City of Seattle v. Sauk-Suiattle Tribal Court, 2022 WL 2440076 (W.D. Wash. Jul. 5, 2022)

- **Holding:** Tribal court action alleging infringement of treaty fishing rights through off-reservation dams' operation would not be enjoined, and case stayed pending exhaustion of remedies in that action.
- **Summary:** The City of Seattle operates via Seattle City Light three Federal Energy Regulatory Commission-licensed dams on the Skagit River. The dams lie outside but upstream of the Sauk-Seattle Indian Tribe's reservation. In January 2022, the Tribe sued the City in tribal court alleging "violations of its usufructuary rights under the 1855 Treaty of Point Elliott, ... the First, Fourth, and Fourteenth Amendments to the U.S. Constitution, and the American Indian Religious Freedom Act." The City responded with this action seeking to enjoin the tribal court proceeding, and the Tribe moved to dismiss on the basis of the City's failure to exhaust tribal court remedies. The district court denied the motion but did stay the action pending exhaustion.

  The only exception to the ordinary exhaustion requirement relied upon by the City was that, given the dams' off-reservation location, tribal court jurisdiction was "'plainly lacking"' and thus "requiring the City to exhaust its remedies would serve no purpose other than to cause delay." In disagreeing, the court applied a "frivolous" standard:

  > Jurisdictional questions are notoriously fact-intensive, and the facts of this case may be distinguishable in a number of potentially material ways from the precedent on which the City relies and could at least arguably bring the tribal lawsuit within the ambit of the [second] *Montana* exception. For example, the Tribe seeks a declaration that the salmon population "within the territory of the Sauk-Suiattle Indian Tribe is protected." ... While the City maintains that "there is no physical on-reservation impact" in this case, the Tribe has alleged that the upstream activities on the Skagit River do in fact have a direct impact on the health of the salmon population downstream, within the reservation. Depending on how the facts in this case develop, this argument may be unfounded or attenuated, and ultimately unpersuasive; but the Court cannot say at this point that it is frivolous. The lawsuit concerns conduct on and affecting rivers, making the jurisdictional inquiry particularly difficult to limit according to geopolitical boundaries. ... In addition, the tribal lawsuit is based in part on interpretation of Sauk-Suiattle tribal law and Indian treaty rights, which would benefit from the Tribal Court's expertise. ... The breadth and complexity of these factual and legal issues are well-suited for review—in the first instance, at least—by the Tribal Court.

  The court emphasized, however, that it "is not ruling here that the Tribal Court has jurisdiction, and nothing the Court has said about the plausibility of jurisdictional arguments should be construed as commentary on the relative merit of those arguments. The Court holds only that the Tribe is entitled to make these arguments to the Tribal Court first."

  The court also rejected the City's contention that any claimed tribal court jurisdiction was precluded under the Federal Power Act that vests exclusive jurisdiction with the federal courts of appeals over challenges to FERC orders. "While the claims are certainly related to the FERC license at issue," it reasoned, "it is not 'frivolous' to argue that the lawsuit—seeking as it does only declaratory relief—is not an attempt to 'affirm, modify, or set aside' that license. The Tribe has at least a colorable argument that its claims

proceeding in Tribal Court are 'wholly collateral to a statute's review provisions and outside the agency's expertise,' and not, therefore, precluded by Section 313 of the FPA."

- **Relevant (2022) Deskbook Section:** 6:9 n.7
- **Comment:** This result is problematic. The City's allegedly violative conduct takes place off reservation where the Tribe plainly lacks jurisdiction. That the conduct has, in the latter's view, on-reservation impacts does not alter this jurisdictional fact. The court's reasoning necessarily leaves open the possibility that a tribe's treaty (or other) rights may vest its judicial system with a form of extraterritorial jurisdiction.