme Court)
- I *United States v. Winans* (1905 – US Supreme Court)
- I *Seufert Bros. Co. v. United States* (1919 – US Supreme Court)
- I *Tulee v. Washington* (1942 – US Supreme Court)
- I *Makah Indian Tribe v. Schoettler* (1951 – 9th Circuit)
- I *Maison v. Confederated Tribes of Umatilla Indian Reservation* (1963 – 9th Circuit)
- I *Holcomb v. Confederated Tribes of Umatilla Indian Reservation* (1967 – 9th Circuit)
- I *Puyallup Tribe v. Department of Game of Washington* (1968 – US Supreme Court) (Puyallup I)

WHY DOES THE UNITED STATES INTERVENE?

TRUST RELATIONSHIP

- I Ward-Guardian Relationship model (passive)
- I Trustee-Beneficiary Relationship model (active)
- I The origin of the federal-Indian trust relationship is usually attributed to two early Marshall Court (1801 to 1835) decisions. See generally Burke, *The Cherokee Cases: A Study In Law, Politics, and Morality*, 21 STAN. L. REV. 500 (1969). Both cases involved Georgia's claim of legislative jurisdiction over Cherokee lands within the state's boundaries, and the Supreme Court's power to determine the issues.

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2009&context=mjlr>

UNITED STATES V. TAYLOR

(1887 – SUPREME COURT OF THE TERRITORY OF WASHINGTON)

- I** Often forgotten case. First case interpreting the Stevens Treaties.
- I** For thousands of years, Celilo Falls was a prominent fishing place for Native Americans. [Celilo Falls in 1930's](#)
- I** At Celilo Falls, Frank Taylor purchases land adjoining the falls. Mr. Taylor placed barbed wire to exclude tribal fishers from his land, and so he could rent access to the falls to non-tribal fishers.
- I** Indian agent R. H. Milroy, representing the United States, and Tribal harvesters sought to prevent Mr. Taylor from excluding them from fishing at their “usual and accustomed places, in common with citizens of the territory.” 3 Wash. Terr. 88, 97.

UNITED STATES V. TAYLOR

(1887 – SUPREME COURT OF THE TERRITORY OF WASHINGTON)

- I** The lower court denied the relief the Tribal harvesters sought.
- I** The Supreme Court of the Territory of Washington reversed.
- I** “[I]t seems to us that the Indians, in making the treaty, would have been more likely to have intended to grant only such rights as they were to part with, rather than to have conveyed all, with the understanding that certain were to be at once reconveyed to them.” 3 Wash. Terr. 88, 96-97.
- I** “What did the Indians intend to reserve to themselves by the words, ‘as also the right of taking fish at all usual and accustomed places, in common with citizens of the territory?’” 3 Wash. Terr. 88, 97.
- I** Using canons of construction for treaty interpretation.

CANONS OF TREATY CONSTRUCTION

- I Reserved Rights Doctrine:** "[N]ot 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, 381 (1905).
- I Basic Canon:** "[T]he treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they [sic] would naturally be understood by the Indians." *Jones v. Meehan*, 175 U.S. 1, 11 (1899).
- I Basic Canon:** Ambiguous expressions in treaties to be resolved in favor of the Indians. *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 174 (1973); *Winters v. United States*, 207 U.S. 564, 576-77 (1908).
- I Basic Canon:** Treaties be construed liberally to favor Indians. *Antoine v. Washington*, 420 U.S. 194,200 (1975); *Choate v. Trapp*, 224 U.S. 665, 675 (1912).

UNITED STATES V. WINANS

(1905 – US SUPREME COURT)

- I** Due to narrow interpretation of *Taylor* by lower courts, and other federal agents' failure to act, exclusions of Tribal harvesters continued throughout the Columbia Basin.
- I** Winans brothers, on the Washington side of Celilo Falls, erected a fishing wheel, for which they received a license from the State of Washington, and fenced out tribal harvesters.
- I** Federal district court enjoined the fencing for almost seven years, but in 1903, Judge Cornelius Hanford dismissed the injunction, in order to place the Tribes “on an equal footing.”

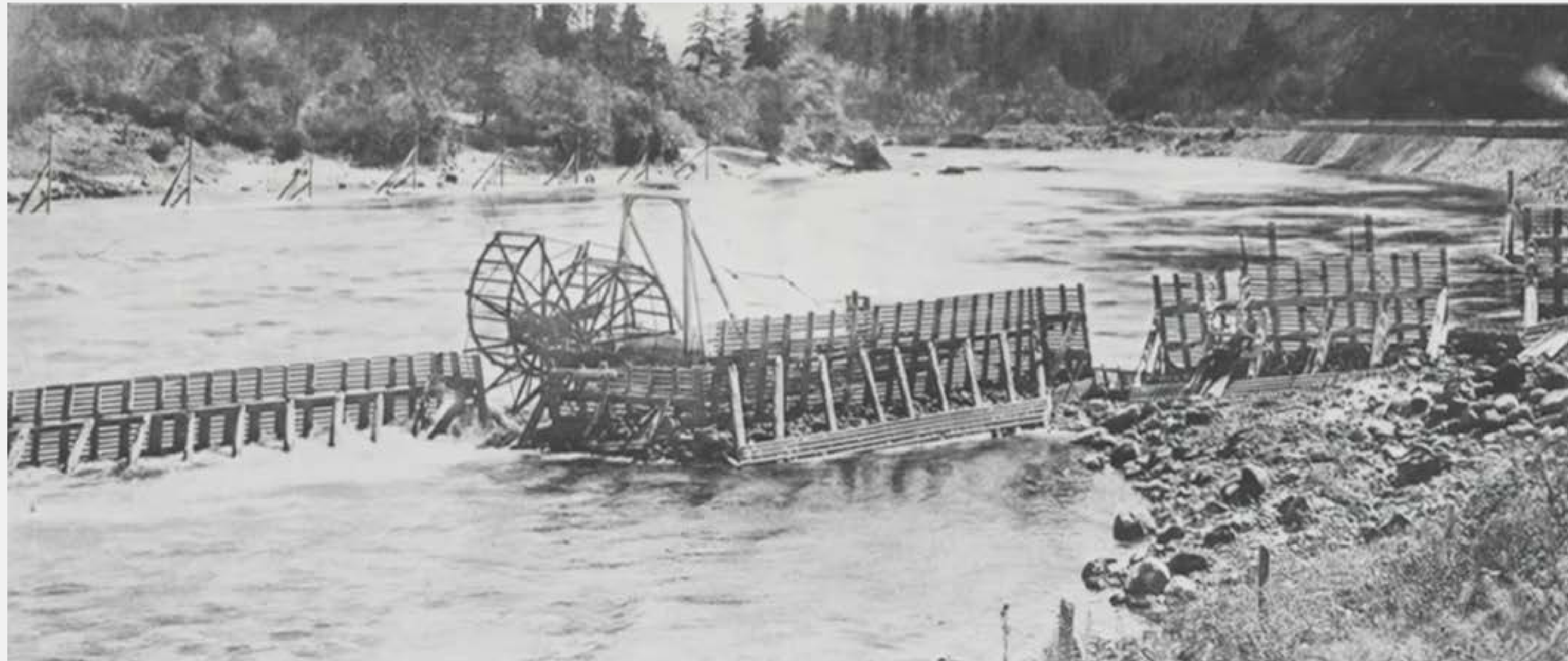
UNITED STATES V. WINANS

(1905 – US SUPREME COURT)



UNITED STATES V. WINANS

(1905 – US SUPREME COURT)



UNITED STATES V. WINANS

(1905 – US SUPREME COURT)

- I** Often quoted in later cases: “[W]e have said we will construe a treaty with the Indians as ‘that unlettered people’ understood it, and ‘as justice and reason demand, in all cases where power is exerted by the strong over those to whom they owe care and protection,’ and counterpoise the inequality ‘by the superior justice which look only to the substance of the right, without regard to technical rules.’” 198 U.S. 371, 380-81 (1905) quoting *Choctaw Nation v. United States*, 119 U.S. 1, 30 (1886).
- I** “The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were **not much less necessary to the existence of the Indians than the atmosphere they breathed.**” 198 U.S. 371, 381.

UNITED STATES V. WINANS

(1905 – US SUPREME COURT)

- I** “[T]he treaty was not a grant of rights to the Indians, but a grant of right from them, a reservation of those not granted.” 198 U.S. 371, 381.
- I** The treaties “imposed a **servitude** upon every piece of land as though described therein.” 198 U.S. 371, 381. (servitude = the subjection of property to an easement (a right to cross or use land))
- I** “[T]he right was intended to be continuing against the United States and its grantees as well as against the state and its grantees.” 198 U.S. 371, 381-82.
- I** First US Supreme Court case using Canons of Treaty Construction to interpret Stevens Treaties.

SEUFERT BROS. CO. V. UNITED STATES

(1919 – US SUPREME COURT)



SEUFERT BROS. CO. V. UNITED STATES

(1919 – US SUPREME COURT)

- I** An Oregon Corporation plead its case was distinguished from *Winans* because Yakima Tribe fishing rights did not extend to the Oregon side of the Columbia river, because the Tribe's treaty ceded lands only to the middle of the Columbia River. 249 U.S. 194 (1919).
- I** “The ‘**servitude**’ is one existing only where there was an habitual and customary use of the premises, which must have been so open and notorious during a considerable portion of each year, that **any person, not negligently or wilfully blind to the conditions of the property he was purchasing, must have known of them.**” 249 U.S. 194, 199.
- I** Second US Supreme Court case using Canons of Treaty Construction to interpret Stevens Treaties.

TULEE V. WASHINGTON

(1942 – US SUPREME COURT)

Swinomish men operating
a scoop net to transfer fish
from a trap, ca. 1938
Courtesy Smithsonian
Institution

[https://www.historylink.org
/File/2593](https://www.historylink.org/File/2593)



TULEE V. WASHINGTON

(1942 – US SUPREME COURT)

- I** The State of Washington started charging license fees to Tribal fishers.
- I** “The appellant, Sampson Tulee, a member of the Yakima tribe of Indians, was convicted in the Superior Court for Klickitat County, Washington, on a charge of catching salmon with a net, without first having obtained a license as required by state law.” 315 U.S. 681, 682.
- I** “Relying upon its broad powers to conserve game and fish within its borders, however, the **state asserts** that its right to regulate fishing may be exercised at places like the scene of the alleged offense...[and] **since its license laws do not discriminate against the Indians, they do not conflict with the treaty.**” 315 U.S. 681, 683.
- I** “The appellant, on the other hand, claims that the treaty gives him an **unrestricted right to fish** in the ‘usual and accustomed places,’ **free from state regulation of any kind.**” 315 U.S. 681, 684.

TULEE V. WASHINGTON

(1942 – US SUPREME COURT)

- I “It is our responsibility to see that the terms of the treaty are carried out, so far as possible, **in accordance with the meaning they were understood to have by the tribal representatives** at the council, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people.” 315 U.S. 681, 684-85.
- I “[I]t is clear that [the state’s] regulatory purpose could be accomplished otherwise, that the **imposition of license fees is not indispensable** to the effectiveness of a state conservation program. Even though this method may be both convenient and, in its general impact, fair, it acts upon the Indians as a charge for exercising the very right their ancestors intended to reserve.” 315 U.S. 681, 685.
- I “We believe that such **exaction of fees** as a prerequisite to the enjoyment of fishing in the ‘usual and accustomed places’ **cannot be reconciled with a fair construction** of the treaty.” 315 U.S. 681, 685.
- I Third US Supreme Court case using Canons of Treaty Construction to interpret Stevens Treaties.

9TH CIRCUIT CASES AFTER TULEE

IN FAVOR OF NATIVE AMERICAN TRIBES

I *Makah Indian Tribe v. Schoettler*, 192 F. 2d 224 (1951)

- Tulee's "Conservation Necessity Doctrine": State had not proved regulation was necessary for conservation

I *Maison v. Confederated Tribes of Umatilla Indian Reservation*, 314 F.2d 169 (1963)

- Reserved Rights Doctrine, Conservation Necessity Doctrine (Indispensable), Disapproved of by *Puyallup*

I *Holcomb v. Confederated Tribes of Umatilla Indian Reservation*, 382 F.2d 1013 (1967)

- Conservation Necessity Doctrine (Indispensable), followed *Maison*, Rejected "equal footing" argument (like *Winans*)

“POLICE POWERS”

ROOTED IN US CONSTITUTION, 10TH AMENDMENT

- I** “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are **reserved to the States** respectively, or to the people.” U.S. Const. 10th Amendment
- I** The fundamental right of a government to make all necessary laws. In the United States, state police power comes from the Tenth Amendment to the Constitution, which gives states the rights and powers “not delegated to the United States.” States are thus granted the power to establish and enforce laws protecting the welfare, safety, and health of the public. https://www.law.cornell.edu/wex/police_powers

PUYALLUP TRIBE V. DEPARTMENT OF GAME OF WASHINGTON (PUYALLUP I)

(1968 – US SUPREME COURT)

- I** The Department of Game of Washington and another state department brought suits in Washington court for declaratory relief and injunction against certain fishing by Indians of the Puyallup Tribe and the Nisqually Tribe.
- I** Lower court (Superior Court of Pierce County, Washington) entered judgments adverse to the Tribes. The Washington Supreme Court with irrelevant exceptions, affirmed in part and remanded. The Supreme Court of the United States granted petitions for certiorari and consolidated the cases for oral argument.
- I** “The treaty right is in terms the right to fish ‘at all usual and accustomed places.’ We assume that **fishing by nets was customary** at the time of the Treaty; and we also assume that there were **commercial aspects** to that fishing as there are at present.” 391 U.S. 392, 398.

PUYALLUP TRIBE V. DEPARTMENT OF GAME OF WASHINGTON (PUYALLUP I)

(1968 – US SUPREME COURT)

- I “But the *manner* in which the fishing may be done and its purpose, whether or not commercial, are not mentioned in the Treaty. We would have quite a different case if the Treaty had preserved the right to fish at the ‘usual and accustomed places’ *in the ‘usual and accustomed’ manner*. But the Treaty is silent as to the mode or modes of fishing that are guaranteed.” 391 U.S. 392, 398.
- I “[W]e see no reason why the right of the Indians may not also be regulated by an appropriate exercise of the police power of the State.” 391 U.S. 392, 398.

PUYALLUP TRIBE V. DEPARTMENT OF GAME OF WASHINGTON (PUYALLUP I)

(1968 – US SUPREME COURT)

- I** “But the manner of fishing, the size of the take, the restriction of commercial fishing, and the like may be regulated by the State in the interest of conservation, provided the regulation **meets appropriate standards and does not discriminate against the Indians.**” 391 U.S. 392, 398.
- I** “[T]he ‘right’ to fish outside the reservation was a treaty ‘right’ that could not be qualified or conditioned by the State. But ‘the time and manner of fishing . . . **necessary for the conservation of fish,**’ not being defined or established by the treaty, were within the reach of state power.” 391 U.S. 392, 399.
- I** Fourth US Supreme Court case using Canons of Treaty Construction to interpret Stevens Treaties.



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UNITED STATES V. OREGON

CONFLICT IN THE 1960'S

- I** In 1964, Oregon and Washington closed commercial fishing on the Columbia River, based on information indicating a critical decrease in summer chinook salmon.
- I** Tribes closed their fisheries also because of this data.
- I** In 1966, Oregon ordered state police to enforce commercial fishing regulations.
- I** Many treaty fisherman ignored both state and tribal closures, believing treaty rights exempted them from all litigation.
- I** Some tribal fishermen held demonstrations and “fish-ins” to draw attention to what they believed was an erosion of their treaty rights through state regulations.
- I** In 1968, Oregon officials arrested Richard Sohappy, a Yakima Indian tribal member, and his uncle, David Sohappy, for fishing in the Columbia River with gillnets, against state regulations.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

- I Richard and David Sohappy, with twelve other Yakima treaty fishermen, sued Oregon Fish Commissioner Mckee Smith and the Oregon State Commission.
- I “They [sought] a decree of this court defining their treaty right ‘of taking fish at all usual and accustomed places’ on the Columbia River and its tributaries and the manner and extent of the State of Oregon may regulate Indian fishing.” 302 F. Supp. 899, 903-04.
- I “Shortly thereafter the United States on its own behalf and on behalf of the Confederated Tribes and Bands of the Yakima Reservation, the Confederated Tribes and Bands of the Umatilla Reservation composed of the Walla Walla, Cayuse and Umatilla Bands or Tribes, the Nez Perce Indian Tribe and ‘all other tribes similarly situated’ filed case No. 68-513 [US v. OR].” 302 F. Supp. 899, 904.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

I “These treaties were ratified and proclaimed by the United States in 1859. Treaty of June 9, 1855, with the Yakima Tribe (12 Stat. 951); Treaty of June 25, 1855, with the Tribes of Middle Oregon (12 Stat. 963); Treaty of June 9, 1855, with the Umatilla Tribe (12 Stat. 945); Treaty of June 11, 1855, with the Nez Perce Tribe (12 Stat. 957). Each of these treaties contained a substantially identical provision securing to the tribes **“the right of taking fish at all usual and accustomed places in common with citizens of the Territory.”** 302 F. Supp. 899, 904.

I “Most of the argument has centered around the state's interpretation of that provision. It believes that it gives the treaty Indians only the same rights as given to all other citizens. **Such a reading would not seem unreasonable if all history, anthropology, biology, prior case law and the intention of the parties to the treaty were to be ignored.**” 302 F. Supp. 899, 904-05.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

- I “The act [by which the United States extinguished Indian rights in the Oregon territory by negotiation rather than by conquest (9 Stat. 323)] also extended to the Oregon Territory the provisions of the Northwest Ordinance of 1787 which provided, among other things, that ‘**good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent.**’ (1 Stat. 51).” 302 F. Supp. 899, 905.
- I “It hardly needs restatement that Indian treaties, like international treaties, entered into by the United States **are part of the supreme law of the land** which the states and their officials are bound to observe.” 302 F. Supp. 899, 905.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

I “The Supreme Court has on numerous occasions noted that while the courts cannot vary the plain language of an Indian treaty, such treaties are to be construed: ‘as “that unlettered people” understood it, and, “as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection,” and counterpoise the inequality “by the superior justice which looks only to the substance of the right, without regard to technical rules,” 302 F. Supp. 899, 905 citing *Choctaw Nation* and *Winans*.

I “It is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people.” 302 F. Supp. 899, 905 citing *Tulee*.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

I **THREE LIMITATIONS ON STATE REGULATIONS:**“The issue in these cases concerns the limitation on the state's power to regulate the exercise of the Indians' federal treaty right. At least three such limitations are indicated by the Supreme Court in its *Puyallup* decision. First, the regulation must be ‘**necessary for the conservation of the fish.**’ Second, the state restrictions on Indian treaty fishing must ‘**not discriminate against the Indians.**’ And third, they must meet ‘**appropriate standards.**’” 302 F. Supp. 899, 906-07.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

I NECESSARY FOR THE CONSERVATION OF THE FISH

- From indispensable (*Tulee, Makah, Maison, Holcomb*), to reasonable and necessary (*Puyallup*), to **least restrictive**.
- “To prove necessity, the state must show there is **a need to limit the taking of fish and that the particular regulation sought to be imposed upon the exercise of the treaty right is necessary to the accomplishment of the needed limitation**. This applies to regulations restricting the type of gear which Indians may use as much as it does to restrictions on the time at which Indians may fish.” 302 F. Supp. 899, 908-09.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

I MUST NOT DISCRIMINATE AGAINST THE INDIANS

- “Oregon recognizes sports fishermen and commercial fishermen and seems to attempt to make an equitable division between the two. But the state seems to have ignored the rights of the Indians who acquired a treaty right to fish at their historic off-reservation fishing stations. If Oregon intends to maintain a separate status of commercial and sports fisheries, it is obvious a third must be added, the Indian fishery. The treaty Indians, having an absolute right to that fishery, are **entitled to a fair share** of the fish produced by the Columbia River system.” 302 F. Supp. 899, 910-11.
- “The Supreme Court has said that the right to fish at all usual and accustomed places may not be qualified by the state. (Puyallup I) 391 U.S. 398. I interpret this to mean that **the state cannot so manage the fishery that little or no harvestable portion of the run remains** to reach the upper portions of the stream where the historic Indian places are mostly located.” 302 F. Supp. 899, 911.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

I APPROPRIATE STANDARDS

- “This court cannot prescribe in advance all of the details of appropriate and permissible regulation of the Indian fishery, nor do the plaintiffs ask it to. As the Government itself acknowledges, ‘proper anadromous fishery management in a changing environment is not susceptible of rigid pre-determination. * * * the variables that must be weighed in each given instance make judicial *review* of state action, through retention of continuing jurisdiction, more appropriate than overly-detailed judicial predetermination.’ The requirements of fishery regulation are such that many of the specific restrictions, particularly as to timing and length of seasons, cannot be made until the fish are actually passing through the fishing areas or shortly before such time. **Continuing the jurisdiction of this court** in the present cases may, as a practical matter, be the only way of assuring the parties an opportunity for timely and effective judicial review of such restrictions should such review become necessary.” 302 F. Supp. 899, 911.

UNITED STATES V. OREGON

(1969 – US DISTRICT COURT – DISTRICT OF OREGON)

I TRIBAL CONSENT NOT REQUIRED, BUT COOPERATIVE APPROACH ENCOURAGED

- “This does not mean that tribal consent is required for restrictions on the exercise of the treaty rights.”
302 F. Supp. 899, 912.
- “But certainly agreements with the tribes or deference to tribal preference or regulation on specific aspects pertaining to the exercise of treaty fishing rights are means which the state may adopt in the exercise of its jurisdiction over such fishing rights. Both the state and the tribes should be encouraged to pursue such a **cooperative approach**.” 302 F. Supp. 899, 912.



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CASE LAW AFTER UNITED STATES V. OREGON

OVERVIEW

CASE LAW AFTER UNITED STATES V. OREGON

- I *State v. Tinno* (1972 – Idaho Supreme Court)
- I *Department of Game of Washington v. Puyallup Tribe* (1973 – US Supreme Court) (Puyallup II)
- I *United States v. Washington* (1974 – United States District Court, W.D. of Washington)
- I *Washington v. Washington State Commercial Passenger...* (1979 – US Supreme Court)
- I State of Idaho intervenes in 1983
- I Shoshone Bannock Tribe intervenes in 1986

STATE V. TINNO

(1972 – IDAHO SUPREME COURT)

- I Gerald Cleo Tinno, a Shoshone Bannock tribal fisherman charged with taking a chinook salmon with a spear.
- I Treaty reads, “[T]hey shall have the **right to hunt on the unoccupied lands** of the United States so long as game may be found thereon....” 94 Idaho 759, 762.
- I “**Indian languages did not employ separate verbs** to distinguish between hunting and fishing but rather used a general term for hunting and coupled this with the noun corresponding to the object (either animal or vegetable) sought.” 94 Idaho 759, 762.
- I “In order to be fair we must attempt to give effect to the terms of the treaty **as those terms were understood** by the Indian representatives.”
- I “[T]he mere passage of time has not eroded the rights guaranteed by a solemn treaty that both sides pledged on their honor to uphold. As part of its conservation program, the State must extend full recognition to these rights, and the purposes which underlie them.” 94 Idaho 759, 766.

DEPARTMENT OF GAME OF WASHINGTON V. PUYALLUP TRIBE (PUYALLUP II)

(1973 – US SUPREME COURT)

- I Clarified that **state regulation could not lawfully discriminate** against tribal harvesters in applying a facially nondiscriminatory regulation. 414 U.S. 44, 48.
- (States cannot enact laws that appear on the surface to be fair and equitable but actually end up being discriminatory.)

UNITED STATES V. WASHINGTON

(1974 – UNITED STATES DISTRICT COURT, W.D. OF WASHINGTON)

- I Often referred to as “the Boldt decision” or “the Boldt case”.
- I “By dictionary definition and as intended and used in the Indian treaties and in this decision ‘in common with’ means *sharing equally* the opportunity to take fish at ‘usual and accustomed grounds and stations’; therefore, non-treaty fishermen shall have the opportunity to take up to **50% of the harvestable number of fish** that may be taken by all fishermen at usual and accustomed grounds and stations and treaty right fishermen shall have the opportunity to take up to the same percentage of harvestable fish, as stated above.” 384 F. Supp. 312, 343.

WASHINGTON V. WASHINGTON STATE COMMERCIAL PASSENGER...

(1979 – US SUPREME COURT)

- I Affirming *United States v. Washington* (the Boldt decision) and its 50% of the harvestable number of fish allocation for tribal fishermen.

UNITED STATES V. OREGON

(1984 – 9TH CIRCUIT)

- I Idaho intervenes in *United States v. Oregon* in 1983.
- I In 1984, the 9th Circuit reverses the order that denied the State of Idaho's petition to intervene because it was not untimely and the remaining requirements for intervention as of right were met. The 9th Circuit court then remanded the case for further proceedings.
- I Idaho intervening in *United States v. Oregon* did not expand the jurisdiction of the case.

UNITED STATES V. OREGON

(1990 – 9TH CIRCUIT)

I The Shoshone-Bannock Tribe was allowed to intervene in *United States v. Oregon* in 1986.

UNITED STATES V. OREGON

TO THE PRESENT DAY

- I “Both the state and the tribes should be encouraged to pursue such a **cooperative approach**.” 302 F. Supp. 899, 912.
- I Judge Belloni’s encouragement of a “cooperative approach” is what laid the foundation for the management agreements entered into in 1977, 1988, 2008, and the 2018 management agreement that is currently in place today.



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