



# Skagit County Prosecuting Attorney Richard A. Weyrich

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April 24, 2017

Stephen LeCuyer, Tribal Attorney  
Swinomish Indian Tribal Community  
11404 Moorage Way  
La Conner, WA 98257

### **RE: SITC Assertion of Off-Reservation Jurisdiction/Authority – Constitutional Amendments**

Stephen,

I write in an attempt to engage you regarding the Swinomish Indian Tribal Community's ("SITC") proposed Constitutional Amendments (see attached document). As you know, Skagit County has filed two objections with the Bureau of Indian Affairs' Regional Office associated with the SITC Constitutional Amendments. I apologize in advance for the length of this letter, but it is a complex subject that merits detailed analysis and discussion.

Much of what is contained in SITC's proposed Constitutional Amendments is fairly innocuous from our perspective, and we understand that BIA has insisted that SITC drop SITC's claim to March Point as a condition of pre-approval of the Amendments.

However, the portion of the Amendments that assert jurisdiction off-reservation (in "usual and accustomed areas" as well as "open and unclaimed lands" pursuant to the 1855 Treaty of Point Elliott) are **highly problematic**, for the reasons discussed below.

As the attached document reflects, the jurisdictional claims remain a part of the proposed Constitutional Amendments. It is my understanding that you have reportedly told a number of landowners in the area that this means SITC will have jurisdiction over all "vacant land" in Skagit County, and it is causing a tremendous amount of concern and distress in the community.

We have had our share of difficulty communicating in the past, and I legitimately feel that the County and its elected officials have not been treated with the kind of good faith, respect and honesty we are entitled to expect -- or that anyone should expect, including SITC's representatives.

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**Main Office**  
605 S. Third Street  
Mount Vernon WA 98273  
(360) 336-9460  
prosecutor@co.skagit.wa.us

**Civil Division**  
Administration Bldg., 700 S 2<sup>nd</sup> St., Rm 202  
Mount Vernon WA 98273  
(360) 336-9460  
prosecutor@co.skagit.wa.us

**Family Support Division**  
PO Box 1226, 208 E Blackburn Rd Ste 203  
Mount Vernon WA 98273  
(360) 336-9461 fax (360) 336-9393

I also think it is fair to say that much of the animosity between SITC and others in the community has arisen from misunderstanding grounded in a lack of transparency. I have watched with concern as the lack of information has devolved into ugly, racist assumptions and accusations by the uninformed on both sides of the issue. It is particularly concerning to see people in the community blame ALL Native Americans for SITC's actions, pertinent given that SITC is one of four tribal entities in our community. Government in our society is not entitled to operate in secret, behind closed doors, and that idea is extremely important to Skagit County.

That noted, I want to reiterate that it is critically important we engage in open and transparent dialogue about SITC's objectives in this matter, in a way that our community -- both tribal and non-tribal -- can understand. One of our tasks as legal counsel is to translate complex issues into understandable dialogue. If we are not leading the discussion, others will, to the detriment of tribal and non-tribal communities alike.

With this in mind, I would like to propose we put the past behind us and attempt to discuss this issue in good faith.

**The County Commissioners have called on SITC to provide a formal public statement of the scope of the jurisdictional claim contained in the SITC Constitutional Amendments.**

Specifically, we are looking for answers to the following questions:

- What does the jurisdictional claim mean, in plain and direct language?
- What kind of jurisdiction is SITC claiming off-reservation, and where?
- Does this involve a demand for land use jurisdiction, criminal jurisdiction, general jurisdiction, regulatory jurisdiction or another kind of jurisdiction?
- How would that work given that we have four tribes that claim overlapping jurisdiction, who have not resolved competing claims over usual and accustomed areas, open and unclaimed lands, and other issues?
- It is our understanding that rights arising under the Treaty of Point Elliott are rights held by all the signatory tribes in common. How is it even possible for SITC to assert Point Elliott Treaty rights without the consent of the other signatory-tribes?

Absent your input, here is what SITC is pursuing in our understanding: SITC intends pass the Constitutional Amendments through a tribal vote and obtain Department of the Interior approval, after which SITC will insist that both parties to the Treaty have approved the "jurisdictional expansion" under the Treaty over anything that has any arguable nexus to habitat and the environment. Skagit County will appeal this federal agency action to the U.S. Supreme Court if necessary, during the course of which SITC will insist that Skagit County should participate in some form of a "consensus based decision-making process" in lieu of litigation, more or less

exactly what SITC demanded in the context of the 1996 Memorandum of Agreement regarding water rights in the Skagit Basin.

While Skagit County has no issues with consultation with area tribes and does so whenever asked,<sup>1</sup> the so-called “consensus” approach to shared decision-making/jurisdiction has been a demonstrable disaster.

While the 1996 MOA was sold to the community as a “cooperative” forum in which we would work together on water (a “fifty year deal”, as Chairman Cladoosby is fond of saying), SITC weaponized the requirement of “consensus” by opposing any sort of decision, and, today, as a direct result, rural landowners and agriculture have no access to water rights in the Skagit Basin. While I recognize that Chairman Cladoosby has a different version of events that he articulates to the media, that is how we perceive it, and, as Marty Loesch is fond of saying, perception is reality.

Accordingly, if SITC persists with its claims for off-reservation jurisdiction, Skagit County will be pursuing all available opportunities to oppose it. Because SITC’s jurisdictional assertions will impact and degrade the jurisdictional authority of every non-SITC government in the region, we expect that others will join. As you are likely aware, we have engaged the Von Briesen & Roper law firm, which has successfully assisted municipal governments against similarly aggressive expansionism by Oneida and other tribes around the country.

While that is one possible outcome, it is our strong preference to attempt to understand what SITC is doing, and try, despite a litany of past failures, to find common ground that respects SITC objectives as well as our common society’s core values of democracy, equal representation, and existing economic expectations. That starts with transparency about our objectives and goals.

As you are of course aware, these issues are not limited to our valley. In recent years it has become fashionable to assert that jurisdictional control over the natural environment and land base should be returned to indigenous people, meaning, in the context of the lower 48 United States, tribal governments.

This has been coupled with a demand for an end to fossil fuel development and reliance.

**SITC Chairman Cladoosby has been at the forefront of these issues, both nationally and internationally, and these two initiatives are being closely linked in the public’s mind through intentional effort by SITC and its allies, including prominent appearance by SITC representatives at the recent March Point refinery protests as well as Standing Rock.**

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<sup>1</sup> Communications from SITC/SSC employees already are in constant and regular contact with Skagit County Planning Department officials, and County staff has spent countless thousands of hours responding to SITC inquiries and demands. SITC’s level of consultation and influence on all levels of government is already wildly disproportionate to the 540 SITC individuals it serves.

Accordingly, it is extremely difficult to ignore Chairman Cladoosby's statements and ideas in the context of SITC's current off-reservation jurisdictional assertions.

Simply put, we are inclined to take your Chairman at his word.

As the Board pointed out in their most recent objection letter to BIA and Interior, the Treaty's central purpose involved tribal relinquishment of jurisdictional claims to the land base, reserving fishing rights and a reservation in the process.<sup>2</sup> We agree that the habitat right includes the right to enjoin actions by the state and its subdivisions that threaten treaty fishing rights, but that is a right expressed judicially. It is NOT a grant of general jurisdiction. There is no legal authority to the contrary.

But let's assume for the sake of discussion that Skagit County agrees, after a period of political lobbying and the like, to re-relinquish jurisdiction (in whole or in part) over land use and environmental regulation within SITC's claimed "usual and accustomed areas" and "open and unclaimed lands". There are a number of serious problems with this, problems that we would sincerely like SITC to address in a response:

1. SITC tribal government represents approximately 0.4% of the Skagit County population (based on the 2010 Census). SITC tribal government dictating laws, regulations and the future of our land base and economy to the other 99.6% of the population (which is the ultimate point of jurisdiction) is not remotely consistent with representative democracy. Skagit County's fifty year old Comprehensive Plan, developed with extensive public participation and process, has already been severely undermined by SITC's litigation over water rights, and it would be rendered effectively meaningless by the jurisdiction that SITC claims.<sup>3</sup>
2. The point of jurisdiction is to establish the boundaries of a government's authority and services to a geographically defined area and population, and "cherry-picking" jurisdictional authority and services is a serious problem from our perspective. At the moment, Skagit County government employs 640 employees, who serve all 116,000 citizens of Skagit County with law enforcement (including fish and wildlife laws), police protection, land use management, health services and many other services inherent in a government of general jurisdiction, while SITC tribal government reportedly employs over 200 employees to serve the SITC population consisting of 540 individuals. If SITC ultimately obtains the jurisdictional authority it envisions, what functions currently performed by Skagit County does SITC propose to take over/subsume? Even if were

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<sup>2</sup> Seen properly, the Treaty was an accommodation between agricultural civilization and hunter-gatherer civilization, accomplished far more humanely and fairly than what occurred on the rest of the planet over the course of the last ten millennia. As Chairman Cladoosby is fond of saying, "a deal is a deal."

<sup>3</sup> Minority rule over a majority population is always wrong and violative of human rights, regardless of the historical claims that are used to justify it here. It was precisely why the international community was opposed to the apartheid regime in South Africa. European colonization around the planet, Alawites in Syria, Tutsis in Rwanda, Sunnis in Ba'athist Iraq are other examples, the common denominator being pernicious conflict and racial animus lasting for generations.

appropriate for SITC to determine long-range outcomes for a substantial majority population that it does not democratically represent, how would SITC ensure a revenue stream sufficient to support the level of services that broadened jurisdiction would involve, particularly given that SITC's government is highly dependent on fairly non-resilient cash flow streams? Put another way, if there was a significant economic contraction and attendant reduction in federal grants as well as vice revenue streams, how would SITC propose to replace its current cash flow in order to maintain its current level of government? Local governments have the ability to raise taxes from the people it serves. SITC does not.

3. Assuming that SITC obtains jurisdiction over the off-reservation areas that it seeks, what would that look like? What is the substantive plan? Would SITC have the County ignore our democratically-created Comprehensive Plan? Are there any principles, ideas, policies or anything else that SITC believes it wishes to pursue differently than what is already transpiring? Or is this just about an assertion of political power?

The latter question warrants a deeper discussion: if there is to be a dramatically increased indigenous (i.e., SITC) role in the management of this ecosystem at the expense of its democratically-elected government (and its transparent, deliberate planning processes undertaken over the course of many decades), what is the general plan that SITC has in mind for the Skagit Valley land base in the alternative that requires the present exercise of separatist jurisdiction?

**Simply put, SITC appears to be asking that Skagit County government hand over the keys to the Skagit Valley's land base, and thus it is entirely rational to ask where it is SITC plans to drive the car.**

In this respect, every conversation and communication I've had with SITC representatives over the past decade about this question has had a singular focus: return of the Skagit ecosystem to pre-European colonization habitat conditions, benefitting tribal fisheries at the expense of agriculture. I fully expect that you will protest to the contrary, but SITC's actions and statements fully confirm this point of view.<sup>4</sup>

As your Chairman recently explained in a national publication:

*Gone is the 19th-century attempt to defeat Europeans or the 20th-century attempt to assimilate. The strategy now is to marshal attorneys, money, land, and political clout to outlast them. "I call us the weebee people," said Brian Cladoosby, president of the National Congress of American Indians. "We be here when they came, we be here when they gone."*<sup>5</sup>

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<sup>4</sup> "Purposes are deduced from behavior, not from rhetoric or stated goals." - Donella Meadows,

"Thinking in Systems."

<sup>5</sup> "What's Happening in Standing Rock," *Outside* magazine, September 2, 2016

We do not see this as a workable idea, given that many of us were born and raised here, and do not plan to leave. Chairman Cladoosby's ideas are based on the notion that the Skagit River ecosystem was a social and environmental utopia prior to European colonization, an idea he frequently expresses in public and the media. For example:

*One hundred fifty years ago, this was utopia — with no (social) classes, no rich, no poor, no starving people. Everyone lived together in 1,000-foot longhouses, and they knew the difference between right and wrong...<sup>6</sup>*

Having lost my own family fishing way of life where we all worked together as a family, young and old, I have personally experienced some small fragment of the cultural loss involved. And personally, I mourn the loss of a civilization that existed without reliance on finite inputs, made possible by the idea that humans are part of the Earth, an idea likely indispensable to the long-term survivability of the human species, an idea culturally supplanted by the maladaptive European-introduced concept that our ultimate home lies elsewhere.

However, to the extent we are charged with representing others in a highly uncertain and dangerous future, it is important to be clear-eyed and rational, rather than relying on emotional appeal and personal narrative.

Before European colonization, this ecosystem supported roughly 10,000 humans, their numbers kept in check by Haida and Tlingit slaving raids and internecine warfare -- among other things. Despite the rhetoric, it is highly unlikely that anyone actually wants to return to that form of civilization, even if it were possible, which it is not.

The current reality, which is not particularly arguable, is that the Swinomish economy is based on gambling, alcohol and fuel sales, as well as federal payments in the form of grants (reportedly \$72 million over the past 8 years), all of which is far more reliant on globalized fossil fuel capitalism and less resilient than the existing local agricultural economy.

And much of SITC's cash flow is clearly being directed to the support of a tribal government significantly out of financial balance with the population it serves, which, some say, is the real driver behind the ongoing expansionism. Thus, SITC is not offering an economy (i.e., a plan) materially different from the one that exists.

Ending fossil fuel reliance is ultimately about squaring food production with human population within an ecosystem. When we end our reliance on fossil fuel, there will be nothing more important than temperate, well-watered alluvial farmland such as the Skagit; this is the reason that European colonizers rushed past the plains to the alluvial floodplains of the Pacific Northwest in the years prior to the advent of fossil fuel agriculture. This is not a reasonable debate among those who understand how food is produced globally, and we therefore believe it is critical to preserve our agricultural land base and the options it provides future generations.

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<sup>6</sup> "Swinomish Leader Cladoosby Fights For Salmon and Sovereignty," Seattle Times, June 20, 2015.

Cultural memory is important; it was a mere eighty years ago, during the Great Depression, that SITC tribal members were kept from starving by donations of food from Skagit farmers, an event far more relevant to what our society faces in the future than the lost hunter-gatherer past. *See, Fish vs Farms on the Skagit Delta, Seattle Weekly, August 4, 2012* (“Cladoosby, in an interview with the Skagit Valley Herald last year, remembered fondly stories elders told him of the generosity of Dave Hedlin's mother, Elizabeth, who saw to it that starving tribal members had food to eat during the Great Depression.”)

As previously noted, SITC has been openly hostile toward agriculture and agricultural landowners in the Skagit Valley. From the covert surveillance of farms (leading to the map of water use that you accidentally furnished in discovery); to the deprivation of water rights; to the persistent harassment of diking and drainage districts; to the extensive effort directed at conversion of farmland to salmon habitat, there is little question that the focus of SITC's efforts are at the expense of agriculture and the agricultural land base.

That said, Skagit County represents the entirety of the Skagit County population, including tribal citizens and agricultural landowners alike. Skagit County government will disagree out of necessity with things such as the assertion that the County should give up large swaths of its jurisdictional authority to one of four tribal entities representing 0.4% of the County's population, because it is inconsistent with the core values we hold as members of our society. If those values are not important to SITC, then we appear to have reached an intractable cultural difference of opinion.

Instead, perhaps it is time to start looking for positive, forward-looking outcomes that focus on what the future holds, rather than viewing Skagit County and the people who run it as enemies to be punished for the advent of agricultural civilization. To quote your Chairman again:

*So when you have a perceived enemy out there who is just fighting tribes, that's the nut that you have to crack and that's the person that needs to be at the table with you. So my advice is to create relationships. Work harder on those that don't agree with you because it's not hard to convince your friends, it's really hard to convince those that you perceive as your enemies.<sup>7</sup>*

It is possible to experiment with new ways of producing food without fossil fuel inputs based on perennial polyculture, tree crop production and agroforestry, systems that draw on indigenous knowledge from around the planet, new discoveries, and better soil practices, meeting both human and ecosystem needs while building community resilience.<sup>8</sup> One could imagine the funds currently aimed at farmers (the “What's Upstream” campaign comes to mind) being used instead to incentivize local landowners to plant edible perennial hedges along streams and a myriad of other creative approaches that stack habitat and human-supportive functions (the “win-win”, in politician parlance).

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<sup>7</sup> “Brian Cladoosby: The Swinomish Indian Tribal Community's Approach to Governance and Intergovernmental Relations,” Indigenous Governance Database, March 24, 2010

<sup>8</sup> *See, e.g.,* <http://www.wildthymefarm.com/agroriparian.html> ; [www.woolleyfoodforest.org](http://www.woolleyfoodforest.org)

One could imagine this sort of thing being promoted as an ecosystem-wide initiative. The people of the State of Washington would surely support designating the Skagit Valley as a strategic food security reserve in the face of fossil fuel decline, particularly if it were the product of a cooperative effort between local tribal and non-tribal government as well as agriculture, and created habitat benefits in the process.

Why not reach for something positive? Is this about political control and retribution for the past, or a rational effort to face the future? It is your question to answer, but it should be the latter.

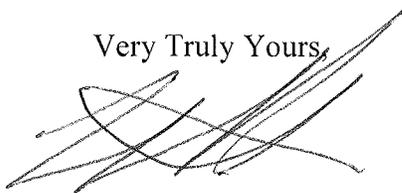
**In conclusion, I would sincerely appreciate it if you would provide a formal, written explanation of what SITC is trying to accomplish by asserting off-reservation jurisdiction, and, more importantly, what substantive plan SITC intends to pursue that requires the assertion of off-reservation jurisdiction at the expense of our community's democratically-elected governments.**

As a housekeeping item, SITC Chairman Cladoosby has asked to put on a televised presentation for the Skagit County Commissioners, but there is a concern that this will be more of a one-sided presentation about March Point. As the Board has expressed, the public exposition of SITC's claims is wrongfully suppressing March Point land values, and should be resolved in federal court. We see no value in continued debate over March Point.

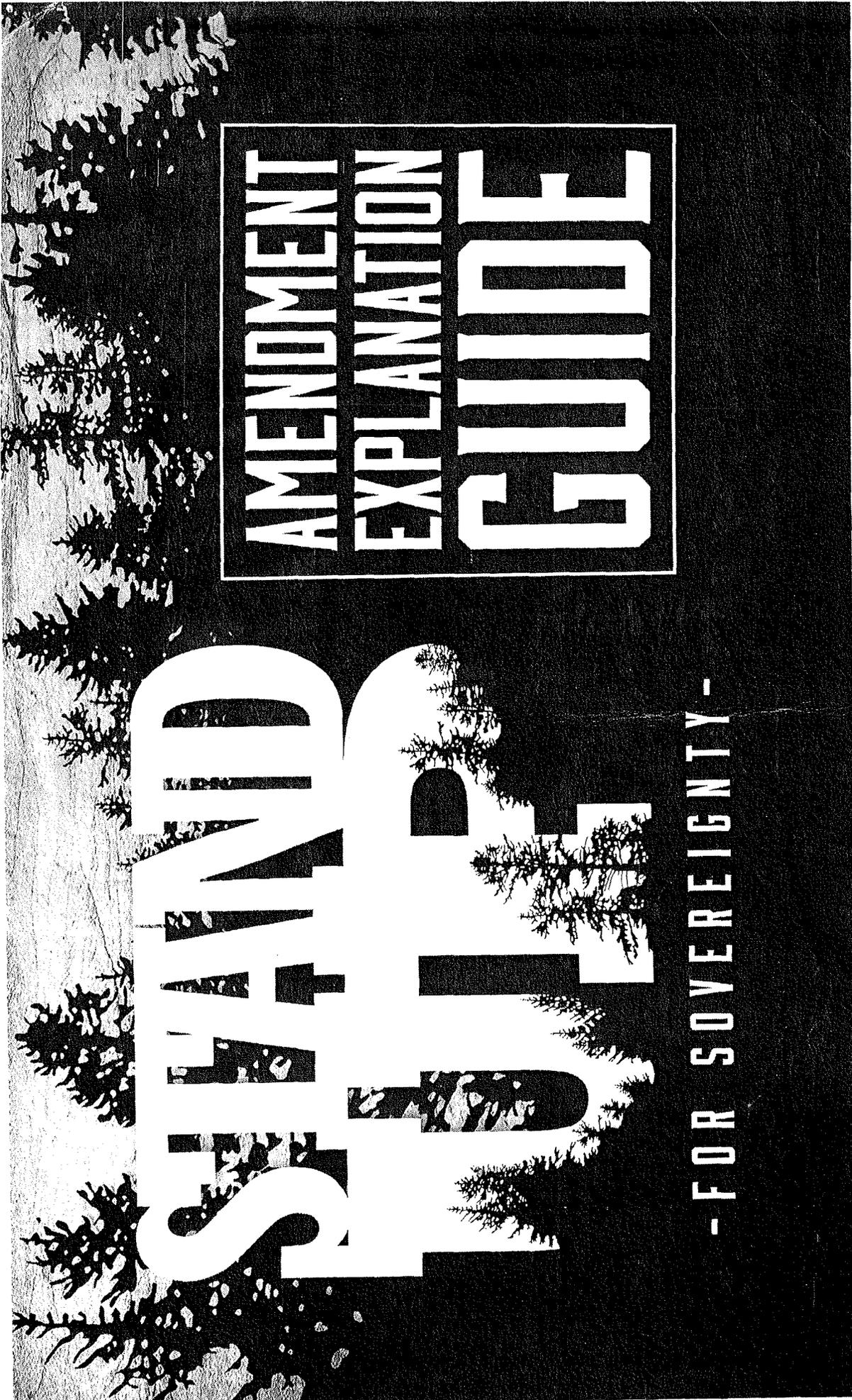
We are far more concerned about the jurisdictional claims. Furthermore, it seems like this issue could benefit from a greater diversity of voices. Just exploring possibilities here, would Chairman Cladoosby be interested in participating in a panel discussion with other stakeholders that would allow our community to explore, discuss and address these issues in a more holistic way? (I would not be part of this, let's keep the lawyers out of it.)

Looking forward to your response.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Will Honea', with a large, sweeping flourish extending upwards and to the right.

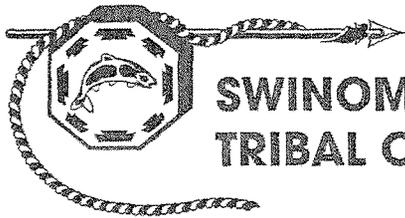
Will Honea



# STAND STILL

## AMENDMENT EXPLANATION GUIDE

- FOR SOVEREIGNTY -



**SWINOMISH INDIAN  
TRIBAL COMMUNITY**

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**A SIDE BY SIDE COMPARISON**

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**CURRENT CONSTITUTION**

**PROPOSED AMENDMENTS**

**-AND-**

**AMENDMENT EXPLANATION**

**SECRETARIAL ELECTION TO BE HELD  
MAY 23, 2017**

## **Explanation of This Document**

This document is Swinomish's Side-By-Side Comparison of the Current Constitutional Language, Proposed Language, and *Changes Explained*. The key component of this document is the *Changes Explained* portion which is located in the GREY AREAS located on the right side of each page. This guide is a replica of the booklet that you received from the Secretarial Election Board, EXCEPT it adds explanations for each of the amendments proposed by the Senate that you will vote on at the Secretarial Election.

If you look at the Side-By-Side Comparison booklet the Secretarial Election Board mailed you and compare it to this one, you will notice there are no greyed out areas in theirs but everything else is identical to ours. This is so you can utilize both, using the Swinomish guide to view *Changes Explained* located in the grey areas to understand the proposed amendment changes.

It is the goal of the Constitutional Reform Committee to help you, the Swinomish Tribal member, understand the Proposed Amendments. Please join us at an Informational Meeting (April 5 at 6PM, April 13 at Noon, May 3 at 6PM in Social Services) with this document in hand and your questions. The Constitutional Reform Committee will be there to present, discuss, and answer your questions. The website [standup.vote](http://standup.vote) also may be of assistance.

Red color shows the current language that is to be deleted.

Blue color shows the proposed amendments.

**Amendment B**  
**(Amends Title and Article 1, Sections 1 and 2 and Adds Section 3)**

**Amendment B**  
**(Amends Title and Article 1, Sections 1 and 2 and Adds Section 3)**

**Changes Explained**

**Current Constitutional Language**

**Proposed Constitutional Language**

**ARTICLE I-NAME AND TERRITORY**

**ARTICLE I-NAME, TERRITORY, AND JURISDICTION**

**SECTION 1.** The name of this organized body shall be the Swinomish Indian Tribal Community, hereinafter called the community.

**SECTION 1. *Name.*** The name of this organized body shall be the Swinomish Indian Tribal Community, hereinafter called the community or Tribe.

**SEC. 2.** The jurisdiction of the Swinomish Indians shall include all the territory within the original confines of the Swinomish Reservation boundaries, as set forth by Executive order of September 9, 1873, in pursuance of article III of the Treaty of Point Elliott, January 22, 1855 (12 Stat. 928), and shall extend to such other lands as may be hereafter added thereto under any law of the United States, except as otherwise provided by law.

**SEC. 2. *Territory.*** The territory of the Swinomish Indian Tribal Community shall include, to the fullest extent possible consistent with applicable federal law and the sovereign powers of the Tribe, all lands, water, property, airspace, surface rights, subsurface rights, and other natural resources

*(New Section)*

- (a)* in which the Tribe now or in the future has any interest, or
- (b)* which are owned now or in the future by the United States for the exclusive or non-exclusive benefit of the Tribe or for individual tribal members, or
- (c)* which are located within the Swinomish Reservation, notwithstanding the issuance of any existing or future patent or right-of-way.

**SEC. 3. *Jurisdiction.*** To the fullest extent possible consistent with applicable federal law and the sovereign powers of the Tribe, the Swinomish Indian Tribal Community shall have jurisdiction over all persons, subjects, property and activities occurring within

- (a)* its territory as defined by this Article; and
- (b)* the Tribe's usual and accustomed fishing grounds and stations and all open and unclaimed lands, as guaranteed by treaty for fishing, hunting and gathering, and on such other lands and waters as is necessary for access to such fishing, hunting and gathering areas

Further, jurisdiction shall extend to all persons, subjects, property and activities that may hereafter be included within the jurisdiction of the Tribe.

**Category: Our Territory and Jurisdiction**

1. Describes and confirms the Tribe's territory as including not only the land, but also water, airspace, surface and subsurface rights as well as natural resources; and
2. Updates and strengthens our current Constitution's description of our Territory to include off-Reservation lands owned by the Tribe or the U.S. in trust for the Tribe.

**Category: Our Territory and Jurisdiction**

By clarifying and strengthening our jurisdiction (authority) over our territory broadly, we

1. protect our territory and natural resources to the fullest extent allowed by applicable federal law. Examples of harmful activities: solid waste dumping on our lands; and harvesting on our tidelands.
2. can better manage our treaty resources for all; and
3. better enforce laws protecting treaty resources.
4. ensure that our Constitution is a living, flexible document that is able to change as federal law changes.