Upper Skagit Indian Tribe v. Sauk-Suiattle Indian Tribe, ___ F.4th ___, 2023 WL 3163049 (9th Cir., May 1, 2023).

- **Holding**: The usual and accustomed fishing area of the Sauk-Suiattle Tribe, as determined in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), did not include the Skagit River.
- **Summary**: The Upper Skagit Indian Tribe (the Upper Skagit tribe), invoked the retained jurisdiction of the district court under the Boldt decision (*United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974) to determine the usual and accustomed fishing areas of the Sauk-Suiattle Indian Tribe (the Sauk tribe). In order to reach the fishing grounds of the Upper Skagit Tribe, salmon must pass through the Skagit River, an area that the Sauk Tribe claimed was included in its usual and accustomed fishing area, as determined in the Boldt decision. The district court concluded that Judge Boldt intentionally omitted the Skagit River from the Sauk tribe's U&A and therefore the Sauk tribe's attempts to open fisheries in the mainstem of the Skagit River were not in conformity with the Boldt decision. On appeal, the Ninth Circuit affirmed, holding that Finding of Fact No. 131 in Judge Boldt's final decision did not expressly include the Skagit River, despite naming three other rivers, The fact that Finding of Fact 131 included nine creeks that flow into the Skagit River did not imply the inclusion of the River itself, because "Judge Boldt's inclusion of rivers and tributaries in other tribes' U&As strongly indicates that Judge Boldt did not intend to include a river by reference to its tributaries alone; rather, he listed a river and its tributaries when he intended to include both." The exclusion of the Skagit River was consistent with the expert report that Judge Boldt relied upon and consistent with testimony of a Sauk tribal member cited in the finding of fact. The fact that the Skagit River lies between the Sauk River and the Cascade River, both included in the Sauk Tribe's U&A, and thus part of a likely "path of travel" between the two rivers, did not imply the River's inclusion in the U&A described in Finding of Fact No. 131, and scattered references in the record to the presence of Sauk tribal members on the Skagit River did not "show[] that Judge Boldt intended to include the Skagit River in the U&As contrary to the plain text of Finding of Fact 131.
- **Relevant (2023) Deskbook Section**: 9:13
- **Comment**: for earlier proceedings in the case see *United States v. Washington*, ___ F. Supp. 3d ___, 2020 WL 5893377 (W.D. Wash. Oct. 5, 2020) (notwithstanding its likely success on the merits in connection with a fishing dispute with the Sauk-Suiattle Tribe, the Upper Skagit Indian Tribe failed to establish the irreparable harm requisite to entry of a temporary restraining order). https://docs.google.com/document/d/19D8d6qb_8h7xkLDK-74CoFOa0xa3qdhN/edit; and *United States v. Washington*, ___ F. Supp. 3d ___, 2021 WL 4972343 (W.D. Wash. Oct. 26, 2021), *reconsid. denied*, ___ F. Supp. 3d ___, 2021 WL 532092 (Nov. 16, 2021) The usual-and-accustomed fishing places of the Sauk-Suiattle Indian Tribe under the Boldt Decree do not include the Skagit River. https://docs.google.com/document/d/1RPtybyoXKuXX5ud9hp-K2BptQGGUKN-i/edit